

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.3561 of 2014

Date of Decision:15.03.2016

Aarti Verma

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikram Chaudhri, Sr. Advocate, with
Mr.Manish Verma, Advocate,
for the petitioner.

Mr.P.P. Chahar, DAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioner is the widow of Mohit Phalswal, who was working as Panchayat Auditor in the Department of Local Audit, Haryana and posted at Barara, District Ambala, died on 13.7.2010, when his Accent car met with an accident at Kalpi near Barara. It is alleged that while the deceased was coming back to Chandigarh, he met with two accidents. The first accident was minor, which took place near Kataria farm house, at the link road, which joins Village Barara to main Highway from Ambala to Jagadhari. In the second accident, the car of the deceased was totally burnt but his dead body was found lying on the ground with injury on the back of his head. The petitioner had a suspicion that the deceased was killed by someone as while auditing the Panchayats' account the deceased had detected various discrepancies and misappropriations of the funds. She filed a writ petition bearing CWP No.15992 of 2010 for direction to probe into the mysterious death of her husband, which was disposed of on 8.9.2010,

directing for a fair investigation under the supervision of the officer not below the rank of Superintendent of Police. Since the FIR was not registered, the petitioner filed a CRM-M-805 of 2011 in which status report was filed by the Superintendent of Police, Ambala alleging that as per investigation, the deceased died due to the alleged car accident. The said petition was withdrawn with liberty to file a fresh one. The petitioner again filed CRM-M-10954 of 2011 for handing over the enquiry/investigation of the alleged murder of her husband to the CBI. The said prayer was not allowed and ultimately the petitioner withdrew the petition to enable her to approach the Magistrate under Section 156 (3) of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.']. The exact order passed by this Court is as under: -

“Learned counsel for the petitioner has submitted that he may be permitted to withdraw the petition to enable the petitioner to approach the Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973.

Petition stands disposed of accordingly.”

The petitioner thereafter filed an application under Section 156(3) of the Cr.P.C. and vide order dated 25.8.2011, the Additional Chief Judicial Magistrate, Ambala, directed respondent No.4 to register a case and investigate the matter. Accordingly, FIR No.220 dated 30.8.2011 was registered under Sections 302 and 120B of the IPC at Police Station Mullana, District Ambala. It is alleged that since investigation was not making any headway, therefore, the petitioner approached the Magistrate, seeking direction regarding submission of status report. On 17.4.2012, the

Chief Judicial Magistrate, Ambala called upon the Investigating Officer to submit the status report. The status report was received in the Court on 27.4.2012. The accused was not arrested and subsequently on 14.6.2012 another status report was received in the Court. Thereafter another status report was received on 30.7.2012 and since the status report was sketchy, therefore, the petitioner moved an application seeking direction to maintain the status report of the investigation on which order was passed on 14.8.2012, directing respondent No.4 to file a detailed status report. Ultimately, the matter, pending before the Magistrate was adjourned to 25.10.2012 for submitting final report. On that date, status report was filed in which it was stated that the matter was referred to CIA Staff (Rural), Ambala for investigation and finally on 18.7.2013, the status report was filed in Court, in which it was stated that cancellation report has been filed in the FIR.

Learned counsel for the petitioner has submitted that according to the report of Sumit K. Arora, M.Sc. (Forensic Science) dated 27.9.2011, the cause of the death of deceased was excessive bleeding from the injury on the occipital region of the skull, which would suggest that it was a case of homicide and not of vehicular accident. The petitioner had also earlier filed CWP No.19239 of 2013, which was disposed of with a direction to the Superintendent of Police, Ambala to ensure that the report under Section 173 of the Cr.P.C. in respect of FIR No.220 dated 30.8.2011, under Sections 302 & 120-B of the IPC, registered at Police Station Mullana, District Ambala, be presented before the Court of competent jurisdiction at an early date but not beyond the period of three

months but it is alleged that according to the petitioner's information, the police has again filed a cancellation report before the Magistrate.

In view of the averments made in the petition, prayer has been made for entrustment of the investigation to the CBI.

Learned counsel for the petitioner, while reiterating the facts narrated hereinabove, has relied upon a decision of the Supreme Court in *Criminal Appeal No.85 of 2016 (@ SLP (Criminal) No.6298 of 2015)* titled as **“Dharam Pal Vs. State of Haryana and others”** decided on 29.1.2016.

It is submitted by learned counsel for the petitioner that the closure report is still pending with the Magistrate, who may accept the same, may order for further investigation or even take cognizance. It is vehemently argued that keeping in view the facts and circumstances and the manner in which the death of Mohit Phalswal has occurred, the investigation of this case may be ordered to be handed over to the CBI.

Learned counsel for the respondents has submitted that on 13.7.2010, telephonic information was received in the Police Station, Mullana that a car No.CH-03-Q-9131 had met with an accident on Ambala-Jagadhri Road near Kalpi Bus Stand. After receipt of the information, Padam Singh Sub Inspector alongwith other police officials reached the spot and found that the car had caught fire and injured husband of the petitioner was taken to the hospital in ambulance. Padam Singh SI went to M.M. Hospital immediately where the dead body of Mohit Phalswal was kept in the mortuary, no relation of the deceased was present and hence no

action could be taken. On the next day, Munni Lal Verma father-in-law of the deceased met the said SI Padam Singh near mortuary and his statement was recorded. He stated that his daughter and the wife of the deceased was in a state of shock and is unable to make a statement. It is alleged that from the statement of Munni Lal Verma, no cognizable offence was made out and then the DDR No.2 dated 14.7.2010 was recorded, investigation was conducted under Section 174 of the Cr.P.C. and postmortem of the dead body was also done. The cause of death in the postmortem report was found to be head injury and thereafter dead body was handed over to the father and brother of the petitioner. The said SI went to the spot of the accident, inspected and photographed it, taken the chhal (bark) of the tree and also the part of the car which had struck against the tree. Those parts were sent to the Forensic Science Laboratory, Madhuban where broken bumper and chhal of the tree were examined physically and under optical microscope. Grazes along with cut were found on the chhal of the tree and some silver colour flakes were present on the chhal of the tree. These flakes tallied the paint of the bumper marked Ex.1, in respect of the colour, physical and microscopic appearance. It was also stated that possibility of fire in the car was due to leakage of petrol/diesel or getting spark from the battery or from AC circuit was not ruled out. The FSL has also given the report that hydrocarbons of petroleum (petrol, kerosene or diesel) could not be detected in the car Ex.3 so it was opined that the car had met with an accident and death of Mohit Phalswal took place due to the accident. It is further averred that because of the

suspicion of the petitioner of her husband's murder because of the injury suffered on the back of his head, inquiries were made by inspector, CIA, Ambala and DSP, Ambala, who recorded the statement of Ram Kumar, Panchayat Officer, who had stated that on 13.7.2010, the deceased went to his house in his car and had no dispute with anybody. Thereafter statement of Dinesh Kumar, resident of Sohana, was also recorded on 13.7.2010 at 10.00 PM, who has stated that he was going on his tractor to his village and when he reached near Kataria farm, he saw that a car had struck against tree and servant Naresh Kumar was standing near the car. He further stated that they took the car to the road with the help of the tractor and asked the driver of the car to stay there and not to travel further. Naresh Kumar, servant of Kataria farm, Sohana was also joined in the inquiry, who had stated that on 13.7.2010 at 10.00 PM, he was present in his house and heard the noise of the accident. He went out and saw that a car had struck against the Safeda tree. Only one person was present in the car on the driving seat. Pardeep Kumar also came at the spot and the driver of the car misbehaved with him as he appeared to be under the influence of liquor. The car driver made calls to his acquaintances and thereafter the car was taken to the road and the driver took away the car. Since no incriminating evidence was found against anybody, therefore, no FIR was lodged and a detailed report was sent to the Director General of Police, Haryana. It is also alleged that on 6.10.2010, during the course of enquiry by the DSP, Ambala, the petitioner had appeared before him and stated that she is feeling danger to her life as she has been threatened on

telephone. She further stated that she had already moved an application to Police Station, Manimajra but no representation was made to the Superintendent of Police, Ambala. It is further alleged that the enquiry has been totally impartial and after the presentation of status report before the Illaqa Magistrate, the petitioner suffered a statement that she is not satisfied with the police report dated 18.7.2013 and wanted her case to be investigated by CBI by filing a writ petition in the High Court. It is further alleged that thorough inquiry has been made but since it is a case of accident, therefore, cancellation report has been submitted.

In support of his submission, learned counsel for the respondents has relied upon a judgment of Delhi High Court rendered in the case of **“Mahender Singh Chhabra Vs. State of NCT of Delhi and others”** 2005(1) Crimes 389.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The petitioner had filed CWP No.15992 of 2010 for seeking a probe into the alleged mysterious death of her husband. The said writ petition was disposed of by this Court with a direction to the Director General of Police, Haryana to depute an officer not below the rank of Superintendent of Police to monitor the investigation. Thereafter, she filed CRM-M-805 of 2011 because the status report was not being filed. In the said petition, the status report was filed in which it was opined that as per investigations, the death had occurred due to the car accident. The said petition was thus withdrawn. Then the petitioner filed CRM-M-10954 of

2011 for entrustment of inquiry/investigation to the CBI. This Court did not agree to the prayer made by the petitioner and hence the petitioner had to withdraw her petition in order to approach the Magistrate under Section 156(3) of the Cr.P.C. The Magistrate ordered for registration of the FIR and investigation was carried out in it. The petitioner had also filed CWP No.19239 of 2013, in which direction was issued to the Superintendent of Police, Ambala to ensure that the police report under Section 173 of the Cr.P.C. be presented before the competent Court of jurisdiction at an early date but not beyond three months. According to the petitioner, the police has again submitted a cancellation report and before the said report is either accepted or rejected, the petitioner has approached this Court for seeking a direction to handover the investigation of this case to the CBI. The suspicion of the petitioner in respect of the death of her husband other than the car accident is only on the basis of the seat of injury. According to the petitioner, seat of injury on the occipital region could not have occurred in the case of an accident because according to the petitioner and the opinion of the private expert, the deceased should have suffered injuries on the forehead.

On the other hand, learned counsel for the respondents has submitted that the investigation has thoroughly been carried out under the supervision of Superintendent of Police as directed by this Court, the petitioner has not denied the fact that before the accident in which the deceased had expired, his car met with an accident at Kataria farm, in the same manner, with the Safeda tree and with the help of a tractor his car was brought on the road and

made road worthy. The petitioner was left alone in the presence of the persons, who had been present there at the time when his car was dragged out after the first accident. It is also submitted that if somebody had to commit murder of the deceased, while setting his car at fire, they would not have dragged the body of the deceased out of the car and left on the ground near the car rather they would have burnt the body alongwith the car to cause disappearance of any kind of evidence against them.

The very fact that the matter in regard to final cancellation of the FIR is still pending before the Illaqa Magistrate, who has the jurisdiction either to accept the cancellation report or to pass an order for further investigation or even to take cognizance himself, it would not be worthwhile to grant the prayer made by the petitioner.

Thus, in view of the aforesaid facts and circumstances, this Court is of the opinion that since the prayer made by the petitioner for investigation of this case by the CBI has already been turned down by this Court in past while dealing with in CRM-M-10954 of 2011 filed by the petitioner which had to be withdrawn by her in order to file an application under Section 156(3) of the Cr.P.C. Consequently, I do not find any merit in this petition for the purpose of granting prayer made by the petitioner and hence, the same is hereby dismissed.

15.03.2016

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**