

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-33419 of 2014

Date of Decision: 01.05.2018

Rajwant Kaur

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. J.S. Gill, Advocate
for the petitioner

Mr. Amandeep Singh Gill, Sr. DAG Punjab

Mr. Sandeep Arora, Advocate
for the complainant

Sudhir Mittal, J. (Oral)

The petitioner who is the wife of accused Jaspal Singh has filed this petition under Section 482 Cr.P.C. for issuing appropriate direction for constituting a Special Investigation Team (SIT) and for re-investigation of the FIR No. 136 dated 20.08.2014 registered at Police Station Mehatpur, District Jalandhar under Sections 302, 34 IPC by it. Certain facts relating to the present controversy are narrated below:-

2. Accused Jaspal Singh (husband of the petitioner) and his uncles namely Gurtej Singh, Balwinder Singh and Nirwail Singh sons of Mangal Singh have been involved in a dispute regarding partition of ancestral property. According to Jaspal Singh, his father was the owner of certain land inherited from Mangal Singh (grand father of Jaspal Singh). His uncles disputed the ownership of father of Jaspal Singh but ultimately settlement was reached. According to this family settlement, father of the plaintiff retained the land in dispute and after his death Jaspal Singh came in

possession. However, there was still heart burning between the parties which resulted in a civil suit for injunction filed by Jaspal Singh against his uncles. Vide order dated 03.01.2014, the civil Court directed maintenance of status quo. Thereafter, the uncles of Jaspal Singh alongwith respondent No. 5 (Power of Attorney holder) of the uncles trespassed into the land of Jaspal Singh and entered the dwelling area of one Jasbir Kaur (widowed domestic help of Jaspal Singh) and molested her. Said Jasbir Kaur complained to the local police on 17.04.2014 but no action was taken. On 24.6.2014, a reminder was sent to the Senior Superintendent of Police, Jalandhar but still no action was taken. Jasbir Kaur ultimately filed a complaint before the Punjab State Human Rights Commission, which took cognizance of the matter. Thus, it is the case of the petitioner that the uncles of Jaspal Singh nursed a grudge against him. They are residing abroad and respondent No. 5 is their Power of Attorney Holder. Jaspal Singh belongs to Congress Party whereas his uncles and respondent No. 5 are members of Shrimoni Akali Dal and the same is the another cause of the strife between them.

3. Now I revert to the facts of the present FIR i.e. FIR No. 136 dated 20.08.2014. The said FIR came to be registered on the statement of one Sarwan Singh son of Karan Singh who stated that his son Daljit Singh had taken ten fields of agricultural land on rent from Jaspal Singh. Out of the payment to be made, 50% was paid in advance and the balance 50% amount of Rs. 1,40,000/- was to be paid after the crop of paddy was harvested. Thereafter, on receipt of instructions from Jaspal Singh son of Sukhwinder Singh, Daljit Singh lent Rs. 1,40,000/- to one Jagroop Lal @ Ruppi son of Lal Chand. Then, Jaspal Singh started demanding the balance amount of rent from Daljit Singh under the threat that if the same was not paid he would not be permitted to harvest the crop. Consequently, Daljit Singh demanded return of Rs. 1,40,000/- lent to Jagroop Lal. But whenever such a demand was raised, Jaspal Singh used to threaten him. In the evening of

18.08.2014, Daljit Singh went towards the fields after having his meals. He did not return for a long time and, therefore, Sarwan Singh went looking for him alongwith Lakhvir Singh son of Santa Sigh (cousin of Sarwan Singh). They were carrying torch-lights and after some time they noticed that Jaspal Singh and Jagroop Lal were beating up Daljit Singh. On spotting Sarwan Singh and Lakhvir Singh these persons fled from the spot leaving Daljit Singh in a severely injured condition. Thus, they brought him home and in the morning an Ambulance was called because his condition was deteriorating and he was taken to Civil Hospital, Nakodar. First aid was administered at Civil Hospital, Nakodar and then Daljit Singh was referred to Civil Hospital, Jalandhar. In the night intervening 19/20.08.2014, Daljit Singh died leading to registration of the FIR. On the same day a supplementary statement of Lakhvir Singh was recorded according to which Rajwinder Singh @ Raju and Lovepreet Singh @ Preeta both sons of Jasbir Kaur aforementioned were stated to be the persons beating Daljit Singh alongwith Jaspal Singh. Jagroop Lal was exonerated in the said statement and the error was attributed to the dim torch-light and old age of witness. Subsequently, Sarwan Singh also got a supplementary statement recorded on 23.08.2014 in line with the supplementary statement of Lakhvir Singh.

4. The case of the petitioner, on the other hand, is that Daljit Singh met with an accident in the early hours of 19.08.2014 near the fields of Jaspal Singh. He was spotted by one Tarsem Lal, who saw Rajwinder Singh @ Raju working in the fields and approached him to provide water to Daljit Singh. Thereafter, a call was made on '108' and an Ambulance was summoned. Daljit Singh was sent in the said Ambulance to Civil Hospital, Nakodar. Sarwan Singh never took his son to the hospital and that a road accident has been converted into a murder case by respondent No. 5 at the behest of uncles of Jaspal Singh. The contention is that

conspiracy with the uncles of Jaspal Singh prevailed upon Sarwan Singh to falsely implicate Jaspal Singh and sons of Jasbir Kaur on account of their previous enmity.

5. The aforementioned contentions are sought to be supported by facts allegedly discernible from the record. The admission record of deceased Daljit Singh has been annexed with the petition as Annexure P-2. Reference has been made to it by learned counsel for the petitioner to submit that 'assault' is not mentioned therein at the time when Daljit Singh was admitted on 19.08.2014. Only 'MLC' is mentioned thereupon indicating that it was a 'Medico Legal Case' but not a case of 'assault'. Only in the treatment card dated 19.08.2014, history of 'assault' is mentioned. The MLR has been referred to for submitting that a total of ten injuries existed on the body of the deceased, all of which were simple in nature except for one i.e. fracture of ribs. Reference has also been made to the discharge certificate of Civil Hospital, Nakodar as well as the case-sheet of treatment after Daljit Singh was referred to Jalandhar. "Assault" is not mentioned in either of these documents. Thus, the submission is that to begin with the case was not one of 'assault'. The injuries indicate a road accident as in case the deceased had been subjected to brutal assault by the accused persons, there would have been more number of grievous injuries on his body. Further, the submission is that the medical papers show that death was caused due to cardiac arrest and not due to the injuries allegedly inflicted by the accused. Reference has also been made to a document dated 21.10.2014 received by the petitioner under the Right to Information Act, 2005 from Punjab Health Systems Corporation. In this document it has been mentioned that on 19.08.2014, a call for Ambulance was received from Tarsem Lal. A copy of the Log Book is also annexed with the said document which shows that 'traumatic injuries' was the reason for making of call and not injuries received due to murderous assault. Statement of Gurmandeep Singh, District Incharge '108'

contention that Tarsem Lal had made a call on 19.08.2014 for summoning the Ambulance. The medical record as well as the statement of said Gurmandeep Singh and the FIR have been referred to contend that at the time of admission of Daljit Singh he was conscious oriented and cooperative. Reference is made to the FIR also for the purpose of submitting that when the police reached the hospital the doctor opined that he was fit to make a statement but Sarwan Singh stopped him from recording his statement and told the concerned police official that once Daljit Singh regained full consciousness, the police would again be called to record a statement. The conclusion being drawn from these facts is that Sarwan Singh had already been approached by respondent No. 5 and uncles of Jaspal Singh and Daljit Singh was purposely prevented from making the statement. In a nutshell, the arguments raised impeaching the investigation in this case are as follows:-

- (a) The admission record does not mention history of assault;
- (b) The evidence indicates that Tarsem Lal and not Sarwan Singh had called for Ambulance to transport Daljit Singh to Civil Hospital, Nakodar;
- (c) Statement of Daljit Singh was not recorded although he was conscious and well oriented indicating that a conspiracy was afoot;
- (d) Death was the result of cardiac arrest and not due to injuries allegedly inflicted by the accused persons;
- (e) Enmity with the accused is apparent as there was long standing civil dispute. Moreover, Jasbir Kaur had complained against the uncles of Jaspal Singh and respondent No. 5 to the Punjab State Human Rights Commission; and
- (f) Photograph Annexure P-4 indicates that Jaspal Singh and Jagroop Lal were arrested by the police on 20.08.2014 pursuant to the first statement made by Sarwan Singh. Jagroop Lal was subsequently

let off due to conspiracy.

6. Reply by way of affidavit of Ashwani Kumar (PPS) Deputy Superintendent of Police, Sub Division Shahkot Jalandhar has been filed. According to his reply, Jaspal Singh was armed with a baseball bat and Rajwinder Singh was armed with a danda and the same were got recovered by them during the course of the investigation. The arrest of Jagroop Lal was denied. Jaspal Singh is stated to be a notorious criminal against whom six FIRs have been registered. All other allegations on merits have been denied in a general manner on the ground that there are specific allegations against Jaspal Singh and that the case being put forward through the petition is concocted.

7. It is relevant to note that the allegations made in the petition are not specifically denied. There is only a general denial.

8. Regarding the allegations that Jaspal Singh is a notorious criminal, learned counsel for the petitioner submits that one FIR viz. FIR No. 121 dated 13.06.2014, registered under Sections 312, 316 IPC at Police Station Sadar, Jalandhar, is a figment of the imagination of police as no such case has been registered against Jaspal Singh. Regarding the rest, it is submitted that these were the handy work of uncles of Jaspal Singh. He has been acquitted in two FIRs and the remaining FIRs arise out of the dispute regarding 'Will'. Learned State counsel has not been able to deny this submission of learned counsel for the petitioner.

9. It is also not in dispute that the trial was not stayed during the pendency of this petition which was filed in the year 2014 and, therefore, presently the evidence is complete and the case is fixed for arguments.

10. The question that arises is whether this is a fit case in which this Court should exercise jurisdiction under Section 482 Cr.P.C. for constituting SIT to re-investigate the case?

Constitutional Courts is not fettered by the stage of the trial. If it appears that the investigation is biased and tainted, a Constitutional Court would take notice and direct re-investigation or transfer of investigation. Specific reliance has been placed upon ***Babubhai vs. State of Gujarat and others, 2010(4) RCR(Criminal) 311*** and ***Dharama Pal vs. State of Haryana and others, 2016(1) RCR(Criminal) 926***.

12. In ***Babubhai (supra)*** the High Court was monitoring the investigation in a criminal case by seeking status report from time to time. This was challenged before the Supreme Court on the ground that the High Court had taken over the investigation and was directing the mode and manner in which the same was to be conducted. After examining the facts of the case, the Supreme Court concluded that investigation was not being carried on in the manner it should have been carried on and, therefore, the High Court was justified in monitoring the investigation. The ratio of the said case is not attracted to the facts of the present case.

13. In the case of ***Dharam Pal (supra)***, a petition had been filed before the High Court for transfer of investigation to the CBI. This was rejected by the High Court on the ground that trial had commenced and some witnesses had been examined. The fact situation of that case as referred to by the Supreme Court was as follows:-

“16. The factual scenario in the present case has to be appreciated on the touchstone of the aforesaid authorities. As the facts would reveal there was a request by the Additional Chief Secretary for handing over the investigation to the CBI; that departmental action was taken against the investigating authorities for negligent investigation; that the concerned ASI has been reverted to the post of Head Constable; and that apart, certain material witnesses have not been examined by the investigating agency without any rhyme or reason. The reasoning of the High Court is as the trial has commenced, there cannot be a transfer of the case to another investigating agency.”

14. In the above facts, the legal position was stated that Constitutional Courts can direct re-investigation or transfer of investigation if it is found that the investigation is unfair. The reason for the same is that a fair and just investigation is a constitutional requirement. It is necessary for instilling confidence in the police machinery and for doing complete justice. However, the said power must be exercised sparingly and in exceptional situations.

15. In the present case, it can not be said with any amount of certainty that the investigation is tainted and, thus, the judgment of *Dharam Pal (supra)* is not applicable. The fact that 'assault' is not mentioned in the papers at the time of admission and discharge from Civil Hospital, Nakodar can not lead to the conclusion that an assault infact never took place because 'assault' is mentioned in the treatment chart of Civil Hospital, Nakodar. The fact that the statement of deceased – Daljit Singh was not recorded even though the doctor had cleared him for recording his statement, is also not sufficient to lead to acceptance of conspiracy theory propagated by the petitioner. To me, it appears far fetched that within a few hours after the death of Daljit Singh, respondent No. 5 communicated the incident to the uncles of Jaspal Singh and a conspiracy was hatched. The name of Jaspal Singh, in the first place, was mentioned by Sarwan Singh and this definitely cannot be a result of conspiracy as respondent No. 5 could not have foreseen that Daljit Singh was going to receive injuries in the near future. Moreover, death being caused due to cardiac arrest does not rule out 'assault' as the cause of death mentioned in the MLR is “neurogenic and hemorrhagic shock” due to multiple injures sustained, which were sufficient in the ordinary course of nature to cause death. Of course, the statement of DW-5 Gurmandeep Singh, letter dated 21.10.2014 issued by the Punjab Health Systems Corporation under the Right to Information Act, 2005 as well as the Ambulance log book do raise a doubt

already been produced by way of defence evidence and I have no doubt that the same will be taken into consideration by the trial Court in the correct perspective. However, the same also does not lead to a conclusion that the trial was biased or unfair.

16. Learned State counsel is justified in contending that the petitioner should have raised these issues at the time of framing of charges or should have atleast moved an application under Section 173(8) Cr.P.C. for further investigation. Now, when the trial is complete, it would be against the interest of the husband of the petitioner to prolong the matter by having *denovo* investigation and trial.

17. The petition is without any merit and is dismissed.

01.05.2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No