

(2018) 05 MP CK 0120

In the Madhya Pradesh High Court

Case No : WRIT PETITION NO.6454 OF 2015

Brajmohan S/O Laxminarayan Dhakad

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174
Indian Penal Code, 1860 — Section 302

Citation : (2018) 05 MP CK 0120

Hon'ble Judges : VIVEK RUSIA, J

Bench : Division Bench

Advocate : Abhilash Vyas, A.S.Sisodiya, Dharmendra Chelawat

Final Decision : Dismissed

Judgement

THE petitioner has filed the present petition seeking action against the culprit who are behind the death of his son "Gaurav Dhakad. He is also seeking direction that the investigation be done by CBI.

[2] According to the petitioner, his son Gaurav went to the house of his friend Ayush Jain, resident of 3, Sneha Nagar, Ujjain on 16.08.2009. At that

time the petitioner was attending the function in the premises of Gas Authority of India (GAIL) along with his wife and younger son. He received

an information on telephone that his son has fell down and taken to the hospital. He immediately rushed to the Sanjeevani Hospital along with

G.K.Dharma and U.S.Pendro and there he was informed that his son has expired. Then he enquired from Ayush Jain about the cause of death. He

informed that his son Gaurav consumed one Banana and immediately fell down and died. The postmortem was conducted in which some poisonous

substance called "Chlorpyrifos" was found in the stomach. Ayush Jain could

not give any justification as to how that poisonous substance came in the stomach of his son because Gaurav and Ayush both had consumed the Banana. The petitioner also noticed certain abnormal things, like part of his son was found changed. The poisonous substance which was found inside the stomach was normally used in plants and vegetables. His urinary bladder was also found empty. The petitioner immediately submitted a representation to the Government for referring the investigation to the CBI. The petitioner also filed Writ Petition No.7130 of 2012 before this Court which was disposed of vide order dated 18.12.2013 with the direction to the Government of Madhya Pradesh to get the investigation conducted in respect of the death of the son of the petitioner. The petitioner has also submitted an application for Narco test of the father and mother of Ayush Jain. The said Narco test was conducted in which no offence said to have been committed was found. According to the petitioner instead of Narco test, the Respondents conducted Lie Detection test. The Narco test as well as Lie Detection test of Ayush Jain was not conducted as he was minor at that time. At present the age of Ayush Jain is more than 20 years, therefore, there is no impediment in conducting his Narco test or Lie Detection test. Certain questions are in the mind of the petitioner which remain unanswered as to how and under which circumstances the poisonous substance came in the stomach of his son and who is responsible for that. Since last 6 years he is suffering from such mental agony, therefore, the present petition is filed seeking investigation by CBI.

[3] After notice in this petition, the Respondent Nos.1 and 2 filed the return. According to the Respondents, the son of the petitioner Gaurav aged about 15 years died on 16.08.2009 at near about 11.00 PM. He was brought and declared dead in Sanjeevani Hospital and on information sent by the hospital, a Marg No.65/2009 was registered under Section 174 of the Code of Criminal Procedure. The dead body of son of the petitioner was taken into custody and sent for the postmortem. In the Marg enquiry, the statements of the wife of the petitioner were taken. The petitioner submitted an application to the Home Minister in respect of the independent investigation after the period of 9 months from the date of incident. On his representation, the Government has referred the dispute to the CID with the direction to police to hand over the Marg diary to the CID. The CID has

again conducted a detailed investigation and found that no offence said to have been committed. The Narco test of the father and mother of Ayush Jain

was conducted in which also no offence said to have been was found. The C.S.P., Ujjain has submitted a report to the Sub Divisional Magistrate,

Ujjain with the request to close the case. The Sub Divisional Magistrate after examination of entire documents, pertaining to the investigation, has

approved the closure of investigation. It was found that the father and mother of Ayush Jain are not having any criminal background and record.

There was no motive behind the murder of son of the petitioner. Ayush Jain and deceased Gaurav were closed friends since childhood and there was

cordial relation between their families. The police has never tried to save the father and mother of Ayush Jain. After Marg investigation, it was found

that Gaurav himself has consumed a poisonous substance in his house and no body has gave him and prayed for dismissal of the writ petition.

[4] The CBI has also filed brief reply by submitting that the police as well as CID have conducted the detailed investigation and there is no scope for

further investigation in this matter through CBI, therefore, the case may not be referred to CBI.

[5] The petitioner has filed the rejoinder to the return filed by the Respondents/ State.

[6] Shri Abhilash Vyas, learned counsel appearing for the petitioner has vehemently argued that in the police as well as in CID investigation the fact

has not come out that how the poisonous substance came inside the stomach of son of the petitioner, therefore, it is a fit case for referring to the CBI

for further investigation. The Respondents have wrongly submitted the closure report. In support of his contention, he has placed reliance over the

judgment passed by the Apex Court in the case of Zorawar Singh v/s Gurbax Singh Bains [(2015) 2 SCC 572] in this case a petition filed by father

alleging pre-planned murder of his son which was given the colour of a road accident in FIR and police investigation. The Supreme Court has not only

awarded the compensation as well as directed the Superintendent of Police concerned to conduct thorough investigation after adding the charge under

Section 302 of IPC. Learned counsel has also placed reliance over the judgment passed in a case of Dharam Pal v/s State of Haryana [AIR 2016 SC

618] in which the Apex Court has held that the Constitutional Court can direct for further investigation or investigation by some other Investigating

Agencies in order to arrive the satisfaction of fair investigation and the fair trial as it is the bounden duty of a Court of law to uphold the truth. He

has further placed reliance over the judgment of Division Bench of this Court in the case of Ramswarup v/s State of M.P. [2011 (2) MPHT 307] in

which this Court has held that the High Court is empowered to direct investigation by CBI in respect of disappearance of the petitioner's brother who

was taken by the Anti Terrorism Squad, Mumbai. He has also placed reliance over the judgment of Gwalior Bench of this Court in the case of

Kedarnath Sharma v/s Union of India [2008 (1) MPHT 233] where the investigation was transferred to CBI in the case of death of daughter of the

petitioner who was working as Sub Inspector in District Bhind.

[7] Shri A.S.Sisodiya, learned Govt. Advocate appearing on behalf of the Respondent Nos.1 and 2/State argued that in the case of State of West

Bengal v/s Committee for Protection of Democratic Rights, West Bengal [(2010) 3 SCC 571] it has been held that extraordinary power in respect of

issuance of direction in regard to investigation by CBI must be exercised sparingly, cautiously and in exceptional situations and where it becomes

necessary to provide credibility and confidence in investigations or where the incident may have national or international ramifications. The details

investigation has been done by police as well as by CID in which it was found no offence said to have been committed, hence the proposal for

closure was sent and the same was duly approved by the Magistrate. Per contra Mr. Dharmendra Chelawat, learned counsel for the C.B.I. has

submitted that C.B.I. is overburdened and is unable to take the investigation of this case in its hands. He further submitted that since the CID did not

find any credible material during investigation and submitted final report in the matter, therefore at this stage no useful purpose would be served to

handover the investigation to the C.B.I. He further submitted that the incident had taken place in the year 2009 and after a lapse of about more than

eight years nothing remains for the C.B.I. to investigate. He vehemently opposed the transfer of investigation to C.B.I.

[8]. No doubt, C.B.I. is overburdened due to many other important cases but due to the reason that C.B.I. has limited manpower and is therefore

unable to take investigation in its hand cannot be a ground for not transferring the investigation to C.B.I. The Hon'ble Apex Court in the case of Pooja

Pal v/s Union of India,Â reported in (2016) 3 SCC 135 has held as under :-

84. As every social order is governed by the rule of law, the justice dispensing system cannot afford any compromise in the discharge of its

sanctified role of administering justice on the basis of the real facts and in accordance with law. This is indispensable, in order to retain and stabilise

the faith and confidence of the public in general in the justice delivery institutions as envisioned by the Constitution.

85. As succinctly summarised by this Court in Committee for Protection of Democratic Rights⁴, the extraordinary power of the constitutional courts in

directing CBI to conduct investigation in a case must be exercised sparingly, cautiously and in exceptional situations, when it is 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 for enforcing the fundamental rights. In our comprehension, each of the determinants is consummate and

independent by itself to justify the exercise of such power and is not interdependent on each other.

86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the

basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his

near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged

that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well demarcated contours of crime

detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the

courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage

of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is

to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

87. Any criminal offence is one against the society at large casting an onerous responsibility on the State, as the guardian and purveyor of human rights

and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review,

a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self-imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

88. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in *Vinay Tyagi v. Irshad Ali* [(2013)5SCC762] to

encompass two imperatives; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has

to be to bring out the truth of the case before the court of competent jurisdiction.

89. Prior thereto, in the same vein, it was ruled in *Samaj Parivartan Samudaya v. State of Karnataka* [(2012)7SCC407] that the basic purpose of an

investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It

held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher

degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the

investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would

result in error of jurisdiction.

90. That the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial was reiterated by this Court in *Rattiram v. State of*

M.P. [(2012)4SCC516] It was postulated that the criminal jurisprudence with the passage of time has laid emphasis on victimology, which

fundamentally is the perception of a trial from the viewpoint of criminal as well as the victim when judged in the social context.

91. This Court in *NHRC v. State of Gujarat* [(2009)6SCC767] did proclaim unambiguously that discovery, investigation and establishment of truth are

the main purposes of the courts of justice and indeed are *raison d'être* for their existence.

92. That the pre-eminence of truth is the guiding star in a judicial process forming the foundation of justice, had been aptly propounded by this Court in

Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira [(2012)5SCC370]. It was ruled that the entire judicial system had been created only to discern and find out the real truth and that the Judges at all levels have to seriously engage themselves in the journey of discovering the same.

Emphasising that the quest for truth is the mandate of law and indeed the bounden duty of the courts, it was observed that the justice system will acquire credibility only when the people will be convinced that justice is based on the foundation of the truth. While referring with approval, the

revealing observation made in Ritesh Tewari v. State of U.P. [(201)10SCC677] that every trial is voyage of discovery in which truth is the quest, the

following passage of Lord Denning scripted in Jones v. National Coal Board [(1957)2QB 55] was extracted in affirmation: (Maria Margarida case38,

SCC p. 384, para 39)

39. It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or

prejudice, but clear to see which way lies the truth.' (Jones case40, QB p. 64)

93. A strain of poignance and disquiet over the insensitive approach of the court concerned in the textual facts in the context of fair trial in the

following observations of this Court in Vinod Kumar v. State of Punjab [(2015)3SCC 220] sounds an awakening caveat: (SCC p. 227, para 3)

3. The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious

trial Judge to ignore the statutory command, not recognise 'the felt necessities of time' and remain impervious to the cry of the collective asking for

justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that a civilised and orderly society thrives on

the rule of law which includes 'fair trial' for the accused as well as the prosecution?

94. The observations though made in the backdrop of repeated adjournments granted by the trial court, chiefly for cross-examination of a witness

resulting in the delay of the proceedings, the concern expressed is of overarching relevance demanding sentient attention and remedial response. The

poser indeed stems from the indispensable interface of the orderly existence of the society founded on the rule of law and "fair trial" for the accused

as well as the prosecution. That the duty of the court while conducting a trial is

to be guarded by the mandate of law, conceptual fairness and above

all its sacrosanct role to arrive at the truth on the basis of material brought on record, was reiterated.

95. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its

foremost duties, it was underscored in *Manohar Lal Sharma v. Union of India* [(2014) 2 SCC 532] that the aim of investigation is ultimately to search

for truth and to bring the offender to book. The observations of Lord Denning in his rendering in *The Due Process of Law*, First Indian Reprint, 1993,

p. 102 were alluded to as under: (SCC p. 553, para 25)

25. ... 'In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of

police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to

justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They

must not search a man's house without authority. They must not use more force than the occasion warrants.â??

[9] It is true that despite wide powers conferred by Article 226 of the Constitution, while passing any order, the Court must bear in mind certain self-

imposed limitations on the exercise of these Constitutional powers . In so far as the question of issuing a direction to the CBI to conduct investigation

in the present caseÂ 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 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, as has been held by Hon'ble Apex Court in the case of

State of West Bengal v/s Committee of Protection [2010 (3) SCC 571]. [10] The facts which came out afterÂ the investigation conducted by the

CID are that on 16.08.2009 near about 7.00 PM the son of the petitioner Gaurav aged about 15 years went to the house of his friend Ayush Jain s/o

Arun Jain aged about 14 years. At that time both were the students of 9th class and close childhood friends. While watching the TV,Â Ayush Jain

brought 2 bananas and out of which one was given to Gaurav. Both consumed the Banana at the same time but Gaurav fell down from the chair and

became unconscious. Immediately Ayush Jain called his father and they immediately took him to Sanjeevani Hospital where he was declared dead.

On a report of hospital, a Marg was registered and the postmortem was conducted by Dr. B.B.Purohit. The viscera was preserved and sent to the

FSL Rao in the report Chlorpyrifos, an organophosphate insecticide, was found. Immediately the statements of petitioner, his wife, Ayush Jain, Smt.

Nilima Jain, Prateek Mittal and others were recorded. On the spot nothing suspicious poisonous substance was found. There was no enmity between

the family of Gaurav and Ayush Jain. On the request made by the petitioner, the case was handed over to CID for re-investigation. A Lie Detection

test was conducted and the answer to questions asked to father and mother of Ayush Jain were found truthful. The CID has investigated the matter

from all angles and found that no offence has been committed in respect of death of son of the petitioner. The Sub Divisional Magistrate has granted

approval for closure of the investigation. The petitioner as well as his wife did not make any allegation against Ayush Jain and his father and mother.

The only intention behind filing of this petition to know the truth behind the death of his son. The petitioner wants to know how theÂ chlorpyrifos

came in the body of his son whether he himself consumed or some bodyÂ forced him to consume. Admittedly this query has not been answered in

this investigation but behind every offence there has to be some motive. The police has tried to enquire the motive behind the unnatural and untimely

death of son of the petitioner but no such motive has been found. The petitioner has also not pointed out the finger or suspicion against any one. But

the fact remains that before the death, the petitioner's son as well as his friend both have consumed Banana but unfortunately the son of the petitioner

has died. Therefore, in the above circumstances it is not a fit case which should be referred to the CBI for investigation as more than 9 years have

been passed. Twice investigation has been done. There is no allegation of mala-fide against the police as well as CID.

[11] The petition is accordingly dismissed.