

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.41105 of 2022 (O&M)
Date of decision : 14.11.2022

Rajbala

..... Petitioner

versus

State of Haryana & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Jai Vir Yadav, Senior Advocate with
Mr. Harshavardhan Ranga, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C.
seeking impartial investigation in FIR No.0287 dated 21.08.2022
registered under Sections 302, 120-B & 34 IPC at Police Station Kasola,
District Rewari from an independent agency.

Petitioner is accused in the said FIR. As per the allegations
levelled in the FIR, it has been alleged as under :-

“That the applicant is the real brother of Bhagwan Singh brother of (since deceased). He was murdered by Rajbala, Sunita, Rama, Baljeet in conspiracy with some other persons on 7/3/2022 regarding which an application dated 8/3/2022 was moved by Krishna Devi W/o Bhawan Singh (since deceased). Copy of the application is enclosed for your kind perusal. That the applicant has now come to know that as per viscera and histopathology report of Bhagwan Singh received a PS Kasola Bhagwan Singh had expired because of administration of poison. That at the time of death Bhagwan Singh was residing in Amangani Society Rewari alongwith Rajbala, Sunita, Rama and Baljeet (accused above named). Bhagwan Singh was having

fragile health due to cancer and he was bedridden as such he could not procure any poison himself so it is quite evident and clear that the accused persons had administered poison to Bhagwan Singh as they were residing with him at that time and they had financial motive to commit murder of Bhagwan Singh and that is why they had given false information regarding cause of death of Bhagwan Singh to the doctor/hospital, Police and to the relatives of Bhagwan Singh. Furthermore no effort was made to save Bhagwan Singh by the accused as deceased was also taken to the hospital after his death. Medical Documents of deceased corroborate this fact). Accused had also tried to claim dead body in order to depose the body so that they could have themselves from legal consequences, but the postmortem was conducted on the basis of application moved by relatives of the deceased. The alleged poisoning had taken place within the four walls of the premises of Rajbala wherein Sunita, Rama and Baljeet used to stay. This murder has been committed in furtherance of conspiracy with one Rasis and Pawan That Rajbala Etc had taken financial benefits worth crore of rupees during the lifetime of Bhagwan Singh Regarding which civil and criminal litigations are pending. The above mentioned accused persons had also got manipulated a Will dated 8/11/2021 regarding 6 properties belonging to the deceased worth more than 50 crores. Rajbala had also taken benefits from life insurance policy of deceased worth 16-17 lacs after death of Bhagwan Singh illegally even though she knew that Bhagwan Singh had not died a natural death. That the antecedents of Rajbala are highly debatable and lot of persons have filed police complaint against her for cheating, land grabbing and other violations. Rajbala and other are openly claiming that they had killed the deceased ever since the death of Bhagwan Singh.”

Learned senior counsel for the petitioner submits that the petitioner apprehends that the investigation has not travelled in the right direction. In order to substantiate his plea, he asserts that as per the proceedings conducted under Section 174 Cr.P.C there was no reason assigned for the death of deceased Bhagwan Singh. In postmortem report cause of death was not spelled. The Board opined as under :-

“In our opinion, the cause of death in this case will be given after

receipt of reports of histopathological examination of viscera, chemical analysis of viscera and blood sample and complete treatment record of the deceased, if any.”

He submits that the same has been assigned for the first time by Dr. Naveen Yadav, Medical Officer (Forensic Medicine Expert), Civil Hospital, Rewari in the communication dated 20.08.2022 claiming that :-

“I am of the opinion that the cause of death in this case is Aluminium phosphide poisoning in already compromised person.”

The precise objection raised is that once the post mortem was conducted by the Board of Doctors the fact that an individual has given opinion itself is a ground to apprehend suspicion with respect to the course of the investigation.

Reply by way of affidavit of Anil Kumar, HPS, Deputy Superintendent of Police, Headquarters, District Palwal on behalf of respondents No.1 to 4 has been filed. The same is taken on record. The relevant contents thereof read as under :-

“3. That at the time of death Bhagwan Singh was residing in Amangani Society Rewari alongwith Rajbala, Sunita, Rama and Baljeet (accused above named). Bhagwan Singh was having fragile health due to cancer and he was bedridden as such he could not procure any poison himself so it is quite evidence and clear that the accused persons had administered poison to Bhagwan Singh as they were residing with him at that time and they had financial motive to commit murder of Bhagwan Singh and that is why they had given false information regarding cause of death of Bhagwan Singh to the Doctor/Hospital, Police and to the relatives of Bhagwan Singh. Furthermore no effort was made to save Bhagwan Singh by the accused as deceased was also taken to the Hospital after his death. Medical documents of deceased corroborate this fact. Accused had also tried to claim dead body in order to depose the body so that they

could save themselves from legal consequences, but the postmortem was conducted on the basis of application moved by relatives of the deceased. The alleged poisoning had taken place within the four walls of the premises of Rajbala wherein Sunita, Rama and Baljeet used to stay. This murder has been committed in furtherance of conspiracy with one Rasis and Pawan.

4. That Rajbala etc. had taken financial benefits worth crore of rupees during the lifetime of Bhagwan Singh regarding which civil and criminal litigations are pending. The above mentioned accused persons had also got manipulated a WILL dated 8.11.2021 regarding 6 properties belonging to the deceased worth more than 50 crores. Rajbala had also taken benefits from life insurance policy of deceased worth 16-17 lakhs after death of Bhagwan Singh illegally even though she knew that Bhagwan Singh had not died a natural death.

6. That after registration of the FIR, the investigation of the case was carried out by Inspector/SHO P.S Kasola, District Rewari and he recorded the statements of witnesses. Rajbala (present petitioner) was joined in the investigation and her account statements and statements of account of the deceased Bhagwan Singh were obtained and a lot of money transactions were found between the accounts of both of them and their copies were taken on record as evidence.

7. That during the course of further investigation, the statement of Krishna Devi wife of Bhagwan and other witnesses was recorded under section 161 of Cr.P.C. On basis of evidence, reports and documents, the offence under section 328 of IPC was also added to the case.

8. That thereafter further investigation of the case was transferred to District Palwal by the Inspector General of Police, South Range, Rewari vide order no. 4015/Reader dated 22.9.2022 and consequently upon receiving the case file of the present case by the Superintendent of Police, Palwal, a Special Investigation Team (SIT) was formulated by the Superintendent of Police, Palwal vide order no. 3126/R-SP dated 29.9.2022 under the chairmanship the DSP, Headquarters, Palwal i.e the undersigned with In-Charge CIA, Palwal, SHO P.S Women, Palwal and In-Charge Cyber Cell, Palwal as members. thereof. Resultantly the investigation of the case is being carried out by the said SIT.”

I have heard learned counsel for the parties and have gone

through the records of the case.

Parameters with respect to transfer of investigation already stand settled and have been reiterated by the Apex Court in ***K.V.Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai & ors., (2013) 12 SCC 480*** wherein the Apex Court observed as under :-

“17. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as 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, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.”

The question with respect to the locus of the accused to seek such transfer was raised and decided by the Apex Court in the case of ***Romila Thapar & ors. Vs. Union of India & ors., 2018(10) SCC 753*** wherein the Apex Court framed the following question :-

“20. After having given our anxious consideration to the rival submission and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:-

(i) Should the Investigating Agency be changed at the behest of the named five accused ?

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*21. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In ***Narmada Bai Vs. State of Gujarat and Ors. 2011(3) RCR (Criminal) 12 : (2011) 5 SCC 79***, in paragraph 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of*

Investigating Agency. Further, the accused persons cannot choose as to which Investigating Agency must investigate the offence committed by them. Paragraph 64 of this decision reads thus:-

“64. It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them.” (emphasis supplied)

22. Again in *Sanjiv Rajendra Bhatt Vs. Union of India and Ors.*, 2015 (4) RCR (Criminal) 790 : (2016) 1 SCC 1, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Paragraph 68 of this judgment reads thus:

“68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in [Union of India v. W.N. Chadha](#), 1993 Supp. (4) SCC 260, [Mayawati v. Union of India](#), 2012(3) RCR (Criminal) 622 : (2012) 8 SCC 106, [Dinubhai Boghabhai Solanki v. State of Gujarat](#), 2014 (2) RCR (Crl.) 19 : (2014) 4 SCC 626, [CBI v. Rajesh Gandhi](#) (1996) 11 SCC 253, [Competition Commission of India v. SAIL](#) (2010) 10 SCC 744 and [Janta Dal v.H.S. Choudhary](#). (1991) 3 SCC 756”

(emphasis supplied)

23. Recently, a three-Judge Bench of this Court in *E. Sivakumar Vs. Union of India and Ors.* 2018 (3) RCR (Criminal) 111 : (2018) 7 SCC 365, while dealing with the appeal preferred by the “accused” challenging the order of the High Court directing investigation by CBI, in paragraph 10 observed:

“10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on [Dinubhai Boghabhai Solanki Vs. State of Gujarat](#) Supra @ Footnote 5, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in [Narender G. Goel Vs. State of Maharashtra](#), 2010 (5) RCR (Crl.) 616 : (2009) 6 SCC 65, in particular, paragraph 11 of

the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.”

24. This Court in the case of *Divine Retreat Centre Vs. State of Kerala and Ors.*, 2008 (2) RCR (Crl.) 373 : (2008) 3 SCC 542, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own Investigating Agency to investigate the crime in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under [Article 226](#) of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer *mala fide*.

25. Be that as it may, it will be useful to advert to the exposition in *State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.*, 2010(2) RCR (Crl.) 141 : (2010) 3 SCC 571 In paragraph 70 of the said decision, the Constitution Bench observed thus:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 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 great caution in its exercise. Insofar as the question of issuing a direction to the 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 the 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.”

26. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of

criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

27. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation.”

The aforesaid principle has been reiterated by the Apex Court in ***Rhea Chakraborty Vs. State of Bihar and others (2020) 20 SCC 184*** and ***Arnab Ranjan Goswami Vs. Union of India & ors. (2020) 14 SCC 12.***

The solitary ground put into service by the learned senior counsel for the petitioner for raising apprehension *qua* the investigation is to the effect that once the post-mortem was conducted by a medical Board consisting of Dr. Naveen Yadav and Dr. Barkha, Dr. Naveen Yadav alone could not have rendered opinion *qua* the cause of death of the deceased. Argument raised by senior counsel for the petitioner cannot be accepted in the light of the reason for not joining Dr. Barkha specifically assigned in the document Annexure R-4 dated 20.08.2022, which is :-

“Note: The board member Dr. Barkha has already resigned the department (As telephonically asked to her).”

The plea of the learned senior Counsel with respect to the proceedings under Section 174 Cr.P.C. also stands answered by the Apex Court in ***Rhea Chakraborty's case*** (supra) wherein it has been held that :-

“22. The proceeding under [Section 174 CrPC](#) is limited to the inquiry carried out by the police to find out the apparent cause of unnatural death. These are not in the nature of investigation, undertaken after filing of FIR under [Section 154 CrPC](#). In the instant case, in Mumbai, no FIR has been registered as yet. The Mumbai Police has neither

considered the matter under Section 175 (2) CrPC, suspecting commission of a cognizable offence nor proceeded for registration of FIR under Section 154 or referred the matter under Section 157 CrPC, to the nearest magistrate having jurisdiction.

23. On the above aspect, the ratio in Manoj K Sharma vs. State of Chhatisgarh (2016) 9 SCC 1 will bear scrutiny. This was a case of suicide by hanging and M.B.Lokur, J. speaking for the Bench held as follows : (SCC pp.11-12, paras 19-20 & 22)

“19. The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short.....

20. Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of “inquiries” in cases of accidental or suspicious deaths and are entirely distinct from the “investigation” under Section 157 of the Code.....

** * * **

22. In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence.....”

24. In the present case, the Mumbai Police has attempted to stretch the purview of Section 174 Cr.P.C. without drawing up any FIR and therefore, as it appears, no investigation pursuant to commission of a cognizable offence is being carried out by the Mumbai police. They are yet to register a FIR. Nor have they made a suitable determination, in terms of Section 175(2) CrPC. Therefore, it is pre-emptive and premature to hold that a parallel investigation is being carried out by the Mumbai Police. In case of a future possibility of cognizance being

taken by two courts in different jurisdictions, the issue could be resolved under [Section 186 CrPC](#) and other applicable laws. No opinion is therefore expressed on a future contingency and the issue is left open to be decided, if needed, in accordance with law.

25. Following the above, it is declared that the inquiry conducted under [Section 174 CrPC](#) by Mumbai police is limited for a definite purpose but is not an investigation of a crime under [Section 157 CrPC](#).”

In view of the aforesaid facts there is no ground to interfere in the present case. In the considered opinion of this Court, the petitioner has not been able to make out a case which warrants transfer of the investigation as prayed for.

Finding no merits in the case, the same is ordered to be dismissed.

Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

14.11.2022

Pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes
No