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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51641-2024 (O&M)
Date of decision: 06.11.2024

Parminder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR JUSTICE HARPREET SINGH BRAR

Present: Mr. Manuj Nagrath, Advocate
for the petitioner.

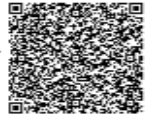
Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J.(Oral)

1. This petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') read with Section 447 of
BNSS seeking transfer of investigation of FIR No.193 dated 09.09.2024
under Section 108 of Bharatiya Nyaya Sanhita, 2023, registered at Police
Station City Jagraon, Ludhiana to some other district in the State of Punjab
and further to constitute a Special Investigation Team to conduct fair, proper
and impartial investigation in the FIR (*supra*).

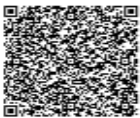
FACTUAL BACKGROUND

2. Briefly, the facts of the case as alleged by the prosecution, are



that about 09 years ago, the daughter of the petitioner namely Harpreet Kaur (deceased) was married to respondent No.7B i.e. Abninder Singh, who is a lawyer by profession. The private respondents- her in laws constantly harassed her and eventually turned her out of the matrimonial home. Thereafter, the complainant brought his daughter to his house. However, a month after the incident, respondent No.7B came to the house of the petitioner and started staying there. During this period, respondent No.7B purchased a plot in Raikot and transferred the same in the name of Harpreet Kaur. On asking of respondent No.7B the petitioner gave him Rs. 10,00,000/- to construct a house there. Post construction, respondent No.2 invited his parents (respondent No.6 and 7A) there. Respondent No.6 and 7A refused to allow Harpreet Kaur to reside in the same house as they accused her of taking their son away. On hearing this, Harpreet Kaur fainted, which scared them and caused them to run away. Respondent No.7B informed the petitioner on call and ran away as well.

3. Thereafter, respondent No.7B, without consulting the Harpreet Kaur or the petitioner, left the house in Raikot and started living with his parents. Respondent No.7B has entered into a deal to sell the house in Raikot and contacted Harpreet Kaur regarding the same. He got her to sign the papers at the time of registry by threatening her of dire consequences while boasting about his profession and influential contacts. He took Harpreet Kaur into confidence and bought another house in Jagraon in both their names.



When the in-laws of Harpreet Kaur found out about the same, they started harassing her. A relative of the petitioner namely Jaswant Singh called him and informed him that Harpreet Kaur had died. The petitioner and his family arrived at her matrimonial home and saw her body hanging by the ceiling fan. At the said time, none of the private respondents were found at the place of occurrence.

CONTENTIONS

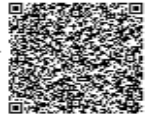
4. Learned counsel for the petitioner, *inter alia*, contends that the investigation is not being carried out in a fair manner as respondent No.7B has links with the local police. In fact, no member of the local Bar Association is agreeing to appear in his remand or bail matter. The statements of the witnesses are yet to be recorded, till date. Neither has the crime scene been inspected nor were respondents No. 7 to 9 implicated in the FIR(supra), in spite of the fact that a clear case of offence under Section 108 BNS is made out.

5. Learned State counsel, on instructions from ASI Balraj Singh, submits that respondent No.7B- husband of the deceased has been arrested and the investigation is being carried out in a fair and proper manner.

OBSERVATIONS AND ANALYSIS

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

7. A free and fair investigation is foundational to criminal



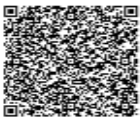
prosecution, marking the first significant step towards achieving the overarching goal of justice. The investigating officers play a pivotal role in the said process as they are charged with the duty to uncover truth objectively and aid the adjudication process. Therefore, it is imperative that their conduct is so pristine that it not only is unbiased in nature but also appear to be so. The investigating officers must act in a manner that is beyond reproach so as to uphold public confidence and reinforce faith in the criminal justice system.

8. Emphasizing that investigations must be conducted independently and without malice, a two Judge Bench of the Hon'ble Supreme Court in ***Babubhai Vs. State of Gujarat and others, 2010(12) SCC 254***, speaking through Justice Dr. B.S. Chauhan, observed as follows:

*"25. ...The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer "is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth". (Vide ***R.P. Kapur v. State of Punjab AIR 1960 Supreme Court 866; Jamuna Chaudhary &Ors. v. State of Bihar AIR 1974 Supreme Court 1822; and Mahmood v. State of U.P. AIR 1976 Supreme Court 69***).*

26. In ***State of Bihar v. P.P. Sharma 1991(2) S.C.T. 397***, this Court has held as under :

"Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism....Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the



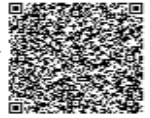
Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court.Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power....The word 'personal liberty' (under Article 21 of the Constitution) is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily..... An Investigating Officer who is not sensitive to the constitutional mandates may be prone to trample upon the personal liberty of a person when he is actuated by mala fides."

27. In Navinchandra N. Majithia v. State of Meghalaya &Ors. 2000(4) RCR (Criminal) 476 , this Court considered a large number of its earlier judgments to the effect that investigating agencies are guardians of the liberty of innocent citizens...

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29. In Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1, one of us (Hon'ble P. Sathasivam, J.) has elaborately dealt with the requirement of fair investigation observing as under :-

"..... The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional



mandate contained in Articles 20 and 21 of the Constitution of India....

It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner.

The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society....

The Court is not to accept the report which is contra legem (sic) to conduct judicious and fair investigation....

The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation..."

9. The role of an investigating officer demands utmost neutrality. They must pursue evidence impartially, without yielding to external pressures, prejudice, or preconceptions regarding both the complainant and the accused. It must be understood that the duty of the investigating officer is not to secure a conviction at any cost or be reduced as a mere mouthpiece for either party but to place accurate facts before the Court, so it can arrive at a just conclusion. Recently, a two Judge Bench of the Hon'ble Supreme Court in ***Maghavendra Pratap Singh @ Pankaj Singh Vs. State of Chattisgarh, 2024(2) CriCC 108***, speaking through Justice Sanjay Karol, made the following observations:

“38. *The Investigating Officer is the person tasked with*

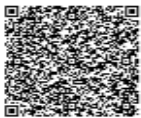


*determining a direction, the pace, manner and method of the investigation. In **Amarnath Chaubey v. Union of India (2021) 11 SCC 80**, it was observed that the police has a primary duty to investigate upon receiving the report of the commission of crime. In **Manohar Lal Sharma v. Union of India (2014) 2 SCC 532**, this Court observed that one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences to bring the offender to the book and facilitate the ultimate search for truth is one of the important duties the police has to perform. This is a statutory duty under the Cr.P.C. and is also a constitutional obligation ensuring the maintenance of peace and the upholding of rule of law.*

*39. On the responsibility cast on an officer investigating a crime, this Court in **Common Cause v. Union of India (2015) 6 SCC 332**, observed as under :*

“31. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness not only to the accused person but also to the victim of any crime, whether the victim is an individual or the State.”

10. The right to fair investigation and fair trial is not only restricted to the accused but extends to the victim and the society as well. More often than not, all attention is given to ensure fair play and fair investigation resulting in fair trial for the sake of the accused while little concern is shown to the victim and the society. Therefore, the onerous duty to maintain a middle ground to secure the fair and trial and fair investigation to the accused without sacrificing the interest of the victim and the society is cast upon the Courts. The judiciary must remain vigilant to uphold the sanctity of the legal



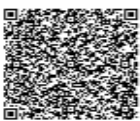
process and prevent abuse of power by law enforcement officials thereby fortifying the rule of law. It must invoke its supervisory powers to ensure that the cause of justice is not sacrificed owing to a flawed investigation.

11. Pertinently, the Supreme Court of the United States in *Snyder Vs. Commonwealth of Massachusetts, 1934(291) U.S. 97*, speaking through Justice Benjamin N. Cardozo opined as follows:

"Justice through due to the accused is due to the accuser also. The concept of fairness cannot be strained till it is narrowed to a filament. We are to keep our balance true."

12. This Court, in exercise of its inherent power under Section 482 of Cr.P.C., can entrust the investigation to independent agency to rule out any bias, in order to secure the ends of justice. If the circumstances are such that it would create a reasonable apprehension of bias in the minds of the onlookers, it is sufficient to invoke the doctrine of bias. The test for likelihood of bias and reasonable apprehension of bias are interchangeable and hence, the parameters for both can be construed to be similar.

13. It is a settled law that where a constitutional Court is satisfied that accusation is against a person who by virtue of his position or profession could influence the ongoing investigation and cause prejudice to the complainant or the victim, it can invoke its power to transfer the investigation to a different agency, especially when it becomes necessary to provide credibility to and instill confidence in the investigation or where such order may be necessary for doing complete justice and enforcing the fundamental

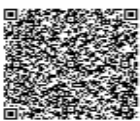


rights. A reference in this regard can be made to *Rashmi Behl Vs. State of Uttar Pradesh and others, 2015(2) RCR(Crl.) 45; State of Punjab Vs. Davinder Pal Singh Bhullar and others, 2012(1) RCR(Crl.) 126, State of Punjab Vs. Central Bureau of Investigation and others, 2011(9) SCC 182, R.S Sodhi Vs. State of U.P., 1994 AIR (SC) 38, Kashmeri Devi Vs. Delhi Administration, (1988) SCC (Cri.) 3 864 and Rubabbuddin Sheikh Vs. State of Gujarat (2010) 2 SCC 200.*

14. An unbiased investigation allows the prosecution and defense to operate on a level playing field. The quality of the investigation directly impacts the outcome of the trial and a substandard, biased investigation can lead to potential miscarriage of justice and undermine the judicial process. For this reason, the legislature, in its wisdom has drafted the Cr.P.C. and the BNSS, laying down a procedure for investigation that ensures adherence to the principles of fairness, transparency and calls for its scrupulous observance.

15. In that vein, a reference must be made to Section 173(2)(ii) of Cr.P.C., which corresponds to Section 193(3)(ii) & (iii) of BNSS, which is one amongst many other provisions that attempt to safeguard the rights of the victim during investigation. The aforementioned legal provisions are reproduced herein below:

Section 173, Cr.P.C.
Report of police officer on completion of investigation. –
(2) (i) -----



(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

Section 193, BNSS

Report of police officer on completion of investigation. –

(3) (i) -----

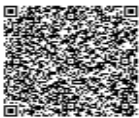
(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

16. A perusal of these provisions reveals that Section 193(3) of BNSS is an evolved version of Section 173(2) of Cr.P.C., since a specific stipulation has been made therein by means of sub-clause (3)(ii), which makes the police duty-bound to inform the victim or the complainant-informant about the progress of the investigation within a period of 90 days. The use of the word “*shall*” assigns it a mandatory nature. As such, it is clear that the victim or the complainant cannot be shunned aside after the registration of the case as they are significant stakeholders in the pursuit of justice.

CONCLUSION

17. In view of the discussion above, the present petition is disposed of with a direction to Respondents No.2 & 3 to constitute a Special



Investigation Team for conducting fair, proper and impartial investigation in FIR (*supra*), strictly in accordance with law.

18. Further, the Director Generals of Police for the States of Punjab and Haryana as well as Union Territory of Chandigarh are directed to issue necessary instructions for scrupulous compliance of Section 193(3) of BNSS (*erstwhile Section 173(3) of Cr.P.C.*) by the Investigating Officers, within a period of four weeks from the date of receipt of a certified copy of this order and submit a compliance report.

19. Pending miscellaneous application(s), if any, shall also stand disposed of.

06.11.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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