

\$~6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 2958/2017

JAGDISH CHAND

..... Petitioner

Through: Mr.Akhilesh Kumar, Advocate.

versus

STATE NCT OF DELHI & ORS

..... Respondents

Through: Mr.Ashish Aggarwal, ASC for the
State/R-1 to R-3 with SI Pankaj
Kumar, PS Shalimar Bagh.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

13.11.2017

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. praying for issuance of directions to the respondent Nos. 1 & 3 to transfer the case FIR No.658/1998 registered under Sections 363/364A/34 IPC at PS Shalimar Bagh to any other investigation agency and for speedy disposal.

2. Learned counsel for the petitioner has submitted that case FIR No.658/98 was registered on 1st September, 1998 under Section 363 IPC on the basis of complaint filed by wife of the petitioner. After conducting the necessary investigation including lie detector test on the suspects, Untraced Report was filed. On the application filed by the petitioner herein to re-open the case on the ground that necessary efforts were not made to trace out the son of the complainant, learned MM vide order dated 19th September, 2011

directed DCP North-West District to re-open the case and get the same investigated through some other competent agency and that investigation is to be conducted by an officer not below the rank of Inspector.

3. Learned counsel for the petitioner does not dispute that the order dated 19th September, 2011 was duly complied with and investigation was transferred to DIU/North West District and investigation was marked to Inspector C.L.Bhardwaj who conducted further investigation. He also filed Untraced Report on 23rd November, 2012. Learned counsel for the petitioner does not dispute that as and when he filed the application before learned Trial Court for conducting lie detector test on suspects, the same were conducted except on one Phoolo Devi who is stated to be sick and undergoing treatment. Statement of another witness Budh Singh named by the petitioner who had allegedly seen the son of the petitioner with the alleged kidnappers was also recorded in presence of the petitioner but Budh Singh stated that he is an old person and in the year 1996 he was in Gannaur (Haryana). This fact was duly informed to learned Trial Court vide action taken report dated 9th March, 2017.

4. Learned counsel for the petitioner submits that the petitioner desires the investigation to be conducted by CBI.

5. In the case State of West Bengal and Ors. Vs. The Committee for Protection of Democratic Rights, West Bengal and Ors. (2010) 3 SCC 571 the Supreme Court in paragraph 46 observed as under:

“46. 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 plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to

the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility 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 the 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.”

6. Since the investigation had already been transferred from PS Shalimar Bagh to DIU, North West District with direction to get the investigation further conducted by an officer of rank of Inspector, the instant case does not fall in the category where investigation is required to be conducted by CBI.

7. The writ petition is dismissed.

PRATIBHA RANI, J.

NOVEMBER 13, 2017

‘st’