

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

CRM No.M-19157 of 2015 (O&M)

Date of Decision: 27.03.2017

Rajinder Garg

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Vijay Sharma, Advocate for the petitioner.

Mr. S.S. Gill, DAG, Punjab.

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 Cr.P.C. seeking issuance of directions to the official respondents to hand over investigation pertaining to FIR No.244, dated 18.12.2013, registered at Police Station Division No.5, Civil Lines Ludhiana City, under Sections 279/304-A IPC to an independent agency. Further directions sought are for completion of investigation expeditiously and within a stipulated time frame.

Facts that would require notice are that the FIR in question came to be registered on the statement of Rajinder Garg (petitioner herein) and who stated that he and his elder son Lalit Kumar Garg (since deceased) used to work in the shop situated at Nawan Mohalla, Ludhiana. On 18.12.2013, at about 8 P.M. after having closed the shop, they were proceeding home on two separate scooters. Complainant was driving scooter bearing registration No.PB-10-EE-9321 and he was following his son who was driving Activa scooter

bearing registration No.PB-10-EB-1311. At about 9:45 P.M., when they had reached in front of Yes Bank near Street house, Ludhiana, then a car bearing registration No. HP-46-A-0153 make Tata Indigo, white colour, crossed the complainant at a high speed and thereafter brushed against the Activa being driven by his son and on account of which Lalit Kumar Garg fell down in front of the car but the car driver did not stop and kept on driving and thereby dragging his son under the car. Complainant disclosed the name of the driver as Ashwani Kumar (respondent No.4 herein).

Undisputedly, a final investigation report dated 21.11.2014 was prepared and signed by the SHO, Police Station Division No.5, Ludhiana and in which it was concluded that as per investigation conducted by IO Baljinder Singh ASI, statements of complainant, statements of witnesses, post mortem report as also investigation conducted by the SHO of Police Station, there was sufficient proof to submit challan against Ashwani Kumar. In such investigation report dated 21.11.2014, it was also recorded that deceased Lalit Kumar Garg was on his Activa scooter bearing No.PB-10-EB-1311 and after crossing Yes Bank chowk, on account of heavy fog, the car driver i.e. Ashwani Kumar had dragged the deceased towards Ferozepur road and after information to control room, the PCR officials and passer bys followed the marks of dragging and reached the place where the offending car was parked i.e. government quarters, Sarabha Nagar and also took the dead body as also car bearing registration No.HP-46-A-0153 into custody.

Ashwani Kumar, respondent No.4, who is a police official himself and holding the rank of ASI and posted at Ludhiana at the relevant point of time. Apparently, after preparation of the investigation report dated 21.11.2014, Ashwani Kumar submitted an application dated 25.11.2014 to the

Commissioner of Police, Ludhiana stating therein that he had an unblemished service record of 25 years, is married, with two daughters and one son. He claimed that he had been falsely implicated in FIR No.244, dated 18.12.2013 under Sections 279/304-A IPC, registered at Police Station Division No.5, Ludhiana. He further claimed that he was not involved in any accident and has not even seen the accident site. While requesting for an inquiry to be conducted afresh at the hands of some other police officials, he had contended that had there been any truth in the allegations, then his vehicle was bound to suffer some marks/dents but there was no such damage suffered by the vehicle.

The request for conducting of an inquiry afresh by Ashwani Kumar ASI was acceded to.

It transpires that an inquiry report was thereafter furnished in January, 2015 by Joginder singh, PPS, Additional Deputy Commissioner of Police, Zone-I, Ludhiana and in which respondent No.4, Ashwani Kumar ASI has been found to be innocent.

It would be apposite to take note that on a previous date of hearing i.e. on 16.07.2015, this Court had observed that it was inexplicable why only inquiries have been undertaken and the normal procedure of investigation has not been conducted. Further directions were issued that if any report under Section 173 Cr.P.C. is prepared by the Investigating Agency, the same shall not be submitted before the competent Court without permission of this Court.

Counsel for the parties have been heard at length and the first challan report dated 21.11.2014 as also the second report of the Additional Deputy Commissioner of Police, Zone-I, Ludhiana dated 27.01.2015 have been perused in minute details.

The present case throws up a sorry state of affairs as regards

investigation conducted pertaining to FIR No.244, dated 18.12.2013, registered at Police Station Division No.5, Civil Lines Ludhiana City under Sections 279/304-A IPC. Even in the second inquiry, it has been concluded that on account of dense fog and low visibility, Lalit Kumar Garg (since deceased) got entangled with the car of ASI Ashwani Kumar and who dragged the deceased and reached his government quarter with the body still entangled. Recovery of the body from underneath the car and at the government quarter of ASI Ashwani Kumar stands concluded. Yet, Ashwani Kumar ASI is sought to be given a clean chit on the basis that he had parked his car at the same place by following his daily routine and there was as such no malafide intent on his part. Further Ashwani Kumar ASI is sought to be exonerated on the basis of certain call detail records of the complainant Rajinder Garg and by concluding that he was not present at the place of incident and had he seen the accident in front of his eyes then he would have either chased the offending vehicle or would have informed the police but in his statement, the complainant had stated that he had gone home at first and then informed his relatives. A doubt, as such, is being cast on the complainant's version. Lalit Kumar Garg's body having been found entangled underneath the car of Ashwani Kumar ASI as also having been recovered from the staff quarter of Ashwani Kumar however stands concluded.

In the first challan report dated 21.11.2014 and which reflected the complicity of the Ashwani Kumar ASI in the offence, it had been reported that there was certain damage on the left side of the offending car and which was described as follows:

“The puttee of the lower gola of the body of the left side was found broken.”

Even as regards the Activa scooter bearing registration No.PB-10-

EB-1311, colour black driven by Lalit Kumar Garg (since deceased), it was reported that there was scratches found on the left side and even paint was missing.

However, in the second report dated 27.01.2015 submitted by the Additional Deputy Commissioner of Police, Zone-I, Ludhiana, it is concluded that no dent of any type was found on both the vehicles and the paint was also not found damaged. Such discrepancy has gone unexplained. Strangely, in the second report dated 27.01.2015, the statements of certain eye witnesses have been relied upon to conclude that the Aactiva rider Lalit Kumar Garg (since deceased) collided with the divider of the road going from Ludhiana to Ferozepur and this has apparently caused his death. Intriguingly, such version would be contradictory to the findings of the report itself that there was no damage/paint/dent even on the Aactiva scooter. Reliance has been placed upon the statement of ASI Harcharanjit Singh, who was stated to be present in the offending car along with ASI Ashwani Kumar and who had stated that no accident had taken place with the car. Suffice it to observe that ASI Harcharanjit Singh would be taken as an interested witness. For reasons best known to the Additional Deputy Commissioner of Police, Zone-I, Ludhiana and who had furnished the second report dated 27.01.2015, he has chosen not to even advert to the post mortem report of Lalit Kumar Garg (since deceased) as also nature of injuries found on his body and which otherwise would have corroborated the complainant's version. Such aspects of the case/investigation referred to and noticed hereinabove are only illustrative and not exhaustive.

Even the conduct of Ashwani Kumar ASI, respondent No.4 does not inspire any confidence. He has chosen not to come forth and associate with the present proceedings and to oppose the prayer made by the complainant

inspite of having been implicated as party respondent by name. That apart, in his application dated 25.11.2014 addressed to Commissioner of Police, Ludhiana seeking an inquiry afresh after preparation of the first challan dated 21.11.2014, he feigns complete ignorance as regards the accident. Even if it was presumed that Lalit Kumar Garg did not die on account of any collision between the car being driven by Ashwani Kumar and Activa scooter driven by Lalit Kumar Garg, yet the fact remains that two reports conclude that the body of Lalit Kumar Garg was entangled under the car of Ashwani Kumar and it was dragged upto his place of residence i.e. staff quarters and had been recovered from there and from underneath the car. Was Ashwani Kumar ASI being a member of the police force and as a responsible citizen not obligated to report the same to the concerned police authorities?

This Court would have no hesitation in arriving at the conclusion that a clear attempt has been made to shield Ashwani Kumar ASI and who was himself a member of the police force. The second inquiry report dated 27.01.2015 submitted by the Additional Deputy Commissioner of Police, Zone-I, Ludhiana would have to be termed as ill motivated and shoddy.

The Hon'ble Supreme Court in ***Zahira Habibulla H. Sheikh Versus State of Gujrat, 2004 (2) RCR (Criminal) 836*** had observed that the Courts have to ensure that the authority of the State is not used to shield itself or their men. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil, the Courts have to deal with the same appropriately and with an iron hand. It was further held that it was duty of the prosecutor as also of the Courts to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

In view of the discussion hereinabove, the prayer made in the instant petitioner is accepted. The second report dated 27.01.2015 furnished by Deputy Commissioner of Police Joginder Singh PPS, Additional Deputy Commissioner of Police, Zone-I, Ludhiana is directed to be treated as *nonest*.

The instant petition is disposed of with a direction to the Director General of Police, Punjab to constitute a Special Investigation Team (SIT) to be headed by an officer not below the rank of Inspector General of Police within a period of two weeks. The Special Investigation Team (SIT), so constituted would complete investigation in the matter within a period of two months thereafter and would submit a report and upon which further action would be taken as warranted in accordance with law.

Disposed of.

27.03.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |