

THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37912-2020 (O&M)
Reserved on: 16.09.2022
Pronounced on: 22.09.2022

A.K. Banerjee and Another

....Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. RS Bains, Senior Advocate, with
Mr. Mohan Singh Chauhan, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, Senior DAG Punjab.

HARNARESH SINGH GILL, J.

CRM-1437-2021 and CRM-12029-2021

These are the applications for placing on record
Annexures P-22 to P-25 and third cancellation report.

Notice in the applications.

On the asking of the Court, Mr. Joginder Pal Ratra,
Senior DAG Punjab, accepts notice and submits that he has no
objection, if the present applications are allowed.

In view of the above, the present applications are
allowed and Annexures P-22 to P-25 and third cancellation
report, are taken on record.

Registry is directed to tag the same at an appropriate
place.

CRM-M-37912-2020

Prayer is for transfer of investigation of FIR No.35 dated 16.04.2015 under Section 304 IPC, at Police Station Division No.8, Kailash Chowk, Ludhiana, to an independent agency like CBI, on the ground that the concerned Police has not investigated the matter in a fair and proper manner.

The petitioners, who are Doctors by profession, are parents of Abhishek Kanta Banerjee (since deceased), who died on 21.06.2014 under mysterious circumstances and qua that, DDR No.14 dated 22.06.2014 was registered by the Police and thereafter, the aforesaid FIR was lodged on 16.04.2015.

As per the petitioners' version, Abhishek Kanta Banerjee (hereinafter referred to as the deceased) after taking Rs.500/- from petitioner No.2 (mother of the deceased) left the house on 21.06.2014 at 6:10 p.m. in Honda Accord Car. Before leaving, he told to the petitioners that he was going for a hair-cut, but the deceased neither returned back nor had replied to the phone calls. Accordingly, the PCR was informed. Later, on 22.06.2014, petitioner No.1 (father of the deceased) received a phone call from a Constable regarding the car, which was being driven by their son, lying parked opposite the wall of Government College for Boys. When petitioner No.1 reached there, he saw his son lying unconscious on the driver seat. The photographs were taken by the investigating agency and the deceased was referred to Civil Hospital Ludhiana. Petitioner No.1 was asked to sign some documents by the then Assistant Sub-Inspector, which he refused to do so as it was

written on the said documents that Abhishek Kanta Banerjee died due to drug overdose and there was no visible injury on his person. On protest, the said documents were torn. Then the said ASI took petitioner No.1 to Police Station Division No.8, where the SHO and the Additional SHO, had prepared fresh documents for conducting the postmortem. Petitioner No.1 signed the said documents and accordingly, the postmortem was conducted. On 24.06.2014, the petitioners moved an application to the Commissioner of Police, Ludhiana for an immediate and thorough investigation. When no response was received, a reminder was also sent. Thereafter, on the request of the petitioners, the investigation was conducted, and it was found that Ankur Azad and Sarabjeet Kaur were last seen with the deceased. The investigating agency has also tracked one Ramandeep Garg, an accomplice of Ankur Azad and one Kuldeep Kumar @ Bawa. The petitioners were also informed about it. Thereafter, the Assistant Commissioner of Police conveyed to the Commissioner of Police that after investigating the matter, they had found that son of the petitioners died due to drug overdose and nobody was responsible for the same.

Still dissatisfied, the petitioners moved a representation to the higher authorities alleging therein that as per the postmortem report, Abhishek Kanta Banerjee had died an unnatural death, though no poison was detected in the body of the deceased and that the investigation was being carried out in a biased manner, just to shelter the real culprit(s). It was further alleged that there were serious irregularities committed

by the Investigating Agency and that as per the opinion of the Medical Officer, LMCH, Ludhiana, the cause of death could not be determined, which in itself was very strange and highly improbable.

Thereafter, vide letter dated 21.10.2014, the Director Bureau of Investigation Punjab, had constituted a Special Investigating Team (SIT) to investigate the crime, afresh. The SIT on the basis of investigation, recommended in its report that an FIR ought to have been registered in the matter and the suspects interrogated. On the basis of the said report, FIR No.35 dated 16.04.2015 under Section 304 IPC was registered.

Still aggrieved, the petitioners filed CRM-M-25356-2015 in this Court and vide order dated 15.10.2018, the investigation was handed over to The Crime Branch, Punjab headed by the ADGP, for further investigation. As per the report of the Crime Branch dated 21.07.2020, the postmortem as well as the viscera reports were sent to the Board of Doctors (BOD) for further opinion/clarification as the post mortem findings indicated the sign of asphyxia; death being an unnatural one; no injury mark seen on the person of the deceased and if the death was due to drug overdose, then Viscera could show the traces of drugs/poison. Thereafter, a second opinion from the Civil Surgeon, Ludhiana, was sent for. The said opinion, when received, indicated that possibility of death due to asphyxia without any external injury mark could not be ruled out; such death due to said reason could occur while sitting in a closed car and that possibility of death due to asphyxia by the other

person, also could not be ruled out. Thereafter, Ankur Azad was interrogated by the Police, who stated that he had purchased drugs, which were consumed by the deceased.

Learned Senior counsel for the petitioners has argued that as per the report of the Civil Surgeon, the death due to Asphyxia by other persons, could not be ruled out and therefore, even if Ankur Azad had purchased the drugs worth Rs.1,000/-, then also as to when he had handed over the same to the deceased and when the deceased had consumed the same, is not forthcoming. He further submits that the petitioners never alleged that Ankur Azad and other suspects had committed the murder of their son, but they were the persons, who were last seen with the deceased. It is further submitted that no specific questions were put to the said persons. Ankur Azad was also not questioned regarding the motive of driving 8 km away to Government College and the CCTV cameras installed on the route, were also not looked into by the Investigating Agency.

On the other hand, learned State counsel has vehemently argued that this is a second round of litigation preferred by the petitioners, inasmuch as, the petitioners had earlier filed CRM-M-25356-2015 seeking same relief as sought herein and the same was disposed of by a Coordinate Bench of this Court on 15.10.2018 and the investigation was handed over to the Crime Branch, Punjab. He further submits that on 22.06.2014, petitioner No.1(father of the deceased) gave a statement that he runs a Hospital, namely, Sadhbhawna at Raikot, which is a De-addiction centre to the effect that the

deceased used to consume heroin and was treated at Sahyog Hospital at Delhi and Shanti Mission Hospital, Hisar, but the deceased was not consuming any intoxicant thereafter. Still further, it is submitted that the Director Bureau of Investigation, Punjab, vide letter dated 21.10.2014 constituted a Special Investigating Team(SIT) consisting of DIG (Crime), DCP(an IPS) and Superintendent of Police (Investigation) and in the investigation/inquiry conducted by them, it was found that the son of the petitioners died under mysterious circumstances and a case should be registered after obtaining legal opinion. Accordingly, FIR No.35 dated 16.04.2015 under Section 304 IPC was registered. Thereafter, again a Special Investigating Team (SIT) headed by an IPS Officer, was constituted and after conducting due investigation/enquiry and going through the entire record, it was found that there was no injury visible on the person of the deceased and as per the postmortem report and the opinion of the Doctor, the cause of death remained undetermined. As per the medical report, no poison was detected. It is yet further argued that two friends of the deceased, namely, Karan Bhalla and Munish Rai, were also interrogated, who stated that the deceased used to consume intoxicants and on the fateful day also, he had consumed Heroin and he died by drug overdose.

The learned State counsel would further argue that earlier the Heroin was purchased by the deceased from one Vishal Sharma and thereafter, FIR No.64 dated 12.07.2014 under Section 22 of the NDPS Act, was registered against Vishal

Sharma and one Gaurav Sharma. It is further submitted that ultimately, a conclusion was drawn that Abhishek Kanta Banerjee died due to drug overdose and nobody else was responsible for his death; that accordingly, a cancellation report under Section 173 Cr.P.C was prepared and was submitted before the Illaqa Magistrate on 01.08.2017, but petitioner No.1 did not agree with the said cancellation report; that again when no new facts were found by the SIT, a fresh cancellation report was prepared and presented before the Illaqa Magistrate, which is pending consideration.

I have heard the learned counsel for the parties and have minutely perused the entire material on record.

The deceased was none other than the petitioners' only son aged about 21 years. On the request of the petitioners, Director Bureau of Investigation, Punjab, vide order dated 21.10.2014 constituted a Special Investigating Team comprising DIG Crime, DCP, Ludhiana (an IPS) and Superintendent of Police (Investigation) and after thorough investigation, FIR No.35 dated 16.04.2015 under Section 304 IPC was registered. Thereafter, Commissioner of Police, Ludhiana, vide order dated 02.01.2017 constituted another Special Investigating Team headed by an IPS Officer and after a detailed investigation, it was found that neither there were any injury marks visible on the person of the deceased nor any poisonous substance was detected in his body. Two close friends of the deceased, namely, Karan Bhalla and Munish Rai were interrogated, who specifically stated that Abhishek Kanta Banerjee (since deceased) used to

consume intoxicants and on the day of the occurrence also, he had consumed heroin and had died by drug overdose. An FIR was also registered against Vishal Sharma and Gaurav Sharma from whom the deceased had purchased the said intoxicant.

After diligent enquiry by senior level officers, the cancellation report was presented before the concerned Magistrate on 01.08.2017 and petitioner No.1, being complainant, was summoned. Petitioner No.1 got recorded his statement wherein he did not agree with the cancellation report and accordingly same was not accepted by the learned Magistrate. Thereafter, again an investigation/enquiry was conducted by the senior police officials and the second cancellation report was presented, which is still pending consideration.

Further, petitioner No.1, who is a Doctor by profession, in his statement recorded on 22.06.2014 had specifically stated that he runs a de-addiction centre in the name of Sadhbhawna at Raikot and that the deceased used to consume intoxicants and was treated at Sahyog Hospital at Delhi and also from Shanti Mission Hospital at Hisar. In the present case, thorough investigation was conducted by two Special Investigating Teams and both the teams drew the same conclusion i.e. Abhishek Kanta Banerjee, has died due to overdose.

Above all, the petitioners vide CRM-M-25356-2015 had already sought the same relief, as prayed for herein and the

Coordinate Bench of this Court vide order dated 15.10.2018 had handed over the investigation to the Crime Branch, Punjab.

It may be noticed that in the order dated 15.10.2018, the Coordinate Bench had specifically noticed an undertaking given by the petitioners that they would not seek any further investigation into the matter. The said part of the order dated 15.10.2018 would read as under:-

“..... However, since the petitioners are not satisfied with the reinvestigation, therefore, in view of the undertaking of the petitioners that they will not make any prayer for further investigation of the case from some other agency, with their consent, the matter is referred to Crime Branch, headed by ADGP (Crime), for re-investigation in the matter for the third time.....”

It is settled proposition of law that finality must be attached to the litigation. A litigant cannot be allowed to seek successive investigation from different agencies, doubting one after the other. In other words, a litigant cannot stretch the easy access to justice to an unlimited extent. The Hon'ble Supreme Court in Dr. Buddhi Kota Subbarao Vs. K. Parasaran, JT 1996(7) 265, held to the following effect:-

“11.The filling of the present application appears to us to be an effort to get 'reopened' the case even after this Court decided criminal appeal No. 275-277 of 1993 on 16.3.1993 and dismissed the review petition also more than three years ago. Finality must attach to some stage of judicial

proceedings. The course adopted by the applicant is impermissible and his application is based on misconception of law and facts. No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. After giving our careful consideration to the submissions made at the bar as well as those contained in the memorandum of the application, we are of the opinion that this application is misconceived, untenable and has no merits whatsoever. It is accordingly dismissed.”

As the successive investigations conducted by the police did not find any foul play in the occurrence in question, the petitioners cannot be allowed to seek unending indulgence in the matter. As noticed above, the matter is to be brought to a logical end at some point of time, of course, on the basis of cogent and convincing material on record. Thus, this Court does not find any merit in the present petition.

In view of above, the present petition is dismissed.

22.09.2022
ds

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No