

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

110

CWP-7887-2024 (O&M)
Date of decision: 08.05.2024

ABDULPetitioner

VERSUS

STATE OF HARYANA AND OTHERSRespondents

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

Present:- Mr. Sanawar Ali, Advocate for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

CM-7790-CWP-2024

The instant application has been filed under Rule 3-A (i) Chapter VI, Part-B, Vol. V of the High Court Rules and Orders for grant of leave to file the present petition.

Application is allowed as prayed for.

CM-7791-CWP-2024

For the reasons mentioned in the application, the same is allowed and accompanying documents are taken on record as Annexures P-4 and P-5.

CWP-7887-2024

1. The present writ petition has been filed for seeking directions to the respondent No.2 i.e. Director General of Police, Haryana for a fair and impartial investigation, in view of the representation dated 18.03.2024, by an independent investigation

agency or in the alternative for transfer of investigation in case FIR No. 273 dated 22.08.2023 registered under Sections 148/149/323/452/427 and 506 of the Indian Penal Code, 1860 and Sections 25/54 of the Arms Act at Police Station Punhana.

2. Learned counsel appearing on behalf of the petitioner contends that the aforesaid FIR was registered with respect to an offence wherein the accused persons caused beating to the family members of the petitioner and leading to miscarriage of Sabila, who was pregnant by two months. He further submits that a land dispute is already going on between the parties and the matter is sub-judice before the Civil Court. A stay has been granted in favour of petitioner due to which the accused attacked the family and threatened to withdraw the Civil Suit. He contends that no action has been taken against accused persons despite lapse of nearly 08 months of registration of the FIR. It is alleged that the Police is working under political pressure. He thus submitted a representation to the Police officials but no action has been taken. Hence, the present petition has been filed.

3. I have heard learned Counsel for the petitioner at length and have gone through the documents appended with the petition.

4. Counsel for the petitioner has also referred to follow up and discharge card of one Jamil who had allegedly been treated for injury due to gun shot, to substantiate the allegations of the incident having occurred on 18.08.2023. A reference is also made to the outpatient health care card belonging to one Sabila aged 35 years wife of Wasib. As per the said report, there was a complaint of abdominal pain, however, there was no injury over the abdomen. It is yet to be

ascertained as to whether the miscarriage was as a result of the incident in question or on account of certain other circumstances.

5. The prayer being for directing a fair investigation or in the alternative for transfer of investigation for understanding the scope of jurisdiction to steer investigation, it is necessary to look into the authoritative judicial pronouncements in the matter. The same are as under:-

1) In the matter of “***State of West Bengal and others versus the committee for Protection of Democratic Rights, West Bengal and others***” reported as (2010) 3 SCC 571. The relevant extract thereof reads 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.”

2) In the matter of “**Sanjiv Rajendra Bhatt versus Union of India and others**” reported as **(2016) 1 SCC 1**. The relevant extract thereof reads as under:-

67. It was also submitted on behalf of the learned counsel for the petitioner that the counter-affidavit filed in WP (Crl.) No. 135 of 2011 discloses sufficient reason to constitute SIT in which in the reply filed by Respondent 2 it has been mentioned that:

"there is no room for doubt that it is a systematic and larger conspiracy through the petitioner of rival political party in Gujarat and vested interest groups surviving on anti-Gujarat campaign all of whom had started efforts to keep the Godhra riot issue live based on concocted facts and the petitioner, through all of them, is trying to build up a story at a stage when after almost 10 long years this Court has virtually concluded the judicial proceedings after undertaking tremendous judicial exercise."

In our opinion, by the aforesaid averment in the reply no case is made out for investigation by SIT into I-CR No. 149 of 2011 relating to preparation of affidavit or for that matter in II-Crime No. 3148 of 2011 relating to hacking of email account and tampering with it. These are not such cases of wide amplitude so as to warrant SIT to be constituted or even CBI to be entrusted with the investigation. It is not for the petitioner to choose the investigating machinery as held by this Court in Sakiri Vasu v. State of U.P. & Others (2008) 2 SCC 409 thus:

(SCC p. 412, para 10)

"10. It has been held by this Court in CBI v. Rajesh Gandhi (vide para 8) 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."

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, Mayawati v. Union of India, Dinubhai Boghabhai Solanki v. State of Gujarat, CBI v. Rajesh Gandhi, Competition Commission of India v. SAIL and Janata Dal v. H.S. Chowdhary".

3) In the matter of ***"Royden Harold Buthello & Another versus State of Chhattisgarh and others"*** reported as **2023 SCC OnLine SC 204**. The relevant extract thereof reads as under:-

18. Also Mithilesh Kumar Singh v. State of Rajasthan, (2015) 9 SCC 795 wherein it is held hereunder:-

"12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for

universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

13. Having said that we need to remind ourselves that this Court has, in several diverse

situations, exercised the power of transfer. In Inder Singh v. State of Punjab this Court transferred the investigation to CBI even when the investigation was being monitored by senior officers of the State Police. So also in R.S. Sodhi v. State of U.P. investigation was transferred even when the State Police was doing the needful under the supervision of an officer of the rank of an Inspector General of Police and the State Government had appointed a one-member Commission of Inquiry headed by a sitting Judge of the High Court to enquire into the matter. This Court held that however faithfully the police may carry out the investigation the same will lack credibility since the allegations against the police force involved in the encounter resulting in the killing of several persons were very serious. The transfer to CBI, observed this Court, "would give reassurance to all those concerned including the relatives of the deceased that an independent agency was looking into the matter".

14. Reference may also be made to the decision of this Court in State of Punjab v. CBI wherein this Court upheld the order transferring investigation from the State Police to CBI in connection with a sex scandal even when the High Court had commended the investigation conducted by the DIG and his team of officers. In Subrata Chatteraj v. Union of India, this Court directed transfer of the Chit Fund Scam in the States of West Bengal and Orissa from the State Police to CBI keeping in view the involvement of several influential persons holding high positions of power and influence or political clout.

15. Suffice it to say that transfers have been

ordered in varied situations but while doing so the test applied by the Court has always been whether a direction for transfer, was keeping in view the nature of allegations, necessary with a view to making the process of discovery of truth credible. What is important is that this Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. There is no reluctance on the part of the Court to grant relief to the victims or their families in cases, where intervention is called for, nor is it necessary for the petitioner seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case.”

20. Hence it is clear that though there is no inflexible guideline or a straightjacket formula laid down, the power to transfer the investigation is an extraordinary power. It is to be used very sparingly and in an exceptional circumstance where the Court on appreciating the facts and circumstance arrives at the conclusion that there is no other option of securing a fair trial without the intervention and investigation by the CBI or such other specialized investigating agency which has the expertise.

21. In that background, even if the rival contentions are taken note, we do not find that there is any issue of public importance which requires to be unearthed by an investigation to be conducted by the CBI. Even from the facts noted above and the allegations made against the police, though we are sensitive to the sentiment of the appellants herein,

the contention ultimately is that the offence alleged against him to have been committed on 21.10.2020 could not have been committed by him inasmuch as he had been abducted from a different State and was already in the illegal detention of the police on 20.10.2020 itself. This essentially would be the defence in the criminal trial. As already noted, the charges have been framed and the evidence is being tendered. Insofar as the allegation that the said persons namely Pramod Behra, Sultan, Santosh and Ali had gone to Odisha and had illegally abducted him, from the very details furnished by the appellants themselves, it is noted that the High Court had through the order dated 17.03.2022 in a collateral proceeding directed that the five officers stated in the said order be called as witnesses for examination and cross-examination.”

4) In the matter of “**Manohar Lal Sharma versus Principal Secretary and others**” reported as **(2014) 2 SCC 532**. The relevant extract thereof reads 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 bona 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.

33. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by CBI under the DSPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences.

38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis

irrespective of the position and status of that person and the inquiry/ investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

61. At the outset, one must appreciate that a constitutional court monitors an investigation by the State police or the Central Bureau of Investigation (for short "CBI") only and only in public interest. That is the leitmotif of a constitutional Court-monitored investigation. No constitutional court "desires" to monitor an inquiry or an investigation (compendiously referred to hereinafter as "an investigation") nor does it encourage the monitoring of any investigation by a police authority, be it the State police or CBI. Public interest is the sole consideration and a constitutional court monitors an investigation only when circumstances compel it to do so, such as (illustratively) a lack of enthusiasm by the investigating officer or agency (due to "pressures" on it) in conducting a proper investigation, or a lack of enthusiasm by the Government concerned in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the Government concerned to take the investigation to its logical conclusion for whatever reason, or in extreme cases, to hinder the investigation."

6. It is evident from a perusal of the above that power of transfer of investigation is to be used only in sparing & exceptional

circumstances and for securing justice to the parties.

7. The petitioner has nowhere alleged any foul play or ill-motive against the investigating agency. There is no attribution against any person. No details of any person have been mentioned who is allegedly exerting pressure on the investigating agency. There cannot be a presumption of investigating agency being unfair or partisan in its investigation merely because the pace of investigation is not to the satisfaction of any party.

8. However, if the dis-satisfaction is as regards delay in investigation, the petitioner has remedy to file an appropriate application before the Illaqa Magistrate who is competent to examine the same and ask for a report from the Police Station. Filing of a restructured petition only for the said reason instead of approaching the Illaqa Magistrate is merely a by-pass to the statutory remedy.

9. The onus to establish the failure to meet ends of justice, bias, malice or undue pressure on the investigating agency is on the petitioner seeking transfer and a mere delay does not satisfy the above requirement for invoking inherent powers of the High Court.

10. It has been repeatedly held in numerous judgments that the prayers for seeking transfer of investigation should not be permitted to be used or deployed by any party for steering the investigation and/or taking the investigation to an agency which is more feasible to the parties seeking any transfer of investigation.

11. Under the given circumstances, I do not deem it fit and appropriate at this juncture to direct transfer of the investigation in the

present case. However, taking into consideration that the incident in question relates to August, 2023, it is deemed appropriate that investigation in the matter is concluded expeditiously and an appropriate final report is filed by the Investigating Agency.

12. The writ petition stands disposed of.

(VINOD S. BHARDWAJ)
JUDGE

MAY 08, 2024
Vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No