

(1998) 02 PAT CK 0096
In the Patna High Court
Case No : Cr.W.J.C. No. 6 of 1998

Bindhya Basini Mishra

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:

Arms Act, 1959 — Section 27
Constitution of India, 1950 — Article 226, 227
Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 364

Citation : (1998) 2 PLJR 173

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Shrawan Kumar, Rajiv Nayan Singh, Shola Shandhwar, Sanjee Jaiswal and Asit Kumar Jha, for the Appellant; S.D. Yadav for State, Mr. Rakesh Kumar for Respondents 3 to 5 and Mr. Amar Nath Singh, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—I have heard the learned counsel for the petitioner, learned counsel for the State, namely, G.R VIII, Mr. Rakesh Kumar for respondents 3, 4 and 5, and Mr. Amar Nath Singh, learned Additional Standing Counsel, for respondent No. 6. By this application, the petitioner has prayed for issuance of a writ of mandamus commanding upon the respondents 3 to 5 to institute and investigate the case arising out of Barwadih P.S. Case No. 56 of 1997 relating to the murder of late B.N. Mishra, Superintending Engineer, North Koel Dam Construction Circle, District Palamau.

2. The short facts giving rise to this application are as follows :-

Late B.N. Mishra, Superintending Engineer, North Koel Dam Construction Circle, Mandal, district Palamau, while on duty, was abducted on 16.8.1997 by armed extremists and was taken to his office where several papers of the office were put on fire and he was shot dead in his office. On the next day, i.e. on

17.8.1997, at about 11 A.M. the dead body was recovered at a distance of about 1 km from his official residence and accordingly, the police registered Barwadih P.S. Case No. 56 of 1997 for offence under sections 147, 148, 149, 452, 364, 497, and 302 of the Indian Penal Code and Section 27 Arms Act read with section 3/4 Explosive Substance Act. Immediately after the institution of the case, the State Government issued a notification u/s 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "the Act") giving its consent for investigation of the case by the C.B.I, by a notification as contained in Annexure-8 dated 21.8.1997. The petitioner who is the widow of the deceased Superintending Engineer remained waiting for a notification u/s 5 of the Act. However, since no notification was issued by the Union of India in exercise of its power u/s 5 of the Act, the petitioner approached this Court by filing this writ application on 6.1.1998 almost after four months of the institution of the case by the State Police.

3. Learned counsel for the petitioner submitted that even if there is no notification u/s 5 of the Act by the Central Government, the Central Government and the C.B.I, authorities may be mandated to investigate the case as it involves a question of public interest. The learned counsel further submitted that the case at hand is a sensitive case and since the State Government has already issued notification u/s 6 of the Act giving its consent, it was incumbent upon the Central Government to issue a notification u/s 5 of the Act enabling respondent Nos. 3 to 5 to investigate the case. The learned counsel alternatively submitted that In view of the public interest vis-a-vis the interest of the petitioner whose husband has been murdered must be safeguarded in exercise of the power of this Court under Articles 226 and 227 of the Constitution of India.

4. It appears that immediately after the filing of this application, the counsel for the C.B.I, was directed vide order dated 7.1.1998 to take instruction and to file counter affidavit stating therein as to whether the C.B.I. has proceeded with the investigation in the matter. In compliance of this Court's order dated 7.1.1998, a counter-affidavit has been filed on behalf of respondents 3, 4, and 5, the C.B.I, authorities, stating therein, inter alia, that due to extreme pressure on the available resources of the C.B.I, because of large number of referred cases with it, the C.B.I, is not in a position to take up investigation in respect of the present case and in this regard the C.B.I, has already communicated its inability to take up the present case to the Department of Personnel & Training, Government of India as back as in the month of October, 1997.

5. Having seen the counter-affidavit filed by the C.B.I, this Court vide order dated 22.1.1998 directed the Additional Standing Counsel for the Central Government to file a counter affidavit as to whether the notification u/s 5 of the Act has been issued by the Central Government. The learned Additional Standing Counsel, however, file counter-affidavit on 5.2.1998 stating therein, inter alia, that, after receiving the notification issued by the State Government u/s 6 of the Act, it requested the State Government on 9.9.1997 to send a detailed

background notes of the case along with the details of the investigation carried out by the State Police for further necessary action. However, no reply was sent by the State Government to the Ministry of Home affairs. The Government of India thereafter consulted the C.B.I, and seeing the inability of the C.B.I, to investigate the case due to extreme pressure no notification as required u/s 5 of the Act was issued by the Union Government handing over the case to the C.B.I, for investigation. However, there is nothing in the counter-affidavit of the Union of India that such information declining the request of the State Government for issuance of the notification u/s 5 of the Act was ever communicated to the State Government.

6. Now, coming to the prayer made in the writ application, it appears to me that somehow or the other the case at hand is a sensitive case as one of the Government functionaries has been brutally murdered while on duty by the so-called extremists and it has become a question of public interest as the State functionaries are frightened to function in such a state of affairs where they have danger to their lives. It further appears to me that the jurisdiction of this Court under Articles 226 and 227 of the Constitution has been invoked by the widow of the deceased Government functionary not only for investigation of the case by the C.B.I, but also for doing complete justice in the matter restoring the confidence in the Government functionaries.

7. The question, however, arises as to whether the investigation in this case is required by the C.B.I. I have already noticed above that the alleged occurrence has taken place on 16.8.1997 and the case was registered on the next day, i.e., on 17.8.1997, by the State police and the State Government without proceeding with the investigation issued a notification u/s 6 of the Act giving its consent for investigation of the case by the C.B.I, on 21.8.1997. Till date admittedly the investigation has not been taken up in Barwahih R.S. Case No. 56 of 1997 relating to brutal murder of late B.N. Mishra. It is the primary duty of the State Government and also the Central Government to protect the life and property of its citizen. Even when the valuable life of a Government functionary has been taken away by the outlaws as back as in the month of August, 1997, the culprits have not yet been brought to book. In no case, the culprits should be spared and the State Government and also the Central Government were duty bound to apprehend them so that the real culprits may not go unpunished. In my opinion, it appears that the State Police is not proceeding with the investigation in such a sensitive case, the confidence of the Government functionaries has shaken and it would be the duty of this Court in exercise of its power under Article 226 of the Constitution to do complete justice for securing the ends of justice and, in that view of the matter, in my opinion, the investigation of the case is required to be done by the C.B.I. Counsel for the respondents, however, are not questioning the jurisdiction of this Court to issue a mandamus commanding upon the respondents to get this case investigated by the C.B.I.

8. So far as the jurisdiction of this Court under Article 226 of the Constitution is

concerned, in my considered view this will be also one of the jurisdiction of this Court to mandate the respondents to investigate this case by the C.B.I, for doing complete justice in the matter. In the case of State of West Bengal and Others Vs. Sampat Lal and Others, , the apex Court has observed :

In our considered opinion section 6 of the Act can not apply when the Court gives a direction to the C.B.I, to conduct investigation and counsel for the parties rightly did not dispute this position."

In the case at hand, there is already a notification issued by the State Government u/s 6 of the Act. However, no such notification as required u/s 5 of the Act has been issued by the Central Government, the result being that the case is not being investigated either by the State Police or by the C.B.I. Since the investigation of the case at hand is still hanging in fire, in my opinion, it would be well advisable for this Court to issue a writ of mandamus commanding upon the respondents to get the case investigated by the C.B.I.

9. Recently, this Court in the case of Sushil Kumar Modi and Others Vs. State of Bihar and Others, has held that this Court has jurisdiction to issue a writ of mandamus commanding upon the respondents in exercise of its power under Articles 226 and 227 of the Constitution for doing complete justice relying upon the decision of the Supreme Court in Sampat Lal's case (supra).

10. In the circumstances noticed above and also seeing the situation that the case is neither being investigated by the State Police in view of the notification issued by the State Government u/s 6 of the Act nor the same is being done by the C.B.I, for sanction of the Central Government u/s 5 of the Act, in my opinion, the prayer made on behalf of the petitioner for investigation of the case by the C.B.I, must be allowed. Having heard the counsel for the parties and considering the respective counter-affidavits filed by the respondents, I hereby direct respondents Nos. 3 to 5 to investigate Barwadih P.S. Case No. 56 of 1997.

With the aforesaid direction, this writ application is allowed.