

\$~9.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3527/2016**

BAL KISHAN

..... Petitioner

Through: Mr. Ajay Khanna & Mr. Ankit
Khanna, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Mr. Sanjay Lao, ASC along with
Inspector Uma Datt, PS-Mangolpuri,
for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
22.12.2016

%

1. The status report has been filed and perused.
2. The petitioner has preferred the present writ petition to seek a direction to the State to transfer the investigation in the case FIR No.302/2015 to an independent branch of Delhi Police, like the Crime Branch, or the Central Bureau of Investigation (CBI).
3. The daughter of the petitioner Shivani, aged about 17 years worked as a Domestic Help at House No.160, Dipali, Pitampura, belonging to one Mr.Atul Verma. The petitioner states that Mr. Atul Verma was residing at

the said house with respondents No.9 & 10, namely Mrs. Charu Verma (his wife) and Ms. Shristi Verma (his daughter). Respondent No.11 is the dhobi of the area. The petitioner states that Shivani was working at the said residence as a Domestic Help between 08:30 a.m. to 10:30 a.m. in the morning and 03:00 p.m. to 05:00 p.m. in the evening.

4. On 03.12.2014, Shivani went as usual to the work in the morning shift and returned. The petitioner states that Shivani was tensed and depressed as Mrs. Charu Verma had scolded her and she was also beaten up by Mrs.Charu Verma. At around 02:30 p.m., Shivani went to the said residence to work in the evening shift. At around 03:25 p.m., the petitioner received a call from Mrs. Charu Verma informing that Shivani had locked herself inside the room and that she was not opening the door. The petitioner reached the house of respondent No.8 and found Shivani lying dead.

5. The petitioner approached the SHO, PS – Mangolpuri on 03.12.2014 itself and filed a complaint. However, the same was returned by the SHO after five days.

6. He preferred another complaint on 04.12.2014, but no action was taken and no investigation was conducted in the matter. On 04.12.2014 itself, he also made a complaint to the Home Ministry, the Lieutenant Governor of Delhi and the Commissioner of Police.

7. He filed yet another complaint on 11.12.2014 with the SHO, PS – Mangolpuri, Outer District. However, he refused to give a hearing to the petitioner and stated that no FIR would be registered against anybody. Pertinently, in this complaint, the petitioner specifically stated that

Mrs.Charu Verma informed him that her father was a DIG and that her mother works in the Home Ministry, and that the petitioner would not be able to get her arrested.

8. The petitioner once again made a complaint on 12.12.2014 to the DCP (Outer District) and the ACP (Rohini Zone).

9. He made yet another complaint on 17.12.2014 to the Commissioner of Police, ACP (Rohini Zone), and once again, no action was taken.

10. The petitioner then approached this Court vide W.P. (Crl.) No.123/2015. The Court required the State to file a status report. Only thereafter the aforesaid FIR came to be registered.

11. Since no progress was made in the investigation, the petitioner preferred W.P. (Crl.) No. 150/2016. The said petition was dismissed as withdrawn on 18.01.2016 since it was stated on behalf of the State that the investigation is underway. The State moved Crl.M.A. No.10348/2016 in the disposed of W.P. (Crl.) No.150/2016 to seek further time to file the final report. On 02.08.2016, that application was disposed of by passing the following order:

“Crl.M.A. No.10348/2016

The petitioner’s daughter aged about 16 years was working as a domestic help with respondents No.8 to 10. On 03.12.2014, she died at the residence of the employers due to burning with Kerosene. The FIR was not registered thereafter for over three months. Eventually, the petitioner preferred W.P. (Crl.) No. 123/2015, which was initially listed before the Court on 16.01.2015. The petitioner moved an application, i.e.

Crl.M.A. No. 1814/2015, which came to be listed before the Court on 06.02.2015. On that date, the writ petition was directed to be listed on 12.02.2015. On 12.02.2015, it was informed to the Court that the FIR No.302/2015 had been registered at Police Station – Mangolpuri on 11.02.2015. Consequently, the said writ petition was dismissed as withdrawn.

The petitioner then preferred the present writ petition. In this writ petition, one of the reliefs sought by the petitioner is that investigation in the case arising out of the complaint registered at Police Station Mangolpuri, Outer District, New Delhi be transferred to an independent branch of Delhi Police like Crime Branch or Central Bureau of Investigation. This petition came up before the Court on 18.01.2016. On that date, the learned Additional Standing Counsel (Criminal), who appeared on advance notice stated, on instructions from Inspector Arvind Kumar, Police Station – Mangolpuri, “that the charge-sheet in the subject FIR shall positively be filed within a period of eight weeks from today”.

Till date, the charge-sheet has not been filed. Instead, the State has moved an application, i.e. Crl.M.A. No.10348/2016 seeking more time to file the final report on the ground that the CFSL report has not been received. Ms. Kamna Vohra, learned ASC states that “final report” would be filed once the CFSL report is received.

The petitioner submits that there is a clear shift in the stand of the State. Whereas, earlier it was stated that the charge-sheet shall be filed, now what has been stated is that only a “final report” would be filed, which would also include a closure report.

Learned counsel for the petitioner further points out that the FIR has been registered on the basis of initial complaint given to the police, and not on the basis of the detailed complaint made by the petitioner on 03.12.2014. Learned counsel further submits that the investigation in the matter has

been done in a shoddy manner inasmuch, as, the relevant evidence has not been collected. The petitioner has apprehension that respondents No.8 to 10 being rich and influential persons, are influencing the investigation in the matter.

Since the writ petition itself stands disposed of, though I am inclined, but I am not in a position to pass any orders at this stage for transfer of the investigation to the Crime Branch. It shall be open to the petitioner to take appropriate steps in that regard.

In the meantime, the CFSL, Rohini is directed to ensure that the CFSL Report in this case is prepared positively within the next one month.

Dasti.”

12. In the aforesaid background, the petitioner has now preferred the present petition to seek transfer of investigation to the Crime Branch of Delhi Police, or the CBI.

13. The status report filed on record refers to the CCTV footage of the RWA, Dipali. It is pointed out by learned counsel for the petitioner that there were three CCTVs installed within the residential premises itself. However, there is no investigation done with regard to the recording made in those CCTVs.

14. Learned counsel for the petitioner further points out that the property in question is 500 square yards property in a prime locality of Delhi and it is not clear as to for what purpose Kerosene oil had been taken to the said premises. According to the petitioner, there is no investigation as to how the deceased came into possession of the two bottles of Kerosene oil. The

aspect whether it is a case of suicide, or a case of murder by burning by Kerosene oil, has also not been thoroughly investigated.

15. Mr. Lao has submitted that the entire team of officers, including the SHO has undergone a change and the present I.O. is not the one, who was dealing with the case earlier. In the end, Mr. Lao submits that in case this Court considers it appropriate, the investigation may be transferred to another investigation agency as this Court may deem appropriate.

16. A perusal of the aforesaid narration of facts shows that this case has a chequered history. Despite that fact that a 17-year old girl died an unnatural death while at work at her employer's place, and despite the fact that the petitioner repeatedly made complaints, the complaint of the petitioner was not entertained by the local police at PS – Mangolpuri. His complaints made to the Home Ministry, the Lieutenant Governor of Delhi and the Commissioner of Police also fell on deaf ears. It was only when the petitioner approached this Court that the FIR came to be registered. This reluctance on the part of the police to register the FIR even though the case involves unnatural death of a young girl at her workplace, itself raises concern in the mind of this Court and is bound to shake the confidence of the petitioner and also create doubt in the mind of this Court whether a thorough investigation would be conducted in the case by the police which appears to have very reluctantly registered the case. The possibility of their being some potent influence being exercised from some quarters to thwart registration of the case and investigation cannot be ruled out.

17. Even after the FIR was registered, the investigation did not progress

and the petitioner once again had to approach this Court by filing W.P. (CrI.) No. 150/2016. Since it was represented to the Court that the investigation was underway, the said writ petition was also withdrawn on 18.01.2016. Even after seven months, the charge-sheet/ final report was not filed and the State then moved CrI.M.A. No.10348/2016 to seek more time.

18. The status report filed on record does not indicate as to how, and why two bottles of Kerosene oil were lying/ taken to the house and by whom, and when. According to the petitioner, there were three CCTV Cameras fitted within the residential premises. The status report is silent whether, or not any CCTVs were installed, and if so, whether the recording of the CCTVs pertaining to the relevant period were taken, preserved and examined. Status report, as filed, raises more questions than it answers and this Court is left with the feeling that the investigation as conducted by the police is incomplete and shoddy.

19. The petitioner has sought to transfer the case to either Crime Branch or the CBI. The Crime Branch is another limb of the Delhi Police itself, and looking to the circumstances of the case and the fact that the petitioner at a rather early stage had also pointed out that the close relatives of Mrs. Charu Verma were in Delhi Police on high rank and in the Home Ministry, transfer of further investigation to Crime Branch of Delhi Police may not have the desired effect.

20. I am conscious of the decisions of Constitution Bench of the Supreme Court in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.*, (2010) 3 SCC 571, and the

subsequent decision in *K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors.*, (2013) 12 SCC 480. Transfer of investigation to the CBI by the Court, though competent for this Court to order, should be sparingly resorted to. The Supreme Court in *State of West Bengal* (supra) observed in paragraph 70 as follows:

*“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. **This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.** Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”* (emphasis supplied)

21. The facts narrated by the petitioner speak for themselves and the apprehension expressed by the petitioner that the police is debilitated from carrying out independent and efficient investigation in the case, appears to be well-founded.

22. Looking to the seriousness of the case and considering the fact that CBI is an independent police force and hopefully beyond influence, I am of the view that this is a fit case where investigation should be transferred to the CBI. It is ordered accordingly. The I.O. shall forthwith transfer the case file to the CBI. A copy of this order be communicated to the Director, CBI forthwith for compliance.

23. It is made clear that the observations made hereinabove have been made only to consider the present petition and this Court has, in no way, pronounced upon the guilt, or otherwise, of any person, including respondents No.8 to 11.

24. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

DECEMBER 22, 2016

B.S. Rohella