



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.2351 of 2021

V.Kumar

.. Appellant / Petitioner

Vs.

- 1.The Superintendent of Police,
Central Bureau of Investigation,
EVK Sampath Salai, Sastri Bhavan,
College Road, Chennai - 600 006.
 - 2.The Secretary to the
Government to Tamil Nadu,
Home Department, Fort St. George,
Chennai - 600 009.
 - 3.The Director General of Police,
Mylapore, Chennai - 600 009.
 - 4.The Commissioner of Police,
Coimbatore.
 - 5.The Inspector of Police,
Karamadai Police Station,
Karamadai, Coimbatore.
 - 6.The Sub Inspector of Police,
Karamadai Police Station,
Karamadai, Coimbatore.
 - 7.The Head master,
Vidhya Vikas School,
Karamadai, Coimbatore.
- .. Respondents / Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 29.01.2021 in W.P.No.5519 of 2020.

Prayer in WP.No.5519/20219: Writ Petition filed under Article 226 of the constitution of India praying to issuance of a writ of Mandamus, Directing the Inspector of Police, Karamadai to withdraw from the investigating the Crime No. 354 of 2019 pending on the file of the Inspector of Police, Karamadai and transfer the investigation to the 1st respondent and direct him to investigate the same.



For Appellants : Mr.C.Deivasigamani
For Respondents : Mr.C.Jayaprakash
Govt. Counsel for R2 to R6

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J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

This intra-court appeal is directed against the order of the learned single Judge dated 29.01.2021 made in W.P.No.5519 of 2020, by which the writ court, declined the relief sought for by the appellant/writ petitioner to direct the Inspector of Police, Karamadai to withdraw himself from investigating the case in Crime No.354 of 2019, pending on his file and transfer the investigation to the Superintendent of Police, Central Bureau of Investigation, Chennai and direct him to investigate the same.

2. The case of the appellant herein/writ petitioner is that, his son K.Harish, who studied 11th Standard in Vidya Vikas School, Karamadai, Coimbatore, by staying in the hostel run by the School, committed suicide on 19.12.2019 by hanging himself in the fan of the hostel room and the same was informed to the petitioner at 4.00 p.m., by one Nagarajan, Sub-Inspector of Police, Karamadai. Suspecting the cause of death of his son and the circumstances narrated by the Sub-Inspector of Police and the School Authorities for the death of his son Harish and having not satisfied with the manner in which the investigation was conducted, the appellant has filed the writ petition for the above relief.

3. The learned single Judge, upon hearing the arguments of both sides, and after perusing the case diary with regard to Crime No.354 of 2019, dismissed the writ petition on 29.01.2021. The penultimate and the concluding paragraphs of the order are extracted hereunder for better understanding:

"11. The classmates and roommates of Harish (deceased) Krishnan, Hari Prabu, Sabari Ganesh, Haswath, Jittender State about the petitioner-s son in pensive mood, depressed and always with the thought of missing his classmate, Sasi Prbha of -Sri Sai Bramha Maharishi Matriculation School-, Sulur, Coimbatore. The roommates state that Harish had left early to hostel room informing he had stomach pain. It was Krishna, roommate, who first saw the Harish hanging in the hostel room. The P.T Teachers Mr.Venkatesh and Mr. Pratap brought him down, informed the police. The students had gathered and the other students in the school compound was in state of shock, agitated, the situation was about to go out of control, hence the body was removed, taken to police station, thereafter to the Government Hospital, Coimbatore. Inquest was conducted, a knife found near the washbasin seized.



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The bucket, nylon rope, chapels were also seized. The diary of Harish seized in which he has written the name of his classmate of his previous school, the writing found confirms the pensive mood of Harish, added to it he was not keeping good health for some time, all the factors cumulatively could have been reason for the extreme step of Harish. The petitioner being the father of Harish, who lost his loving, bright student, with future dreams got shattered, out of emotional outburst, unable to come to terms, had such apprehension. From the perusal of the case diary, it is seen that the apprehension of the petitioner is misplaced. The statements and materials collected are in conformity to the procedures. There is no contra materials to interfere with the investigation.

12. In view of the same, this Writ Petition is dismissed. However, it is open for the petitioner to produce any materials to the Investigation Officer, if available, to put forth and substantiate his contention. In such case, the investigating officer to receive and to consider the same. However, there shall be no order as to costs.

Aggrieved by the dismissal of the writ petition, father of the deceased filed the instant writ appeal.

4. Heard the learned counsel for the appellant and the learned Government Advocate appearing for the respondents 2 to 6 and perused the materials available on record in the form of typed set of papers. Notice is not ordered to the first respondent, in view of the judgment we propose to pass, after hearing the learned counsel for the appellant on merits.

5. The primordial objection of the learned Government Counsel is that the writ appeal is not maintainable against an order passed by the learned single Judge in a Writ Petition with respect to, exclusively, a criminal proceeding. It is apposite to note that the First Bench of this Court in D.Kumar V. Raichand Daga, (2020) 6 MLJ 245, following some earlier judgments, held as follows:

"8. On perusal of the Writ Petition, it is evident that the first Respondent herein requested for a writ of mandamus in order to direct the police authorities to conduct an enquiry in terms of the order dated 6.03.2020 of the Judicial Magistrate-I, Chengalpet in C.M.P. No. 2322 of 2020. In other words, it is in respect of a pending complaint to the police. As against the order therein, this appeal is presented under Clause 15 of the Letters Patent, which reads as under:

....

9. The text of Clause 15 indicates that an appeal is not maintainable under Clause 15 in respect of the categories of cases specified in parenthesis, which includes judgments pronounced in



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the exercise of criminal jurisdiction. Therefore, the test to decide whether the present appeal is maintainable would be to ask the question : was it an order passed in the exercise of civil or criminal jurisdiction? A related question would be whether the form of proceeding, namely, the filing of the proceeding as a writ petition has a material bearing on the answer. The difference between civil and criminal jurisdiction and the maintainability of an appeal under Clause 10 of the Letters Patent of Lahore, which is in pari materia with Clause 15 of the Letters Patent of this Court, was considered and decided in *Ram Kishan Fauji v. State of Haryana*, (2017) 5 SCC 533, wherein the Supreme Court held as under in paragraphs 29-31 :

10. In *Ram Kishan Fauji*, the specific question as to the maintainability of a Letters Patent appeal against an order in a writ petition was also considered by drawing reference to Full Bench judgments of various High Courts and it was held as follows in paragraphs 53-54:

"53. The Full Bench of the High Court of Delhi in *C.S. Agarwal v. State* 2011 SCC OnLine Del 3136 was dealing with a situation wherein a writ petition was filed before the High Court under Article 226 of the Constitution of India read with Section 482 CrPC seeking for appropriate writ for quashing of the FIR. As the writ petition was dismissed [*C.S. Agarwal v. State*, 2010 SCC OnLine Del 3914] by the learned Single Judge, an intra-court appeal was preferred. A preliminary objection was taken by the respondents as regards the maintainability of the LPA contending that the judgment of the learned Single Judge was passed in exercise of criminal jurisdiction and the letters patent appeal against such an order is barred by Clause 10 and Clause 18 of the Letters Patent constituting the High Court of Judicature at Lahore, which is applicable to the Judicature of High Court of Delhi. The Full Bench analysed Clause 10 of the Letters Patent and took note of what has been prohibited for entertaining any intra-court appeal. The Full Bench, analysing various decisions, opined thus :

"19. ... proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. A fortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can



be said that the Single Judge was exercising his "criminal jurisdiction" while dealing with such a petition filed under Article 226 of the Constitution."

54. After so stating, the Full Bench referred to the Constitution Bench decision in CIT v. Ishwarlal Bhagwandas, 11 of 37 (1966) 1 SCR 190 and distinguished the Full Bench decision of the Andhra High Court in Gangaram Kandaram v. Sunder Chikha Amin, 2000 SCC OnLine AP 119 and noted the decision of the Division Bench of the Gujarat High Court in Sanjeev Rajendrabhai Bhatt v. State of Gujarat, (2000) 1 GLR 206] and came to hold as follows : C.S. Agarwal v. State, 2011 SCC OnLine Del 3136

"32. The test, thus, is whether criminal proceedings are pending or not and the petition under Article 226 of the Constitution is preferred concerning those criminal proceedings which could result in conviction and order of sentence.

33. When viewed from this angle, it is clear that if the FIR is not quashed, it may lead to filing of challan by the investigating agency, framing of charge and can result in conviction of order of sentence. Writ of this nature filed under Article 226 of the Constitution seeking quashing of such an FIR would therefore be "criminal proceedings" and while dealing with such proceedings, the High Court exercises its "criminal jurisdiction."

11. Thus, in Ram Kishan Fauji, the Supreme Court held that the material consideration is the nature of the right, which is said to be infringed, and the relief requested in the proceeding and not whether it is instituted by way of a writ petition or a criminal original petition. A Division Bench of the Patna High Court, in Dipak Bajaj v. Union of India, 2018 SCC OnLine Pat 2141, considered whether a Letters Patent Appeal would be maintainable in respect of a compounding proceeding and whether such proceeding partook the character of a civil proceeding. Upon such consideration, the Patna High Court concluded, in paragraphs 16 and 20, that it was a criminal proceeding and that the Letters Patent Appeal was not maintainable. The Division Bench of this Court considered the question of maintainability of a Letters Patent Appeal under Clause 15 in C.M.P. No. 2614 of 2020 in W.A.SR. NO. 140650 of 2019, Judgment dated 18.03.2020. After surveying a plethora of judgments, this Court held that the appeal, in that case, was maintainable only with regard to the grant of compensation to the writ petitioner on the ground that the order, in that



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respect, had civil consequences and the proceeding could not be characterized as an exclusive criminal proceeding. By contrast, in this case, the Writ Petition was exclusively a criminal proceeding because it undoubtedly relates to a police complaint filed by the first Respondent herein and the enquiry relating thereto. The judgments that were cited by the learned counsel do not advance the cause of the Appellant as is evident from the brief discussion thereof supra. Thus, we conclude that the appeal is not maintainable against the order passed in W.P.8431 of 2020.

6. Admittedly, the Writ Petition was also exclusively a criminal proceeding, as it relates to a police complaint filed by the appellant and the enquiry relating thereto, and applying the aforesaid judgment of a co-ordinate Bench, wherein, similar earlier judgments were also relied upon, we are of the view that the instant appeal filed against the order passed in the writ petition pertains to a criminal proceeding is not maintainable.

7. The learned counsel for the appellant argued the appeal on merits contending that the Sub Inspector of Police did not conduct the investigation in the manner, it has to be conducted in accordance with the Code of Criminal Procedure and hence, this Court has got power under Article 226 of the Constitution to transfer the investigation to the first respondent.

8. Though as has been held above, the instant writ appeal is not maintainable, even on merits, we are of the view that the appellant has not made out any valid ground to interfere with the impugned order of the learned Single Judge declining the transfer of investigation. A perusal of the affidavit, status report and the order of the learned single Judge would go to show that based on the complaint given by the defacto complainant/the appellant, a case was registered in Crime No.354 of 2019, under Section 174 Cr.P.C., (Suspicious death), on 19.12.2019 at 22.00 hours by the Sub-Inspector of Police, Karamadai Police Station. The Sub-Inspector of Police visited the scene of occurrence and examined the appellant/writ petitioner and the roommates of the deceased - Harish. It is seen that they have categorically stated that they were heard from the deceased stating that when he was studying in X Standard in "Sri Suga Brama Maharishi Matriculation School, Sulur, Coimbatore", he developed a love affair with one girl, who studied along with him in the said school and that against his wish, he was shifted to Vidhya Vikas, Karamadai. It was also stated by them that the deceased was in a depressed mood and hence his concentration and performance in curriculum dropped. The Investigating Officer also conducted inquest between 7.00 pm. and 9.00 pm., in the presence of panchayatars and recorded the upward ligature mark found on the body of the deceased. The postmortem on the body was also



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conducted, in which, neck injury observed and superficial linear incised wound 2 in numbers 4 x 0.5 x 0.25 cm over front and left neck 1 cm below ligature mark, incomplete transversely oblique ligature prima abrasion 34 x 1 cm noted on upper most part of front part of neck were recorded.

9. The apprehension of the appellant/petitioner is that before ever he could reach the scene of occurrence, namely the school hostel, the body of his son was removed, kept in a ambulance in the police station and a cut injury was found near the neck and blood was found around the place. Further, at about 9.00 p.m., when he visited the hostel room, he found bloodstains near the bathroom, the same was recorded in his mobile phones, in the presence of Tahsildhar and no investigation was conducted in this regard, hence, the appellant/petitioner has got serious doubt for the cause of the death of his son and the manner in which the Investigating Officer conducted the investigation.

10. We are of the view that the transfer of an investigation to CBI cannot be done as a matter of routine, throwing aspersions on the state police, that too without any basis. Of-course, the appellant is entitled to place the material facts, which come to his knowledge for the effective investigation, but at the same time, he cannot dictate terms to the investigating officer in the manner in which, the investigation has to go on. Even if the appellant has some grievance in the manner, the investigation is being held by the police, that itself is not a ground to transfer the investigation, that too, to the CBI. The appellant has effective remedies under the Code of Criminal Procedure even before the jurisdictional criminal Court raising objection to the final report or seek for reinvestigation, etc., and if there is any failure on the part of the criminal court, he can approach the Constitutional Court.

11. At this juncture, it is apt to refer to the judgment of the Hon'ble Supreme Court in Arnab Ranjan Goswami v. Union of India, (2020) 14 SCC 12, wherein, the prayer of transfer of investigation was discussed relying on the earlier judgments in the following manner :

"42. The transfer of an investigation to CBI is not a matter of routine. The precedents of this Court emphasise that this is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances". Speaking for a Constitution Bench in State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 D.K. Jain, J. observed:

"70. ... 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



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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."

43. This principle has been reiterated in K.V. Rajendran v. CBCID, (2013) 12 SCC 480 Dr B.S. Chauhan, J. speaking for a three-Judge Bench of this Court held:

"13. ... 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 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."

46. The principle of law that emerges from the precedents of this Court is that the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances".

47. The line of interrogation either of the petitioner or of the CFO cannot be controlled or dictated by the persons under investigation/interrogation. In P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24, R. Banumathi, J. speaking for a two-Judge Bench of this Court held that:

https://hcservices.ecourts.gov.in/hcservices/65. ... there is a well-defined and demarcated



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function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused."

This Court held that so long as the investigation does not violate any provision of law, the investigating agency is vested with the discretion in directing the course of investigation, which includes determining the nature of the questions and the manner of interrogation. In adopting this view, this Court relied upon its earlier decisions in *State of Bihar v. P.P. Sharma* [*State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222 and *Dukhishyam Benupani v. Arun Kumar Bajoria*, (1998) 1 SCC 52, in which it was held that the investigating agency is entitled to decide "the venue, the timings and the questions and the manner of putting such questions" during the course of the investigation."

12. If the principles stated above by the Hon'ble Supreme Court are applied to the instant case, we do not find any error or infirmity in the order of the learned single Judge, declining to transfer the investigation to CBI. We hope that the investigating agency address all the issues raised by the appellant in accordance with law, as the dream of the son of the appellant, so also the appellant is nibbed in the bud and it is on own volition or on violation has to be unearthed. If the investigating agency fails to do so, it is open to the appellant to take out appropriate application before the competent criminal Court, and the Court will deal with the matter in accordance with law without influenced by the observations made by the Writ Court.

13. For the foregoing reasons, the writ appeal is dismissed confirming the order of the learned single Judge. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-IX)

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