

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

**Criminal Misc. No. M-41370 of 2018
Date of decision: 03.12.2018**

Aiasha Rani

..Petitioner

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vishal S. Chauhan, Advocate
for the petitioner.

Daya Chaudhary, J.

Petitioner-Aiasha Rani has filed the present petition under Section 482 Cr.P.C. for direction to the respondents to hand over the matter to any independent agency like CBI or to constitute SIT headed by some senior officer of Police Department in case FIR No.162 dated 23.03.2018 registered under Sections 148, 149, 323, 506, 452 IPC at Police Station Palamvihar, Haryana and to decide the representation submitted by the petitioner to the Deputy Commissioner of Police, Gurugram, Haryana.

Learned counsel for the petitioner submits that on the basis of allegations levelled by the petitioner, the aforesaid FIR was registered and thereafter without conducting proper investigation, challan was presented. The Investigating Agency was hand in gloves with the accused party and every effort has been made to save the accused. Learned counsel further submits that specific allegations have been levelled against accused, namely, Bhushan, who was carrying pistol and pointed towards the petitioner. He gave beatings and also snatched mobile of the petitioner/

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complainant but still the FIR under the Arms Act has not been registered. During investigation, no recovery of pistol was effected from the accused persons and a weak charge-sheet has been filed just to give benefit to the accused. Learned counsel also submits that a detailed representation was made to the Deputy Commissioner of Police on 12.05.2018 but no action has been taken. Learned counsel also submits that the accused was released on bail whereas he was not entitled for bail. Learned counsel for the petitioner has also relied upon judgment rendered by Hon'ble the Apex Court in *State of Punjab vs. Central Bureau of Investigation and others, 2011(9) SCC 182* in support of his arguments.

Heard arguments of learned counsel for the petitioner and have also perused the documents available on the file.

Aforesaid FIR was registered on the basis of complaint made by the petitioner. As per allegations levelled in the complaint, accused-Bhushan was harassing the daughter of the complainant/petitioner by blackmailing her and FIR No.46 of 2018 was registered under Sections 376, 506, 328, 354 IPC read with the Protection of Children from Sexual Offences Act at Police Station Vasant Kunj, New Delhi. Accused-Bhushan's sister, who is wife of nephew of the petitioner put pressure upon the complainant party to withdraw the FIR. When the complaint was not withdrawn, the complainant party was threatened. Five persons entered into the house of the complainant and pointed out pistol and locked the door from inside. They gave beatings due to which, the Complainant became unconscious. The complainant gained consciousness at about 4:00 am and then she raised noise but nobody heard her noise. On the basis of complaint,

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the FIR was registered under Sections 148, 149, 323, 506, 452 IPC. After presentation of challan, charges have also been framed. Neither any allegations have been levelled against the Investigating Officer nor anything has been stated as to how investigation is not fair. Simply it has been stated that the Investigating Officer was in connivance with the accused party and no action has been taken against them and accused have been released on bail by stating that no recovery was to be effected from the possession of the accused and trial may take long time to conclude.

Cognizance of the offence has already been taken and the investigation has been concluded. The petitioner was given copy of the challan and after presentation of challan, charges were framed. The petitioner has not challenged the order of framing of charges and no allegations have been levelled against the Investigating Officer to show as to how the investigation was not fair or it was biased. Even in the representation, no such allegations have been levelled.

No doubt, proper and fair investigation on the part of the Investigating Officer is the backbone of the rule of law. No evidence was collected during investigation to prove that the pistol was with the accused and no offence was made out under the Arms Act. There was no request on the part of the petitioner for further investigation. Simply by stating that the investigation is not fair as the Investigating Officer was in connivance with the accused party, is not a sufficient ground to transfer the investigation of the case unless some specific allegations are there against the Investigating Officer or something has been pointed out to show as to how the investigation is not fair.

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Hon'ble the Apex Court in the case of ***K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai and others 2013***

(12) SCC 480 has held as under:-

“The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudalure M.J. Cherian & Ors. v. Union of India & Ors., (1992) 1 SCC 397; R.S. Sodhi v. State of U.P. & Ors., AIR 1994 SC 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors., AIR 1994 SC 1023; Vineet Narain & Ors., v. Union of India & Anr., AIR 1996 SC 3386; Union of India & Ors. v. Sushil Kumar Modi & Ors., AIR 1997 SC 314; Disha v. State of Gujarat & Ors., AIR 2011 SC 3168;

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Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors., (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar & Ors. Etc., 2012 (1) RCR (Criminal) 126; 2011 (6) Recent Apex Judgments (R.A.J.) 303).

In State of West Bengal v. Committee for Protection of Democratic Rights, 2010 (2) RCR (Criminal) 141, a Constitution Bench of Hon'ble the Apex Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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.

In **Sakiri Vasu v. State of UP**, 2008 (1) RCR (Criminal) 392

has held:-

"This Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them."

Admittedly, the Court can exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI but only in rare and exceptional cases where it is necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be

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tainted/biased.

In the present case, the petitioner is seeking transfer only on the ground that the investigation is not fair and accused have been released on bail whereas it is not a case of simple injury and Section 452 IPC is also there. Accused were released on bail by considering the facts of the case and even no efforts have been made to move application for cancellation of bail, if any threat was given subsequently. Moreover, the trial Court is empowered to add certain sections in case something come in the evidence.

Accordingly, I find no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit is, hereby, dismissed.

However, the petitioner is at liberty to avail the appropriate remedy, in case, any threat is there.

03.12.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes