

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

**CWP NO. 11369 of 2013
Decided on 11.04.2019**

Dalbir Kaur & Ors.

...Petitioners

Versus

State of Punjab & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by : Mr. R. Kartikeya, Advocate
for the petitioners.**

**Mr. Atul Nanda, Advocate General Punjab with
Ms. Diya Sodhi, Asst. AG Punjab.**

**Mr. Puneet Bali, Senior Advocate with
Mr. Paramveer Singh, Advocate
for respondent No.3.**

**Mr. Sumeet Goel, Advocate and
Mr. Manav Bajaj, Advocate
for respondent No.4-CBI.**

ARUN MONGA, J.

1. Sukhpal Singh, husband of petitioner no.1, stated to be then a young man of 26 years, just disappeared like a ghost in thin air on 13.08.1994, never to be seen again. When his wife, Dalbir Kaur approached the police, instead of taking any prompt action by registering an FIR, she was told that he would return soon. Still later, it was conveyed he was required in the investigation of a matter, and would return once the same is over. The version later changed and the family was told that Sukhpal Singh had been sent for some work and once that is over he would return. It went on and on, days turned into weeks to months and years but Sukhpal Singh never ever returned. No FIR was registered by police, despite the wife and

father of Sukhpal Singh narrating the abduction incident which disclosed commission of a cognizable offences. The poor family did not have the means to litigate against the State, until a decade and half later, when petitioner no.3, Col (Rtd.) G.S.Sandhu, a human rights activist, started pursuing the matter. Having made no headway, after almost 20 years, present writ petition in May, 2013 was filed. It is prayed, inter alia, that an investigation be directed either by CBI or to any other independent agency.

2. Even if a theft of a bicycle is reported, the police has to register an FIR. It is rather bizarre that when a human being disappears, ne', is abducted, not even a DDR is recorded, what to say of an FIR. Such extraordinarily peculiar and abnormal situation makes one curious and suspicious of the dubious conduct of the concerned police officials. It is settled position of law that sine qua non for recording an FIR is, (a) there must be information and (b) said information must disclose a cognizable offence. Once the information discloses a cognizable offence, the police officer has no recourse but to record the same in prescribed form i.e. register an FIR under section 154(1) of the Criminal Procedure Code. A Constitution Bench of Hon'ble the Supreme Court of India dealt with the issue of non registration of an FIR in a cognizable offence and enunciated as below **[Lalita Kumari v/s Government of U.P. and ors. reported as 2014(1) SCC (Cri) 524] :-**

“22. The issues before the Constitution Bench of this Court arise out of two main conflicting areas of concern, viz.,

- (i). Whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a complaint immediately investigated upon allegations being made; and*
- (ii). Whether in cases where the complaint/information*

does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an accused.

x-x-x-x-x-x

Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

- i). Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*
- ii). If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*
- iii). If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*
- iv). The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*
- v). The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
- vi). As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*
 - a) Matrimonial disputes/ family disputes*
 - b) Commercial offences*
 - c) Medical negligence cases*
 - d) Corruption cases*
 - e) Cases where there is abnormal delay/laches in initiating*

criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii). While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii). Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

3. In the instant case, succinctly, the factual allegations in the petition are as follows :—

(a) On 13.08.1994, about 3-4 police personnel took away Sukhpal Singh from his house in village Kala Afghana, District Gurdaspur saying that he was required by Majitha District Police for some police investigation and would be sent back next day. Sukhpal Singh did not return. His wife Dalbir Kaur and father Jagir Singh (petitioners No. 1-2 herein), visited several police Stations in Majitha but were told that Sukhpal Singh had been sent for some work at the behest of officers and would return in a few days.

(b) During this period, it was reported in the newspapers that Gurnam Singh Bandala, a prominent terrorist, had been killed in an encounter by the Ropar District Police. Respondent No. 3 was DSP,

Ropar at that time. The petitioners, however, gathered later that the person killed in the alleged encounter was not Gurnam Singh Bandala but was their own Sukhpal Singh. Petitioners No. 1-2 ran from pillar to post but the authorities did not accept their version. Their complaints were just swept under the carpet.

(c) After several years, it was reported in the newspapers (Annexure P/1; Indian Express-in 2007) that Gurnam Singh Bandala, who was reportedly killed in police encounter in 1994, had been caught alive. Petitioners No. 1-2 renewed their struggle for justice but their efforts were futile. Rather, they got threats to desist from pursuing the case. Petitioner No. 3 came to their rescue and highlighted in press conferences the killing of Sukhpal Singh, in fake police encounter. The petitioners approached the higher ups in the Punjab Police and also political leaders, who ignored their requests. No action was taken to bring out the truth as respondent No. 3 enjoyed political patronage.

(d) Due to tremendous efforts of media in highlighting the plight of petitioners No. 1-2, with the help of petitioner No. 3, the then Director General of Police, Punjab ordered a probe into the questionable police encounter. But nothing concrete was done in the inquiry. The petitioners filed a petition before the State Human Rights Commission, who forwarded it to the respondent No. 2 on 15.01.2013. Still no action was taken to redress the petitioners' grievance. Hence the instant petition.

4. The petitioners allege that respondent No. 3 enjoyed the

patronage of political high ups and the State machinery was hell bent to support his cause. Inaction of the respondents is obvious as no criminal proceedings have been initiated, despite pursuit of their grievance by the petitioners, till the filing of this petition (on 14.05.2013). Sukhpal Singh was innocent and had been killed in 1994. Their main prayer is for transfer of the investigation/enquiry to the Central Bureau of Investigation or to any other independent agency for probe/investigation.

5. Respondents No.1-2 filed written statement denying any wrongdoing in the police encounter or inaction on their part or shielding any guilty person. They stated that firstly, an inquiry about the encounter was conducted by DIG, Rupnagar. On submission of his report, the Director General of Police, Punjab constituted a Special Investigation Team headed by Shri Iqbal Preet Singh Sahota, ADGP and comprising of Shri R.K. Jaiswal and Balkar Singh Sidhu, both DIGs, for a fair and independent probe into the matter, which was then in progress. Later an affidavit dated 16.03.2016, on behalf of respondents No. 1-2, was filed, stating inter alia that on completion and submission of the inquiry report of and the recommendation of that SIT, an FIR No. 15 dated 15.03.2016, about the disappearance of Sukhpal Singh, was registered at P.S. Fatehgarh Churian. Another SIT headed the Deputy Superintendent of Police and comprising of the SHO, P.S. Fatehgarh Churian and the Incharge, CIA Staff, Batala had been constituted by SSP, Batala for investigation of the said FIR, which was under progress. Status report by way of affidavit dated 25.01.2019 of Shri Vipin Chaudhary was also filed.

6. Respondent No. 3 filed his counter affidavit dated 23.07.2016, asserting that the allegations against him were false. He denied any wrong-

doing on his part in the disappearance of Sukhpal Singh. He filed another affidavit dated 10.04.2019, on the same lines and further stating that he is all for a fair investigation of the incident of the disappearance of Sukhpal Singh but expressed grave apprehensions at the hands of Punjab Police. He stated that without prejudice, it would be in the interest of justice, if further investigation with regard to the disappearance of Sukhpal Singh is handed over to a Special Investigation Team comprising officers of the State of Haryana under the Chairmanship of an officer of the rank higher than his rank and alternatively to the Central Bureau of Investigation for submitting a preliminary enquiry.

7. On the other hand, CBI/Respondent No. 4 filed written statement opposing the prayer for CBI investigation and saying that the State police was fully equipped for the purpose. CBI submitted that case in hand is local in nature and does not have any inter-state or transnational ramifications so as to warrant investigation by it.

8. I have gone through the record of the case with the able assistance of the learned counsel for the petitioner, the learned Advocate General for State, the learned Senior counsel for respondents No. 3 and learned Counsel for CBI and have heard them.

9. The petitioners allege that Sukhpal Singh is missing since 13.08.1994, the matter had been persistently pursued with the police and other authorities, they suspect that Sukhpal Singh was killed in a fake police encounter and the same had been highlighted in the print media as per press cuttings of The Indian Express (06.05.2007), The Washington Post (07.06.2007), Punjab Newslane Network (03.05.2007) [Annexure P/1 (Colly)], The Indian Express (28.03.2009) and The Tribune (26.04.2007)

[Annexure P/2(Colly)]. As noted above, an FIR about the disappearance of Sukhpal Singh (on 13.08.1994) was registered only on 15.03.2016, almost three years after filing of the instant writ petition.

10. The existing SIT constituted for its investigation comprises of the area DSP, the concerned SHO and the Incharge, CIA Staff, Batala. Status report dated 25.01.2019 shows that till then, the local police had not been able to ascertain the identity of any of the 3-4 persons, who had allegedly taken away Sukhpal Singh from his village on 13.08.1994. The petitioners allege that the State machinery is shielding the guilty persons. They seek transfer of the inquiry to CBI or to any independent agency for independent probe/investigation. Respondent No. 3 filed affidavit stating that he is all for a fair investigation provided if its either conducted by an officer of State of Haryana having a rank higher than him or by CBI. However, I am in agreement with the submission of the learned counsel for the CBI that instant case is local in nature and does not have any inter-state or transnational ramifications so as to warrant CBI investigation. As regards, deputing an officer from Haryana, higher in rank than respondent no.4, the same is also fraught with administrative in-exigencies and territorial limitations of an officer of one state to exercise jurisdiction in another state. Besides, an officer assigned to another State cannot be relieved of the responsibility/duty assigned to him in his parent State by issuance of a writ of mandamus under Article 226 of Constitution of India.

11. In the premise, I am of the opinion that considering the rank of respondent No. 3 (Inspector General of Police), the nature and gravity of the allegations, the level of the existing SIT conducting the investigation, its progress since the registration of the FIR on 15.03.2016 and other over all

circumstances of the case, it is fit case to constitute a sufficiently higher level SIT, for a speedy and effective investigation and to allay the apprehensions and inspire the confidence of all concerned in its fairness.

12. In **Bharati Tamang v. Union of India (2013) 15 SCC 578**, the Apex Court held as under:-

“41. From the various decisions relied upon by the petitioner counsel as well as by respondents counsel, the following principles can be culled out.

The test of admissibility of evidence lies in its relevancy.

41.2 Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

41.3 If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4 It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5 In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6 While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court

can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7 In appropriate cases even if the chargesheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8 In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

13. As already noted above, the CBI is opposed to the entrustment of investigation to it. There is administrative difficulty in getting the services of and constituting an SIT of senior level police officers from Haryana State. Besides, there is likelihood of practical and logistic problems for an SIT comprising of officers of that State in speedy and effective investigation of the present case pertaining to the State of Punjab.

14. Taking into consideration the overall facts and circumstances of the case and for an effective and speedy investigation and with a view to lending greater credibility and inspire higher confidence of all concerned, in the fairness of investigation and for balancing the scales of justice, I am of the opinion that it would be appropriate to constitute a Special Investigation Team, comprising of sufficiently senior level officers of the Punjab State cadre, but hailing from three different States, for the investigation of the case. Accordingly, in place of the existing SIT, a new Special Investigation Team, as mentioned below, is constituted for the investigation of the case FIR No. 15 dated 15.03.2016 registered at P.S. Fatehgarh Churian, Distt. Gurdaspur, about the disappearance of Sukhpal Singh (in August, 1994)

from all angles:-

- (a) Shri Sidharth Chattopadhyaya, DGP rank (Home State as per gradation list-West Bengal), Chairman of the SIT.
- (b) Smt. Gurpreet Kaur Deo, ADGP rank (Home State as per gradation list- Chandigarh UT), Member of the SIT
- (c) Shri B. Chandra Sekhar, IGP rank (Home State as per gradation list-Andhra Pradesh), Member of the SIT.

15. The new SIT shall take over the investigation from the existing SIT and carry out and complete the investigation from all angles as expeditiously as possible and have the final report filed before competent criminal court in accordance with law in due course.

16. Appropriate assistance and logistic support shall be given to the SIT by all concerned.

17. I may hasten to add that nothing stated herein shall amount to an expression of opinion on the merits of the respective versions of the parties or any reflection on the proceedings of and the opinion/conclusions of earlier inquiries by SITs and the investigation of the existing SIT or about the conduct/performance of the officers manning them. The observations herein are tentative, meant only for and confined to the direction for constitution of the new SIT.

18. Copies of this order be given *dasti* to all the learned counsels for the parties. Respondents no.1 and 2 are also directed to file a compliance report before this court specifying the date of commencement of investigation by the newly constituted SIT. Let the report be filed on or before 27.05.2019.

19. The writ petition stands disposed of with the aforesaid directions and observations.

(ARUN MONGA)
JUDGE

April 11, 2019

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No