

(2010) 04 P&H CK 0411
In the Punjab And Haryana At Chandigarh

Charan Singh Chahal	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 174, 482
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2010) 04 P&H CK 0411

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gurdev Singh, J.—Petitioner, Charan Singh Chahal, has invoked the inherent jurisdiction of this Court by means of this petition u/s 482 of the Criminal Procedure Code (hereinafter referred to as "the Code"), for issuance of a direction to the respondents to hand over the inquiry to the CBI or to some other independent agency for inquiring into the murder of his son Sonu Chahal, who was an international boxer, as the police is conniving with the accused persons and is not fairly inquiring into the matter and is not taking steps to arrest the accused persons. According to the petitioner, his son Sonu Chahal deceased was a student of BA Part-III, an international boxer and was a shining star in the world of boxing, having won medals at national and international levels. On the night of 12.3.2006, he was found dead in SAI Hostel in suspicious circumstances. He was found hanging with the ceiling fan with the help of a skipping rope. The police is trying to make it a case of suicide. In fact, he was murdered by four suspected persons. The police failed to register any case and take appropriate steps against the suspects. It was only when the murder was highlighted in the newspapers and he repeatedly approached the higher authorities that FIR was registered on 11.5.2006 under Sections 302 and 120B IPC, vide FIR No. 238. The police is conniving with the accused persons and is not interested in solving this murder. On 12.3.2006, there was a marriage reception party at Bhiwani

which was attended by Sonu Chahal and 10/11 other boxers. The deceased was dancing and singing in the party and was very happy. At about 10.30 PM, he received a telephonic call and left the party in between. It was Narender Sangwan and three other accused, who hatched a conspiracy to murder him. In the reception party that Narender Sangwan was armed with an illegal pistol also. The deceased, alongwith Narender Sangwan, was playing in the junior category, though the latter had already crossed the age of his entitlement to play in the junior category. In order to become eligible to play in the junior category, he reappeared in the matriculation examination from National Institute of Open School, New Delhi in the year 2003 by giving his date of birth as 15.2.1987, whereas he had already passed the matriculation examination in the year 1999 from CBSC and 10+2 examination from the same Board in the year 2001 by giving his date of birth as 15.3.1984. Jagdish Singh Coach, who is one of the accused in this case, got admitted Narender Sangwan in the hostel with the forged documents, though he was fully aware of his activities. When Sonu Chahal came to know about the said forgery, he objected to the said Coach and on that account the Coach and Narender Sangwan were nursing a grudge against him. The said criminal conspiracy was hatched by the accused i.e. Jagdish Coach, Narender Sangwan, Pawan Rathi boxers and the chowkidar. The police connived with the accused persons and gave information to him (petitioner) after 6 hours of the occurrence. Even the Medical Board of the doctors, which conducted the post-mortem examination on the dead body of the deceased, was influenced by the accused persons. Even the viscera was kept lying with the police for 5/6 days and was sent thereafter. The role of the police remained suspicious from the very beginning. Even the clothes of the deceased kept by it, which could be a material evidence in this case. The police did not cooperate with the FSL team, which was called to the spot after 3 days of the occurrence and was not provided with the necessary documents. The metallic wire/rope, with the help of which the deceased is alleged to have committed suicide, was found to be length of 50 inches. Only a single knot was found at its both ends. The height of the deceased was 67 inches. The distance between the chair on the double bed and the ceiling fan was 87 inches. Thus, it was impossible for the deceased to commit suicide with the help of that rope and it was not easy to tie knot in such metallic wire. In fact, the accused wanted to remove the deceased from the scene, who was a boxer of international category. The petitioner made a number of representations to the police for conducting investigation properly but to no effect. He had been continuously trying to get the case of murder registered against the accused but the same was not done by the police, nor any accused was arrested. He has lost confidence in the police and hence prayed for directing the respondents to hand over the inquiry to the CBI or to some independent agency.

2. Notice of motion was issued to the respondents. They filed reply. They contended that the thorough investigation of the case established that the son of the petitioner committed suicide on the night of 12.3.2006, after consuming liquor. No evidence was found which may indicate towards any foul play in

untimely and unfortunate death of the deceased. The police had reached the spot after receiving information regarding the death of the deceased. The inquest proceedings were conducted u/s 174 of the Code, in the presence of the petitioner and the dead body was sent for post-mortem examination. During the inquest proceedings, the petitioner never raised any such suspicion. The viscera of the dead body was sent to the Chemical Examiner on 20.3.2006 but was returned with some objections and was again sent after removing those objections on 22.3.2006 and the Chemical Examiner made his report that the deceased had consumed liquor and there was 80.5 milligrams of alcohol in his blood. Even the team of the FSL was called on 17.3.2006 for investigation of the spot. No doubt, it gave its opinion on 15.4.2006 that possibility of foul play cannot be ruled out. Keeping in view that the petitioner was not satisfied with the inquiry of the police, the above said FIR was registered. The matter was investigated by CIA Inspector under the direct supervision of DSP, Hansi. During the investigation expert's opinion regarding the death of the deceased was obtained from the Head of Department of Forensic Medicine, PGI MS, Rohtak, who also concluded that the cause of death was hanging, which was ante-mortem in nature. During the investigation, it was revealed that the deceased had love affair with his fellow boxer for the last 2/3, years which was being objected by the wife of the petitioner, as the girl was from another caste. Due to that reason, the family of the girl broke the relations with the family of the petitioner and the deceased started consuming liquor and used to talk to the girl on cellphone after consuming the same. In the meantime, that girl developed friendship with some other boy and the deceased used to tell his friends that if the girl did not marry him, he will commit suicide. On the date of occurrence also, he consumed liquor with his friends and threatened the room mate of his former girl friend, while talking on cellphone No. 9416649229 that he would commit suicide, in case she would not marry him. The deceased was seen in the reception party at about 10.30 PM. When his fellow boxer came to the hostel at 1/2 AM, he was found hanging from the ceiling fan.

3. I have heard learned Counsel for both the sides.

4. It has been submitted by learned Counsel for the petitioner that the investigation was not conducted by the investigating agency in right perspective. Throughout it was done from the angle that the deceased committed suicide. The investigation was never conducted from the angle that he was murdered. There are such like circumstances that it becomes doubtful if it was a case of suicide. The photographs taken on the spot itself suggest that it is not a case of suicide. The statement of Narender Sangwan, purported to have recorded during the investigation, becomes doubtful from call detail sheet of the cellphone from which that accused talked to the deceased. The time and the place of those calls itself suggest that this accused was very much present in the hostel when the deceased is said to have committed the suicide. It was not possible for the deceased to commit suicide with the help of such a rope, which was not of sufficient length to hang him with the ceiling fan. Even the team of FSL which

visited the spot and conducted various tests came to the conclusion that there was some foul play in the death of the deceased. The contents of the post-mortem report stands falsified from the photograph of the deceased. The accused had the motive to cause death of the deceased, who was a promising boxer and was bound to eliminate Narender Sangwan in the category of boxers of that age and in order to contest in that category, he had forged the matriculation and higher secondary certificates. All these facts suggest that the investigation was not done properly by the investigating agency and in order to find out the truth, it is necessary that the case be investigated by an independent agency and the only hope of the petitioner is with the CBI.

5. On the other hand, it has been submitted by the learned State counsel that a thorough investigation was conducted into the matter and it was found that the deceased committed suicide on account of frustration as his girl friend failed to perform marriage with him on account of her relation with another boy. It cannot be concluded only from the details of the cellphone calls of the deceased and Narender Sangwan that the latter was present in the hostel when the occurrence took place. It is very much clear from the statement of that witness, recorded u/s 161 of the Code, that he was away to attend the reception party and when he came back he found that the deceased had committed suicide. The investigation was conducted from every angle and it was found to be a case of suicide. The petitioner was joined in the inquest proceedings conducted u/s 174 of the Code and at that time, he had specifically stated that he had no suspicion regarding the death of his son. The story put forwarded by him is afterthought. There is no question to transfer the investigation to another agency or the CBI.

6. I had the opportunity to go into the minute details of the case with the help of the counsel for both the sides. The materials, which is being relied upon by the petitioner, have been annexed with the petition itself and the documents being relied by the respondents are part of their reply. In addition to that the other evidence collected during the investigation was also gone into by going through the police file, which was brought by the police officials, who attended the Court with the State counsel. There is no denial of the fact that during the inquest proceedings u/s 174 of the Code, the statement of the petitioner was recorded and at that time, he had stated that he had no manner of doubt regarding the death of his son. The inquest proceedings are only meant for determining the cause of death. Even if such a statement had been made by the petitioner, that is not to operate as a estopple against him. The mental condition of the father at the time of the death of his young son can well be imagined. Immediately after the death of his son, it was not possible for him to ascertain as to whether it was a case of suicide or homicide. It is only on the basis of the facts, which surfaced subsequently, that a doubt developed in his mind regarding the death of his son.

7. The most important document, which points the needle of suspicion regarding death of the deceased being homicidal, is the report of Ravinder Pal, Senior Scientific Officer of FSL, Haryana. He was heading the scientific team of that

Laboratory, which visited the spot after the occurrence. All the facts observed at that place are incorporated in his report Annexure P/5. On the basis of the kind of rope used and the knots therein and the position of the dead body in the photograph, it was opined by that team that the possibility of foul play could not be ruled out. The respondents are relying upon another report of the Department of Forensic Medicine, PGIMS, Rohtak, in which it is mentioned that on the consideration of the post-mortem report and the photographs of the deceased, taken at the place of the recovery of the dead body, the cause of death was hanging, which was ante-mortem in nature. It is mentioned in the report that the loss of continuity of ligature mark is visible on the posterior aspect of neck in the photograph. In the post-mortem report (Annexure P/20) also, it is mentioned that on posterior aspect of neck no ligature mark were seen. As per that report, the cause of death was asphyxia due to hanging. The investigating agency never tried to investigate the matter as to ascertain whether the deceased hanged himself or was hanged by some one else. The investigating agency directed itself towards the angle that the deceased committed suicide on account of love affairs. It recorded the statements of a number of witnesses regarding that suicide and did not take into consideration the evidence collected scientifically by the special scientific team.

8. From the material placed on the record, it is very much apparent that Narender Sangwan had the motive to remove the deceased from the scene of boxing, who was his rival so far as the boxing championship of that particular category was concerned. It is very much clear from that material that this person obtained/forged the certificates of matriculation and higher secondary, in order to show that he was born on a particular date though the other documents established that he had already passed the said matriculation three years earlier. In regard to that forgery, FIR had been registered against him. The Investigating Agency never tried to join him as accused during the investigation and he was examined only as a witness. Had he been joined as an accused, the truth might have come out. From the details of the calls made by this Narender Sangwan to the deceased and vice-versa, it becomes very much doubtful whether at the time of occurrence he was present in the reception party or was in the hostel itself. The correctness of these facts were never gone into by the investigating agency. When the investigating agency has failed to perform its statutory duty, in right perspective, whether this Court can transfer the investigation to some other independent agency/CBI?

9. It was held by the Apex Court in Kedar Narayan Parida and Others Vs. State of Orissa and Another, , that the High Courts in exercise of their inherent and plenary powers are entitled to intervene to set right the illegality and/or mala fide action on the part of the investigating authorities when it notices such illegality and/or mala fide action on the part of the investigating authorities. While the courts should not intervene in matters of investigation, which power, under the scheme of Cr PC has been vested in the police authorities, an exception has also been made that in certain circumstances the court could

intervene in order to do justice to the parties. The courts and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the investigating authority, the High Court or the Supreme Court may certainly step in to correct such injustice or failure of justice.

10. It has recently been held by the Supreme Court in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, , that the words "life" and "personal liberty" are used in Article 21 as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to continuance of a person's animal existence. All those aspects of life, which make a person live with human dignity are included within the meaning of the word "life". The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. Article 21 in its broad application not only take within its fold enforcement of the rights of an accused but also the rights of the victim. It was further held that being the protectors of civil liberties of the citizens, the Supreme 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. Therefore, a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to 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.

11. Keeping in view the above discussion, facts and law, I am of the considered opinion that it is a fit case where the investigation should be transferred to the CBI. Accordingly, this petition is accepted and the investigation of the above said FIR is transferred to the CBI, which shall investigate the matter expeditiously and shall complete the same preferably within a period of six months from the date of receipt of a copy of this order.