

CWP-18975-2015

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

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Decided on: February 20, 2017.

Inderjit Kaur

.. Petitioner(s)

VERSUS

State of Punjab and others

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Ms.Sarika Gupta, Advocate,
for the petitioner.**

Ms.Anu Pal, A.A.G., Punjab.

**Ms.Ramandeep Kaur, Advocate, for
Mr.Sumeet Goel, Advocate, for CBI (respondent no.5)**

M.M.S. BEDI, J. (ORAL)

Petitioner is wife of Bhupinder Singh who died after hospitalisation on 16.1.2014. The petitioner claims that her husband Bhupinder Singh had strained relations with his parents, brother and sisters regarding the property and on account of said enmity on 1.1.2014, pursuant to a scuffle, he received injuries at the hands of his brother Satwinder Singh and other family members. The petitioner claims that the petitioner has been falsely implicated in the case.

Through the instant writ petition, the petitioner seeks a direction to the State for holding an inquiry on application Annexure P6, dated 28.10.2014, filed by her, in respect of the murder of her husband by his family members, by an independent agency like CBI or by a team of senior officers of the Crime Branch. She also claims that a direction should be issued for registration of FIR/cross case under Section 302 IPC as per the statement of the petitioner but the local police has allegedly colluded with the family members of her husband and without holding any inquiry and conducting investigation in the version put forth by the petitioner, has presented challan against the petitioner in FIR No.3 dated 11.1.2014, under Section 308 IPC, Police Station, Chabbewal, later on converted to Section 304 Part II of the Indian Penal Code. The petitioner insists that it is Satwinder Singh the brother of her husband, who had caused injuries on the head of her husband on account of property dispute but she has been falsely implicated in the case at the instance of brother of her husband.

The suspicious circumstance on the basis of which the present petition has been filed is that the petitioner was got arrested on 11.1.2014. Thereafter, the husband of the petitioner was got discharged from the Hospital against medical advise on 15.1.2014. The family members of her husband had allowed him to die on 16.1.2014 with an oblique motive to get the entire land measuring 30 kanalas 8½ marlas i.e. share of the husband of the petitioner, mutated in their name.

State counsel has informed that the trial against the petitioner is at final stage i.e. at the stage of arguments.

Counsel for respondent no.5, Satwinder Singh has intervened to oppose the application contending that no doubt it is a fact that husband of the petitioner was discharged from the hospital against medical advice on 15.1.2014. The reason put forth is that on account of paucity of money to get Bhupinder Singh treated and refusal of the hospital to treat him without depositing Rs.2 lacs, there was no option for the family members of Bhupinder Singh to get him discharged from the hospital against the medical advice.

Counsel for the petitioner has vehemently relied upon the admission of the State in the written reply in para 8 and the admission of respondent no.5 that her husband had been got discharged from the hospital against medical advice on their own responsibility by giving in writing to the doctor an undertaking.

I have considered the contention of the learned counsel for the petitioner.

The circumstances on the basis of which the petitioner seeks launching of prosecution for offence under Section 491 and 302 IPC, against the family members of Bhupinder Singh do constitute the defence plea of the petitioner in the criminal case registered against her as she is attributed an injury on the head of Bhupinder Singh. The petitioner during the course of the trial is not only to defend her case but also to establish her defence by establishing the circumstance which create doubt regarding the story of prosecution against her as well as her plea that it was respondent no.5, and other family members who had assaulted the husband of the

petitioner and had permitted him to die by getting him discharged from the hospital intentionally. The facts which are sought to be established/enquired into/investigated are not disputed but only the conclusion is to be derived from the facts alleged by the petitioner which are relevant for establishing the defence of the petitioner as well as the counter guilt of respondent no.5 or the other family members of deceased Bhupinder Singh.

Taking into consideration the stage of the trial against the petitioner, it will not be appropriate for this Court to issue any direction for investigation in rapat no.7 dated 22.12.2015, recorded under Section 491 IPC. The rights of the petitioner to launch proceedings on the basis of facts mentioned in rapat no.7 aforesaid, stands safeguarded from very inception in the direction petitions filed under Section 482 Cr.P.C.

In view of above said circumstances, this Court is of the opinion that the investigation pertaining to a particular incident can always be taken in hand by the prosecution agency as per the provisions of Section 173 (8) Cr.P.C. at any stage. It is observed that in case the petitioner is able to establish the facts by evidence on record as per rapat no.7 dated 22.12.2015, entered in rapat roznamcha as plea of defence or as a plea which would warrant prosecution of the family members of Bhupinder Kaur, it will always be open to the trial Court to make an observation or issue any direction for further investigation and if the trial Court does not issue any directions then it will always be open to the investigating agency on the basis of the observations made by the Court to further investigate the matter as per the provisions of Section 173 (8) Cr.P.C. and take action

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against any person who is prima facie found to be culpable for the death of Bhupinder Singh in accordance with law.

In vies of above observations, I do not find any ground to issue any writ in the nature of mandamus as claimed without prejudice to the rights of the petitioner as mentioned hereinabove.

Disposed of with the aforementioned observations.

(M.M.S. BEDI)
JUDGE

February 20, 2017.

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Whether speaking / reasoned
Whether reportable:

Yes / No
Yes / No