

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

880 (2)

CRM-M-1113-2017

Judgment Reserved on : 17.11.2023

Judgment pronounced on: 30.11.2023

RAJ KUMAR AND ANOTHER

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Vikas Goel, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer made by the petitioners in the present petition is to hand over the investigation of case FIR No. 158 dated 20.04.2016 registered under Sections 148/149/323/506/379 of the Indian Penal Code, 1860 (for short “the IPC”) (the offence under Section 395 IPC was added and the offence under Section 379 IPC was deleted later on) at Police Station City Bahadurgarh, District Jhajjar to some other independent Investigating Agency.

2. Briefly summarized, the case of the petitioners is that the above FIR had been registered on the statement of one Saroj Kumar Pandey alleging that on the day of the incident, he went to the land owned by his employer for getting the same earth filled where the petitioner No.1

alongwith his accomplices picked up a quarrel with him and gave beatings to him and also snatched from him. Since the allegations made out a cognizable offence, the FIR was registered and investigation commenced. The petitioners were arrested by the police on the same day and produced before the Court. The petitioners were released on bail. Eventually as Section 395 IPC was added and Section 379 IPC was deleted, permission was sought to re-arrest the accused person. The said permission was granted by the Sub Divisional Judicial Magistrate. Some accused were arrested while others were granted the concession of pre-arrest bail. It is alleged that the said FIR had been registered at the instance of one P.K. Gupta with whom petitioner No.2 is in a litigation before the Civil Court for the same land on which the complainant claims to have been sent to fill up earth. The employer of the complainant viz. the defendant in the suit wanted to take forcible possession of the land purchased by him despite a Civil Court decree dated 11.02.1981 having been passed in suit No. 192 of 1979 as per which possession of the disputed land had been handed over to the vendor of the petitioners. The police initially presented final report on 29.07.2016 against some accused and thereafter a supplementary challan was filed on 18.09.2016 against the remaining accused. It is averred that the said investigation was tainted under the influence of one P.K. Gupta who is having dealings with the high police authorities. A complaint was also made by petitioner No.1 to the National Commission for Schedule Caste at Delhi regarding the attempt at grabbing his land and against the Police working under the influence of P K Gupta. An enquiry was conducted by the National Commission for Schedule Caste and parties were also heard in the presence of Inspector General of Police on 26.09.2016. It was alleged that the police was working under influence of

some Director General of police (without naming any person). The National Commission for Scheduled Caste specifically recorded a finding in relation to innocence & false implication of the petitioners & returned a finding about the final report under Section 173 Cr.P.C. being wrong. A further finding was also recorded that the officers were biased in their approach and were insensitive. Hence, the investigation of the case ought to be transferred to some other agency to conduct a fair probe.

3. Reply on behalf of the respondents has been filed wherein it has been informed that the investigation in the matter has already been concluded and the final report had been filed against Sita Ram, Krishan, Suresh and Kuldeep as well as a supplementary report against accused Pavitar, Raj Kumar and Rajesh. It was also pointed out that the National Commission for Schedule Caste had also directed that the further investigation in the case to be conducted through the State Crime Branch. Since the order passed by the National Commission for Scheduled Caste was adjudicatory in its nature and effect and travelled beyond the power vested on the National Commission for Scheduled Caste under Article 338 of the Constitution of India, hence, the said order of the National Commissioner was challenged in CWP-21647 of 2016 and stay was granted on 26.09.2016 against the impugned order.

4. I have heard learned counsel for the parties and have gone through the documents appended alongwith the present petition.

5. The facts as noticed above remain undisputed. The entire case of petitioners for seeking transfer of investigation is based on the grounds as under:-

i) that the complainant has lodged the FIR at the instance of P.K.

Gupta with whom he has a pending civil dispute.

- ii) P.K. Gupta has contacts with high police officials and is exploiting the same to pressurize the petitioners.
 - iii) The investigating agency has been working under influence of a D.G.P rank officer & has chosen to ignore the evidence produced by the petitioners.
 - iv) The National Commission for Scheduled Caste has already held the investigation to suffer from bias and the petitioners being innocent.
6. The above contentions have been considered along with CWP-21647-2016 which have been reiterated by the counsel and it has observed as under:-

- a) the investigation was concluded and final report had already been filed as per which the petitioners was himself in encroachment over land.
- b) The CCTV footage referred to by the petitioners did not show any face and hence it could not be determined that petitioners was not present at the place of occurrence.
- c) The office of the petitioners was only at a distance of 30 kms and plea of *alibi* could not be *per se* accepted.
- d) The petitioners had ante timed the occurrence to be at 10:00 am whereas it took place of 11:00 am.
- e) The National Commission for Scheduled Caste travelled beyond the power under Article 338(5) of the Constitution of India & passed orders against report under Section 173 and returning a finding of innocence of the petitioners which is an

adjudicatory function and the said order had been stayed by this Court.

(f) Even though allegation of influence of some DGP rank officer is made, however, no such officer is named or made a party. The allegation was thus general.

(g) The National Commission for Scheduled Caste had no material to substantiate its findings on the issue and thus do not withstand test of judicial scrutiny.

7. Even in the present case, the petitioners has neither disclosed the name of any alleged senior functionary nor established any link of P.K. Gupta with the said officer. Further, no such officer of the rank of DGP or even P.K. Gupta who is alleged to exert influence has been impleaded as respondent in the present case to controvert the allegation leveled. Still further, even though the petitioner had mentioned that a Civil Suit is instituted by petitioner No.2 against P.K. Gupta, however, there is no mention of any order passed on any application under Order 39 Rule 1 and 2, if any, and as to whether possession of the petitioners regarding the land in question has been accepted by the Civil Court as an interim measure. There can be no presumption of the above fact and the same is required to be pleaded and prima facie established before an investigation conducted by an Investigating Agency can be questioned and the authorities may called upon to explain their investigation/misconduct, if any. Further, the petitioners also failed to disclose as to how the complainant Saroj Kumar Pandey is related to P.K. Gupta and why would P.K. Gupta involve himself. The present criminal miscellaneous petition apparently seems to be filed by attributing motive and reasons for false implication without establishing the entire link

and completing the chain of events in which such allegations/attribution may be perceived to have any semblance of truth.

8. The Hon'ble Supreme Court of India in the matter of ***“State of West Bengal and others versus Committee on Protection of Democratic Rights and Others”*** reported as ***(2010) 3 SCC 571*** held as under:

“70. Before parting with the case, we deem it necessary to emphasise that 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 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.”

9. The Hon'ble Apex Court, in the matter of ***“Bimal Gurung***

versus Union of India and others”, reported as **(2018) 15 SCC 480** has further held as under:

“29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In K.V. Rajendran v. Supt. of Police [K.V. Rajendran v. Supt. of Police, (2013) 12 SCC 480: (2014) 4 SCC (Cri) 578], this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased.

47. The Constitution Bench of this Court in Lolita Kumari v. State of U.P. (Lalita Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524] has elaborately considered the obligation to register an FIR when information of cognizable offence is received by a police personnel. The following are the relevant observations made by the Constitution Bench speaking through P. Sathasivam, J. that "When a cognizable offence takes place before the eyes of police personnel, he is not to await any information or any other source for registering an FIR, it is his obligation and duty to register an FIR". Thus, FIR registered at the instance of police leading serious offences involving the petitioner and supporters of GJM, cannot be discarded on the plea that it was police, who has roped in the petitioner and other

supporters by lodging the FIR No bias or mala fides has been pleaded against any individual State functionary or police officer nor has any such person been impleaded in the writ petition so as to consider the allegation of bias. It is very easy to make allegations of bias against a person but it is difficult to substantiate the same. In the present case, neither are there any pleading nor any material to come to a conclusion that State functionaries including police functionaries are biased against the petitioner. Thus, the allegations of the bias made against the State and police functionaries had to be rejected and the petitioner cannot be permitted in saying that the FIRs lodged against him are result of a bias of the State or police personnel.

53. Most of the cases which were cited before us by the parties are the cases where this Court exercised jurisdiction under Article 32 in transferring the investigation at the instance of the victims. For a victim, the investigation in a case is of much significance. In the event, a proper investigation is not carried out and relevant evidence which would have been collected by due care and caution, is not collected, the victim is sure not to get justice on such faulty investigation. In case of faulty investigation, where an accused has been wrongly roped in, he has the right to seek all remedies before court of law for further investigation and a court of law is able to marshal all evidence and capable of discerning truth from evidence on record. Although as a principle, there is no fetter on an accused to move a court of law for transfer of Investigation, but on the facts of this case as noted above, we do not think it to be a fit case where this Court may exercise jurisdiction under Article 32 to transfer the cases en masse to an independent agency. The present case cannot be said to be a case of individual's persecution by the State authority.

10. In the matter of “***K.V. Rajendran versus Superintendent of Police, C.B, C.I.D, South Zone, Chennai and others***” reported as (2013) 12 SCC 480, the Hon’ble Supreme Court of India held as under:

“13. The issue involved herein, is no more res integra. 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. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide Gudalure M.J. Cherian v. Union of India ((1992) 1 SCC 397] R.S. Sadhi v. State of U.P. [1994 Supp (1) SCC 143: 1994 SCC (Cri) 248 AIR 1994 SC 38), Punjab and Haryana High Court Bar Assn. v. State of Punjab ((1994) 1 SCC 616: 1994 SCC (Cri) 455: AIR 1994 SC 1023), Vineet Narain v. Union of India [(1996) 2 SCC 199: 1996 SCC (Cri) 264], Union of India v. Sushil Kumar Modi ((1996) 6 SCC 500: AIR 1997 SC 314), Disha v. State of Gujarat [(2011) 13 SCC 337:

(2012) 2 SCC (Cri) 628: AIR 2011 SC 3168), Rajender Singh Pathania v. State (NCT of Delhi) ((2011) 13 SCC 329: (2012) 1 SCC (Cri) 873] and State of Punjab v. Davinder Pal Singh Bhullar (2011) 14 SCC 770: (2012) 4 SCC (Civ) 1034: AIR 2012 SC 364])

14. *In Rubabbuddin Sheikh v. State of Gujarat [(2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006] this 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 Gujarat Police after the conclusion of the investigation, submitted a charge-sheet before the competent criminal court. The 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 Court held that even if a charge-sheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.”*

11. Further, the Hon’ble Supreme Court of India in the matter of **“Royden Harold Buthello and another versus State of Chhattisgarh and others (supra)”** reported as **2023 SCC OnLine 204** and in the matter of **“Anant Thanur Karmuse versus State of Maharashtra and others”** reported as **(2023) 5 SCC 802** held as under:

“34. In Himanshu Kumar (Himanshu Kumar v.

State of Chhattisgarh, (2023) 12 SCC 592: 2022 SCC OnLine SC 884), this Court had occasion to consider the power of the Court to transfer investigation to any other independent agency. After taking into consideration the catena of judgments on the point, it is reiterated that investigation may be transferred to CBI only in "rare and exceptional cases". In SCC paras 44 to 55, it is observed and held as under:

44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by CBI, such prayer should not be granted on mere asking.

45. A Constitution Bench of this Court, in State of W.B. v. Committee for Protection of Democratic Rights (State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571: (2010) 2 SCC (Cri) 401), has made the following observations pointing out the situations where the prayer for investigation by CBI should be allowed:

"70.... 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 powers 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."

46. In the above decision, it was also pointed out that the same Court in Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya (Minor Irrigation & Rural Engg. Services v. Sahngoo Ram Arya, (2002) 5 SCC 521 2002 SCC (L&S) 775), had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to the conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency.

47. In an appropriate case when the Court feels that the Investigation by the police authorities is not in a proper direction, and in order to do complete justice in the case and if high police officials are involved in the alleged crime, the Court may be justified in such circumstances to hand over the investigation to an independent agency like CBI. By now it is well settled that even after the filing of the charge-sheet the Court is empowered in an appropriate case to hand over the investigation to an independent agency like CBI.

48. The extraordinary power of the constitutional courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to CBI to conduct investigation must be exercised with great caution as underlined by this Court in Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571: (2010) 2 SCC (Cri) 401) as adverted to hereinabove, observing that although no inflexible guidelines can be

laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in the Investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights.

49. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge- sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

'30. 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.

54. It has been held by this Court in CBI v. Rajesh Gandhi (CBI v. Rajesh Gandhi, (1996) 11 SCC 253: 1997 SCC (Cri) 88: 1997 Cri LU 63), that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he

alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

55. 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. In assessing the plea urged by the petitioner that the investigation must be transferred to CBI, we are guided by the parameters laid down by this Court for the exercise of that extraordinary power."

12. Further, in the matter of ***"Dharam Pal versus State of Haryana"*** reported as ***(2016) 4 SCC 160*** wherein it was held as under :-

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only

one taste, the taste of salt, so does justice have one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? if a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

13.

In the matter of **“Mohan Lal Sharma versus Principal**

Secretary and Others” reported in **(2014) 2 SCC 532**, wherein it was held as under:

24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bono fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of Investigation is ultimately to search for truth and bring the offender to book.

14. The law for seeking transfer of investigation to any other agency being well laid down, the onus lies on the petitioners to establish that such exceptional circumstances exist in the present case as would necessitate reference of investigation to any other agency. Once the power is extra-

ordinary and is required to be exercised sparingly, allegations that are not supported by any cogent material cannot be relied upon for invoking such power. The possibility of high officials tainting investigation has to be real and not perceptive. Giving too much weightage to general, vague and uncorroborated allegations can often be counter productive and are susceptible to be devised as tools for steering investigation. Neither the circumstances nor the documents on record support the evidence and the investigation concluded cannot be said to be absurd or irrational.

15. No material has been put up on the basis whereof the extraordinary power of prerogative writ to be exercised at this stage. There is nothing on record on the basis whereof, it may be presumed that the Investigating Agency had conducted the investigation in a bias partial manner. There is also no allegation against any person/Investigating Officer in his individual capacity and hence, no motive can be imputed or implied against the Investigating Officer or the Agency. The final report has already been filed and is pending consideration before the competent Court. The prayer for transfer of investigation in the case and at this stage thus cannot be accepted.

16. The petitioners may, if so advised, take recourse to their remedy(ies) as available to them in accordance with law.

17. The instant petition is accordingly disposed of, at this stage, with liberty(ies) as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 30, 2023
Seema/Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No