

Crl. Misc. No.M-25463 of 2015 (O&M)

1

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

**Crl. Misc. No.M-25463 of 2015 (O&M)
Date of decision : 17.09.2018**

Deshbandhu

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Manjeet Singh, Advocate
for the petitioners.

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

ANITA CHAUDHRY, J.

The petitioner is seeking directions to the State of Haryana and DGP, Haryana to initiate proceedings against respondent no.4 the Commissioner of Police for receiving Rs.40 lacs as bribe and seeks cancellation of a FIR at Police Station Chandi Mandir, District Panchkula.

The petitioner claims that a rape FIR was registered at P.S. Chandi Mandir on a complaint made by a victim, a married woman against a resident of Ambala after she was made to consume intoxicating sweets. The petitioner claims that there are instructions that in heinous crimes verification by the concerned SHO has to be got done from the Supervisory Officer and the petitioner was the Supervisory Officer at the relevant time. The SHO concerned did not produce the complainant for verification before

Crl. Misc. No.M-25463 of 2015 (O&M)

2

him even till 03.06.2015 and the case came to his notice when one ASI was sent to arrest the accused on 02.06.2015. The petitioner sent a communication to the SHO concerned directing him to get the facts verified by the next date. The petitioner also learnt that the victim and her husband had gone to DCP, Panchkula on 04.06.2015. He claims that the victim and her husband were produced before him on 04.06.2015 and he in discharge of his duties after verification of facts gave directions for investigation of the case and deputed the Sub-Inspector to go to Ambala and conduct a raid and arrest the accused. The petitioner later learnt that the Sub-Inspector had been ordered by respondent no.4 to return to Panchkula. The petitioner then refers 'WhatsApp' messages on a group of police officers and claims that respondent no.4 had received a bribe of Rs.40 lacs and this fact had come to his notice and respondent no.4 was taking shelter of the instructions of a Senior Cabinet Minister and a retired IPS Officer was helping respondent no.4 in getting plump postings. It was pleaded that to elicit truth, the matter should be investigated by CBI and scientific methods should be used to elicit truth. It was claimed that a conspiracy had been hatched to ruin his career and he was being harassed and a threat had been given to him that adverse remarks would be recorded in the ACR as he had raised a finger.

Notice in this petition was not issued. The State counsel was asked to file a short reply in order to go into the issue raised by the petitioner.

Affidavit of Assistant Commissioner of Police, Headquarter was filed and was taken up on record. According to it the petitioner is an accused in FIR No. 129, which was registered under Sections 182, 384, 385,

Crl. Misc. No.M-25463 of 2015 (O&M)

3

389, 420, 465, 468, 471, 120-B IPC and Section 7/8/9 of the Prevention of Corruption Act and the alleged victim, her husband and the police officials were also the accused and challan had been submitted after sanction from the Governor and the case was fixed for framing of charge. It was pleaded that the petitioner had been placed under suspension vide order dated 29.03.2017, passed by the Governor of Haryana. The sanction order as well as the suspension order has been enclosed with their reply.

It was further pleaded that frivolous allegations have been levelled by the petitioner to save his own skin and the matter had been thoroughly investigated and the petitioner wants to raise a defence to wriggle out of his misdeeds unearthed by the Investigating Agency and material facts had been concealed to mislead the Court. It was pleaded that after the registration of the case, a lady Sub-Inspector had recorded the statement of witnesses and had inspected the spot and had taken into possession the sweet box, tissue papers and handkerchief alleged to be containing semen, bedsheet and pillow from the place of occurrence and the scene of crime team was called to the spot and thereafter, medical of the complainant was got done. It was pleaded that meanwhile the alleged accused and his brother were approached and money was demanded for taking the complaint back and Tek Chand approached the police and handed over a C.D., which contained the conversation between the complainant and Pranveer and he submitted that his brother had been falsely implicated and it was a honey trap and the sexual relation that was formed were with consent of the complainant and was portrayed as a rape case. It was pleaded that the complainant and her husband had demanded huge amount of money to drop

Crl. Misc. No.M-25463 of 2015 (O&M)

4

the proceedings. It was pleaded that there were several similar instances of honey trap and extortion and blackmail and respondent no.4 being the supervisory head had given instructions to the DCP, Crime and DCP, Panchkula to get to the bottom of the matter and instructions were given to the SHO to have a complete picture before taking action and a SIT was constituted. During investigation it transpired that the complainant had earlier also extorted money using the same modus operandi against one Pawandeep of Jagadhri and one Vikram of Nahan and a case was registered in 2015 under Sections 328, 376 IPC in Himachal Pradesh and Pawandeep had got a case registered against the complainant and her husband at Jagadhri. On thorough investigation and on receipt of the FSL report, the allegations of rape were found to be false and Section 328, 376 IPC were deleted and Sections 389, 182, 120-B IPC were added against complainant Rajni. Rajni and Hasim were arrested and an interstate gang was busted. Subsequently, Sections 420, 384, 465 IPC were added and some more people who had played a role and were the touts of the petitioner were arrayed as an accused and disclosure statement was made by Ashwani Sahni that he had demanded Rs.40 lacs from accused Pranveer on behalf of the petitioner for settling the matter. On checking the call details it was found that the petitioner was in touch with Ashwani Sahni and Sections 7/8/9 of the Prevention of Corruption Act were added against the petitioner. It was pleaded that during investigation they had found the role of two other police officials EASI Ramesh Kumar and EASI Rajpal. It was further pleaded that the mobile phones of the petitioner were recovered and he was arrested on 20.11.2015.

Crl. Misc. No.M-25463 of 2015 (O&M)

5

Today the State counsel has placed on record the order vide which charge had been framed against the petitioner on 13.04.2018. A query was posed to the petitioner as to whether the order had been challenged. It was stated that the order had not been challenged.

Counsel for the petitioner submits that the petitioner has information that respondent no.4 had taken a bribe of Rs. 40 lacs and the messages sent on the common WhatsApp would show that he was doing it at the behest of a Senior Cabinet Minister and his involvement can only be found if the matter was handed over to CBI to elicit the truth and the matter had not been investigated properly and a false challan had been filed against the petitioner and others. It was urged that there are instructions to the SHO to get the facts verified by the Supervisory Officer, which was not done in this case and when the fact came to the notice of the petitioner, the petitioner asked the SHO to place the facts before him and instructions had been violated. The counsel had referred to the messages which were given by respondent no.4 on the common WhatsApp group.

The State counsel urges that the matter was referred to the Crime Branch as the complainant had a past history and she had lodged FIRs on similar pattern against others and they were indulging in extortion and it was a honey trap. It was urged that challan had been presented and charge had been framed and four witnesses have already been examined. He added that five FIRs had been lodged in different districts which are similar in pattern and the petitioner by filing this petition wants to wriggle out of the case and raise a defence and he has an opportunity to lead evidence in defence and it is not a case for transfer to any other agency much less the CBI.

Crl. Misc. No.M-25463 of 2015 (O&M)

6

The petitioner's case is that he had information that a bribe of Rs. 40 lacs had been received from the accused for cancellation of FIR No. 29 dated 22.05.2015. A query was posed as to what was the source of the information and what was that evidence. The petitioner has been unable to disclose the evidence in his possession. He is merely relying upon the messages posted on the WhatsApp group. The allegations merely are that respondent no.4 was taking shelter of the instructions of Senior Cabinet Minister whose name he did not know as it had not been disclosed by respondent no.4. He claims that he was stating this with complete responsibility that the accused had approached respondent no.4.

The FIR was lodged on a statement made by the prosecutrix but during investigation the complainant has been challaned along with the touts as well as the petitioner. The case of the prosecution is that it was a honey trap and it was a extortion racket and there are FIRs against the prosecutrix.

The challan has already been presented. Charge has been framed. It would not be appropriate to give any finding on the merits and demerits of the allegation. It is for the petitioner to raise the defence and lead evidence at the appropriate stage.

The Apex Court in the case of ***West Bengal and others v. Sampat Lal and others***, reported in AIR 1985 SC 195, held and observed that in absence of any material to be satisfied that the investigation was not conducted properly, it should not order the transfer of investigation.

The principles have been settled by the Supreme Court in number of judgments and it is not necessary to refer to them here. However, cases are transferred to CBI only because of complicity of issues where the

Crl. Misc. No.M-25463 of 2015 (O&M)

7

case involves national or international ramifications or where people having political clouts are involved. What is important is that the power to transfer to the premier agency like the CBI is to be exercised with utmost care and circumspection and only where the fact situation so demands.

It would not be necessary to go into the correctness or otherwise of the allegations though a lot can be said about it but I would refrain from making any observation lest it may prejudice the accused. The petitioner has only expressed his doubts. The petition was filed in 2015 and even after three years he has not placed any material, which can hint that the allegations should be investigated.

The petition is dismissed with cost of Rs. 10,000/- to be deposited with the High Court Legal Services Committee. In case, the amount is not deposited within a month then steps would be taken by it to recover the same.

17.09.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No