

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 550 of 2017**

(Arising out of order dated 16.11.2017 passed by the learned Single Judge in WPCR No. 05 of 2017)

1. Gagan Kumar Dash S/o Shri I. C. Dash, aged about 30 years, R/o Village Telia Via Ambaguda, Jaipur, District Koraput, Orissa
2. Niranjan Das, S/o Shri I. C. Dash, aged about 30 years R/o Village Telia Via Ambaguda, Jaipur, District Koraput, Orissa (In Jail) (Represented to brother Petitioner No. 1)
3. Manoj Kumar Mohankudo S/o Shri K.C. Mohankudo, Aged About 32 Years R/o At Goudu Street, Jaipur, District Koraput, Orissa
4. Durjoti Mohankudo S/o Shri K.C. Mohankudo, Aged About 45 Years R/o At Goudu Street, Jaipur, District Koraput, Orissa (In Jail) (Represented to brother Petitioner No. 3)

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary, Home Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. The Director General of Police, Chhattisgarh Head Quarter Raipur, District Raipur, Chhattisgarh.
3. The Inspector General of Police, Bastar Range, Bastar, Chhattisgarh.
4. The Superintendent of Police, Jagdalpur, District Jagdalpur, Chhattisgarh.
5. The Station House Officer, Police Station Nagarnar, District Jagdalpur, Chhattisgarh.
6. State of Orissa, Through The Secretary, Home Department, Secretariat Bhuvneshwar Orissa.
7. The Director General of Police, P. H. Q. Kuttack, District Kuttack, Orissa.
8. The Deputy Inspector General Of Police, Koraput, District Koraput, Orissa.

9. The Superintendent of Police, Koraput, District Koraput, Orissa.
10. The Station House Officer, Police Station Kotpad, District Korapat, Orissa.

---- Respondents

For Applicants	: Mr. Harshwardhan Parghaniha, Advocate
For State of Chhattisgarh	: Mr. Siddharth Dubey, Deputy Government Advocate
For State of Orrisa	: Mr. P.C. Mahapatra and Mr. Raghvendra Pradhan, Advocates

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per, P.R. Ramachandra Menon, Chief Justice

20/01/2020

1. Appeal arises from the judgment dated 16.11.2017 passed by the learned Single Judge in WP(Cr.) No. 05 of 2017, whereby the prayer to cause investigation of the Crimes to be taken over by CBI has been declined and another Agency has been ordered to be constituted with involvement of the State of Chhattisgarh and State of Orissa, to have the matter investigated and to take the proceeding to its logical conclusion.
2. A brief reference to the factual context is necessary to understand the case. The writ petition was filed by 'four' persons, pointing out certain offences stated as committed by some persons including those of the State Police of Chhattisgarh. It is the version of the Petitioners that Petitioner No.1 and 2 are the real brothers and so also are the Petitioners No.3 and 4. According to the Petitioners, the Petitioners No.2 and 4 have been working in Orissa; the 2nd Petitioner being employed as permanent employee of one Front Line Trading Company, whereas the 4th Petitioner

working as peon in a Local Authority. It is stated that the said Petitioners were proceeding on a 'Scooty' to their destination on 28.07.2016, when they were intercepted by persons who came in two Bolero Vans, one having the registration in the State of Andhra Pradesh and the other one having registration in the State of Chhattisgarh. The Petitioners No.2 and 4 were forcefully taken to custody and kidnapped. Subsequently, a Criminal Case was registered against them as Crime No.136/2016 in the Police Station, Nagarnar, Bastar in the State of Chhattisgarh, in respect of the offences under Section 8(1)(3)(5) of Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 and Section 4 & 5 of Explosive Substance Act, 1908.

3. Relatives of the Petitioners No.2 and 4, on getting information as to incident, rushed to the Police Station, Kotpad, District – Koraput in the State of Orissa and gave statements as to what has happened. The 1st Petitioner also moved the Magistrate having jurisdiction over the area by filing a private complaint in terms of Section 200 of the Cr.P.C. and the same was forwarded by the Magistrate for investigation to the Police in terms of Section 156(3) of the Cr.P.C. On receipt of the said complaint, a Crime was registered as FIR No. 0159 in the Police Station in Orissa and the matter is being investigated.
4. The grievance of the Petitioners is that, absolutely no proper action has been taken, despite the fact that the State of Orissa has requested the State of Chhattisgarh, particularly, the Police Authorities here, as to various particulars and that no co-operation or support is being extended by the latter; by virtue of which everything has come to stand still. In the

said circumstance, the Petitioners moved the High Court of Orissa by filing a Writ Petition with regard to the Crime registered in the Police Station, Nagarnar, Bastar in the State of Chhattisgarh, but interference was declined and the matter was disposed off stating that the High Court of Orissa was not having territorial jurisdiction in this regard. This made the Petitioners to approach this Court by filing Writ Petition (Cr.) No. 05 of 2017. After hearing both the sides, the learned Single Judge observed that the prayer to entrust the investigation to the CBI was not liable to be entertained so far as the CBI was not made a party. Considering the fact situation, the learned Single Judge ordered the matter to be inquired into by another Agency with the involvement of Officers belonging to both the State of Chhattisgarh and the State of Orissa. It was accordingly, that the matter was ordered to be proceeded with and finalized. The relevant portions of the judgment, as given in paragraphs 10 to 15, are to the following effect :

“10. This situation shows that there are conflicting interests and claims of police of two States namely Chhattisgarh and Orissa. To break the deadlock, some step is necessary to be taken in this case and high level enquiry is required to be done in this matter, to ascertain and find out the truth behind the claims, allegations and the cross-allegations made by the respondent No.1 to 5 and by the Page No.8 respondent No. 5 to 10.

11. In view of the law laid down by the Hon'ble Supreme Court in case of ***Rubabbuddin Sheikh vs State Of Gujarat & Ors, reported in (2010) 2 SCC 200***, the Supreme Court has held that in case where there is accusation against the officials of police department, when the Court feels that investigation of the police authorities is not in proper direction, in order to do complete justice in the matter and to instill confidence in the public mind, it is always open for the Court to handover investigation to some independent agency like CBI.

12. This is a case in which the case against the petitioner No.2 and 4 has been investigated and charge sheet is filed before the Court of Judicial Magistrate First Class, Jagdalpur. Whereas the case registered in Police Station – Kotpad is pending for investigation. Although it was held in *Rubabbuddin Sheikh vs State of Gujarat* (Supra) that investigation can be ordered, even if the charge-sheet is filed. Here the matter is totally different and enquiry is required for the purpose to find out as to the truthfulness of one of the case, which will by itself falsify the another case.

13. Petitioners have not made CBI a party in this case, in this situation, there is an option available to constitute Special Investigation Team of Chhattisgarh Police and Orissa Police jointly to inquire and find out the truth and correctness of the proceeding by Police Station – Nagarnar or by the Police Station – Kotpad in this matter.

14. Hence this petition is allowed and respondent No.1 and 2 and respondent No.6 and 7 are directed to coordinate and cooperate by constituting one Special Investigation Team of two members of high Police officials from the Chhattisgarh Police unconnected with the matters relating to Police Station – Nagarnar and similarly two members of high Police officials of Orissa State unconnected in the matters relating to Police Station – Kotpad. This team constituted shall proceed with enquiry in the line of the observation made hereinabove. In case, one of the case is found to be based on concoction or falsity, SIT so constituted, shall have an authority to proceed against the concerned, in accordance with law.

15. Accordingly, the petition stands disposed off with aforesaid observations.”

5. The learned counsel for the Petitioner submits that the aforesaid direction is not adequate enough and the denial of relief to cause the matter to be investigated by the CBI is not correct or sustainable, merely for the reason that the CBI is not in the party array. Reliance is sought to be placed on various rulings rendered by the Apex Court on the point.
6. Now, the learned Government pleader representing the State of Chhattisgarh and the Police of the State submits that, by virtue of change in circumstances and passage of time, the State / Police has taken a firm

decision to extend utmost co-operation to the State of Orissa and their Police and A joint team to conduct the investigation in view of the two different Crimes registered in State of Orissa against the Officers of Police of the State of Chhattisgarh and the Crime which has been registered in the State of Chhattisgarh against the Petitioners No. 2 and 4 in respect of the offences under Section 8(1)(3)(5) of Chhattisgarh Vishesh Jan Suraksha Adhiniyam, 2005 and Section 4 & 5 of Explosive Substance Act, 1908 has already been given effect to. Because of the pendency of the matter for long and the transfers/ promotions effected in the meanwhile, the team of officers identified by the State had to be recast and it will be done forthwith. It is also stated that the investigation will be completed by the joint team with the involvement of the higher officials, as expeditiously as possible, at any rate within a period of 'six' weeks and a report will be submitted before this Court. The learned counsel representing the State of Orissa submits that, same is position with the State of Orissa as well and the members nominated earlier are being shifted and new members are being inducted into the team, to have a concerted action and result.

7. Considering the aforesaid submissions as put forth in the affidavit dated 16.01.2020 filed on behalf of this State, we find it appropriate to cause the said affidavit extracted in toto, to have a clear idea as to course and events sought to be pursued by the State of Chhattisgarh.

**“AFFIDAVIT IN COMPLIANCE HON'BLE COURT
DATED 14.01.2020”**

I, Hemsagar Sidar aged about 36 years S/o Haldhar Sidar presently posted as City Superintendent of Police Jagdalpur, District-Bastar Chhattisgarh presently at Bilaspur do hereby on solemn affirmation state that:-

1. I am the Officer-In-Charge in the present case and duly authorized to file the present affidavit.
2. The Special Investigation Team (hereinafter referred to as "SIT") had been constituted (consisting of two members of Chhattisgarh Police and two members of Orissa Police appointed by Superintendent of Police Koraput, Odisha) vide order dated 01/08/2018 passed by the Director General of Police in consonance with direction of the Hon'ble Writ Court contained in penultimate paragraph of the judgment passed in W.P.(CR) No. 05 of 2017.
3. That the Constitution of the aforesaid SIT was amended vide order dated 15/10/2018 as one officer of Odisha police had been transferred. The aforesaid order dated 01/08/2018 & 15/10/2018 are collectively annexed to the present affidavit as **Annexure "A/1" (Colly)**.
4. That since the officers of Chhattisgarh Police which were part of the Special Investigation Team as per the amendment order dated 15/10/2018 have also been transferred out of Bastar range new members would be appointed to be part of the SIT.
5. That the new members of the SIT would hold the rank of Additional Superintendent of Police and Deputy Superintendent of Police.
6. That enquiry would be completed within outer-limit of 6 weeks subject to co-operation be members of SIT appointed from Odisha Police and the aforesaid period includes the time required to appoint new members to the existing SIT.
7. That after completion of the inquiry within the aforesaid time span i.e. 6 weeks the inquiry report would be submitted before this Hon'ble Court.
8. That the documents annexed to the present reply are true and correct.
9. That I have not concealed any material fact.

Sd/-
DEPONENT

VERIFICATION

I, Hemsagar Sidar, the above named deponent do hereby verify that, the contents of the above affidavit from paragraph 1 to 9 are true to my personal knowledge and belief.

Verified and signed by me on this day 16th January 2020, Bilaspur C.G.

Sd/-
IDENTIFIED BY ME



Sd/-
DEPONENT

8. The learned counsel representing the State of Orissa submits that the State of Chhattisgarh was not extending adequate co-operation earlier, despite the several letters issued in this regard, but now since there is a change in the factual scenario and the State has come forward with an affidavit stating that a new joint team is being constituted, the State of Orissa and the Police in the State of Orissa will definitely extend all co-operation to have the matter investigated and finalized within the shortest possible time. The said submission is recorded.
9. In the above circumstances, we do not find it necessary to keep the matter pending any more. The writ petition is disposed off recording the submissions, assurances and undertaking given by the learned counsel appearing for the States / Police of both the States, to have the matter finalized accordingly. On completion of the investigation as above, a report shall be submitted before the Registrar General of this Court and a copy of the same shall be given to the Petitioners. It shall be open for the Petitioners to agitate the matter further, if at all they are having any subsisting grievance in any manner, in accordance with law.
10. With the above direction, the writ petition stands disposed off.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge