

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-43601 of 2021 (O & M)

Date of Decision: *January 7th, 2022*

Hitesh Bhardwaj

..... Petitioner

VERSUS

State of Punjab & another

..... Respondents

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

. . .

PRESENT: - Mr. R.S. Rai, Senior Advocate, with Mr. Rajat Khanna, Advocate and Mr. Ashutosh, Advocate, for the petitioner.

Mr. Tanvir Joshi, Assistant Advocate General, Punjab.

Mr. Rajeev Anand, Advocate, for respondent No.2 – CBI.

Mr. Preetinder Singh Ahluwalia, Advocate, for respondent No.3.

. . .

Sant Parkash, J

CRM-43483-2021

Application under Section 482 Cr.P.C. for placing on record short reply by way of affidavit of Nitesh Bhardwaj – respondent No.3 is allowed.

Reply taken on record.

CRM-M-43601 of 2021

Through the instant petition under Section 482 Cr.P.C. seeking transfer of investigation of case FIR No.354 dated 30.10.2020

(Annexure P-24) under Sections 302, 120-B IPC registered with Police Station, Civil Lines, Batala to Central Bureau of Investigation or any other independent agency outside the jurisdiction of the State of Punjab.

The petitioner is the complainant of present FIR. Earlier FIR No.121 dated 26.04.2013 (Annexure P-1) under Sections 302/34 IPC was registered with Police Station, Vasant Kunj (South), Delhi, in relation to the murder of Deepak Bhardwaj, father of petitioner herein. During investigation, police authorities arrested petitioner's brother Nitesh Bhardwaj (respondent No.3). Though, he was acquitted by the trial court as the sole eye witness of the occurrence died in a road accident in Ludhiana before he could testify in the trial. The judgment of acquittal of respondent No.3 was challenged by the petitioner as well as the State by filing two separate appeals.

On 14.07.2014, petitioner's mother – Ramesh Kumari Bhardwaj, executed a registered Will bequeathing all her property in favour of respondent No.3. After acquittal, respondent No.3 made demand of being appointed as a Director in all the family companies. The petitioner's mother appointed him as such. On 22.02.2020, petitioner's mother executed another hand written Will being her last Will in which respondent No.3 would no longer inherit all the property rather it was to be divided in equal shares between both the brothers i.e. petitioner – Hitesh Bhardwaj and respondent No.3 - Mr.Nitesh Bhardwaj. When the Petitioner's mother disclosed the factum of execution of Will dated 22.02.2020 to Nitesh Bhardwaj, he got annoyed and started quarrelling and threatening.

On 07.03.2020, Nitesh Bhardwaj alongwith his wife – Nistha Bhardwaj and his brother in law conspired against his mother and

persuaded her to go to Batala with them to Nistha's parental house, whereupon she sensing the foul play, insisted that Sandeep, her nephew, and one Balbir Singh should accompany her to Batala. Nitesh Bhardwaj and his wife insisted petitioner's mother to sleep with them in the main portion of the house. On 08.03.2020, Balbir Singh was informed that petitioner's mother has suffered a heart attack and passed away whereafter her post-mortem was got conducted without even informing the petitioner. The post-mortem report was given by an ortho specialist (who was not even competent to conduct a post-mortem) stating that the victim suffered a cardiac arrest which lead to her death without there being any history of heart ailment. Petitioner has alleged that respondent No.3 – Nitesh Bhardwaj, not only murdered his own mother but also his father with a malafide intention to usurp the entire property.

Petitioner doubted that his mother had died under suspicious and mysterious circumstances which call for a fair and proper investigation. So, he filed a detailed complaint at Police Station, Civil Lines, Batala in relation to commission of offence of criminal conspiracy to murder. However, no proper and fair investigation took place pursuant to his complaint. Be that as it may, after two months, formal FIR was registered and statements of persons concerned were recorded under Section 160 Cr.P.C. which were contradictory in nature and created a suspicion upon the act and conduct of respondent No.3 but still no action was taken by the local police against the culprits.

Aggrieved by the inaction of Batala police, on 17.06.2020, petitioner filed a petition before this Court viz. CRM-M-16384 of 2020 seeking a fair and impartial investigation, wherein this Court vide judgment

dated 25.06.2020 gave directions to Superintendent of Police, Batala, to consider and decide the complaint of petitioner but the police authorities of Batala failed to take any action. Thus, on 12.07.2020 the petitioner through his lawyer issued a legal notice for compliance of the order dated 25.06.2020 passed by this Hon'ble Court, however still no action was been taken. However, there was a report of Deputy Superintendent of Police holding "sudden cardiac arrest can be there", same view that had been given by Ortho-Specialist and as such, no further investigation was called for.

Reply by way of an affidavit of Parvinder Kaur, PPS, Deputy Superintendent of Police, Sub Division City Batala, on behalf of respondent NO.1 – State, was filed submitting that no incriminating circumstance was found during investigation which could establish the nexus between the person arraigned as accused in the commission of alleged offence of murder. Hence cancellation report was prepared on 14.03.2021 and after approval of SSP, Batala which was presented in the trial court on 17.03.2021. However, vide order dated 14.09.2021, the matter was remitted to the investigating agency for further investigation. The said order was assailed by respondent No.3 by filing CRM-M-39693 of 2021 wherein this Court vide judgment dated 11.10.2021, while setting aside the impugned order, directed the Judicial Magistrate 1st Class, Batala, to re-visit the issue and pass appropriate order in accordance with law.

As per reply dated 25.11.2021 filed on behalf of respondent No.2 – CBI, the present case is primarily local in nature and does not involve any interstate or international ramifications so as to warrant investigation by CBI. The State police is well equipped with trained

investigating officers to investigate such kind of cases. CBI is a specialized agency having limited manpower and resources.

As per reply filed on behalf of respondent No.3 – Nitesh Bhardwaj, petitioner has deliberately not approached this Court with clean hands. Judgment dated 11.10.2021 passed by this Court in CRM-M-39693 of 2021 whereby the matter was remanded to JMIC, Batala to pass a fresh order in accordance with law. The prayer of petitioner, infact, had been allowed by the trial court vide order dated 14.09.2021 and further investigation was ordered, however, the same was set aside by this Court vide judgment dated 11.10.2021. A bare perusal of postmortem report of Ramesh Kumari would reveal that it was a case of no injury. Even report of Chemical Examiner was received which revealed that no poison was detected in the body of deceased. Report received from the Department of Histopathology, Government Medical College, Amritsar, revealed atherosclerotic changes. As such, Ramesh Kumari died a natural death due to cardiac arrest.

Learned counsel for the petitioner vehemently contended that from the sequence of events, it was evidently clear that the police was hell-bent upon to help respondent No.3 as the cancellation report was filed hurriedly within a period of 26 days only. He further contended that mother of the complainant was murdered in Batala on 08.03.2020, regarding which a detailed complaint was filed by the petitioner at Police Station, Civiil Lines, Batala on 22.03.200 but no FIR was lodged and CrI. Misc. No.M-16384 of 2020 filed by the petitioner was disposed of by this Court on 25.06.2020 by directing respondent No.3 (in that petition) to consider and decide complaint dated 22.03.2020 in accordance with law. He further tried

to convince the Court that one sided inquiry report was submitted by the DSP, City Batala to SSP, Batala on 30.07.2020. Being not satisfied, petitioner was constrained to file Crl. Misc. No.M-26794 of 2020 and resultantly, under directions of order dated 27.10.2020 passed by this Court, FIR No.354 dated 30.10.2020 under Sections 302 and 120-B IPC was registered at Police Station, Civil Lines, Batala. This order dated 27.10.2020 was assailed in the Hon'ble Apex Court but the same was upheld vide order dated 22.02.2021.

Learned counsel would further argue that the investigation is not being conducted in a fair and impartial manner and there were many circumstances leading to irresistible conclusion that it was a case of murder of the mother of petitioner by respondent No.3 by hatching a conspiracy alongwith his wife and her family members. The reason for annoyance of respondent No.3 was that he was infuriated on account of execution of an unregistered Will in favour of the petitioner and respondent No.3 by the deceased mother wherein they were given equal shares in property.

Referring to the cause of death, he would contend that the cause of death being Cardiac Arrest was given by an Ortho Specialist whereas his mother was having no history of that ailment and she was completely hail and hearty, and she never complained of any such ailment. He further submitted that before her last visit to Batala, his mother and even respondent No.3 had never visited Batala in the last 5 years and from this circumstance, it can reasonably be gathered that it was a calculated move to eliminate the mother on account of annoyance/grievance of respondent No.3.

Lastly, he would submit that since the police authorities at Batala are hand in glove with respondent No.3 and are helping him in & out,

and in order to reveal the truth, it would be just and proper if the matter is referred to a specialized agency i.e. CBI for investigating the murder. He would further submit that earlier also, respondent No.3 was tried for the murder of his father though he was acquitted on account of the death of sole eye witness and it is a strong circumstance for transferring the investigation to specialized agency.

Per contra, learned counsel for the respondents have taken strong exceptions to aforesaid submissions and have urged that there is no occasion for this Court to refer the matter to specialized agency as every effort has been made by the investigating agency to find out the truth in the allegations leveled by the petitioner but those could not be substantiated either by any ocular evidence or medical evidence.

Referring to documents Annexures R3/11 to R3/13, they would submit that the root cause of the dispute between the parties is the property left by the deceased. They would submit that there is a registered Will dated 14.07.2014 in favour of respondent No.3 and various disputes are already going on/pending between the parties regarding properties left by their parents. The investigating agency after threadbare investigation, filed cancellation report which was not accepted by the learned trial court and reinvestigation was ordered vide order dated 14.09.2021. That order was assailed in this Court and vide order dated 11.10.2021 passed in Crl. Misc. No.M-39693 of 2021, order of trial court was set aside with direction to revisit the issue and to decide upon cancellation report in accordance with law. The primary reason for setting aside order dated 14.09.2021 was that the trial court had not applied its mind, rather ordered reinvestigation merely on dissatisfaction of the present petitioner.

They would further contend that vide Annexure R3/13, it was got recorded in the record of Delhi Municipal Corporation, Branch office Cremation Ground, Dwarka, Sector 24, New Delhi, by the petitioner himself that cause of death was “heart attack”, meaning thereby that he had accepted that cause of death was Cardiac Arrest, and thus, he was now estopped from raising the plea of murder of his mother. He cannot be allowed to blow hot and cold in the same breath and to take divergent pleas at different times at his own choice. Referring to PMR, pathological report and chemical examiner report, they would submit that from all these documents, a reasonable and unerring conclusion can be drawn that there is no evidence of murder. There was no mark of injury on the dead body and no poison was detected in the chemical examiner report and cause of death was cardiac arrest, meaning thereby, she died a natural death. With these submissions, it has been prayed that the present petition deserves to be dismissed with heavy costs as respondent No.3 is unnecessarily being dragged into litigation in order to grab the share in property left by the parents.

After having heard both the parties and on bestowal of though, I am of the considered opinion that the present case is not a fit case for being referred to CBI i.e. specialized agency.

From the sequence of events narrated above, concededly the petitioner and respondent No.3 are real brothers. The root cause of the dispute between the parties is the property left by their parents who have admittedly died. It is further evidently clear that mother of the petitioner Ramesh Kumari died in the house of in-laws of respondent No.3 and on account of heavy suspicion of commission of murder by respondent No.3

alongwith others, the complaint instituted by the complainant was investigated. After investigation, cancellation report was presented by the State authorities before the court of competent jurisdiction which was not accepted and reinvestigation was ordered. That order was assailed in this Court wherein vide order dated 11.10.2021 passed in Crl. Misc. No.M-39693 of 2021 the trial court was directed to revisit the issue and to decide it in accordance with law.

To a pointed query of this Court, it has been informed by learned State counsel that reinvestigation was conducted, pursuant to aforesaid order of this Court, and cancellation report has again filed on 26.11.2021 before the trial court and now the matter is fixed for 20.01.2021 for hearing the complainant with regard to cancellation report having been filed for the second time.

The present petitioner, who is complainant, would certainly have a legal right to disagree with cancellation report and if so advised, can take recourse to the filing of protest application. In that eventuality, proper opportunity would be granted to the complainant to adduce the evidence whatever in order to substantiate the assertion of the present case being a case of murder by his own brother. Even otherwise, other legal remedies at every stage are available to the complainant.

As regards transferring the investigation to CBI or any other independent agency, order regarding transfer of investigation should not be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extra ordinary power deserves to be exercised sparingly, cautiously and in exceptional circumstances where it becomes necessary to provide credibility and instill confidence in

investigation or where the incident may have national or international or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. The CBI is already 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. The case in hand does not involve the ramifications for CBI investigation. There appears to be no such justified grounds in the instant case for transfer of investigation by the CBI. Moreover, the present case is primarily local in nature and the State police is well equipped with trained investigating officers to investigate such kind of cases and has the requisite resources at its command to conduct investigation of the case properly under supervision of senior police officers having experience. To fortify the aforesaid observations, reference can be made to decision of the Supreme Court in the case of **State of West Bengal vs. Committee for Protection of Democratic Rights, 2010(3) SCC 571.**

With the aforesaid discussion, this Court does not find any merit in the instant petition and the same is hereby dismissed.

**(Sant Parkash)
Judge**

January 7th, 2022
avin

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No