

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

**CRM-M-12211-2016(O&M)
Date of decision:-2.11.2017**

Satbir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.K.S. Godara, Advocate
for the petitioner.

Mr.C.S. Bakshi, Additional Advocate General, Haryana,
with Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.(ORAL)

This is a petition under Section 482 Cr.P.C. filed by petitioner – Satbir for issuance of appropriate direction to official respondents No.1 to 3 to take action against respondents No.4 to 6, namely, Anil Rao, Inspector General, Special Task Force, Hisar, Haryana (respondent No.4), Jeet Singh, Incharge Special Task Force Team of I.G. Staff, Hisar, STF HSR, P.S. Ellenabad, District Sirsa (respondent No.5) and Mahender Singh, S.I., No.852, Member of I.G.

Special Task Force Team, Hisar, P.S. Ellenabad, District Sirsa (respondent No.6), who had allegedly murdered Mukesh Kumar, brother of the petitioner, since no action is being taken against them for the reason of such respondents No.4 to 6 being police officials and further investigation be handed over to some independent agency like CBI.

Inter alia, in the petition, it is contended that Mukesh Kumar was murdered by team of Special Task Force (for short – STF) of I.G. Staff, Haryana in the area of Police Station Ellenabad, District Sirsa in a fake police encounter; that Mukesh Kumar aged about 21 years was studying in ITI at Nohar, District Hanumangarh, Rajasthan, who was kidnapped by Haryana Police on 17.1.2016 in connection with Panchayat Election; that on coming to know about killing of Mukesh Kumar in fake police encounter, petitioner had submitted an application to SHO, Police Station Ellenabad on 18.1.2016 seeking action against accused persons but to no effect. According to the petitioner Mukesh Kumar was not involved in any criminal activity but Haryana Police concocted a story and projected him as a history-sheeter in a press note published in newspaper on 19.1.2016; that Ellenabad police registered a false FIR of the fake encounter against the deceased and six other persons i.e. FIR No.13 dated 18.1.2016 for the offences under Sections 186/332/353/307/34/427 IPC and 22 & 25 of Arms Act; that family members of the deceased approaching higher police officers and various other authorities have not yielded any desired result, as such to seek justice, the petitioner has knocked at the door of this Court.

Notice of this petition was given to respondents and State counsel has appeared on behalf of the respondents. A written reply has

been filed in the form of affidavit of Sh.Satender Kumar Gupta, I.P.S. Sirsa wherein it is submitted that petitioner had made a complaint to D.G.P., Haryana, which had been marked to S.P. Sirsa, who further marked it to D.S.P., Ellenabad for enquiry and thorough probe was conducted by DSP, Ellenabad, who concluded that the allegations were false and without any substance and that report was submitted to S.P. Sirsa, who in turn forwarded it to DGP, Haryana. Further, in the reply it is submitted by the respondents that as per actual facts of the case due to Panchayat Elections, which were to be held on 17.1.2016 in the State of Haryana, the Inspector General of Police, Hisar Range, Hisar had constituted a STF team to ensure that no untoward incident took place during the elections; that respondent No.5 (Jeet Singh) and respondent No.6 (Mahender Singh, S.I.) were members of that STF team, total number being 14; that the team operated under the direct supervision and control of Inspector General of Police, Hissar Range, Hissar; that the said STF got secret information on 17.1.2016 while at village Poharka, Police Station Ellenabad that many dreaded criminals were hiding, who had been called there to create terror on the day of election and such criminals were present in the house of Kuldeep son of Surjit Singh, resident of village Khari Surera, who happened to be a cousin brother of the candidate contesting election of Sarpanch and the criminals had been hired from District Bhiwani and Rajasthan State, who were having cache of arms and ammunition besides vehicles to create a terror; that on receipt of that information STF reached outside the house of Kuldeep at about 7:00 p.m. on 17.1.2016; that the criminals were sitting on the Chabutra in front of house of Kuldeep and on seeing

the police party, they panicked and started firing indiscriminately upon the police party; that the bullet hit Tavera Car (Govt.vehicle); that 6-7 persons were sitting on the Chabutra with deadly arms; that the members of STF in order to save themselves from being hit by the bullets being fired by the said criminals swung into action; that respondent No.5 fired a warning shot in the air, however, the criminals were not deterred and rather started running from the spot towards the house while firing back at the members of STF; that the members of STF also ran behind them to catch hold of five criminals outside the house, whereas two of them had succeeded in entering the house and were caught from inside the house; that SI Mahinder Singh (respondent No.6) and ASI Virender entered the house at which accused persons including deceased fired at the police personnel but since the police personnels were wearing bullet proof jackets, the bullet hit the jacket of SI Mahinder Singh, respondent No.6; that in retaliation, respondent No.6 had also fired and once the firing stopped from the other side then it came out that deceased Mukesh Kumar was lying on the floor in injured condition; that the other criminal was caught by ASI Virender Singh and brought outside the house; that respondent No.5 entered the house and found that deceased Mukesh Kumar, who was lying on the floor with pistol in his hand; that respondent No.5 instructed the police officials accompanying him to rush injured Mukesh Kumar to the nearby hospital, as such SI Mahinder Singh with ASI Surender took the injured to Civil Hospital, Ellenabad, where the doctors declared him being brought dead; that in the meanwhile respondent No.5 had taken in possession the loaded pistol which was recovered from injured at the

spot; that the details of the weapons recovered have been given as follows:

Sr.No.	Name and address	Recovery
1.	Sunil @ Golu son of Om Parkash, Caste Jat, resident of villageLakhasar Rajasthan	One pistol 9MM from spot.
2.	Sonu @ Vinod son of Rajender, Caste Jat, resident of Mithi, Bhiwani	One pistol .315 bore from the spot.
3.	Amarjeet son of Jile Singh, Dhanak, resident of Bamla	One pistol .32 bore from spot.
4.	Naveen @ Doga son of Rajbir, Caste Jat, resident of Ragha Badi, Rajasthan.	One loaded pistol .32 bore and one live cartridge from the spot.
5.	Mukesh son of Mohar Singh, Caste Jat, resident of Nagrasari Nohar, Rajasthan	One loaded 9 MM pistol with one live cartridge from the spot.
6.	Sonu son of Inder Singh, Caste Rajput, resident of W.No.1, Nohar.	
7.	Vijay Kumar son of Hanu Maan Singh, Caste Jat, resident of Lakhasar Nohar.	

In the meanwhile, on information having been received the local police headed by SHO, Ellenabad reached at the spot; that respondent No.5, who was heading STF did the paper work narrated the entire incident along with recovery of weapons to the police. On the basis of that, formal FIR No.13 dated 18.1.2016 was recorded; the arrested criminals numbering six were handed over to SHO, P.S. Ellenabad, who had reached at the spot with the police party, who also took into possession a Toyota Fortuner, white colour bearing registration No.HP-09B-0630; that on being searched two more loaded country-made pistols of .315 bore were recovered from the dashboard of the said car; that on verification of antecedents of all the criminals arrested from

the spot by SHO, it transpired that all of them were involved in various other criminal cases and some of them were wanted criminals and were carrying rewards on their heads and that the Fortuner vehicle had been snatched from village Sangaria (Rajasthan) at a gun point on 15.9.2015 and FIR No.536 dated 15.9.2015, under Sections 392, 34 IPC had been registered with Police Station Sangaria, District Hanumangarh (Rajasthan); that the criminals had put a fake number plate on the vehicle and had every intention to commit serious crimes; that during interrogation, three criminals had suffered disclosure statements and further got recovered three illicit weapons i.e. one pistol of .32 bore and two pistols of .30 bore along with 45 live cartridges, which were hidden in the house of Kuldeep; that a team of doctors was constituted which firstly visited Civil Hospital, Ellenabad, where the body of deceased Mukesh Kumar was lying and thereafter visited the spot of incident, collecting evidence; that FSL prepared its report on 20.1.2016; that post mortem examination on the dead body of Mukesh Kumar was carried out at Civil Hospital, Sirsa by a Board of doctors; that upon the report made by SHO to Deputy Commissioner, Sirsa, the matter was referred to SDM, Ellenabad to carry out inquest proceedings, which was got accordingly conducted through Tehsildar, Ellenabad; that on the basis of the call details and location/tower usage for the mobile No.96602-60499 of deceased, it came out that he had entered Haryana on 16.1.2016 in the evening and had made 34 calls to various persons including the persons resident in his village having long talks with them; that mobile was recovered from the place of crime; that the allegations of kidnapping are stated to be wrong; that Superintendent of Police,

Sirsa had send reports to NHRC and DGP, Haryana, narrating the entire incident; that SIT team had been constituted to investigate FIR No.13 dated 18.1.2016, which had presented its report in the competent Court. It is denied that the deceased had been kidnapped by the police personnels of Haryana. It is contended that no complaint was made on 17.1.2016 with regard to alleged kidnapping. The deceased is stated to be part of a gang of criminals responsible for shooting at the police party.

I have heard learned counsel for the parties besides going through the record and I find that petitioner has not been able to show that his brother Mukesh Kumar had been killed in a fake police encounter after kidnapping him, rather it comes out that he was involved in criminal activities and was killed in the shoot out with the police. It being so the police officials taking part in the action cannot be held liable for death of Mukesh Kumar.

It cannot be said to be a case of respondents, members of STF having committed murder of Mukesh Kumar by staging a fake police encounter. The encounter appears to have actually taken place, where both the sides had fired at each other; the deceased being one of the criminals gathered there to cause disturbance in the Panchayat elections. Those criminals had fired at the police party and police party was justified in returning the fire. The deceased seems to have been killed in the retaliatory fire, therefore, it does not appear to be a case of members of STF i.e. respondents No.4 to 6 committing murder of Mukesh Kumar. There is no occasion to issue direction to official respondents to take action against such respondents by way of

registering an FIR and then to direct that investigation be handed to some independent agency like CBI.

Finding no merits in the petition, the same stands dismissed accordingly.

2.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No