

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

CWP No. 24104 of 2017

Date of decision : 27.11.2017

Jalaluddin

...Petitioner

V/s

State of Haryana & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. Kartik Gupta, Advocate for the petitioner.

Mr. Deepak Sabharwal, Addl. A.G. Haryana.

Mr. Sumeet Goel, Advocate for the CBI.

Mr. P.S. Sidhu, Advocate for respondent no. 5-UOI.

RAJAN GUPTA J.

An incident occurred on 22.06.2017 in a train which was proceeding from Ghaziabad to Mathura. Accused were allegedly assaulted by the complainant's side and seriously injured. In the incident Junaid Ali Khan was killed. An FIR was registered on the complaint of Hasim. Contents thereof are reproduced as under:-

"It is that that I am resident of the abovesaid address and study in a Madarsa at Surat, Gujrat. Today i.e. 22.6.2017 in the morning, I along with Mosim, Moein and my real brother Junaid had gone to Sadar Bazaar Delhi for making purchases for Eid. After making the purchases, all four of us had caught train that was scheduled to leave at 5:30 P.M. from Sadar Bazaar, Delhi. From Okhla Railway Station, about 15/20

passengers had boarded in our coach. All the aforesaid passengers asked us to vacate the seat and started pushing us; whereupon I and my brothers resisted the same; then out of them two passengers started hurling caste related remarks “Mulle” and started exchanging heated words with us. I requested them not to speak derogatory words and not to quarrel with us. I told them that I had even given seat to an aged person. Then two/three youths started abusing us. Then we decided that we all the four brothers would alight at Faridabad; to put the quarrel to an end; but due to heavy rush, we could not alight. Two/three youths started manhandling us. I and Mosim made phone calls and intimated our brothers; whereupon 5/6 boys came from the village to take us from Railway Station, Ballabgarh; and when Train EMU had stoped than all four of us were to alight but then two three youths started abusing and manhandling us. The other passengers of the coach raised raula and they did not let us alight; whereupon we both brothers had protested against the same; the train had started and the persons namely Mujahid, Mosem @ Chunna and my elder brother Shakir had boarded the same coach and when we again protested then two boys started hurling abuses in the name of mother and sisters and started passing caste related remarks; and started giving beatings to us. Thereafter, one youth had opened an attack on us by stabbing indiscriminately with knife; attacked on all of us; first of all he caused stab injuries to Shakir in his neck, chest and hand. My brother Junaid tried to save; then the said boy gave

many stab blows to brother Junaid and rendered him seriously injured. I tried to intervene then two stab blows were caused to me. The person making attack with knife was one boy whereas many youths had caught hold of us. Lot of noise and commotion was raised in the coach and when the train had stopped at Railway Station Asawati then the boy who gave stab blows on us and his accomplices alighted from wrong side and fled away. We were in injured condition. However, we had alighted along with seriously injured brother Junaid and rushed him to Civil Hospital, Palwal in Ambulance where the Doctor declared my younger brother Junaid as dead. The family members reached Palwal Hospital and brought us to Pawan Hospital, Faridabad. The boy who had caused stab injuries to me and my accompanying persons; and have caused death of my real brother Junaid by stabbing; and the persons who had caught us from behind; could identify the persons causing stab injuries and persons catching hold us; if brought before me. A legal action may be taken against them.”

Pursuant to FIR investigation ensued. Challan was presented against Naresh Kumar under sections 323, 324, 298, 341, 302, 307, 201 IPC and 145 Railway Act and against remaining accused Ramesh Kumar, Rameshwar Dass, Pardeep Kumar, Chander Parkash, Gaurav Sharma under sections 323, 341, 298 IPC and 145 Railway Act. At the time of framing of charge, trial court arraigned Rameshwar Dass as another accused on the basis that he shared common intention with main accused Naresh Kumar to commit the crime. Charge was, thus, framed under sections 298, 323, 324,

341, 307, 302 read with section 34 IPC and 145 Railway Act. Remaining accused were charged for offences under sections 298, 323, 341 IPC and 145 Railway Act. Thereafter trial has made some progress. Fifteen official witnesses cited by the prosecution have been examined. A prayer has been made in the instant petition for transfer of investigation to CBI.

Mr. R.S. Cheema, learned senior counsel has assailed the investigation. According to him, investigating agency has failed to add section 153A, 153B, 505C, 120B and 149 IPC which were clearly made out in the facts and circumstances of the case. Besides, there are procedural and legal flaws in the investigation. The person(s) who incited violence have not been arraigned as an accused. Mr. Cheema referred to disclosure statements at length and submitted that investigating agency had built up the entire story with a view to exonerate certain accused. It also left out certain serious offences. According to him, presence of other accused at the spot would attract section 149 IPC which has not been invoked. This clearly shows that the investigation is not fair. Besides, indifferent attitude of the investigating agency was clear from the fact that section 153A was not added in the FIR. Calculated distortions, discrepancies had been introduced to derail the investigation. By splitting the final report in two parts, the investigating agency had absolved other accused of serious offences of hatching conspiracy, causing injuries and committing murder. According to Mr. Cheema, the issue that there was a conspiracy to commit murder was ignored by the investigating agency. This conspiracy started when victims were not allowed to alight at Faridabad station and the co-villagers of Rameshwar Dass joined the gang to commit the crime. It is crystal clear that the victims who were traveling in the train from Delhi and their

companions, were surrounded and assaulted by the accused with the common object of committing murder. There was also initial conspiracy to commit offences under sections 323, 298, 341, 153A & 505 IPC. The commission of murder was the handy work of unlawful assembly wherein all six accused challaned, were actively involved. The common objective of this unlawful assembly was to commit murder and offences under sections 307, 341, 298, 153A & 505 IPC.

Plea was vehemently opposed by learned State counsel. According to him, investigation was carried out in a fair and impartial manner. The sequence would show that investigating agency was prompt in acting. A perusal of the charge-sheet under section 173(2) Cr.P.C. and material attached therewith would reveal that investigating agency had conducted a thorough and sustained investigation. According to him, present petition is an abuse of process of law with an objective to prolong the trial. Petitioner did not raise any contention with regard to addition of offences at the time the trial court heard the parties on the issue of framing of charge. After framing of charge and examination of 15 prosecution witnesses, no ground to transfer the investigation to another agency is made out. During the course of arguments, he referred to affidavit of the investigating agency dated 06.11.2017. According to which father of deceased was demanding money and land for settling the matter. He also referred to order dated 06.10.2017 passed by coordinate bench while rejecting the bail application wherein it was observed that trial be concluded within five months. According to him, petitioner never made any representation to any authority during the pendency of investigation or proceedings pursuant thereto to show his dissatisfaction with the investigation. Nor he demanded CBI probe at any stage. Only after court

proceeded further with the trial, petitioner has filed the instant petition. He further submitted that in case charge is to be amended at any stage, petitioner would be at liberty to resort to remedy under section 216 Cr.P.C. and for arraigning additional accused, if any, under section 319 Cr.P.C.

I have heard learned counsel for the parties and given careful thought to the facts of the case. The question this court is faced with is whether investigation of the case needs to be handed-over to the independent agency at this stage. Mr. Cheema during the course of arguments referred to various judgments particularly those reported as ***Kashmeri Devi vs. Delhi Administration 1988 Supp SCC 482, Punjab & Haryana High Court Bar Association, Chd. vs. State of Punjab & ors. 1994(1) SCC 616, Nirmal Singh Kahlon vs. State of Punjab 2009(1) SCC 441 & CRM M-7931-M of 2003 titled as Anshul Chhatarpati vs. State of Haryana*** in support of his contention that mere filing of charge-sheet would not preclude the power of this court to hand-over investigation to an independent agency. He also cited judgment reported as ***State of West Bengal & ors. vs. The Committee for Protection of Democratic Rights, W.B. & ors. 2010(3) SCC 571*** to refer to parameters laid down therein for investigation to be handed-over to an independent agency.

The issue which needs examination is whether the investigation has been shoddy, partial or inefficient. For this purpose, this court would have to refer to entire sequence of events as also the investigation undertaken by the police as per record. It appears police recorded statement of one Hasim. He stated that on 22.06.2017 in the morning, he along with Mosim, Moin and his real brother Junaid had gone to Sadar Bazaar, Delhi for purchasing some articles for Eid festival. After making necessary purchases, they boarded the train from Sadar Bazaar, Delhi at 5:30 PM for

returning to their village. In the train they were playing ludo game on mobile phone while seated on their respective seats. From Okhla Railway Station, 15/20 passengers boarded the train in the same compartment. They asked them to give space and started pushing them. When complainant and his brother protested, two out of 15/20 passengers used abusive language and insulted them in the name of their religion. Complainant requested them not to utter derogatory words but 2/3 boys kept on using invectives. For nipping the issue, they tried to de-board the train but could not do so due to heavy rush. 2/3 boys scuffled with them due to which complainant and Mosin made a call to their brothers. 5/6 boys from the village came to receive them at Ballabhgarh Railway Station. As the train stopped at said station, complainant alongwith three others tried to de-board the train. At that time, 2/3 boys again abused them. Other passengers also raised alarm. They were not allowed to alight from the train. Complainant and his brother protested. Meanwhile, Muzzahid, Mosim @ Chuna and elder brother of complainant namely Shakil also boarded the train in the same compartment. On resistance of complainant, two boys hurled abuses and one of them started giving knife blows. He struck on the neck, chest and hand of Shakil. As Junaid tried to intervene, said boy inflicted several knife blows to Junaid. Complainant also made efforts to rescue Junaid. However, same boy inflicted knife injuries on him. Other passengers caught hold of the assailants. When train stopped at railway station, Asavati the boy who inflicted injuries and his companion got down from the train from the wrong side and fled. Injured Junaid was taken to Civil Hospital, Palwal where doctor declared him dead. Family members of complainant brought him and other injured to Pawan Hospital, Faridabad.

323/302/307/34 IPC was registered at railway station GRP Faridabad. It appears that name of none of the assailants was mentioned in the FIR. Pursuant to FIR, investigation ensued. According to stand of investigating agency, ASI Surat Pal recorded statement of Mosim, Moin, Wahid Hasim, Mustakim, ASIs Rajinder, Chetram, Vishwas, Dhani Ram, Razzaq Khan & Sheru Khan on 23.06.2017 under section 161 Cr.P.C. During the course of investigation, search of the person from whom Mosim and Junaid made call to their brothers, was made. His name was revealed as Salman s/o Zamil Ahmed R/o HNO. 495, Sector 15-A, Faridabad. Salman was also joined investigation on 02.07.2017. This person deposed that on 22.06.2017, he alongwith his friend Rian was returning to their house after purchasing some articles/clothes for Eid from Delhi in EMU train. At railway station Tuglakabad, 3/4 boys wearing muslim caps came to them in the compartment in which they were traveling. They approached them (Salman and Rian) to help as they were also wearing muslim caps. They were told that some Hindu passengers had quarreled with them and uttered derogatory words regarding their religion. They also demanded phone from Salman to make a call. Thereafter, 2/3 calls were made from his phone to their brother Shakil to come to railway station Ballabgarh.

Meanwhile, post mortem of the body of deceased Junaid was conducted. Doctor opined that there were eight injuries on person of Junaid and cause of death was shock and hemorrhage due to injuries which were ante-mortem. Same were sufficient to cause death in ordinary course of nature. Viscera and heart were sent to RFST, Bhondsi, and GMC Nallhad for chemical and histopathological examination. Nature of weapon for injuries 1 to 7 was described as sharp and injury no. 8 as blunt. Accused Ramesh

was arrested on identification of Mosim. He suffered disclosure statement

that he had quarreled with some muslim boys and inflicted number of knife injuries to them. He had thrown the knife thereafter and hid his blood stained shirt behind the television after washing it. According to investigating agency on basis of this disclosure, shirt of accused was recovered from his house and taken into possession and recovery memo was prepared. Mosim appended his signature on the same. On 24.06.2017, offences under sections 298 and 307 IPC were added in the case. On 24.06.2017, a Special Investigation Team was constituted by Superintendent of Police, Railways (H) Ambala Cantt for investigation of the case. On 27.06.2017, Yudhister S/o Kirori Mal and Mahinder S/o Rajinder were joined in investigation and their statements were recorded under section 161 Cr.P.C. They disclosed names of Rameshwar (who boarded train from Okhla railway station) and Chandar, Pardeep, Gaurav (who boarded train from New Town, railway station, Faridabad) as the persons who had quarreled with the complainant party on 22.06.2017 in the train. As per investigating agency, Yudhister stated that he did not see the accused who inflicted knife blows. Mahinder Singh stated that he saw the accused who inflicted knife injuries from the side pose, but could not identify him. On 28.06.2017, accused Rameshwar Dass, Gaurav, Pardeep and Chander Parkash were arrested. They also suffered disclosure statements. On the basis of same, sections 341/114/147/149 IPC were added in the case. On disclosure of accused Gaurav and Chandar Parkash, their shirts were recovered. Pardeep got recovered 'Safi'. On 06.07.2017, Javed Khan and Rahul Pal were joined in investigation. Their statements were recorded under section 161 Cr.P.C. They stated that on 22.06.2017 at about 06:45 PM, they were present in front of railway station Asavati. At that time, an

lift to village Jatola. They dropped the said boy at village Jatola on their motorcycle. They stated that the injured boy made a telephonic call to someone and told his name as Naresh and intimated the receiver of the call that he had sustained injuries in the train and would be going to the house of his maternal uncle in village Jatola. On 08.07.2017, main accused Naresh Kumar s/o Inder Singh was arrested in the case. He suffered many disclosure statements during his police remand. On 15.07.2017, he stated that he was working as a private guard in PUSA Agriculture Museum, Delhi and was a daily passenger. On 22.06.2017, he purchased a knife from the footpath of Shivaji railway station, Delhi whereafter he boarded the local EMU train from Shivaji railway station. At Okhla railway station, some altercation took place between muslim boy and one middle aged passenger. The middle aged passenger slapped the muslim boy and also uttered derogatory words relating to religion. He also beat up the muslim boy who went to another compartment thereafter. However, this boy alongwith 3/4 other muslim boys boarded the compartment at railway station Ballabgarh and asked about the names/identity of the boys who had quarreled with them at railway station Okhla, Delhi. Muslim boys thereafter assaulted him with belt resulting in various injuries on his head. They also gave kick blows to him. Thereafter, he took out his knife and started inflicted injuries to them. He then de-boarded the train near railway station, Asavati and went to house of his maternal uncle by taking lift from two boys standing with their motorcycle outside the railway station, Asavati. The accused got recovered his jeans, safi, bag, shoes and socks. He also told that he had thrown the blood stained knife in a pond in village, Jatola. Same was recovered from the pond in the presence of villagers. He also disclosed that he had burnt his

the case. However, on verification of facts sections 147/149/114/34 IPC were deleted. On completion of investigation, investigating agency submitted its final report under section 173 Cr.P.C. Operative part thereof reads as under:-

“From the investigations till date, statements of the witnesses, enquiry, disclosure statements of accused Ramesh Kumar, Rameshwar, Gaurav, Chander Parkash and Pardeep, the evidence has come in the case against give accused Ramesh S/o Sri Chand, Jat by caste R/o Jodhpur, P.S. Sadar Palwa, District Palwal now resident of Kailash Colony, Palwal, Rameshwar Dass S/o Sh. Ramji Lal, Brahim by caste R/o Khambi, P.S. Hasanpur, District Palwa, Pardeep Kumar S/o Sh. Prem Raj, Khati by caste R/o Khambi, P.S. Hasanpur, District Palwal, Chander Parkash S/o Ram Parsad, Brahim by caste R/o Khambi, P.S. Hasanpur, District Palwal, Gaurav S/o Kanti Parsad Brahim by caste R/o Khambi, P.S. Hasanpur, District Palwal, the offence has made out as a result of giving beatings to the victim party by picking up a quarrel, passing derogatory words against religion and of not allowing them to alight at Railway Station Ballabgarh; whereupon offence u/s 323,298,341 IPC 145 Railway Act has been made for presentation of challan; whereas the evidence against main accused Naresh Kumar S/o Inder Singh, Jat by caste R/o Village Bhamrola, P.S. Baheen, District Palwal of causing beatings to the victim party; passing derogatory remarks against religion; not letting them alight from the train and of making attempt to murder by opening attack with knife on the

victim party in the moving train; and committing murder; destroying evidence by burning the blood stained T-shirt' having come on the file warranting presentation of challan against accused Naresh u/s 323,324,298,341,302,307,201 IPC and 145 Railway Act. Hence the challan against all the accused Ramesh, Rameshwar Dass, Pardeep Kumar, Gaurav Sharma and Chander Parkash u/s 323,341,298 IPC 145 Railway Act whereas against accused Naresh aforesaid u/s 323,324,298,341,302,307,201 IPC and 145 Railway Act having been prepared; on the faith of the witnesses is being submitted in the court for favour of trial. The witnesses may be summoned during the trial. The Report of FSL is awaited in the case; on receipt of the same; would be enclosed with the challan. Accused Gaurav, Pardeep and Chander Parkash are on bail granted by the court; accused Rameshwar Dass, Ramesh Kumar, Naresh Kumar are in judicial custody. The trial may kindly be conducted. ”

The accused who were charged for offences under sections 323, 298, 341 IPC and 145 of the Railway Act were released on bail vide orders dated 27.07.2017 & 02.08.2017 by Additional Sessions Judge, Faridabad. At the stage of consideration of charge, trial court heard detailed arguments. It added Rameshwar Dass as another accused for sharing common intention with Naresh Kumar to commit the crime. Remaining accused were charged for offences under sections 298, 323, 341 IPC and 145 Railway Act. Operative part of the order reads as under:-

“7. So far as accused namely Pardeep, Ramesh Kumar, Chander Parkash and Gaurav Sharma are concerned, it

has been found during investigation that they had boarded the train from different railway stations. The trial was coming from Delhi and going to Palwal. Only two accused namely Naresh and Rameshwar were traveling in the same coach from Delhi and initially quarrel had taken place between them as well as some passengers and victim party. The accused namely Ramesh and Chander boarded the same coach from Ballabgarh Railway Station while accused Pardeep and Gaurav Sharma boarded the same coach from NIY Railway Station. As such, they did not share any common intention with accused Naresh and Rameshwar and they are liable only for the overt acts attributed to them regarding causing simple injuries, wrongful restraint and uttering abusive words and for causing nuisance in the train compartment and accordingly, they are liable to to be charge sheeted under sections 298, 323, 341 IPC and 145 Railway Act.

8. *So far as accused Rameshwar is concerned, he was accompanying main accused Naresh from the very beginning and had abused the victims in the name of their religion and they also did not allow the victim to alight from the train and when the quarrel ensued, accused Naresh caused injuries with sharp edged weapon. As such, it will be a matter of evidence whether accused Rameshwar share common intention with accused Naresh or not. It is well settled that at the stage*

of framing of charge, it is only to be seen, whether a prima facie case exists to proceed against the accused or not. Standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the time of framing of charge and at this stage the court is required to see only whether there are sufficient grounds for presuming that the accused has committed the offence.

9. *So far as accused Naresh is concerned, he caused knife blows not only to deceased Junaid but also stabbed Shakir in his stomach. He also caused simple injuries to two more persons with the same knife and accused Naresh thus had the intention to commit the murder. This is not the stage to appreciate the facts of the case minutely to come to the conclusion whether it will fall within the ambit of Section 304(1) IPC or not. These facts can be considered after the prosecution leads its evidence and at the final stage.*
10. *In view of discussions made above, a prima facie case under Sections 298, 323, 324, 341, 307, 302, 201 read with Section 34 IPC and 145 Railway Act is made out against the accused Naresh, a prima facie case under Sections 298, 323, 324, 341, 307, 302 read with Section 34 IPC and 145 Railway Act is made out against the accused Rameshwar while prima facie case under Sections 298, 323, 341 IPC and 145 Railway Act is made*

out against the remaining accused. Let the accused be charge sheeted accordingly. ”

Admittedly by now, out of 45 witnesses cited by the prosecution, 15 who are official witnesses have been examined. 16 have been summoned for next date of hearing. It appears that after the incident was reported, investigating agency swung into action and looked for clues. On the basis of credible information, it was able to arrest the main assailant namely Naresh Kumar. Even petitioner does not dispute that fatal injuries were caused by Naresh Kumar. Investigating agency appears to have employed forensic and electronic means for cracking the crime. It is for this reason that all accused present at the spot at the time of occurrence are stated to have been identified despite the fact that no names were mentioned in the FIR. Some of them are alleged to be merely present, others scuffled, abused and incited. Accused Naresh Kumar, however, is alleged to have caused the fatal injuries. It needs to be noticed that after registration of FIR on 23.06.2017, investigating agency was able to conclude the investigation within two months and submitted its final report on 22.08.2017. A perusal of final report shows that investigating agency collected sufficient material to support its case to prosecute the accused. The material/evidence so collected has to be analyzed by the court during trial. Creases, if any, can be ironed out during proceedings. Already the trial court has arraigned another accused Rameshwar Dass who is alleged to have shared a common intention with Naresh Kumar to commit the crime. Plea of petitioner that there is deliberate attempt to subvert or derail the investigation lacks substance. The manner of investigation, perusal of 173(2) report and evidence referred to therein leaves no room for doubt that the agency has not been remiss in

any manner. Grievance of the complainant regarding non-inclusion of additional accused or omission of certain offences cannot be a ground for transfer of investigation to CBI, that too after proceedings have made some headway. The Code of Criminal Procedure incorporates provisions which can be invoked at the appropriate stage by the complainant for seeking redressal, if he feels that some of the accused have been left out by investigating agency or certain offences have been omitted. It appears that section 298 IPC was included in the FIR in view of allegation of the complainant that there were communal overtones and religious feelings had been wounded. The issue was considered by the trial court as well, at the time of framing charge and detailed order was passed. Still if complainant has some grouse, remedy is provided in the Code. This court would refrain from making any observation on merits lest it should prejudice the case of either party.

Another aspect of matter relates to certain accusations made during the course of hearing. In view of same an affidavit dated 04.11.2017 was filed by father of the deceased Junaid Ali Khan. Same reads as under:

- “3. That Sh. Deepak Sabharwal levelled a false, baseless and reprehensible allegation against the Petitioner to the effect that the petition had been filed mala fide as the real motive of the Petitioner was to compromise the matter with the accused after obtaining Rs. 2 Crores and 3 acres of land. The Ld. Counsel stated that his information was based on the information provided to him by the DSP.*
- 4. That the aforesaid allegations are false, baseless and deserve to be condemned. These allegations have*

resulted in gross defamation of the Petitioner. However, it is significant that the abovementioned allegations furnish clear proof of the mala fide on the part of the Government of Haryana.

5. *That in the recent past, a number of Panchayats have been organized openly in the village of the Petitioner which are illegal and the objective of the same is to interfere in the administration of justice. The Government is knowingly shutting its eyes in this matter and consequently the oppressors are getting encouragement.*

6. *Panchayats were also held in the local Government School. The Government is answerable for the same.”*

A counter affidavit of Mohinder Singh, Deputy Superintendent of Police, Railway (H), Faridabad was, however, filed by State which reads as under:-

“1. That the affidavit dated 04.11.2017 (Annexure P-38) filed by the petitioner is totally false because the deponent was informed by the secret informer about the participation of the petitioner in the Panchayat proceedings wherein the petitioner raised a demand of Rs. 2 crores and 3 Acres of land from the accused party for the settlement in the murder case.

2. That when the deponent exposed the conduct of the petitioner and apprised this Hon’ble court about his above mentioned demand, the petitioner has filed a false affidavit

dated 04.11.2017 (P-38) before this Hon'ble court with an objective to save himself."

It is evident that allegations/counter-allegations have been leveled in the affidavits filed by the complainant's side and the State. However, this court does not intend to express any opinion or delve deeper into the issue. Trial of the case is at crucial stage and important prosecution witnesses have to depose, some of whom may be injured and/or eye witnesses. It is, thus, necessary to ensure that trial proceeds in the right earnest and evidence is led promptly to ensure that it culminates. This court has no doubt that trial court would have enough expertise to swift the grain from the chaff and arrive at a fair conclusion. It also needs to be noticed that a coordinate bench while considering prayer for bail of accused Rameshwar Dass @ Rameshwar Dayal observed as follows:-

"(i) Prayer for bail is not considered for the time being and the petition is disposed of with liberty to apply for regular bail again after a period of five months.

(ii) In the meanwhile, the trial Court shall frame charge on 10.10.2017 and shall immediately prepare a schedule for conducting the Sessions trial if possible on day to day basis and complete the same within five months.

(ii) CRL. MISC. No. M-37007 of 2007 is disposed of with the observations as aforesaid."

It is evident that trial court is not delaying the matter and is proceedings further promptly. It is required to do so in terms of section 309 of the Code as well. Judgments referred to by Mr. Cheema in Kashmeri

Singh Kahlon's case & Anshul Chhatarpati's case (supra) that there is no bar for transferring investigation to an independent agency even after presentation of challan or framing of charges need not be adverted to as there is no dispute with this legal proposition. However, the issue has to be considered in the facts and circumstances of each case. In judgment reported as ***State of West Bengal & ors. The Committee for Protection of Democratic Rights, WB & ors. 2010 (3) SCC 571*** observed as under:-

“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 plentitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no flexible guidelines can be laid down to decide whether or not such power should be exercised but time and gain it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credible 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.”

During the course of hearing, complainant has not been able to show that there are serious flaws in the investigation which would lead to the conclusion that same is shoddy or tainted. Besides, there is nothing to show that the incident has any national or international ramifications. It is, thus, not a fit case to exercise extra ordinary power to hand-over the investigation to CBI. In view of note of caution sounded by Hon’ble Supreme court in ***State of West Bengal’s*** case (supra), this court feels that plea for entrusting investigation to CBI is without any merit and deserves to be rejected. Ordered accordingly. Petition is dismissed.

November 27, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No