

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

(1)

CRM-M-30833 of 2017 (O&M)
Date of Decision: March 04, 2020

Kricpy Khera and another

...Petitioners

Versus

State of Punjab and others

...Respondents

(2)

CRM-M-30829 of 2017 (O&M)

Kricpy Khera and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. J.S. Bedi, Senior Advocate with
Mr. Abhinav Gupta, Advocate
for the petitioners (in both the cases).

Mr. Gaurav Garg Dhuriwala, Sr. DAG Punjab.

Mr. Sumeet Goel, Standing Counsel
for CBI-respondent No.4.

JAISHREE THAKUR, J. (Oral)

1. By this order common, this court proposes to dispose of above

captioned two petitions i.e. ***CRM-M-30833 of 2017 and CRM-M-30829 of 2017***, both titled as “***Kricpy Khera and another vs. State of Punjab and others***” as facts of both the cases are same and a similar relief has been claimed thereunder.

2. Both the said criminal miscellaneous petitions have been filed under Section 482 Cr.P.C. In CRM-M-30833 of 2017, the petitioners herein are seeking transfer of investigation to any independent investigation agency preferably Central Bureau of Investigation for conducting fair investigation in FIR No.135 dated 02.09.2014, under Sections 452, 342, 323, 354, 506, 120-B of Indian Penal Code and Section 25/27/54/59 of Arms Act, registered at Police Station Mataur, Mohali, whereas in CRM-M-30829 of 2017 a similar prayer has been made with respect to FIR No.195 dated 30.08.2014, under Sections 452, 323, 365, 342, 225, 186, 506, 120-B of Indian Penal Code, registered at Police Station Phase-I, Mohali.

3. In brief, the facts that can be culled out from CRM-M-30829 of 2017 are that petitioner No.2-Devinder Singh Gill developed a friendly relationship as well as an business association with one Mr. Gautam Cheema, serving in Indian Police Service of the Punjab Cadre. Petitioner No.2 came in contact with Gautam Cheema in the year 2008, when he was SSP, Khanna, which relationship ultimately took an ugly turn. As stated, Gautam Cheema was interested in buying disputed properties and then getting the dispute resolved by exercising police power and then would dispose of the same. Since petitioner No.2 was in property business, Gautam Cheema thought it fit and appropriate to take the service of petitioner No.2 in doing his Benami transactions. A brief story with regard

to the said relationship between them has been detailed in para 4 of the petition, in which, it has been *inter alia* stated as to how petitioner No.2 and said Gautam Cheema planned to do business of carving out Farm Houses in Mullanpur area near Chandigarh, and divide the profits in the ratio of 50:50 and the said business was done through the company of petitioner No.2 namely Sky Heights Infrastructures House Building Society. It has also been stated said Gautam Cheema introduced petitioner No.2 to Ajay Chaudhary, an officer in Indian Defence Service, who shared similar interests. It has also been stated that petitioner No.2 had 50% partnership in Omega City at Kharar for which he has signed a joint Venture Agreement with the promoter of Omega City namely Amrit Pal. Petitioner No.2 transferred four plots of 110 sq. yards each in the name of Gautam Cheema and two plots in the name of mother-in-law of Gautam Cheema through a transaction in black and white, apart from allotting two other plots in the name of Gautam Cheema for a meager consideration. On the asking of Gautam Cheema, petitioner No.2 allotted two show room plots at Rajpura in Rajpura Pride for ₹ 65 lacs each in the name of Rakesh Chandra, who was working in association with Gautam Cheema. It has also been alleged that petitioner No.2 spent more than ₹ 15 lacs on the travel of Gautam Cheema to various places like Canada, Malaysia, Thailand etc. and similarly, holidays taken by Ajay Chaudhary were also sponsored by petitioner No.2. Petitioner No.2 also transferred his two cars i.e. Audi to the father of Gautam Cheema only for rupees nine lacs. Petitioner No.2 further stated that as he was involved in a CBI case and had to remain in judicial custody for two months, Gautam Cheema set up a person to receive money directly from many of the

investors, pretending that the money was being collected on behalf of the petitioner No.2 and in this way, Gautam Cheema collected a vast amount of money and refused to account for the same. Petitioner No.2 started avoiding the phone calls of Gautam Cheema and Ajay Chaudhary and started to look for his legal remedies. When petitioner No.2 came back from Ajmer after paying obeisance on 25.02.2014, Gautam Cheema and Ajay Chaudhary came to the house of the petitioners at Mohali in an inebriated condition and threatened the petitioners to mend their ways.

4. It has been further stated that on the next day, Gautam Cheema called petitioner No.2 to settle the matter at his house at House No.162, Sector 8, Chandigarh from where he was called to House No.205, Sector 8, Panchkula, where petitioner No.2 was given beatings by Gautam Cheema, Ajay Chaudhary, Sunny Garg and other unknown persons. It has been alleged that petitioner No.2 was mercilessly tortured there and was made to sign on some blank stamp papers and from there he was taken to the farm house belonging to Gautam Cheema situated at Barwala. Petitioner No.2 requested Gautam Cheema to settle the accounts and to bring an end to the partnership, but Gautam Cheema and Ajay Chaudhary started demanding 2 crores.

5. It has been further stated that on 20.03.2014, Gautam Cheema and Ajay Chaudhary along with 15-16 guards came to the residence of petitioner No.2, upon which petitioner No.2 called the Police Control Room, but petitioner No.2 was locked up in his own residence and the PCR was returned by them assuring that everything was all right. It has been mentioned that petitioner No.2 got lodged two FIRs against the accused

persons i.e. FIR No.135 dated 02.09.2014, registered under Sections 452, 342, 323, 354, 506, 120-B of Indian Penal Code and Section 25/27/54/59 of Arms Act at Police Station Mataur, District SAS Nagar and FIR No.394 dated 03.11.2015, registered under Sections 141, 144, 149, 363, 364, 365, 367, 368, 386, 420, 120-B of Indian Penal Code at Police Station Sector 5, Panchkula. When petitioner No.2 again approached Gautam Cheema claiming his lawful dues, he was informed by Gautam Cheema that an FIR has already been registered at Police Station Phase-I, Mohali against him and many more are likely to follow.

6. It has been pointed out that one more FIR had been registered against Gautam Cheema and his associates at the instance of ASI Dilbagh Singh wherein, Gautam Cheema in an inebriated state along with his associates reached the Police Station Phase-I, Mohali and kidnapped Sumedh Gulati (partner and family friend of petitioner No.2) from the lawful custody of the police officials and in this regard, FIR No.195 dated 30.08.2014, under Sections 452, 323, 365, 342, 225, 186, 506, 120-B of Indian Penal Code, was registered at Police Station Phase-I, Mohali. It has been alleged that after registration of the aforesaid FIRs, SHO, Police Station Phase-11, Mohali, at the instance of Gautam Cheema registered a spate of FIRs against the petitioners and falsely implicated them. Details of the said FIRs have been reflected in para 4 (xxiii) of the petition. It has been submitted that petitioners were being falsely implicated in the said FIRs only to put pressure upon them, so as to make them to withdraw the complaints made by them against said Gautam Cheema and his associates. It has been further alleged that influence as exercised by Gautam Cheema is

such that no action has been taken on the complaints made by the petitioners to the police, despite the FIRs having been registered against him.

7. Mr. J.S. Bedi, learned Senior counsel appearing on behalf of the petitioners, assisted by Mr. Abhinav Gupta, Advocate would point out that FIR No.195 dated 30.08.2014, as referred to above, came to be registered at the behest of ASI Dilbagh Singh stating therein that on 26.08.2014 at about 11.00 p.m. when he was in the process of interrogating Sumedh Gulati, who was PO in some other FIR, Gautam Cheema, IG, in inebriated state along with Ajay Chaudhary and two other unidentified persons had forcibly taken Sumedh Gulati in their private vehicles. ASI Dilbagh Singh along with other officials followed them in one private car and upon reaching at Max Hospital, Phase-6, Mohali they saw that Gautam Cheema and three-four other persons were present in the room of Kricpy Khera wife of Davinder Singh Gill and threatened her with dire consequences, in case she did not withdraw the complaints against him. It is also pointed out that no action has been taken under the influence of Gautam Cheema in the said FIR No.195 dated 30.08.2014, got lodged by ASI Dilbagh Singh as well as in FIR No.135 dated 02.09.2014 got lodged by the petitioners herein at Police Station Phase-I, Mohali. It is argued that the allegations as set out against said Gautam Cheema and Ajay Chaudhary are such that a fair investigation is required to be done, which would allow for a fair trial. It is contended that both the said FIRs were registered as far back as 2014 and as on date, investigation has not been completed in an attempt to get the petitioners recant from their statements and complaints made by them against said Gautam Cheema and Ajay Chaudhary. A prayer

has been made for transfer of investigation in both the said FIRs to any independent agency for fair investigation. In support of his arguments, learned counsel for the petitioners relied upon judgments rendered in ***Boghabhai Solanki vs. State of Gujarat and others, 2014(2) RCR Dinubhai (Criminal) 19, K.V. Rajendran vs. Superintendent of Police, CB CID South Zone, Chennai and others, 2013(4), RCR (Criminal) 745, State of Punjab vs. Central Bureau of Investigation and others, 2011(4) RCR (Criminal) 152 and E. Sivakumar vs. Union of India and others, 2018(3) RCR (Criminal) 111.***

8. Per contra, Mr. Gaurav Garg Dhuriwala, learned Sr. DAG Punjab appearing on behalf of the respondent-State, while reading the short affidavit of Kuldeep Singh Chahal, IPS, Senior Superintendent of Police, District SAS Nagar (Mohali) dated 10.10.2018, would submit that pursuant to the registration of FIR No.195 dated 30.05.2014, investigation was commenced thereunder and during the course of investigation, spot was inspected, site plan was prepared and statement of the witnesses were recorded under Section 161 Cr.P.C. The CCTV footage of Max Hospital was obtained and perused. It is stated that accused Gautam Cheema joined the investigation on 17.08.2014 and Ajay Chaudhary joined the investigation on 31.10.2014. It is submitted that while the investigation under FIR No.195 was under process, keeping in view the seriousness of the allegations, a Special Investigation Team (SIT) was constituted headed by then SP(D) SAS Nagar and comprising the then DSP (Special Branch), the then DSP (City-1) and the then SHO to investigate the said FIR No.195. It is also submitted that thereafter, the Director Bureau of Investigation by order

dated 16.09.2014 constituted another SIT comprising the then IGP Zonal, Patiala, the then DIG (Investigation) and the then SSP to investigate the matter under the said FIR. It is pointed out that thereafter, the Director Bureau of Investigation vide order dated 27.01.2016 constituted another SIT headed by the then IGP (Crime-1), comprising of DIG (Intelligence) and the then SSP to further investigate the matter. It is stated that the Director Bureau of Investigation by order dated 01.07.2016 nominated SP (Industrial Security), SAS Nagar as a member of the SIT in place of the then SSP, SAS Nagar. Learned State counsel, while reading the additional affidavit of Kuldeep Singh Chahal, IPS, Senior Superintendent of Police, District SAS Nagar (Mohali) dated 20.11.2018 would argue that by order dated 22.10.2018 passed by the Director General of Police, Punjab, Chandigarh, investigation under both the said FIRs No.195 and 135 has been transferred to Chief Director, Vigilance Bureau, Punjab. Further, learned State counsel, while reading the status report filed by way of affidavit of Ashwini Goyal, IPS, Assistant Superintendent of Police, City-I, District SAS Nagar (Mohali) would argue that at present investigation under both the said FIRs is being conducted by Senior Superintendent of Police (Vigilance Bureau) Range SAS Nagar, Mohali and during the course of further investigation, notices were issued to Ajay Chaudhary, Rashmi Negi, Gautam Cheema, IPS, IGP, Varun Utreja and Sumedh Gulati to join the investigation, which were duly noted by the said persons. Learned State counsel would contend that pursuant to the notices issued, Gautam Cheema, IPS, IGP, joined the investigation on 04.09.2019, but Sumedh Gulati and Varun Utreja did not join the investigation and instead sent their requests for giving some other

date to join the investigation. Learned State counsel further pointed out that Kricpy Khera (petitioner No.1) was also issued notices dated 19.07.2019, 22.07.2019, 24.04.2019 and 03.09.2019 to join the investigation, however, she did not come present to join the investigation. It is also contended that Vigilance Bureau had also visited the house of Kricpy Khera on 04.09.2019, however, she did not open the door of her house because of which the spot of occurrence could not be inspected and as such, she could not be joined in the investigation. It is vehemently argued that since Kricpy Khera is not joining the investigation and cooperating, therefore, investigation under both the said FIRs is pending.

9. At this stage, Mr. J.S. Bedi, learned Senior counsel appearing on behalf of the petitioners, assisted by Mr. Abhinav Gupta, Advocate counters the submissions made by learned State counsel, while contending that the petitioners herein and other witnesses in the said two FIRs are being harassed by the Investigating Agency, in order to pressurize them to withdraw the complaints filed against Gautam Cheema, who is IGP rank Officer in the Punjab police itself. Regarding the contention raised by the State counsel that petitioner No.1 and other witnesses are not joining the investigation, despite notices having been issued under Section 160 Cr.P.C., learned Senior counsel for the petitioners vehemently argues that in the name of investigation, the petitioners and other witnesses are being tortured since the year 2014 as would be evident from the number of FIRs registered against them and the allegations as set out in the same.

10. I have heard counsel for the parties and with their able assistance have gone through the pleadings of the case.

11. After going through the pleadings of both the cases, it is borne out that petitioner No.2-Devinder Singh Gill, who was in property business, came in contact with Gautam Cheema, IPS, in the year 2008, when he was SSP Khanna. With the passage of time, they developed family relations as well as business relations and as detailed out in para 4 of the petition, number of business transactions were exchanged. Through Gautam Cheema, IPS, petitioner No.2 was introduced to Ajay Chaudhary, an officer in Indian Defence Services. With the time span, relation between petitioner No.2 and Gautam Cheema turned sour, as reflected above. The only question, which this court has to reply is that whether under these facts and circumstances, the investigation under both the FIRs ought to be transferred to any independent investigating agency for fair investigation considering the inordinate delay in concluding the investigation.

12. In FIR No.195 dated 30.08.2014 (supra) which was lodged by ASI Dilbagh Singh, there are specific allegations against Gautam Cheema that when he was interrogating Sumedh Gulati (a family friend and partner of petitioner No.2), who was PO in some other FIR, at that time Gautam Cheema, the then IG, in an inebriated state, while accompanying with Ajay Chaudhary and two other unidentified persons, forcibly took Sumedh Gulati from his legal custody and took Sumedh Gulati to the Max Hospital where petitioner No.1-Kricpy Khara (wife of petitioner No.2) was admitted, gave threats and slaps to Sumedh Gulati and also issued threats to Kricpy Khara, in order to pressurize petitioner No.1-Kricpy Khara to withdraw the complaints filed by her against said Gautam Cheema, otherwise to face dire consequences. It was ASI Dilbagh Singh, who saved Sumedh Gulati from

their clutches.

13. In FIR No.135 dated 02.09.2014 (supra) which was lodged by the petitioners herein, there are allegations that on the intervening night of 20/21.03.2014 at about 12.00 mid night, Gautam Cheema, IPS, IG and Ajay Chaudhary forcibly entered their house and locked petitioner No.2 in one room and molested petitioner No.1. It was also alleged that Ajay Chaudhary also aimed his pistol on the temple of Sumedh Gulati, who was present in their house at that time.

14. After issuing notice of motion in the instant matters, three status reports have been filed by the respondent-State, which have been read in detail by the learned State counsel during the course of his arguments. Both the FIRs in question pertain to the year 2014 and from the perusal of the status reports filed by the respondent-State, it is crystal clear that since the year 2014, the matter was initially investigated by the then SP(D), District SAS Nagar. Thereafter, the investigation was entrusted to a Special Investigation Team (SIT), which team during the course of investigation, inspected the spot, prepared the site plan and recorded the statements of witnesses under Section 161 Cr.P.C. The CCTV footage of Max Hospital was obtained and perused. However, by an order dated 03.09.2014 of SSP, District SAS Nagar, another SIT was constituted and thereafter, by an order dated 16.09.2014 of the Director Bureau of Investigation, another SIT was constituted in the matter. After that, by an order dated 27.01.2016 of the Director Bureau of Investigation, another SIT was constituted to investigate the matter. Interestingly, by an order dated 22.10.2018 of the Director General of Police, Punjab, Chandigarh, the investigation in the said two

FIRs was transferred to the Chief Director, Vigilance Bureau, Punjab and at present, the matter is being investigated by the Senior Superintendent of Police (Vigilance Bureau) Range SAS Nagar (Mohali).

15. In the landmark case of ***State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 Supreme Court Cases 571***, the Constitution Bench of the Apex Court has held that in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigations or where such an order may be necessary for doing complete justice and enforcing the fundamental rights and on being satisfied that the material discloses a prima facie case calling for investigation by the CBI, High Court can issue direction in this regard.

16. In the case of ***K.V. Rajendran vs. Superintendent of Police, CB CID South Zone, Chennai and others (supra)*** it has been held by the Hon'ble Apex Court that where high officials of State authorities are involved or the accusation itself is against the top officials of the investigating agency, thereby, allowing them to influence the investigation or where the investigation is prima facie found to be tainted/biased, investigation can be transferred to any other independent agency like CBI. A similar observation was made by the Hon'ble Apex Court in ***E. Sivakumar vs. Union of India and others (supra)***.

17. It appears that the SITs as constituted by the State are unable to conclude an investigation against one of their own, considering that the said Gautam Cheema is in the police force and at present holding the rank of IG (Crimes). The manner in which the investigation of these FIRs are being

transferred/entrusted to one SIT to another, or the other subsidiary agency of the Punjab Police, do not inspire confidence of this court. Prima facie, the opinion this court is forming, is that a fair investigation would not be possible in such circumstances. The allegations as set out in the petitions and in the FIRs are serious, considering that they pertain to the conduct of a serving highly ranked police officer and deserve a thorough investigation, especially in the background of the allegations that a person of the police force is indulging in Benami transactions and wielding influence to get FIRs registered, and removing person being interrogated by the Investigating Officer from his custody amongst other acts such as criminal intimidation.

18. Consequently, both the petitions are allowed and the investigation of these FIRs is being transferred to the Central Bureau of Investigation with immediate effect. Since the genesis of the dispute arises from various alleged property transactions done by Gautam Cheema and Ajay Chaudhry, the same must be investigated as well. The State of Punjab is directed to hand over the entire record of the investigation done so far to the Superintendent of Police, CBI, Sector 30, Chandigarhs within a period of two weeks. The CBI is also directed to look into the question as to why there has been an inordinate delay in concluding the investigation. Let the preliminary status report be submitted after a period of two months from taking over the investigation.

March 04, 2020
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No