



CRM-M-28762-2016 (O&M)

-1-

203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28762-2016 (O&M)

Date of Decision:- 24.02.2025

Kanta Devi

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

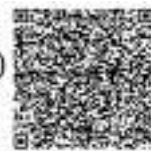
Present:- Mr. Vivek Salathia, Advocate
for the petitioner.

Ms. Ambika Sood, Addl. A.G. Haryana.

Mr. Keshav Partap Singh, Advocate
for respondent No. 5.Mr. J.S. Dahiya, Advocate with
Mr. Phool Kumar, Advocate
for respondent No. 6.Mr. Ravi Kamal Gupta, Advocate
for CBI-respondent No. 7.

AMARJOT BHATTI, J.

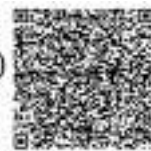
1. Petitioner Kanta Devi filed Criminal Miscellaneous Petition under Section 482 of Code of Criminal Procedure (Cr.P.C.) for issuance of directions to respondents No. 2 and 3 to trace the whereabouts of missing daughter of petitioner, who has been missing since 08.08.2016, as her life is in eminent danger at the hands of private respondents No. 5 and 6, who have not been associated into investigation by respondent No. 3, despite the fact his daughter was last seen in the company of said private respondents, with further prayer to issue directions to respondent No. 2 to ensure fair



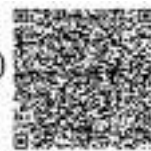
and impartial investigation in FIR No. 876 dated 09.08.2016 under Section 365 of IPC registered at Police Station Chandani Bagh, Panipat (Annexure P-2) and to protect life and liberty of petitioner and her family members, since after the disappearance of her daughter, they are receiving threats for dire consequences.

2. As per the facts of case, petitioner Kanta Devi filed application to Incharge, Police Post Sector 29, Panipat dated 08.08.2016 (Annexure P-1) giving information that her daughter namely Anu Kumari left the house i.e. NFL House No. A-359 allotted in the name of her husband who is working in CISF, West Bengal, for going to the shop of Vishal for collecting stitched clothes and she did not return home till date. She inquired from the friends and relatives to trace the whereabouts of her daughter but failed. She gave description of her daughter Anu Kumari age 20 years, wearing Orange colour Kurta, Blue colour lower and Blue colour Chappal, having fair complexion, height 5'6" and also disclosed her mobile phone No. 9050377881. On the basis of this application, subsequently FIR No. 0876 dated 09.08.2016 was registered under Section 365 of IPC at Police Station Chandnibagh, District Panipat (Annexure P-2).

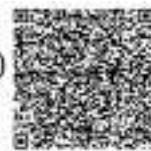
3. Learned counsel for petitioner argued that daughter of petitioner namely Anu Kumari was student of B.Com 3rd year, studying in I.B. College, Panipat. On 08.08.2016, she left the house at about 03:00 PM along with her brother Shubham for going to a cloth shop at Panipat. He dropped his sister and left for tuition. Petitioner was under the impression that Anu will return home after collecting clothes, however, she did not return home. She made inquiry from the shopkeeper, who disclosed that



Anu did not come to the shop. Even her phone was unreachable. Thereafter, she gave representation in the office of respondent No. 4 (Annexure P-1). Petitioner was given assurance that her daughter will return home. She shared photograph and number of her daughter with police. On the next day, FIR No. 876 dated 09.08.2016 (Annexure P-2) (supra) was registered. Police authorities did not investigate the case in a proper manner and they kept on telling that it was a case of runaway marriage and soon her daughter would inform her or would come to the police along with some order passed by competent Court. Petitioner was sure in her mind that her daughter was kidnapped by some persons and she suspected foul play. Police authorities refused to probe the matter. Thereafter, petitioner along with her husband and other family members started making inquiry about the whereabouts of her daughter from friends of her daughter and they came to know that her daughter was last seen in the company of respondent No. 5 who is a married man having two children and respondent No. 6 whose details were provided by friends of her daughter. Petitioner immediately approached the office of respondent No. 3 to interrogate aforesaid private respondents but police did not pay any heed to their request. Finding no other alternative, she along with her husband went to the house of private respondents to inquire about the whereabouts of their daughter. Said private respondents pleaded ignorance about the whereabouts of their daughter. Later on, she and her husband came to know that respondent No. 5 had accompanied their daughter to New Delhi on 01.08.2016 where he had taken her to the house of one Deepak. They further came to know that on 04.08.2016, respondent no. 6



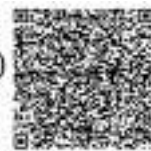
also accompanied their daughter to New Delhi to the house of said Deepak, who was staying in rented accommodation. It came to their notice that respondents No. 5 and 6 had a fight between themselves over the daughter of petitioner and respondent No. 6 even assaulted her daughter. Petitioner managed to get call detail record of her daughter and it was further revealed that there were frequent exchange of calls between her daughter and respondent No. 5. These facts were brought to the knowledge of respondent No. 3. Even then no action was taken and she was told in a casual manner that they were investigating the matter. There were frequent calls made by respondents No. 5 and 6 on 07.08.2016 and 08.08.2016. Petitioner and her husband confronted private respondents about the said calls and in return they started threatening the petitioner and her family members with dire consequences. Petitioner became suspicious about the involvement of respondents No. 5 and 6 in the disappearance of her daughter. Upon their repeated requests, respondent No. 3 called private respondents to police station where they admitted the fact that they had accompanied victim to New Delhi to the house of one Deepak. Thereafter, police authorities abruptly stopped the probe in this matter. Petitioner along with her husband went to the house of said Deepak and after meeting him, they became more suspicious about the involvement of private respondents No. 5 and 6. They also started receiving threats from private respondents. Respondent No. 5 told them that he was coming to their house along with 10-15 persons to settle the dispute. Police was informed, but that night respondent No. 5 did not come. Petitioner had also given representation to Superintendent of Police, Panipat dated 12.08.2013 (Annexure P-3). Till



date, whereabouts of her daughter are not known. Petitioner has strong apprehension that private respondents No. 5 and 6 are responsible for alleged disappearance of her daughter. Police authorities wasted crucial time and carried on investigation in an unscientific manner. Chances of tracing out of victim became negligible on account of lapse on the part of police. Ultimately, petitioner filed present petition.

4. Notice of petition was given to official respondents as well as private respondents. Official respondents filed their status report regarding investigation carried out by them from time to time. Respondents No. 5 and 6 also put up their appearance through their respective counsel(s). As per order dated 10.08.2017 passed by the Coordinate Bench, Standing Counsel for CBI also put in his appearance and filed his reply to present petition regarding transfer of investigation in present case to CBI for tracing out Anu Kumari daughter of present petitioner.

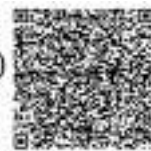
5. Learned counsel for petitioner argued present petition as per the facts detailed in petition and pointed out that no proper investigation was carried out by official respondents No. 2 to 4. Matter was reported to police immediately on the same date but official respondents treated complaint in a casual manner and did not inquire the matter in a proper manner. Petitioner along with her husband and family members started the probe and when they came across the names of private respondents No. 5 and 6, again police was informed but no concrete steps were taken by the police to inquire the matter from private respondents. Seeing the conduct of official respondents No. 2 to 4 as referred above, learned counsel for petitioner submitted that investigation in this case may be handed over to



CBI to trace out the victim Anu Kumari and to find out the persons who are responsible for missing of daughter of petitioner.

6. On the other hand, learned counsel representing official respondents No. 2 to 4 referred to status reports filed by them from time to time. There is status report dated 16.09.2016 filed by Deputy Superintendent of Police, Head Quarter Panipat in which it was mentioned that call detail record of Anu Kumari was obtained. Investigating Officer met one person namely Sumit who disclosed that he had seen Anu Kumari near her house in Vikas Nagar on 11.08.2016, whereas, she got missing on 08.08.2016. Police inquired about respondent No. 5 Ajit Rathi and came to know that Anu Kumari used to fetch milk from his dairy farm in Vikas Nagar and both of them developed relationship. It also came into light that Anu Kumari also worked as Teacher in Green Heritage School, run by father of said Ajit Rathi. It was also confirmed that on 01.08.2016, said Ajit Rathi accompanied Anu Kumari to Delhi to bring Rs. 10,000/- from Deepak. Regarding Sumit again it is mentioned in status report that he was student of B.Tech and his father was working in N.F.L. He also developed friendship with Anu Kumari and wanted to marry her. He allegedly provided financial aid to Anu Kumari. On 03.08.2016, he saw selfie of Anu and Ajit in her mobile phone and got angry. It is also confirmed that on 04.08.2016, he had also accompanied Anu to Delhi for going to the house of Deepak. At this stage, it was reported that Investigating Agency could not find any clue about abduction of Anu Kumari by somebody.

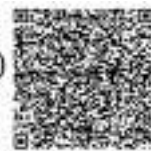
Again another status report dated 18.02.2017 was filed by Deputy Superintendent of Police (H.Q.) Panipat, District Panipat, where it



CRM-M-28762-2016 (O&M)

-7-

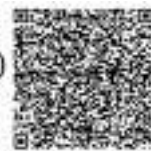
was reported that in aforesaid FIR No. 876 dated 09.08.2016 (supra), accused Sumit Nandal – respondent No. 6 was arrested under Section 354-D(1)(i)(ii), 506 of IPC and Section 3 of SC/ST Act. It was further made clear that Investigating Officer failed to trace Anu Kumari. At this stage, on the directions of this Court, mobile phone produced by petitioner was taken into police possession and it was sent to Cyber Cell office. The Incharge, Cyber Cell produced 24 pages containing messages and 6 pages of Facebook which were taken into police possession. Said messages were sent by creating account in the name of Seema Rani No. +917015823331 and Facebook chat in the name of Seema Rani were also annexed with report. Subsequently, status report dated 15.03.2017, status report dated 10.07.2018 were filed, confirming the facts earlier mentioned in status report. Apart from this, it was further found that IP address of mobile phone No. 9813275199 was found to be used by father of missing girl. According to antecedents of Sumit Nandal – respondent No. 6, he was involved in another FIR No. 597 dated 15.11.2013 under Section 302, 324, 307, 354-B, 120-B of IPC registered at Police Station Samalkha, Panipat. Again status report dated 20.09.2018 and status report dated 25.09.2019 were filed giving detail of efforts made by Investigating Agency to trace out the victim by distributing pamphlets, showing photographs in different cities of U.P, Rajasthan, H.P., Chandigarh, Bihar etc. Special Investigating Team (SIT) was also constituted to trace out the victim. During the pendency of present petition, status reports dated 05.11.2019 and 14.01.2020 were filed, to conduct Polygraph test of petitioner, her son Shubham and private respondents No. 5 and 6. Along with status report dated 31.01.2024,



Polygraph Examination Report dated 15.06.2022 (Annexure R-1) is also filed in Court.

Learned counsel representing official respondents No. 2 to 4 pointed out that thorough investigation was carried out by police to trace out Anu Kumari daughter of petitioner but she could not be traced out. Regarding the complaint of petitioner, on completion of investigation challan is already presented against respondent No. 6 in aforesaid FIR under Section 354, 506 of IPC and under the provisions of SC/ST Act. Therefore, petition filed by petitioner is without any basis and there is no requirement to transfer the investigation to CBI.

7. Learned counsel representing CBI, Chandigarh filed reply denying the facts for want to knowledge. Even the counsel representing CBI did not show interest to take over the investigation in this case by alleging that CBI has limited manpower and resources and is already overburdened with investigation of cases entrusted by this Court. The case in hand does not fall within the purview of guidelines laid down by Supreme Court of India in case titled “State of West Bengal & Ors. Versus The Committee For Protection of Democratic Rights West Bengals & Ors.” 2010(3) SCC 571. The Supreme Court has emphasized that transfer of investigation to CBI may be done in cases where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. In reply, it is further prayed that in view of the facts and circumstances of case, Court may pass appropriate order as it deem fit



CRM-M-28762-2016 (O&M)

-9-

in the interest of justice.

8. In the light of aforesaid facts and circumstances of case, it is evident that Anu Kumari daughter of petitioner Kanta Devi got missing on 08.08.2016 when she was dropped by her brother Shubham in the market at about 03:00 PM and thereafter, she never returned home. Petitioner filed representation to Incharge, Police Post Sector 29, Panipat (Annexure P-1) on the same day. On hue and cry raised by petitioner and her family members, FIR No. 876 dated 09.08.2016 (Annexure P-2) (supra) was registered. Dissatisfied with investigation carried out by respondents No. 2 to 4, Kanta Devi - petitioner filed present petition under Section 482 of Cr.P.C. on 17.08.2016. Facts narrated in petition clearly indicate that Investigating Agency took representation filed by petitioner in a casual manner, as a result petitioner along with her husband and other family members tried to search Anu Kumari at their own level. They managed to get call detail record and inquired the matter from friends of Anu Kumari, as a result came to know about respondents No. 5 and 6 who were in touch with Anu Kumari. Petitioner was running pillar to post seeking justice for her daughter. There are status reports called from time to time during the pendency of present petition and till date official respondents filed nine status reports as referred above and during this entire period failed to locate the whereabouts of Anu Kumari nor could reach at any logical conclusion.

9. It is kept in mind that Supreme Court has held time and again that power to transfer investigation must be used sparingly. Gainful reference can be made to the judgment of **Supreme Court of India (Large Bench)** case titled “**State of West Bengal & Ors. Versus The Committee**

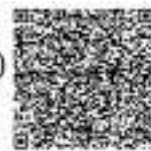
**For Protection of Democratic Rights West Bengals & Ors.” 2010(3)**

SCC 571, relevant Paras No. 45 and 46 runs as under :-

“45. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

46. 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. In so far as the question of issuing a direction to the 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 extra-ordinary 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 the 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.”

While dealing with direction matter for transfer of investigation from one agency to other, it is to be assessed as to current Investigating Agency portrayed inadequacy in investigation or prima facie appeared to be biased. Investigating Agency is required to investigate each case in a professional and ethical manner. Deficiency in investigation can be perceived from the facts and circumstances of case and manner in which investigation was handled by Investigating Agency.

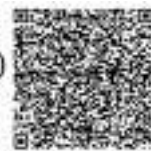
Supreme Court of India in case titled “**Bharati Tamang Versus Union of India and others**” **2014 CriLJ 156**, in Para No. 37 explained extraordinary and exceptional circumstances requiring reinvestigation, which runs as under :-

“37. From the various decisions relied upon by the petitioner counsel as well as by respondents counsel, the following principles can be culled out.

(a) The test of admissibility of evidence lies in its relevancy.

(b) Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

(c) If 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, Courts have to deal with the same with an iron hand appropriately within the framework of law.

(d) It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

(e) 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 and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

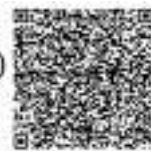
(f) While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

(g) In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

(h) In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo.”

10. Facts of the case as detailed in petition clearly indicate that initially there was reluctance on the part of Investigating Agency to probe the facts detailed in representation dated 08.08.2016 (Annexure P-1).

During the pendency of present petition, status reports are filed and



suddenly without recovery of Anu Kumari daughter of petitioner, challan is presented under Section 354-D, 506 of IPC and under the provisions of SC/ST Act, by leaving aside the probe regarding missing of Anu Kumari daughter of petitioner. It has come in status report dated 05.11.2019 and 14.01.2020 when Special Investigating Team took the decision to conduct Polygraph test on the petitioner Kanta Devi, her son Shubham on the one hand and private respondents Ajit Rathi and Sumit Nandal respondents No.5 and 6 on the other hand. Polygraph Examination Report conducted by Forensic Science Laboratory, Madhuban, Karnal, Haryana is Annexure R-3. As per report pertaining to Sumit Kumar, Kanta Devi and Shubham, Polygraph examination and analysis of polygrams were found to be truthful pertaining to same questions asked to them. However, regarding Ajit Rathi respondent No. 5, his response of issues No. 1, 2 and 4 was deceptive and regarding issue No. 3 no opinion was given. Despite aforesaid report, no further investigation was carried out. No doubt Polygraph test cannot be considered as an evidence but it can be considered as an expert opinion which can help the Investigating Agency to move in a particular direction to conduct further investigation. But in the case in hand, Investigating Agency concluded the investigation by presenting challan under the provisions of Section 354-D, 506 of IPC and under the provisions of SC/ST Act.

11. In the light of aforesaid factual position, it is evident that Investigating Agency conducted investigation in a casual manner. Facts and circumstances of case are covered under exceptional circumstances, when Court in order to prevent miscarriage of justice should direct transfer of



investigation to CBI – respondent No. 7 to discover the truth. Ultimate purpose of transfer of investigation is to uphold justice delivery system. Therefore, official respondents No. 2 to 4 are directed to transfer all records including material and evidence i.e. all statements recorded in the case to respondent No. 7 – CBI within 10 days from the date of receipt of copy of this order, with further direction to respondent No. 7 – CBI to assign the matter to an appropriate officer for expeditious investigation of matter in accordance with law.

With aforesaid observation, present petition is accordingly, disposed of.

12. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

24.02.2025

lalit

(AMARJOT BHATTI)
JUDGE

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