

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

**CRM-M No. 31335 of 2016 (O&M)
DATE OF DECISION :- May 30, 2018**

Pawan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Naveen Dahiya, Advocate
for Mr. Shalender Mohan, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Sarvesh Kumar Gupta, Advocate
for respondents no. 2 and 5.

Mr. V.K. Jindal, Sr. Advocate
with Mr. Gopal Soni, Advocate
for respondents no. 6 and 12.

Mr. Sumit Sangwan, Advocate
for respondent no. 7.

This petition under Section 482 Cr.P.C. for getting the investigation in case F.I.R. No. 202 dated 18.6.2016 under Sections 147, 148, 149, 302 IPC registered with Police Station Tosham, District Bhiwani conducted from CBI, New Delhi or any other independent agency out of State or from officer not below the rank of SP/DSP except Hisar has been filed by petitioner Pawan Kumar-complainant in F.I.R. in question.

Briefly stated the facts of the case are that complainant Pawan Kumar son of Jagdish Chand resident of Ward No. 9, Bagri Mohalla, Tosham,

District Bhiwani, aged about 32 years had got statement recorded with police of Police Station Tosham on 18.6.2016 stating therein that he is having a confectionary shop at Main Chowk Tosham; that on 17.6.2016 when the complainant and his younger brother Vinod Kumar were closing the shop at about 10.30 P.M., then Kamal son of Rai Singh, Sanjay son of Bharta, Ram Avtar son of Bishambhar, Parveen Kumar son of Puran Chand, all residents of Tosham came there; then Kamal, Sanjay took Vinod Kumar in his grasp and Ram Avtar caught hold of Vinod Kumar from his left hands, Parveen Kumar having a knife gave a blow there with on chest of Vinod Kumar. Vinod Kumar managed to get himself released and ran towards the street. According to the complainant, he also ran behind Vinod Kumar but Vinod Kumar-injured fell in the street. Then Parveen again hit Vinod Kumar with knife resultantly Vinod Kumar died on the spot. Then Puran son of Nand Lal, Rai Singh son of Nand Lal,, Bishamber son of Nand Lal, residents of Tosham having sticks in their hands, Joginder, Bittu having knives, Mukesh son of Puran Chand was having stick inflicted injuries on Vinod Kumar, who was lying there. On alarm being raised by complainant Vakil son of Om Parkash, resident of Arya Nagar, Hisar and Darshana wife of Dalip Singh came to the spot. On arrival of such persons the accused ran away along with their respective weapons. According to the complainant he took his brother to CHC Tosham for treatment, however, on the way Vinod Kumar died.

After registration of F.I.R. the matter was investigated. Accused Ram Avtar and Sanjay were arrested in this case and sent up to face trial. During the course of trial the prosecution had moved an application for summoning of Kamal, Parveen, Puran, Rai Singh, Bishambhar, Joginder and Mukesh as additional accused which was, however, dismissed by Learned

Sessions Judge, Bhiwani vide order dated 17.1.2018 which has also been challenged in this Court. Notice of petition was given to the respondents who have put in appearance and are opposing the petition.

In the reply filed on behalf of respondent no. 11 Bishambhar Dass, it is contended that respondents have been falsely involved in the F.I.R.. The occurrence took place on 17.6.2016 at about 10.30 P.M.. As per statement of petitioner, after the incident, the victim was taken to Civil Hospital, Tosham. Ruqa was sent to Police Station. Police party went to the hospital and asked the petitioner to make statement but he did not do so which raises a question in the mind as to why he did not do so; that on 18.6.2016 at 11.00 A.M., he got his statement recorded after delay of 12 hours which shows that the story has been concocted in order to falsely implicate the respondents. That after registration of F.I.R. investigation was carried out by the police and two persons namely Ram Avtar and Sanjay were arrested whereas the other persons named in the F.I.R. were found to be innocent.

The officials respondents no. 1 to 5 have submitted a joint written reply in the form of affidavit in which it is contended that after registration of F.I.R. the investigation was carried out by SI Bhim Singh, who after receiving the Ruqa from CHC Tosham regarding dead body of deceased Vinod Kumar having been present there went to CHC Tosham. The petitioner was present there but he did not get his statement recorded for the reason best known to him rather petitioner got his statement record on the next day i.e 18.6.2016.

Thereafter investigation in this case was carried out by Inspector Kuldeep Singh during the course of which involvement of two accused namely Sanjay son of Bharath Singh and Ram Avtar son of Bishambar, residents of Village Tosham were found to be there and they were arrested on 19.6.2016

and 21.6.2016 respectively. Weapon of offence i.e. Knife was recovered from accused Sanjay at the time of his arrest. The accused suffered disclosure statements. Remaining accused namely Kamal, Parveen, Puran, Bishambhar, Ram Singh, Joginder, Bittu and Mukesh were found to be innocent as such they were not arrested. DSP, Siwani had verified such investigation. After fair and impartial investigation, report under Section 173 Cr.P.C. was submitted in the Court of Ilqa Magistrate on 15.9.2016 against Sanjay and Ram Avtar and trial against accused is going on in the Court of Additional Sessions Judge, Bhiwani. There is no ground for transfer of investigation. A prayer for dismissal has been made. Joint written reply filed on behalf of respondents no. 9, 10 and 15. Joint reply on behalf of respondents no. 6 and 12 is almost on the similar lines.

It is stated that motive for the false implication is that a person by name of Deepak was murdered and an F.I.R. No. 466 dated 26.12.2013 for offences under Sections 147, 148, 149, 323, 341, 302 IPC was registered against Mandeep @ Motha son of Daya Nand, Gulshan, alias Gulli son of Shyam Lal, Mukesh alias Gharsi son of Dalip Singh, Anil son of Raja Ram, Sunil son of Dalip, all resident of village Tosham and respondent no. 13 Joginder had appeared in that case as PWs. Respondent No. 15 Mukesh had also appeared there as PW3 as an eye witness. Nominated accused in that case were convicted by Additional Sessions Judge, Bhiwani on 29.4.2015 and were sentenced to undergo life imprisonment on 12.5.2015. Out of those five accused in F.I.R. No. 466 dated 26.12.2013, Earlier Deepak the brother of Ram Avtar was murdered by Mukesh, cousin brother of petitioner and due to that grudge answering respondents have been falsely involved in the case. As a matter of fact the petitioner was not present at the time of occurrence since if

he was present he should have made efforts to save his real brother which he has not suffered any injury on his person. Rendering his presence at the spot is doubtful. Respondents no. 6 and 12 have also filed a short reply which is on the similar lines as that of respondent no. 11.

I have heard learned counsel for the parties besides going through the record.

The main grouse of the petitioner is that all the persons named by the complainant in the F.I.R. have not been challaned.

In that way, investigation has not been fair, impartial and proper. However, I am not impressed by these contentions. The purpose of recording F.I.R. is to set the criminal machinery into motion and it is only after registration of the F.I.R. when the investigation is carried out by the police then it can be found out as to which of the accused were involved in the incident and role played by each one of them. The persons named by the complainant in the F.I.R. are not to be challaned unnecessarily because if during investigation the police finds that they had no role to play in the incident then they need not be sent to face trial. The persons named in the F.I.R. belong to Scheduled Caste community. There is nothing on record to show that they are very rich belonging to some political party or wielding influence with the police or the administration and they can make the local police as per their desires. Merely because of the reason that all the persons named in the F.I.R. have not been challaned does not go to show that investigation has not been fair and impartial. The complainant has got remedy to file application under Section 319 Cr.P.C. During the trial which he has availed of for the purpose of summoning of additional accused with challan having been filed and trial is going on. There is no question of investigation being transferred to some

higher police officer, Crime Branch, independent agency like CBI etc.

Learned counsel for the petitioner has referred to various authorities Bharati Tamand versus Union of India and others 2014(4) Recent Apex Judgments (R.A.J.) 1, R. Sankarasubbu versus The Commissioner of Police Egmore Chennai The Inspector of Police R-5 Tirumangalam Police Station Chennai 2013(3) R.C.R. (Criminal) 745, Gurbax Singh Bains versus State of Punjab 2013(2) R.C.R. (Criminal) 246 in suport of his contention that this Court has got power under Section 482 Cr.P.C. to transfer the investigation even after filing of challan but those authorities do not come to rescue of the petitioner due to different facts and circumstances and the context in which such observations have been made.

The investigation in this case does not come out to be tainted, partial, biased or one sided as alleged by the petitioner, therefore, I do not find any merit in the petition, the same stands dismissed accordingly.

(H.S. MADAAN)
JUDGE

May 30, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No