2024:PHHC:163573

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34436-2018 (O&M)
Date of decision: 10.12.2024

Meenu Sharma **...Petitioner**

Versus

State of Haryana and others **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. S. K. Garg Narwana, Senior Advocate with
Mr. Mukesh Rao, Advocate,
Mr. Vinod Rao, Advocate and
Mr. Shubham Aneja, Advocate
for the petitioner.

Ms. Nidhi Garg, Assistant Advocate General, Punjab.

Mr. Vinod Ghai, Senior Advocate with
Mr. Abhilaksh Grover, Advocate and
Mr. Arnav Ghai, Advocate
for respondent No. 4.

Mr. Gaurav Mohunta, Advocate and
Mr. Nishant Arora, Advocate
for respondent NO. 5.

Mr. Mrinal Sharma, Advocate
For respondent No. 6.

Mr. Prateek Gupta, Advocate
for respondent No. 7.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure *(for short 'the Code')* seeking issuance of direction to respondent No. 1 to hand over/transfer the investigation of case arising out of FIR No. 249 dated 08.07.2018, registered under Section 306 of

Indian Penal Code *(for short 'IPC')* at Police Station Sector 56, Gurugram to respondent No. 7-Central Bureau of Investigation *(for short 'CBI').*

2. Briefly stated, this petition has been filed on the grounds that Vinod Sharma (victim), husband of the present petitioner, was a building contractor, who was owner of a concern named as Lakshmi Builders and was Director of Lakshmi Infra Buildcon Pvt. Ltd. He had purchased some land from one Manju Sandhir in May, 2005 for a sum of Rs.12,08,500/-. Respondent No.4-Mohinder Singh Sethi, who was posted as SHO of Police Station Udyog Vihar, Gurugram, was on visiting terms with the husband of the petitioner and at the time of purchasing land, the victim had borrowed a sum of Rs. 2 Lakhs from respondent No. 4. The victim had also purchased one apartment situated in Sector 21, Gurugram by a registered sale deed dated 10.03.2005. Respondent No. 4 started residing in the said flat along with his family as tenant since 2005. He had agreed to pay rent @ Rs. 10,000/- per month and had assured to get the rent amount adjusted against the amount of Rs. 2 Lakhs as borrowed by the victim from him. After adjustment of the said amount of Rs. 2 Lakhs, respondent No. 4 neither paid any rent amount to the victim nor he vacated the apartment. Rather, by exerting pressure upon the victim and extending threats to him, he got transferred the said apartment in the names of his wife and mother, vide sale deed dated 22.12.2017. He transferred the sale consideration amount for purchase of apartment, in the bank account of the victim by different transactions that took place during the period from 01.12.2017 to 23.04.2018, but the said amount of money was in fact taken back by respondent No. 4 from the victim by subsequently getting

the same transferred in the bank account of his wife/relatives and some close friends.

3. As per further allegations, respondent No. 6-Devender Lakra had committed fraud worth crores of rupees with the victim and litigation between them had been going on. Respondent No. 4 was well aware about the dispute between the victim and respondent No. 6. The victim was under debts and had to repay the loan taken from some banks and for that purpose, he had entered into an agreement to sell the land purchased by him in the year 2005 to one Avinash Chander Sharma and had sold the same on 06.06.2017. Respondent No. 4, who became aware of this fact, started pressurizing the victim to have half share of the money received by the victim by sale of his land by extending threats to him, despite the fact that the amount of Rs. 2 Lakhs as given by him to the victim stood adjusted not only against the rent of the apartment of the victim but also by the transfer of his flat in the names of wife and mother of respondent No. 4.

4. As further alleged, respondent No. 4 along with respondent No. 5, who is his brother, and two more persons, pressurized the victim on 02.07.2018 also and then latter was even made to execute some writing qua his outstanding liability of huge amount of money towards respondent No. 4 and was exerted pressure to pay a sum of Rs. 50 Lakhs by 04.07.2018, to such an extent that on 04.07.2018, the victim shot himself with some fire arm and was admitted to a private hospital at Gurugram. He died during the course of treatment on 07.07.2018. The matter was reported to the police and the aforesaid FIR was registered under Section 306 of IPC. No action was taken

against respondent No 4, who was posted as a DCP in Haryana Police at that time and his brother i.e. respondent No. 5 and even against respondent No. 6. Several representations had been filed by the petitioner in that regard but to no avail, thereby compelling the petitioner to file the present petition.

5. Learned counsel for the petitioner, while giving details of the investigation conducted by the State Police, argued that though during the pendency of this petition, challan has been filed against respondent No. 6, however, the investigating agency, under the influence of respondent No. 4, who is a senior police officer, had exonerated him and respondent No. 5, despite the fact that there was sufficient evidence against them which proved their active involvement in the commission of subject crime. Learned counsel for the petitioner further submitted that since there has been no proper investigation in respect of the crime in question, as such, it was a fit case to assuage the feeling of the anguished petitioner, who was in search of justice, to transfer the investigation of the case to CBI. In support of his arguments, learned senior counsel for the petitioner has placed reliance upon the authorities cited as ***Anant Thanur Karmuse vs. State of Maharashtra : 2023 (5) SCC 802, Ramesh Kumari vs. State of NCT Delhi : 2006 (2) RCR (Criminal) 197, Iqbal Singh vs. State of Punjab : 2006 (2) RCR (Criminal) 836, State of Punjab vs. Central Bureau of Investigation : 2011 (4) RCR (Criminal) 152*** and ***Rashmi Behl vs. State of U.P.: 2015 (1) Law Herald***.

6. Respondents No. 1 to 3 filed a joint reply, as per which, the victim was opined to be fit to make statement on 05.07.2018 while he was admitted in the hospital at Gurugram but had not given any statement by

saying that he was not mentally and physically well. He had died on 07.07.2018. He had left a suicide note, on the basis of which, a case was registered against respondent No. 6. On accusations of the petitioner, the investigation had been transferred from Gurugram Police to State Crime Branch, Faridabad. Respondent No. 4 had been transferred from the post of DCP, Manesar to Vigilance Bijli Board, Rohtak. It is argued by learned State counsel that after conducting thorough investigation in the matter by an SIT, constituted by the DGP, Haryana, vide order dated 08.07.2018, under the supervision of IG(Crime), Haryana, *challan* report has been filed against respondent No. 6 and respondents No. 4 and 5 have not been found to be involved in the commission of offence under Section 306 of IPC. It is, therefore, argued that no ground has been made out for allowing the petition.

7. Respondent No. 4, in his separately filed reply, took preliminary objection to the petition being filed on false and vexatious grounds by submitting that the victim was under heavy debt and had borrowed huge amount of money from banks. Respondent No. 4 was having close friendly terms with him and rather had assisted him financially on several occasions in lieu of their trust and association. The petitioner had levelled unfounded allegations against him. For conducting fair and effective investigation, an SIT was constituted by the DGP, Haryana under the supervision of IG (Crime), Haryana, vide order dated 08.07.2018. Respondent No. 6 had been declared a proclaimed offender. *Challan* was presented after due and fair investigation. No rare and exceptional circumstance has been made out for giving direction to conduct investigation by the CBI. He has been exonerated by the

investigating agency in the supplementary challan report filed under Section 173(8) of the Code. On merits, it is admitted that the victim had borrowed a sum of Rs. 2 Lakhs from him in the year 2005. It is also admitted that he had been residing in the apartment owned by the victim and subsequently, the said apartment had been purchased in the names of his wife and mother. It is asserted that the due sale consideration amount had been paid to the victim. It is denied that sale consideration amount had been taken back by different transactions. With regard to amount of money, which was shown to be transferred from the bank account of the victim to the account of respondent No. 4, it is submitted that the same was in lieu of some financial settlement between them and not on account of any pressure being exerted by him. The remaining allegations have been controverted and dismissal of the petition has been prayed for.

8. Respondents No. 5 and 6 chose not to file any reply. It is, however, argued by learned counsel for respondent No. 6 that he has been falsely implicated in this case.

9. Respondent No. 7-CBI has filed separate reply. Learned counsel for the CBI has argued that the case in hand does not involve any inter-state or international ramifications. The SIT, which had been constituted in this case to conduct investigation, was supervised by a police officer of the rank of IG (Crime), Haryana and has conducted the investigation in a proper manner. No ground warranting investigation by the CBI has been made out. Therefore, it has been urged that the petition does not deserve to be allowed.

10. This Court has heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

11. Before delving into the contentions as raised by the parties, this Court considers it proper to mention that so far as the relief claimed by the petitioner as against respondent No. 6 is concerned, the same has admittedly become infructuous, in view of the fact that during the pendency of this petition, respondent No. 6 had been arrested and has even been challaned for commission of offence under Section 306 of IPC.

12. At the outset, this Court would like to consider the scope of interference by this Court in exercise of powers under Section 482 of the Code. In ***State of Punjab'***s case (supra), it was held by Hon'ble Supreme Court that the High Court, in exercise of inherent powers under Section 482 of the Code can transfer the case at any stage for fresh investigation or re-investigation, even after chargesheet was submitted in the Court. In ***Anant Thanur Karmuse***'s case (supra), Hon'ble Supreme Court had observed that constitutional Courts may order further investigation, re-investigation or de-novo investigation, even if the chargesheet is filed and the charges are framed.

13. With regard to question as to whether direction for conducting investigation by the CBI can be issued even after filing of challan report/chargesheet, in ***Ram Jethmalani v. Union of India (2011) 8 SCC 1***, it was observed by Hon'ble Supreme Court that in appropriate cases, even if chargesheet is filed, it is open for the High Court or Supreme Court to direct investigation of the cases to be handed over to CBI or to any other

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independent agency in order to do complete justice. Similar observations were made by Hon'ble Supreme Court in ***Bharati Tamang vs. Union of India and Ors., (2013) 15 SCC 578*** and ***Dharam Pal vs. State of Haryana and Ors., (2016) 4 SCC 160***, wherein it was observed that the power to order fresh, de novo or re-investigation, being vested with constitutional Courts, the commencement of 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. If a grave suspicion arises with regard to the investigation, a constitutional Court should not close its hands and accept the proposition that as the trial has commenced, the matter is beyond it. To do the complete justice and furtherance of fair investigation and fair trial, the constitutional Courts may order further investigation/re-investigation/de novo investigation even if the chargesheet is filed and charges are framed, otherwise, it would lead to travesty of justice. In ***Iqbal Singh***'s case (supra), Hon'ble Supreme Court held that if investigation by the local police is not satisfactory, a further investigation is not precluded, though accused has no right as to which investigation agency should conduct investigation into the allegations.

14. In view of the above, it is evident that a constitutional Court can direct CBI to investigate into a case, even after the chargesheet has been filed, charges have been framed or some evidence before the trial Court has been recorded. However, simultaneously, it is also well established that such power can be exercised in exceptional circumstances when after examining the allegations in the complaint, the Court reaches a conclusion that the

complainant could make out a prima facie case with regard to relief sought by him and only when it is satisfied that the investigation has not proceeded in a proper direction or had been conducted in a biased manner. Reference in this context can be made to some judicial pronouncements of Hon'ble Supreme Court cited as ***CBI vs. Rajesh Gandhi : 1997 Cri LJ 63,*** wherein it was observed that no one can insist that an offence be investigated by a particular agency. 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; ***Secretary, Minor Irrigation & Rural Engineering Services, U.P. vs. Sahngoo Ram Arya, (2002) 5 SCC 521***, wherein it was observed that an order directing an enquiry by the 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 the CBI or any other similar agency; and to ***State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, reported in (2010) 3 SCC 571***, wherein it was observed that although no inflexible guidelines can be laid down to decide whether or not powers for issuing directions to conduct investigation by CBI should be exercised or not but 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.

15. Reliance can further be placed upon ***K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai, (2013) 12 SCC 480,*** wherein it was observed by Hon'ble Supreme Court that the power of transferring investigation from State investigating agency to any other independent investigating agency like CBI must be exercised 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. Reference can also be made to ***Ram Jethmalani'***s case (supra)***,*** wherein it was observed by the Apex Court that if there is deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, the Courts have to deal with the same with an iron hand appropriately within the framework of law. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases, this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments. Reliance can further be placed upon ***K.V. Rajendran'***s case (supra) and ***Vishal Thakur vs. Union of India : AIR 2024***

Supreme Court 414, wherein it was observed that such powers must not be exercised by the Court in the absence of cogent justification indicative of a likely failure of justice in the absence of exercise of power to transfer the investigation. The petitioner must place on record strong evidence indicating that the investigating agency has portrayed inadequacy in the investigation or prima facie appears to be biased. In ***Himanshu Kumar and others vs. State of Chattisgarh : 2022 SCC Online 884***, Hon'ble Supreme Court held 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 the CBI, such prayer should not be granted on mere asking.

16. In view of the above, the law can be summarised to the effect that this Court can exercise its constitutional powers in transferring investigation from State investigating agency to any other investigating agency including CBI only in rare and exceptional cases when it is revealed that the investigation is prima facie tainted/biased and investigation has been influenced. Before directing CBI to investigation a case, the Court must reach a conclusion on the basis of the pleadings and material available on record that a prima facie case is made out against the accused. However, the investigation by CBI is to be granted only in exceptional circumstances, where the Court is of the view that accusation is against a person who by virtue of his post could influence the investigation and may cause prejudice to the cause of the complainant.

17. On applying the above discussed principles of law to present case, it is to be seen as to whether a case is made out for directing further investigation by CBI? It is required to be noted in the present case that it is not in dispute that the victim had shot himself on 04.07.2018 and had succumbed to the fire arm injury sustained by him during the course of his treatment on 07.07.2018. The petitioner has alleged that apart from respondent No. 6, respondents No. 4 and 5 had also abetted his suicide and as such, they are liable to be arraigned as accused. It is, however, not disputed by the petitioner/complainant that the deceased had left a suicide note. A photocopy of this suicide note, which is dated 04.07.2018, has been placed on record by the petitioner herself as Annexure P-3. A. On going through the contents of this note, it is revealed that the victim had held respondent No. 6 and his family, to be solely responsible for his taking drastic step as on the above mentioned date. This suicide note, which runs into six pages, contains details in the form of a questionnaire of the acts allegedly committed by respondent No. 6. This note was admittedly recovered by the police in the presence of the son of the complainant from the office of the victim. In this note, There is no whisper about the names of respondents No. 4 and 5, what to say about the acts committed by them, which amounted to abetting suicide by the victim. No doubt, it is also revealed from the record that just next day after the death of the victim, the present petitioner had recorded a statement and had sent a letter to the police making allegations that respondents No. 4 and 5 had been harassing the victim, by trying to extract money from him and the victim was

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very much disturbed due to that fact. However, the suicide note which is dated 04.07.2018 does not mention any such allegation.

18. It is also revealed from the record that on representations being filed by the petitioner, investigation of the case had been handed over, during the pendency of this petition, to an SIT supervised by a police officer of the rank of Inspector General of Police. Respondents No. 4 and 5 were found to be innocent and challan was presented against respondent No. 6 only, who has presently been chargesheeted and is facing trial for committing offence of abetment of suicide by the victim. The fact that respondent No. 4 along with his family members had been staying in the apartment owned by the husband of the petitioner since the year 2005 and had purchased the same in December, 2017 in the names of his wife and mother has not been disputed and it is also not disputed that the victim had borrowed an amount of Rs. 2 Lakhs from respondent No. 4 way back in the year 2005. The stand as taken by respondent No. 4 is that he was having cordial relations with the victim since long and also that the abovesaid apartment was purchased by his wife and mother by making payment of due sale consideration amount. As per the allegations, after purchase of the aforementioned apartment by the wife and mother of respondent No 4, the amount of Rs. 19 Lakhs had been transferred in the bank account of wife of respondent No. 4 and as alleged by the petitioner, the former had taken back the entire sale consideration amount from her husband by getting it transferred in the account of some persons as well as his wife. However, it is revealed that during the course of investigation, statements of persons in whose bank accounts (except that of the wife of respondent No. 4)

had been recorded by the investigating agency and these statements show that these persons stated that the said amount was transferred in their bank accounts by the victim on account of the transactions, which were taking place between them and had no relations with respondent No. 4. The investigating agency, after thorough investigation in the matter, had submitted challan report during the pendency of this petition. Respondent No. 4 was undisputedly posted as Deputy Commissioner of Police in Gurugram at the time when the vcitim committed suicide, however, during the course of investigation, he is shown to be transferred elsewhere and as discussed above, even the investigation had been transferred to an SIT headed by a police officer of the rank of Inspector General of Police. There is nothing on record to show that the investigation conducted by the SIT was tainted or biased one. No material has been placed on record to show that respondent No. 4, being a police officer, was responsible for influencing or controlling the investigation. Even otherwise, if the allegations in the petition as levelled against respondents No. 4 and 5 are considered to be correct on the face of the record, it is a debatable question as to whether a case for abetting suicide within the meaning of Section 306 of IPC has been made out against them or not? In view of the above discussed facts, this Court is of the considered opinion that no case has been made out warranting interference by this Court. Accordingly, the petition is dismissed.

19. However, it is clarified that the detailed discussion as made above shall not be treated as a finding on the merits of the case and learned trial Court shall continue with trial in accordance with law and will not be

influenced by the findings given in this order and even while considering the question of summoning any additional accused.

10.12.2024 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*