

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.493 of 2015

Arising Out of PS. Case No. 54 Year- 2010 Thana – Jakkanpur District- PATNA

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1. Shobha Kumari W/o Suresh Kumar
 2. Suresh Kumar S/o Sumangal Yadav
- Both are residents of Village- Timalpur Tola, Sadullah Chak, P.s Pali, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Ministry of Home Affairs, Union of India, New Delhi.
3. The Director , Central Bureau of Investigation , New Delhi.
4. The Principal Secretary, Deptt. of Home, Govt. of Bihar, Patna.
5. The Director -General of Police, Bihar, Patna.
6. The Deputy Inspector General of Police, Central Range, Patna.
7. The Senior Superintendent of Police , Patna.
8. The Superintendent of Police,(City), Patna.
9. The Sub-Divisional Police Officer, Sadar, Patna.
10. The Officer-in-Charge, Jakkanpur, Police Station, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Advocate
For the Respondent/s : Mr. Madhav Prasad Yadav, G.P.-23
Mr. Arvind Kumar, AC to GP-23
For the CBI : Mr. Sanjay Kumar, SC CBI

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
JUDGMENT AND ORDER
(CAV)

Date: 14-02-2017

This is an application under Articles 226 and 227 of the Constitution of India with prayer for issuance of a writ in the nature of mandamus commanding the respondent-authorities to entrust the investigation of Jakkanpur P.S. Case No.54 of 2010, registered under Sections 304B/201/34 of the Indian Penal Code on 16.03.2010 against the husband and other relations of the husband of the victim



girl, who was the daughter of the petitioners, to the CBI. The accused persons are not party to this writ application.

2. The prayer is on the ground that present investigating agency/the State police being thoroughly casual, arbitrary, malicious and inconclusive in the matter of investigation of the aforesaid case. In fact, the agency having miserably failed to discharge the obligation of a fair and professional investigating agency.

3. Petitioner Shobha Kumari is the informant of the aforesaid Jakkantpur P.S. Case No.54 of 2010 and another petitioner Suresh Kumar is the husband of Shobha Kumari. According to First Information Report, Karuna Kumari @ Pinky Kumari was married with accused Pramod Kumar @ Guddu six years prior to the lodging of the police case. After the marriage, the in-laws started torture to Pinky Kumari for non-fulfilment of their more and more demand for dowry. On several occasions steps for conciliation failed. The victim was residing in her parents' house after removal from the matrimonial house a few years back. However, the husband induced the victim to go with him to her matrimonial house and soon thereafter the victim was reported missing by accused Pramod Kumar. In the circumstances, the informant suspected that her daughter has been done to death for dowry. After investigation the police submitted charge sheet against the husband of the victim only,



on 06.07.2012, under Section 364 of the Indian Penal Code.

4. In the further investigation the police reconsidered its opinion on the basis of appearance of a letter allegedly written by the victim lady indicating that she had committed suicide on account of some misconduct or may be some misadventure she had indulged into. Now the police came to the conclusion that this is a case of mistake of fact and the victim might appear in future.

5. Prior to submission of police report under Section 173 Cr.P.C., petitioner Shobha Kumari had filed Cr.W.J.C. No. 360 of 2010 in this Court for direction to the respondents for fair and expeditious investigation of Jakkanpur P.S. Case No.54 of 2010. This Court by order dated 22.04.2010 disposed of the criminal writ petition vide Annexure-6 and passed the following orders:

“Petitioner has filed this writ application for a direction to the respondents to hold a fair and expeditious investigation of Jakkanpur P.S. case No. 54/2010 instituted on 16.03.2010.

Learned counsel for the petitioner submits that the respondents are not proceeding with the investigation of the case in fair and impartial manner inasmuch as in spite of the statements of the witnesses, accused persons have not been arrested. Learned counsel submits that the main accused of the case i.e. husband of



the deceased was arrested but within 60 hours, he was released.

The case has been instituted on 16.03.2010 and it will be premature to say that the police is not proceeding in fair and impartial manner. In this view of the matter, this Court is not inclined to interfere with the matter.

Learned counsel for the petitioner submits that the petitioner has filed an application before the Deputy Inspector General of Police, Patna in this regard. If the application of the petitioner as contained in Annexure-2 has been received in the office of the Deputy Inspector General of Police, Patna Division, Patna, it is expected that he will look into the matter and take necessary steps in accordance with law.

The writ application is disposed of with the aforesaid observations and directions”.

6. Simultaneously, accused Pramod Kumar @ Guddu, the husband of the victim girl of this case, filed Complaint Case No. 1334(C) of 2010 in the Court of learned Chief Judicial Magistrate, Patna, which was registered as Budha Colony P.S. Case No.93 of 2010. This complaint was with allegation against the informant of this case and others that they have done to death to the victim while she was in her parents' house.



7. Thereafter both the present petitioners and two others, co-accused of Budha Colony P.S. Case No.93 of 2010, filed Cr.W.J.C. No.703 of 2010 ventilating the grievance that the police is not investigating Jakkanpur P.S. Case No. 54 of 2010 and Budha Colony P.S. Case No. 93 of 2010 properly. The aforesaid writ application was disposed of on 27.01.2011 vide Annexure-9 with following conclusions:

“In the above circumstances, I am not inclined to interfere with the matter. However, it goes without saying that both the aforesaid cases i.e., Jakkanpur P.S. Case No.54/10 and Buddha Colony P.S. Case No.93/10 be investigated expeditiously without unnecessary delay. Moreover, as regards the grievance of the petitioners with regard to the investigation, if any, it will be open for them to bring it to the notice of the concerned Superintendent of Police by way of representation, which would be considered in accordance with law.”

8. Thereafter the petitioners filed Cr.W.J.C. No.1053 of 2012 ventilating the identical grievance before this Court. On the basis of supplementary investigation in the aforesaid case the respondents brought to the notice of the Court vide 2nd Supplementary Counter Affidavit dated 04.07.2013 in Cr.W.J.C.



No.1053 of 2012 that girl is missing and the supplementary charge sheet was filed on 12.05.2014 that the case is a mistake of fact as the victim committed suicide vide evidence in para-60 of the case-diary. The aforesaid criminal writ petition was disposed of on 18.07.2014 vide Annexure-17 with following observations:

“After some argument learned counsel for the petitioners prays for withdrawal of this petition in the light of the report of the police at page-10 of Annexure-C of the supplementary counter affidavit filed on behalf of respondent Nos.3 to 5 dated 15.05.2014 to pursue the remedy in accordance with law.

Accordingly, the case is withdrawn as dismissed.”

9. Learned counsel for the petitioners submits that the conduct of the police in recording different conclusions first of kidnapping for the purpose of marriage by the husband only and subsequent conclusion of missing of the victim simplicitor and final conclusion that the victim committed suicide for some other reason shows that the police did not investigate the case fairly. His contention is that the submission of charge sheet or progress of the trial is no bar in directing the investigation, to the CBI or other competent agency or even for ordering re-investigation of the case by the same agency. Contention of the petitioner is that this is a fit case



wherein reinvestigation is required by CBI.

10. On the other hand learned counsel for the respondents submits that since the police has already submitted the charge sheet and the same is based on the evidence collected during investigation, the petitioners have just adopted delaying tactics to harass the system. The petitioners could have filed affidavit of the witnesses before the higher authorities if the investigating officer was not deliberately recording their statement, which has not been done in the present case. No witness has turned up before the learned Magistrate or before any other authority to substantiate the suspicion of the petitioners that this is a case of dowry death. Moreover, the direction for further investigation by CBI would not be required in each and every case to over burden the CBI, which is already burdened. The aforesaid fact would be evident from the counter affidavit filed by the CBI that several other important cases are already entrusted to the CBI for investigation.

11. In **State of West Bengal and others V. The Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571**, the Constitution Bench of the Hon'ble Supreme Court considered the scope of the power of judicial review under Articles 32 and 226 vested in the constitutional Courts. The matter for consideration before the Constitution Bench was to



direct investigation of the said case by the CBI. The Supreme Court observed that the power of judicial review can be exercised to protect fundamental rights and cannot be curtailed by invoking doctrine of separation of power. The Court can issue such direction if substantial justice requires to protect the fundamental right of not only the accused but also of the victim as well as the witnesses. Paragraphs 68 and 70 of the Judgment are being reproduced below:

“68. Thus, having examined the rival contentions in the context of the Constitutional Scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any Constitutional or Statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce



the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified



by combination of "the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review".

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the Executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of The Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the Statute. In our opinion, exercise of such power by



the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State Police, the court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the Constitutional Courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

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. In so far as the question of issuing a direction to the 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 instill 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. “

12. The factual capitulation of the present case would reveal that the petitioners are not satisfied with the result of the investigation; rather have unsuccessfully attempted to get the desired result of the investigation. The F.I.R. was lodged on 16.09.2010.



Soon thereafter a protest petition (Annexure-5) was filed on 03.04.2010 praying therein to take cognizance in the case in the event of submission of final form by the police after completion of the investigation. The list of prosecution witnesses was also mentioned in the protest petition. Prior to filing of the protest petition the petitioner was served with notice on 27.03.2010 vide Annexure-4 from the Investigating Officer to produce evidences in the aforesaid Jakkanpur P.S. Case No. 54 of 2010. Special attention of the petitioners was drawn to the fact that no evidence has been produced, before the Investigating Officer till the date of notice, by the petitioners. There is neither averment nor any material to substantiate that the petitioner produced any evidence in pursuance to the notice aforesaid. Therefore, the petitioners were themselves uninterested in proper investigation of the case by taking appropriate step to produce the witnesses or otherwise. If there would have been evidence in the case diary, the learned Magistrate considering the report under Section 173 Cr.P.C. might have differed from the conclusion of the investigation by the police.

The previous writ applications of the petitioners before this Court and directions thereon as noticed above would indicate that the different Benches of this Court had already taken appropriate care and issue directions for just and proper investigation of the case.



13. For the aforesaid reason, in my view, this is not a fit case wherein this extra-ordinary power should be exercised. Hence, there is no merit in this criminal writ application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Mkr./-

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