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

L.P.A. No. 869 of 2016 [O&M]
Date of Decision : January 20, 2017

Jarnail Singh

.... Appellant

Versus

State of Punjab and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

Present Mr. Sanjay Kaushal, Senior Advocate,
with Mr. Vikram Satpal Anand, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present Letters Patent Appeal is directed against the judgment dated 24.12.2015 passed by learned Single Judge of this Court in CWP-24439-2012.

2. Facts relevant for the purpose of decision of the appeal; that the appellant is father of one Gurshahid Singh alias Shera who had participated in various sports events organized by Government of India and State of Punjab and number of medals were to his credit in the stream of 'Hammer Throw'. Various FIRs were also registered against Gurshahid Singh alias Shera as detailed below:-

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1. FIR No.171/2009, under Sections 401/411/420/467/471/120-B IPC and 25/54/59 of Arms Act, Police Station Sector 36, Chandigarh;
2. FIR No.235/09, under Sections 395 IPC and 25/54/59 of Arms Act, Police Station Sector 34, Chandigarh;
3. FIR No.47 dated 15.05.2009, Police Station Sector 20, Panchkula, under Sections 395/417 IPC;
4. FIR No.31 dated 25.01.2009, under Sections 307/224/225/353/332/323/186 IPC, Police Station City Barnala;
5. FIR No.99 dated 30.06.2009, Police Station Division No.6, Ludhaina, under Sections 391/342/34 IPC.

3. The appellant filed Civil Writ Petition No.24439 of 2012 on the ground that in fact, on 6.9.2012 at about 7.00 PM, the police after apprehending his son, i.e., Gurshahid Singh alias Shera took him to an unknown place where he was brutally murdered by firing a gun-shot and brought back as dead. Later on, the police cooked-up a story that in fact, Gurshahid Singh alias Shera was driving a car along with one lady and was passing through the area of Kamla Nehru Colony. On seeing them, he started firing and to save themselves the police also fired in retaliation. During this exchange of fire, Gurshahid Singh got injured and later on, died in the hospital. FIR No. 83 dated 6.9.2012 was registered at Police Station, Bathinda under Sections 307/34 IPC read with Sections 24, 25 and 27 of the Arms Act against Gurshahid Singh alias Shera [since deceased] along with one lady, i.e., Namdeek Kaur who was also shown to be accompanying him. As per the appellant, in fact, it was a cold-blooded murder of his son by the police party headed by Kuldeep Singh Chahal, IPS, Assistant

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Superintendent of Police, City-II, Bathinda and later on, the incident was shown to be a fake encounter.

4. The appellant raised the following points in support of his contention showing that in fact, the encounter was fake:-

“(i) It was a Fortuner and running car which was shown to be driven by Gurshahid Singh and one girl was also shown to be sitting with him. It was a hot season i.e. 1st week of September, the Air Conditioner must have been on and window glasses must have been shut, therefore, how with the shut glasses of a running car, the driver could fire a shot on the police or in case some shots were allegedly fired by the person driving the car, the window glass or any other glass must have broken, but same has not been happened, which creates a great doubt.

(ii) That in the FIR, it has been stated that during firing, the injured person disclosed his name as Gurshahid @ Shera and also disclosed the name of the girl as Namdeek Kaur and he was taken to Civil Hospital for treatment in the government vehicle of the ASP bearing No.PB65-P-4223 under the supervision of HC Harbans Singh whereas in the hospital when the said young man was got admitted his identity was shown to be some unknown person. If the police already knew his name as Gurshaheed @ Shera, then why in the hospital record his name was not

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disclosed and only unknown person was admitted.

- (iii) That further at the time of taking medicines from Chemist Shop, it was shown to be for unknown person.
- (iv) That it is shown that the alleged girl who was sitting with deceased had succeeded in running away from the spot. Is it possible in the presence of heavy police contingent for a girl to flee that too during firing from both sides?
- (v) That even if for sake of arguments, it is admitted that the girl was accompanying the deceased when the police party started firing on the car in which the deceased was allegedly injured and died later on, then why any other bullet did not hit the girl.
- (vi) That if the police started firing in retaliation, then the bullets must have hit the window glasses, where the deceased was sitting on driver seat. None of the bullets hit the deceased on the upper part of the body. In post mortem report, only one bullet is shown to have crossed the lower part of window which hit on the anti-superior iliac spine of the deceased and same proved to be fatal. There was no injury of any bullet on any other part of the body. There was no damage to the car except one bullet shown to be entered through window of driver side.
- (vii) That as per PMR, both the injuries shown on the body of the deceased entry and exist, blackening is shown, which

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itself is not possible as bullet Ist crosses the window and thereafter hit the deceased. The blacking of wound is not at all possible.

(viii) That most importantly on the Bed Head Ticket of deceased in the Civil Hospital, Bathinda, the injured person was shown to have expired at 08.07 p.m, whereas in the inquest report, the police has shown deceased to have died at 12.30 a.m. on 07.09.2012.

(ix) That even in the PMR, the doctors have written the date and time of death as per police papers i.e. 07.09.2012 at 12.30 A.M., which clearly spells out that the police intentionally did not bring into their record. HC Harbans Singh 1115/BTI who allegedly got deceased admitted in hospital made a statement under Section 161 of the Code of Criminal Procedure, that he brought the medicines as per prescription of doctor at once and after some time doctor told him that due to serious condition of injured, he had expired and sent to Mortuary. Accordingly if the doctor disclosed HC Harbans Singh about the death of deceased, why he has not informed the high police officials about his death, whereas news of death of deceased was flashed at 10.00 P.M. From all these facts and circumstances, it is clear that young boy was caught and murdered, then the police later on concocted a false

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story. Moreover, the girl who was sitting with the deceased was arrested at 2.30 A.M., next morning.

- (x) That it is so mentioned in the FIR that the young man driving the car, started firing on the police. If that is so, whether any shot hit anybody or any place, because the place where the incident is shown to be happened, is a residential area and bullet must have hit some where, but it is totally silent. The story that in retaliation the police started firing, is completely an unbelievable story but forwarded by the police.
- (xi) That ASP Bathinda Shri Kuldeep Singh Chahal in his statement under Section 161 Cr.P.C., has changed the entire version of the police, as was recorded in the FIR. He stated that when they stopped the car of deceased, then the girl started shouting fire fire and the young boy in order to kill started firing on the police and the gunmen in order to save themselves took positions, the deceased closed the door of the car. After taking positions, ASP directed the deceased to come out of car and thereafter apprehending that he may not fire again, he (ASP) fired a shot from his pistol and one shot hit the window of the car which further hit the deceased, whereas fact is that ASP himself after catching hold of the deceased, killed him and shown it a case of

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encounter.”

5. The above mentioned points were raised before learned Single Judge and almost same points have been raised before us with the prayer that further investigation be got carried out by Central Bureau of Investigation [CBI] because the police had tried to justify the fake encounter; In fact, no impartial investigation by an independent investigating agency had been carried out; It is a very serious case; The photographs taken from the place of occurrence clearly indicate that it was cold-blooded murder of Gurshahid Singh alias Shera which was shown to be an encounter.

6. At the time of arguments, learned counsel for the appellant also contended that the alleged incident had taken place on 6.9.2012 at about 7.00 PM and Gurshahid Singh alias Shera was driving Fortuner car and one girl was shown to be sitting with him. It was a hot season i.e. first week of September and the Air Conditioner of the car must have been on with window panes rolled up which would have made firing by the driver of the running car on the police impossible and in case some firing was there, the window glass or any other glass must have been broken, but the same had not happened. More over, the girl, who was allegedly sitting in the said car had succeeded in running away from spot, which is just impossible especially when there was presence of heavy police contingent. There was no bullet injury on the body of the deceased on his upper part. In the Post Mortem Report [PMR], only one bullet is shown to have crossed the lower part of window which hit on the anti-superior iliac spine of the deceased and same proved to be fatal. The time of death as explained by the Police and

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shown in the PMR are also at variance. The Statement of Kuldeep Singh Chahal, ASP Bhatinda, recorded under Section 161 Cr.P.C., was also different from the version of the FIR. All these points have not been investigated at any point of time.

7. We have considered the submissions made by learned counsel for the appellant and have gone through the material on record. Undisputedly, the appellant is the unfortunate father of Gurshahid Singh alias Shera who died pursuant to the occurrence on 6.9.2012. He had various reasons to suspect the cause of death as pointed above. However, these points were investigated by the Police and that too by a senior police officer of the rank of Superintendent of Police. Magisterial enquiry was also carried out. The entire matter was also examined by National Human Rights Commission which came to the conclusion that it was not a case of fake encounter. The Criminal Court also examined the entire matter and after conclusion of the trial of the case arising out of FIR No. 89 dated 6.9.2012, Namdeek Kaur was convicted.

8. Hon`ble Supreme Court of India in **People's Union for Civil Liberties and another vs. State of Maharashtra and others** 2015 (1) PLJ (Criminal) 193 has laid-down guidelines in the matters of investigating police encounters in the cases of death as the standard procedure which have been considered by learned Single Judge in the impugned judgment dated 24.12.2015. The said guidelines have also been considered by us and we are of the view that the steps taken in the present case indicate that there was

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compliance of the guidelines laid down by Hon`ble Supreme Court in **People's Union for Civil Liberties case [supra]**. Learned Single Judge has rightly observed that the alleged incident has been shown to have taken place in a residential area. If the police was to arrange a fake encounter, the same could have been shown at an isolated place. More over, it is the case of the appellant that Gurshahid Singh alias Shera was brutally murdered and was brought to the spot whereas, the medical record suggests that Gurshahid Singh alias Shera [since deceased] was brought alive to the hospital. Learned Single Judge has rightly observed that as the matter has already been investigated at different levels and by different agencies, there is absolutely no justification to order further investigation especially by the C.B.I. therebeing giving liberty to the petitioner to avail the remedies, if any, available to him in view of law laid down by Hon`ble Supreme Court in **People's Union for Civil Liberties case [supra]**. We are, thus, not inclined to interfere in the said findings of learned Single Judge.

9. In view of the above, the present LPA is dismissed being devoid of any merit.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 20, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes