

CRM-M-58105 of 2022

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

CRM-M-58105 of 2022
Date of decision: - 13.12.2022

Daler Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : - Mr. M.R. Sharma, Advocate,
for the petitioner.

Ms. GaganpreetKaur, AAG, Haryana.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 482 Cr.P.C. for issuance of directions to the official respondents to transfer the investigation of FIR No.0279 dated 30.07.2022 under Sections 120-B, 406, 420, 467, 468, 471, 506 IPC registered at Police Station Nissing, District Karnal, to some other independent agency to conduct the fair investigation

Learned counsel for the petitioner submits that petitioner got lodged the aforesaid FIR against respondents No.4 to 7 but no investigation has so far been carried out as the accused persons are roaming free. He submits that for fair investigation case may be transferred to some independent agency so that the petitioner can get justice.

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On the other hand, learned State counsel opposes the prayer of the petitioner and submits that investigation in the present case is going on, therefore, no ground is made out to transfer the investigation to any other agency.

I have heard learned counsel for the parties and perused the record.

The issue involved herein, is no more *res integra*. The issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency has already been dealt with by this Court and the Hon'ble Supreme Court. 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.. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. Reference can be made to the judgments in ***Gudalure M.J. Cherian & Ors. v. Union of India & Ors., (1992) 1 SCC 397; R.S. Sodhi v. State of U.P. & Ors., AIR 1994 Supreme Court 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors., 1994(1) RCR (Criminal) 205 ; Vineet Narain & Ors., v.***

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Union of India &Anr., AIR 1996 Supreme Court 3386; Union of India &Ors. v. Sushil Kumar Modi&Ors., AIR 1997 Supreme Court 314; Disha v. State of Gujarat &Ors., 2011(3) RCR (Criminal) 694 : 2011(4) Recent Apex Judgments (R.A.J.) 190 ; Rajender Singh Pathania&Ors. v. State (NCT of Delhi) &Ors., 2011(3) RCR (Criminal) 827 : 2011(4) Recent Apex Judgments (R.A.J.) 439 : (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar&Ors. etc., 2012(1) RCR (Criminal) 126 : 2011(6) Recent Apex Judgments (R.A.J.) 303).

In *Rubabbuddin Sheikh v. State of Gujarat &Ors., 2010(1) RCR (Criminal) 738 : (2010)2 SCC 200*, the Hon'ble Supreme Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat police after the conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Hon'ble Supreme Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Hon'ble Supreme Court held that even if

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a chargesheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

In *State of West Bengal v. Committee for Protection of Democratic Rights*, 2010(2) RCR (Criminal) 141 : 2010(1) Recent Apex Judgments (R.A.J.) 664, a Constitution Bench of the Hon'ble Supreme Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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.

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 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.

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In sum and substance, firstly, the facts and circumstances of the instant case do not present special features warranting transfer of investigation to any other agency, and that too, at this stage where FIR was lodged only four months earlier and investigation is going on. In case the petitioner has any grievance against the investigating agency, he can approach the Magistrate under Section 156(3) Cr.P.C.

In view of the above, I do not see any cogent reason to order transfer of investigation in the aforesaid case to any other agency. The petition lacks merit and is, accordingly, dismissed.

(NAMIT KUMAR)
JUDGE

13.12.2022
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No