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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.11.2019

DELIVERED ON : 13.12.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.32842 of 2019

National Student Union of India,
Represented by its President,
Tamil Nadu
N.Aswathaman,
Sathia Moorthy Bhavan,
No.40, Thiru-vi-ka-Salai,
Chennai-600 002.

..Petitioner

Vs.

1. The Home Department,
Represented by Secretary,
Fort St.George,
Chennai-600 009.
2. Director General of Police,
Office of the Director General of Police,
Kamarajar Salai,
Chennai-600 004.
3. Additional Commissioner of Police,
Special Team, Central Crime Branch,
Vepery, Chennai-600 007.
4. The Director,
Central Bureau of Investigation,
New Delhi.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to transfer the investigation of the case in Crime No.394 of 2019 dated 09.11.2019 registered by the Kotturpuram Police Station, now pending investigation on the file of the third respondent to the fourth respondent and to pass such further orders.



Chennai, State Human Rights Commission, Chennai and the National Human Rights Commission, New Delhi and filed this writ petition on 19.11.2019.

5. Mr.M.Jaikumar, learned counsel appearing for the petitioner would submit that the deceased Fathima Lateef had excelled in her academic career and on sheer merit, got admission to M.A. Humanities course in IIT, Madras and she was found hanging from a ceiling fan on 09.11.2019 in her hostel room and the information came out thereafter had revealed that she has been subjected to harassment at the hands of some of the teaching faculties and though the case was initially registered by Kotturpuram Police Station and was transferred to the Additional Commissioner of Police, Central Crime Branch, Chennai for investigation, still no headway has been made as to whether it was suicide or homicidal hanging and in the light of the fact that reputation of the premium institution, namely IIT is involved, the investigating agency is exhibiting lackadaisical attitude and is not properly investigating the case.

6. It is the further submission of the learned counsel appearing for the petitioner that even the IIT administration is yet to take disciplinary action against the professors / teaching faculties concerned and the father of the deceased student also met the Commissioner of Police, Chennai as well as Hon'ble Ministers praying for fair and speedy investigation and despite that nothing is moving forward. It is also the submission of the learned counsel appearing for the petitioner that the detailed representation dated 18.11.2019 submitted in this regard by the petitioner has failed to invoke any kind of response and admittedly, suicides of students studying in IIT, Madras Campus becoming a regular feature and therefore, an effective workable solution is to be found in the form of giving periodical counseling to the students that too at appropriate times and however, IIT Madras is not doing anything in that regard. The learned counsel appearing for the petitioner would further submit that to exhibit fairness in the investigation and also in the light of the controversies generated, it will be fit and proper to entrust the investigation to a premier investigating agency, namely the Central Bureau of Investigation (CBI) and hence, prays for appropriate orders.

7. Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that Kotturpuram Police Station has registered a case in Crime No.394 of 2019 under Section 174 CrPC on 09.11.2019 as to the suspicious death of Fathima Lateef and without any loss of time, investigation was entrusted to the Additional Commissioner of Police, Central Crime Branch, Chennai, namely, Mr.C.Easwaramoorthy, I.P.S. and the investigation is proceeding



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on right lines. It is also pointed out by the learned Additional Government Pleader that though the representation of the petitioner was sent on 18.11.2019, the writ petition came to be filed immediately on 21.11.2019, without even giving breathing time to the respondents concerned to respond to the representation and in the absence of any specific allegation of malafide and deliberate inaction on the part of the investigating agency, investigation of the case cannot be transferred to CBI by a mere asking and prays for dismissal of this writ petition.

8. This Court has paid it's best attention to the rival submissions and also perused the entire materials placed before it.

9. Kotturpuram Police Station has registered a case with regard to the demise of Fathima Lateef in Crime No.394 of 2019 on 09.11.2019 under Section 174 CrPC and within a short span of time, it was transferred to the Additional Commissioner of Police, Central Crime Branch, Chennai, for investigation. According to the learned Additional Government Pleader appearing for the official respondents, crucial materials have been gathered and investigation is also proceeding on right lines and in respect of cognizable offence, outer time limit cannot be framed for completion of investigation and also undertakes to file status report as to the progress being made in this regard. The petitioner said to have submitted the representation dated 18.11.2019 through e-mail, for which no proof or acknowledgement is available. The writ petition itself came to be filed on 19.11.2019 on the very next day of submission of the representation and without giving breathing time for the official respondents concerned to respond to his representation, has approached this Court seeking a mandamus for transfer of investigation to CBI.

10. It is a settled position of law that if the High Court under Article 226 of the Constitution of India, is convinced that the investigating officer in exercising his legal powers, which resulted in tainted investigation, it shall exercise it's power to prevent such kind of illegality in investigation.

11. It is also a well settled position of law that the High Court, in exercise of it's power under Article 226 of the Constitution of India, cannot direct the investigating agency to investigate the case in accordance with its views as that would amount to unwarranted interference, equally no such directions could be issued in exercise of inherent jurisdiction under Section 482 of the Criminal Procedure Code. [See D.Venkatasubramaniam & Ors. v. M.K.Mohan Krishnamachari & Anr., 2009 (12) Scale 483, para 9].



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12. A Constitution Bench of the Hon'ble Supreme Court of India in the decision in State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors. [(2010) 3 SCC 571], observed in paragraph No.70 as follows:

"Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations 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. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

13. Section 156(3)CrPC provides for check by Magistrates on police to perform their duties and if the said official finds that police have not done their duties or investigate properly, can always monitor the same. [See Sakiri Vasu v. State of U.P. and Others, AIR 2008 SC 907].

14. In K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Others [2013 (5) CTC 310], the Hon'ble Supreme Court of India has dealt with the issue relating to transfer of case from State Investigating Agency to CBI and observed Paragraph Nos.6 and 8 as under :

"6. 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



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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; 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., AIR 2012 SC 364).

8. In *State of West Bengal v. Committee for Protection of Democratic Rights*, AIR 2010 SC 1476, a Constitution Bench of this 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.

(See also: *Ashok Kumar Todi v. Kishwar Jahan & Ors.*, AIR 2011 SC 1254).

15. The incident took place on 09.11.2019 and the case was registered by Kotturpuram Police Station in Crime No.394 of 2019 under Section 174 CrPC and was transferred to the Additional Commissioner of Police, Central Crime Branch, Chennai city. According to the learned Additional Government Pleader appearing for the respondents, headway made in the investigation and the



cellphone possessed by the deceased was seized and it is also subject to forensic analysis and expeditious steps have already been taken to conclude the investigation at the earliest.

16. No doubt, brilliant academic career of an young student came to an end under tragic circumstances and this Court can also understand the feelings / sentiments of the parents of the deceased.

17. The petitioner has pointed out that from the month of April, 2018 to November, 2019 totally 5 students of IIT, Madras campus had committed suicide, may be on account of stress and other related facts and unable to perform to their full potential. It is high time that the administration of IIT shall make every endeavour to give periodical psychiatric counseling to the students and the teaching faculties are also under obligation to motivate/encourage the students to perform better and permanent solution is to be found as expeditiously as possible so as to prevent loss of young lives. It is also high time that all IITs in this country shall take a call to deal with such situations which also cause anguish to the parents/relatives of the deceased.

18. The tragic demise of Fathima Lateef had generated controversies, agitations and dharnas and therefore, it is also suggested that the investigation of the case may be transferred to a specialized investigating agency, namely Crime Branch Criminal Investigation Department (CBCID).

19. The above cited decisions also lay down the proposition that transfer of investigation from State Investigating Agency to another Investigating Agency like CBI can be done only in rare and exceptional cases, especially if it is found that the investigation prima facie found to be tainted and as of now, no such material has been placed before this Court warranting transfer of investigation to CBI.

20. This Court also cannot issue any positive direction as to the manner in which the investigation is to be carried out, as it is always open to the jurisdictional Magistrate to monitor the investigation and even if Final Report is filed, it is always open to the Magistrate concerned to order further investigation, if he is satisfied that the investigation and collection of materials have not proceeded on right lines.

21. This Court cannot issue mandamus on the basis of mere sympathy or sentiment and however, taking into consideration the facts and circumstances as well as the agony being undergone by the parents of the deceased, the Investigating Agency concerned is directed to file their Status Report before this Court as to



the progress being made in the investigation.

22. This Writ Petition is dismissed, subject to above observations. No costs. Call on 22.01.2020 for filing the Status Report.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Jvm

To

1.The Secretary,
Home Department,
Fort St.George, Chennai-600 009.

2.Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Chennai-600 004.

3.Additional Commissioner of Police,
Special Team, Central Crime Branch,
Vepery, Chennai-600 007.

4.The Director,
Central Bureau of Investigation,
New Delhi.

+1 CC to The Govt. Pleader sr 104493.

W.P.No.32842 of 2019

NRL(CO)
SP(20/12/2019)