NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 15.09.2017

Order Delivered on : 16/11/2017

W.P.(CR.) No. 05 of 2017

1. Gagan Kumar Dash, S/o. Shri I.C. Dash, Aged About 30 Years, R/o. Village -Telia Via Ambaguda, Jaipur, District- Koraput, Orissa
2. Niranjan Das, S/o. Shri I.C. Dash, Aged About 30 Years, R/o. Village Telia Via Ambaguda, Jaipur, District Koraput, Orissa (In-Jail) (Represented to brother Petitioner No. 1)
3. Manoj Kumar Mohankudo, S/o. Shri K.C. Mohankudo, Aged About 32 Years, R/o. At Goudu Street, Jaipur, District- Koraput, Orissa
4. Durjoti Mohankudo, S/o. Shri K.C. Mohankudo, Aged About 45 Years, R/o. At Goudu Street, Jaipur, District- Koraput, Orissa (In-Jail) (Represented to brother Petitioner No. 3)

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Versus

1. State Of Chhattisgarh, Through : The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District- Raipur, Chhattisgarh
2. The Director General of Police, Chhattisgarh Head Quarter Raipur, District- Raipur, Chhattisgarh
3. The Inspector General of Police, Bastar Range, Bastar, Chhattisgarh
4. The Superintendent of Police, Jagdalpur, District- Jagdalpur, Chhattisgarh
5. The Station House Officer, Police Station- Nagarnar, District- Jagdalpur, Chhattisgarh
6. State Of Orissa, Through The Secretary, Home Department, Secretariat, Bhuvneshwar, Orissa.

7. The Director General Of Police, PHQ, Kuttack, District- Kuttack, Orissa

8. The Deputy Inspector General Of Police, Koraput, District - Koraput Orissa

9. The Superintendent Of Police, Koraput, District- Koraput, Orissa

10. The Station House Officer, Police Station -Kotpad, District Koraput, Orissa

-----Respondents

For Petitioner	: Mr. S.C. Verma, Advocate
For Respondent No.1 to 5	: Mr. Ashish Shukla, Govt. Advocate
For Respondent No.6 to 10	: Mr. P.C. Mahapatra & Mr. Raghavendra Pradhan, Advocates

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Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

16/11/2017

1. This petition under Article 226 of Constitution of India has been brought for issuance of appropriate writ for constitution of high level enquiry committee or special investigation team to investigate and submit the report regarding act and conduct of the arraying police officers in this case.

2. It is submitted by the counsel for the petitioner that petitioners are residents of District – Koraput, Orissa. One FIR No.0159 dated 10.08.2016 was lodged by the petitioner No.1 in Police Station Kotpad, District – Koraput for offence under Section 120B, 220, 330, 342, 365, 500 of Indian Penal Code and 25 & 27 of Arms Act alleging in it that his younger brother Niranjan Das was kidnapped by person occupying two jeeps near Borigumma on 29.07.2016. On

making enquiry from Nagarnar Police, no information was received but later on complainant came to know that his brother and one Durjoti Mahangkodo were produced before the Court at Jagdalpur in case about possession of explosives thus implicating brother of complainant and other falsely in a criminal case.

3. It is submitted that petitioner No. 2 Niranjan Das was supervisor of Front Line Trading Company and petitioner No.4 was peon in Municipal Corporation, both of them had been on some personal work to Kotpad on 29.07.2016, where they have been kidnapped by the police personnels of Chhattisgarh Police, alleging them to be connected with some illegal organization and a Crime No.136/2016 registered at Police Station – Nagarnar, District – Bastar for offence under Section 8 (1) (3) (5) of Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 and Section 4 & 5 of Explosive Substance Act, 1908, is a false case registered against them. On coming to know about the incident, FIR was lodged at Police Station – Kotpad by order under Section 156 (3) of Cr.P.C. passed on the basis of a complaint filed before the Court of Judicial Magistrate First Class, Kotpad. Statement of the witness recorded in the complaint case clearly make out a case, that petitioner No.2 and 4 were forcefully kidnapped by the respondents No.3 to 5 from the jurisdiction under Police Station – Kotpad, Orissa in a high handed manner. FIR No.159/2016 has been registered by Police Station – Kotpad. A W.P. (CRL) No. 109/2016 has also been filed before the High Court of Orissa at Cuttack praying relief of habeas corpus and other relief, which has been dismissed by order dated 05.10.2016. Being

aggrieved by the order passed by the High Court of Orissa, SLP (Crl.) No.9292/2016 was filed before the Supreme Court, which has been disposed off on 07.12.2016 directing the petitioner to approach the High Court of Chhattisgarh. It is submitted that high handed act of the police officers in kidnapping the petitioner No.2 and 4 from Kotpad and registering false and concocted case against them in Police Station- Nagarnar is misuse of power and is a crime in the garb of exercise of lawful power. On the basis of the statement recorded by the Police Station – Kotpad and the statement of witnesses before the Court of Judicial Magistrate, Kodpad, a clear case of abduction is made out against the police personnel of Chhattisgarh Police. Hence, prayed that specific direction be issued.

4. Counsel for the respondents No.1 to 5 has opposed the grounds in the petition and the submission made in this respect. It is submitted that one information was received on 28.07.2016, that two suspicious persons are standing at Dhanpunji railway crossing within the jurisdiction of State of Chhattisgarh carrying some bags, a Rojnamcha information was recorded and immediately police party proceeded to the spot, two persons found on the spot were searched and they were found in possession of 1250 pieces of detonators containing in various bags, 1838 giletin rod, safety wires, ammonium nitrate etc., which were seized from them. On enquiry they admitted that they were going to supply these materials to the naxalite groups, hence both the persons were arrested and the case was registered and the proceedings have been taken against them

in accordance with law. It is denied that petitioner No.2 and 4 were abducted from Orissa within the jurisdiction of Police Station – Kotpad. It is submitted that petitioners have brought this petition on imaginary grounds without any substance, hence, no case is made out for issuance of any writ or constitution of any special investigation team in this case.

5. Counsel for the respondent No.6 to 10 submits that Crime No.159/2016 is registered in Police Station- Kotpad, District – Koraput on the basis of information received. As per the investigation conducted in this case, abduction of petitioner No.2 and 4 from Orissa State can not be ruled out looking to the statement given by the witnesses before the Court of Judicial Magistrate First Class, Kotpad. It is also submitted that the Chhattisgarh Police has tried to frustrate the investigation being made by the Orisa Police in the case registered in Police Station – Kotpad. It is also submitted that Chhattisgarh Police has approached the concerned to settle the matter for which, meetings were held and audio and video of these meetings have been recorded, which has been seized by the Orissa Police. It is further submitted that as per the call detail of the mobile held by petitioner No.2, his last location was at Nuagaon within the territorial jurisdiction of Orissa. It is submitted that case requires proper enquiry and investigation by the appropriate agency like CBI or NIA.

6. As per the case registered in Police Station – Kotpad, on 28.07.2016 at about 8.00 PM, the petitioner No.2 and 4 were abducted by some persons occupying Bolero jeep. Complainant

petitioner No.1, enquired from Police Station -Nagarnar from where he came to know that petitioner No.2 and 4 have been booked for illegal possession of explosives. A complaint was filed before the Court of Judicial Magistrate First Class, Kotpad by the petitioner No.1 and by the orders of the Court, received in Police Station – Kotpad on 10.08.2016, FIR has been registered for offence under Section 120-B, 220, 330, 342, 365, 500 of the Indian Penal Code and Section 25 and 27 of the Arms Act against Thana Incharge of the police Station- Nagarnar.

7. As per the reply submitted by the respondent No.1 to 5, one information was received on 28.07.2016 at about 17.50 pm that two suspicious persons in possession of some explosive substance are present within the jurisdiction of Police Station – Nagarnar. Thana-Incharge, Nagarnar proceeded to the spot and found petitioner No.2 and 4 present. Explosive substances were seized from their possession at 19.30 PM of the same day. On interrogation, petitioner No.2 and 4 gave statement that they are engaged in supplying explosive substance to banned naxalite groups. On the basis of findings in the proceeding, case was registered against the petitioner No.2 and 4 and after investigation charge-sheet has been filed before the Court of Judicial Magistrate First Class, Jagdalpur District – Bastar for offence under Section 4, 5 of Explosive Substance Act, 1908 and Section 8 (1) (3) (5) of the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 on 26.10.2016. As submitted by the respondents No.1 to 5 that, petitioner No.2 and 4 have been legally searched, detained and charge-sheeted by the

Police of Police Station – Nagarnar.

8. As per the rival submissions made by the respondents No.1 to 5 and the respondents No.6 to 10 in this case, peculiar situation has arisen giving rise to deadlock as to which of the case should be regarded to be based on truth.

9. It is not disputed that petitioner No.2 and 4 were arrested on 28.07.2016 by the police personnel of Police Station – Nagarnar, but subsequent to that brother of petitioner No. 2 after gathering information became active and instead of approaching any police authority, he directly filed a complaint before the Court of Judicial Magistrate, Kotpad. It was on the basis of the order passed by the Judicial Magistrate First Class, Kotpad, FIR was registered against the Incharge- of Police Station, Nagarnar registering various offences. Police Station -Nagarnar of Chhattisgarh State, has own claims on the basis of the case registered by the Police Station – Nagarnar against the petitioner No.2 and 4, which is now charge-sheeted and the petitioner No.2 and 4 are facing trial before the concerned Court. But at the same time, the case registered in Police Station – Kotpad (Odisha) is also in existence and investigation is pending.

10. This situation shows that there are conflicting interests and claims of police of two States namely Chhattisgarh and Orissa. To break the deadlock, some step is necessary to be taken in this case and high level enquiry is required to be done in this matter, to ascertain and find out the truth behind the claims, allegations and the cross-allegations made by the respondent No.1 to 5 and by the

respondent No. 5 to 10.

11. In view of the law laid down by the Hon'ble Supreme Court in case of ***Rubabbuddin Sheikh vs State Of Gujarat & Ors***, reported in ***(2010) 2 SCC 200***, the Supreme Court has held that in case where there is accusation against the officials of police department, when the Court feels that investigation of the police authorities is not in proper direction, in order to do complete justice in the matter and to instill confidence in the public mind, it is always open for the Court to handover investigation to some independent agency like CBI .

12. This is a case in which the case against the petitioner No.2 and 4 has been investigated and charge sheet is filed before the Court of Judicial Magistrate First Class, Jagdalpur. Whereas the case registered in Police Station – Kotpad is pending for investigation. Although it was held in *Rubabbuddin Sheikh vs State Of Gujarat* (Supra) that investigation can be ordered, even if the charge-sheet is filed. Here the matter is totally different and enquiry is required for the purpose to find out as to the truthfulness of one of the case, which will by itself falsify the another case.

13. Petitioners have not made CBI a party in this case, in this situation, there is an option available to constitute Special Investigation Team of Chhattisgarh Police and Orissa Police jointly to inquire and find out the truth and correctness of the proceeding by Police Station – Nagarnar or by the Police Station – Kotpad in this matter.

14. Hence this petition is allowed and respondent No.1 and 2 and respondent No.6 and 7 are directed to coordinate and cooperate by constituting one Special Investigation Team of two members of high Police officials from the Chhattisgarh Police unconnected with the matters relating to Police Station – Nagarnar and similarly two members of high Police officials of Orissa State unconnected in the matters relating to Police Station – Kotpad. This team constituted shall proceed with enquiry in the line of the observation made hereinabove. In case, one of the case is found to be based on concoction or falsity, SIT so constituted, shall have an authority to proceed against the concerned, in accordance with law.

15. Accordingly, the petition stands disposed off with aforesaid observations.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram