

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL PUBLIC INTEREST LITIGATION (St.) NO. 1 OF 2019

Heena Vichare.	]
Adult Indian Citizen,	]
Occ : Advocate.	]
Residing at 301, Royal Sankalp,	]
Zakaria Road, Off SV Road,	]
Malad (W), Mumbai – 400 064.	] ..Petitioner.

Versus.

- | | |
|---|-------------------|
| 1] Union of India |] |
| Through The Department of Legal |] |
| Affairs Branch Secretariat, |] |
| Aaykar Bhavan, Maharishi Karve |] |
| Road, Churchgate, |] |
| Mumbai – 400 020. |] |
| |] |
| 2] Central Bureau of Investigation |] |
| 13 th Floor, Plot No. C-35A, |] |
| G-block, Bandra Kurla Complex |] |
| Near MTNL Exchange, |] |
| Bandra East, |] |
| Mumbai 400 098. |] |
| |] |
| 3] State of Maharashtra |] |
| Through Public Prosecutor |] |
| Appellate Side, |] |
| Criminal Writ Department, |] |
| High Court, Mumbai – 400 032. |] |
| |] |
| 4] Virendra Mhaiskar |] |
| IRB Complex, Chandivali Farm Road, |] |
| Andheri (East) Next to Raheja |] |
| Complex, Mumbai – 400 072. |] ...Respondents. |

Ms. Pooja Thorat I/b Fauzan Shaikh for the Petitioner.
Ms. P. P. Shinde, APP for the Respondent-State.
Mr. Sujay Kantawala and Ms Teresa Daulat I/b TRD Associates for
Respondent No. 4.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.
Date : **January 14, 2019.**

P. C. :

. Heard Ms. Pooja Thorat, the learned counsel for the
Petitioner, Ms. Shinde, learned APP for the Respondent-State and Mr.
Kantawala, the learned counsel for Respondent No. 4.

2. This criminal public interest litigation is filed seeking
direction to the Government of Maharashtra or the Central
Government to formulate the guidelines for the protection of whistle-
blowers and RTI activists and to comprehensively investigate and
monitor such investigations under some special and comprehensive
enactment or guidelines. The Petitioner is also seeking direction to
CBI to conduct further investigation against suspected accused Nos.9
to 11 and any other persons having motive in RC BS220010S0001
dated 9th July 2010. The Petitioner is further seeking direction to
quash and set aside the order dated 21st July 2018 passed by the
Additional Sessions Judge, Pune in RC BS220010S0001. The Petitioner
is also seeking direction to CBI to furnish progress report about
investigation in Special Case No. 52 of 2017.

3. The following facts are alleged by the Petitioner.

One Mr. Satish Shetty was murdered on 13th January 2010. On the complaint of his brother – Sandip Shetty, FIR bearing No. 8 of 2010 was registered on 13th January 2010 with Talegaon-Dabhade Police Station. Six persons including one advocate were arrested and charge-sheet was filed against them on 13th April 2010 alleging the commission of offence punishable under sections 302 and 120B of the Indian Penal Code, 1860. Since grievance was raised regarding the shoddy investigation, the State Government by notification dated 6th April 2010 and the Central Government by the notification dated 9th April 2010 transferred the investigation to the CBI and the CBI thereafter registered RC BS220010S0001. After carrying investigation for about 4 years, on 11th August 2014, the CBI filed closure report due to lack of sufficient evidence against the suspects including Respondent No.4. Even before this closure report dated August 2014 filed by the CBI could be considered by the ACB Court, Pune, the CBI itself informed the Court that Special Crime Branch, Delhi intended to continue the investigation into RC BS220010S0001 and therefore order on closure report be kept pending.

Thereafter in April 2016, CBI arrested two investigating

officers of the Pune Rural Police. In July 2016, CBI registered and charge-sheeted two officers of the Pune Rural Police for botching up the investigations to shield the real culprits. On 13th April 2018, CBI filed report / intimation in respect of the said case and prayed that the said report may be taken on record and further investigation may be treated as closed. The learned Additional Sessions Judge, after hearing the complainant as well as the public prosecutor, by the order dated 21st September 2018 accepted the closure report. Being aggrieved by this closure report, the Petitioner had approached this Court by way of this criminal PIL for the reliefs stated hereinabove.

4. Ms. Thorat, learned counsel for the Petitioner invited our attention to the order on closure report and submitted that if further investigation is not directed, it will be against the public interest and it would deter the citizens from acting selflessly as RTI activists and whistle-blowers. She submitted that because of the lethargic and improper investigation by CBI, the evidence could not be collected. Ms. Thorat also contended that deceased RTI activist had in his possession evidence against various influential persons but the CBI has not investigated the role of all such persons. She further submitted that there is enough evidence to prosecute the said

suspected accused and or to charge-sheet them. The second closure report by the CBI is nothing but an eye wash and therefore the same cannot be accepted. Ms. Thorat, the learned counsel for the Petitioner submitted that closure report is also not in proper format as per the provisions of section 173 of Code of Criminal Procedure, 1973. She lastly submitted that though six persons have been charge-sheeted by the local police and two officers have been charge-sheeted by the CBI for botching up the initial investigation and the Court has taken cognizance and issued process against them, it does not mean that further investigation cannot be conducted, particularly when according to the CBI itself the real culprits have not been identified and the suspected are being let scot free due to lack of evidence. She also submitted that CBI be directed to file its progress report of investigation in Sessions Case No. 52 of 2017.

5. Mr. Kantawala, learned counsel for Respondent No.4 opposed the PIL vehemently. He submitted that already the Central Government has enacted the Whistle Blowers Protection Act, 2014 and adequate safeguards/measures against the victimisation of the persons making complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion

against any public servant, are in place and therefore this Court need not entertain the first prayer.

. Mr. Kantawala submitted that the PIL is filed with malafide intention and there is no public interest involved in it. He submitted that CBI investigated the case for about 8 years and two closure reports were already filed, therefore, the Petitioner's prayer for further investigation in the subject crime cannot be entertained. Regarding the Petitioner's prayer for investigation in Special Case No. 52 of 2017 is concerned, he submitted that Respondent No.4 as well as other accused in this case are already discharged by the competent courts and those discharge orders have become final. Mr. Kantawala lastly submitted that the petition is devoid of any substance and should be dismissed with exemplary cost on the Petitioner.

6. We have heard the learned counsel appearing on behalf of the respective parties and we have gone through the PIL and annexures thereto including the order dated 21st November 2018 passed by the learned Additional Sessions Judge. It is borne out of the record that initially crime No.9 of 2018 was registered in Talegaon Dabhade Police Station under section 302 of IPC in respect of the murder of deceased Satish Shetty. The State police has conducted the

investigation and presented the charge-sheet against six persons on 13th April 2010. Thereafter the investigation of this case was undertaken by CBI in the year 2010. Upon taking over the case, the CBI registered separate crime being CR.No.BS220010S0001 and investigated the case and thereafter filed closure report on 11th August 2014. This closure report reveals that the CBI did not find any evidence to connect other suspected persons with the crime. After filing this report, the original complainant challenged the said report before this court by filing writ petition seeking the relief that CBI be directed to investigate further. This petition came to be disposed of on the statement of learned counsel for CBI that Director of CBI had taken a decision to further investigate the matter and the matter has been handed over to the Delhi Special Crime Branch, CBI. Thereafter Delhi Crime Branch has carried out further investigation. During investigation, the CBI recorded statements of near about 500 witnesses and also carried out polygraphy test of the suspected persons. But no prosecutable definite evidence was found. CBI hence concluded that there is no evidence against the suspected persons. During investigation, CBI arrested two investigating officers of Pune Rural Police in the year 2016 and ultimately filed closure report. Learned Additional Sessions Judge having gone through closure

reports, came to the conclusion that there is no evidence against the suspected persons or material on record connecting them even after long investigation of 8/9 years and accordingly accepted the report.

7. It is significant to note that CBI has not given clean-cheat to six persons who were charge-sheeted on the allegation of conspiracy to murder. The CBI also charge-sheeted and investigated two investigating officers of Pune Rural police for botching up investigation. In these circumstances, there is no reason to presume that investigation carried out by CBI is shoddy, especially when CBI has examined 500 witnesses and carried out polygraphy tests of some of the suspects, in which nothing incriminating was revealed. During 8 to 9 years of investigation, CBI has not found any prosecutable evidence against the suspected persons. Merely, on surmises and conjectures, it cannot be presumed that CBI has failed to perform its duties. In such circumstances, in our opinion, the writ jurisdiction of this Court cannot be invoked to rope in the suspected persons including Respondent No.4 and to subject them to criminal prosecution, without any incriminating material against them. It also cannot be said that the CBI has filed vague closure reports. Further investigation cannot be directed merely to satisfy the grievance of any

individual without justifiable reason. At this stage, reference must be made to the supplementary statement of complainant recorded on 14th January 2010, which was also considered by the learned Additional Sessions Judge while accepting the closure report. In the year 2014, CBI itself voluntarily agreed for further investigation instead of pursuing the closure report filed at that stage. Thereafter despite further investigation spreading over about 4 years, the CBI could not find any cogent material against the suspected persons including Respondent No. 4.

8. The allegation of the Petitioner that closure reports are not in proper format is also liable to be rejected as such objection can never come in the way of substantial justice. The grievance of the Petitioner regarding Special Case No.52 of 2017 for the offence punishable under section 120B, 420 of IPC read with sections 13(2) and 13(1)(d) of the Prevention of Corruption Act is concerned, the same pertains to the illegally grabbing of land by accused persons. Respondent No.4 was an accused in this case along with several other persons. The Sessions Court has already discharged Respondent No. 4 and several other accused. This Court has also quashed proceedings of said case qua some of the accused persons. Those orders have

become final and therefore the said issue cannot be re-opened in this PIL.

9. Before parting with the matter, we must consider the Petitioner's prayer regarding the giving of directions to the Government to formulate the guidelines for the protection of RTI activists and whistle-blowers. In this regard, we find that already in the year 2014 itself, Parliament has enacted the Whistle Blowers Protection Act, 2014. The object of the said Act is to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause to enquire into such disclosures and to provide adequate safeguards against victimization of the persons making such complaint. Chapter V of the said Act deals with protection to the persons making disclosure. Section 11 deals with safeguards against the victimization. Section 12 makes provisions for protection of witnesses and other persons. Section 13 deals with protection of identity of complainant. Thus there is sufficient protection provided to RTI activists and whistle-blowers. In the light of this enactment being in force and in existence, no direction as claimed by the Petitioner are required.

10. Taking totality of the facts and circumstances of the case into consideration, we find no infirmity in the order dated 21st September 2018 passed by the learned Sessions Judge, Pune accepting the closure report inasmuch as the said order was passed after hearing complainant and public prosecutor and supported by cogent reasons. Unless there is fatal illegality in the said order, the same cannot be set aside at the instance of some individual or the complainant who is not satisfied with the investigation. We find no public interest involved in this PIL and the same is accordingly dismissed.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]