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(2015) 09 SHI CK 0109

In the High Court Of Himachal Pradesh

Case No : CWP No. 3450 of 2015

Dhian Singh — APPELLANT

Vs

State of Himachal Pradesh and Others — RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Constitution of India, 1950 — Article 142(1), 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 170, 173, 173(1), 173(8)
Penal Code, 1860 (IPC) — Section 120-B, 201, 279, 304(A), 427
Prevention of Damage to Public Property Act, 1984 — Section 4

Citation : (2015) 09 SHI CK 0109

Hon'ble Judges : Rajiv Sharma, J;Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Naveen K. Bhardwaj, for the Appellant; Romesh Verma and Anup Rattan, Additional Advocates General and J.K. Verma, Deputy Advocate General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sharma, J—Petitioner''s son was working with Indian Air Force as Technical Staff. He owned a motorcycle bearing registration No. HP-36-B-4995. Petitioner''s son was driving motorcycle. It was chased and was hit purposely by the vehicle. Petitioner''s son lost his life. It was not a case of rash and negligent driving by the son of the petitioner. It was a cold blooded murder. Some money transaction was the cause of the death of the petitioner''s son. FIR No. 31 dated 4.3.2015 was registered by the police of Police Station Nagrota Bagwan, Himachal Pradesh. Petitioner has sought direction to handover the case to the Central Bureau of Investigation.

2. Reply was filed by respondents No. 1 and 2. According to the averments made in the reply, petitioner''s son had consumed liquor. The content of Ethyl Alcohol in the blood of deceased was found to be 87.25 mg%. The call detail of the persons mentioned in petition dated 3.3.2015 was obtained. Vehicle No. HP-36-B-8203 was also mechanically examined. Prima facie this vehicle was not involved in the

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accident. Petitioner himself has given in writing that he did not consider anybody responsible for the death of Vijay Kumar Rana.

3. Mr. Naveen K. Bhardwaj, Advocate, submits that petitioner''s father subsequently came to know that it was a case of murder and not accident. Quantity of Ethyl Alcohol i.e. 87.25 mg% in the blood of alcohol does not indicate that the deceased was drunk. It has come in the investigation that respondent No. 5 had borrowed a sum of Rs. 10,000/- from the deceased. Case has been registered by the Police under Sections 279 and 304(A) IPC whereas petitioner has made specific averment in the petition that it was a case of murder and not per se accident. Matter ought to have been investigated on these lines also.

4. Their Lordships of the Hon''ble Supreme Court in Central Bureau of Investigation Vs. State of Rajasthan and Another, AIR 2001 SC 668 : (2001) CriLJ 968 : (2001) 1 JT 624 : (2001) 1 SCALE 250 : (2001) 3 SCC 333 : (2001) 1 SCR 472 : (2001) 1 UJ 441 : (2001) AIRSCW 305 : (2001) 1 Supreme 263 have held that the powers of the High Court under Article 226 of the Constitution of India or the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to Central Bureau of Investigation in certain cases. Their Lordships have held as under:

"14. True, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to the CBI to investigate in certain cases, [vide Kashmeri Devi Vs. Delhi Administration and Another, AIR 1988 SC 1323 : (1988) CriLJ 1800 : (1988) 2 JT 293 : (1988) 1 SCALE 977 : (1988) 3 SCR 700 and Maniyeri Madhavan Vs. Sub-Inspector of Police and others, AIR 1994 SC 1033 : (1993) CriLJ 3063 : (1993) 3 Crimes 550 : (1993) 5 JT 375 : (1993) 3 SCALE 854 : (1994) 1 SCC 536 : (1993) 2 SCR 406 Supp]. A two Judge Bench of this Court has by an order dated 10.3.1989, referred the question whether the High Court can order the CBI to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act.

15. In Mohammed Anis Vs. Union of India (UOI) and Others, (1994) 1 SCC 145 Supp : (1993) 1 SCR 263 Supp Ahmadi, J. (as his Lordship then was) has observed thus (SCC pp. 148-49, para 6):

"6. True it is, that a Division Bench of this Court made an order on March 10, 1989 referring the question whether a court can order the CBI, an establishment under the Delhi Special Police Establishment Act, to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf. In our view, merely because the issue is referred to a larger Bench everything does not grind to a halt. The reference to the expression court in that order cannot in the context mean the Apex Court for the reason that the Apex Court has been

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conferred extraordinary powers by Article 142(1) of the Constitution so that it can do complete justice in any cause or matter pending before it."

16. As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation."

5. Their Lordships of the Hon''ble Supreme Court in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91 have held that the High Court under Article 226 of the Constitution of India can direct an inquiry by the Central Bureau of Investigation against a person only if the High Court after considering the material on record comes to a conclusion that such material does discloses a prima facie calling for an investigation by Central Bureau of Investigation or any other similar agency. Their Lordships have held as under:

"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, there is a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause (supra). This Court in the said judgment at paragraph 174 of the report has held thus : (SCC p.750, para 174)

"The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person''s involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of "LIFE" and "LIBERTY" guaranteed to a person under Article 21 of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or the CBI to find out whether he has committed any offence or is living as a law- abiding citizen. Therefore, it is clear that a decision to direct an inquiry by

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the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of ''ifs'' and ''buts'' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause."

6. The same principles have been reiterated by their Lordships of the Hon''ble Supreme Court in Sakiri Vasu Vs. State of U.P. and Others, AIR 2008 SC 907 : (2008) 106 CLT 354 : (2007) 13 JT 466 : (2008) 2 SCC 409 : (2007) 12 SCR 1100 : (2008) AIRSCW 309 : (2008) 8 Supreme 226 . Their Lordships have held as under:

"33. In Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, AIR 2002 SC 2225 : (2002) CriLJ 2942 : (2002) 1 JT 286 Supp : (2002) 4 SCALE 455 : (2002) 5 SCC 521 : (2002) 2 SCT 1090 : (2002) AIRSCW 2333 : (2002) 4 Supreme 91 , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation."

7. Their Lordships of the Hon''ble Supreme Court in Bhavesh Jayanti Lakhani Vs. State of Maharashtra and Others, (2009) 2 DMC 292 : (2009) 11 JT 279 : (2009) 11 SCALE 467 : (2009) 9 SCC 551 : (2009) 12 SCR 861 have reiterated that superior courts have power to issue direction to Central Bureau of Investigation to investigate a matter. Their Lordships have held as under:

"99. We are not concerned, as it is not necessary for us to determine, whether a direction for making investigation by CBI by the superior courts of the country is permissible. As the law stands, we place on record such directions by the superior courts are permissible."

8. Their Lordships of the Hon''ble Supreme Court in Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, (1996) 7 AD 752 : AIR 1997 SC 93 : (1997) CriLJ 63 : (1996) 4 Crimes 104 : (1996) 9 JT 131 : (1996) 7 SCALE 508 : (1996) 11 SCC 253 : (1996) AIRSCW 4249 : (1996) 7 Supreme 455 have held that if the investigation of the local police is not satisfactory, further investigation is not precluded. Their Lordships have held as under:

"8. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate

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does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. The notification dated 2.6.1994 is issued by the Government of Bihar (Police Department) by which in exercise of powers under Section 6 of the Delhi Special Police Establishment Act, 1946, Governor of Bihar was pleased to consent and extend the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar in connection with investigation of the concerned Police Station, on case No. 159 of 9.3.1993 in the District of Dhanbad, under Sections 457, 436, 427, 201 and 120-B, Indian Penal Code and conspiracy arising out of the same and any other offence committed in course of the same. The notification of 26.10.1994 is issued by the Government of India, Ministry of Personnel in exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 whereby the Central Government with the consent of the State Government of Bihar in their notification dated 2.6.1994 extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of offences under Section 457, 436, 427/120-B and 201 I.P.C. and Section 4 of the Prevention Of Damages to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No. 159 dated 9.3.1933 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police had not been satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, the C.B.I. has been directed to further investigate the offences registered under the said F.I.R. with the consent of the State Government and in accordance with law. Under Section 173(8) of the Cr.P.C. 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate."

9. The investigation should be fair, cautious and effective. The learned Single Judge of Madras High Court in Seethalakshmi Vs. State of Tamil Nadu and Others, (1991) CriLJ 1037 has succinctly explained the manner in which the investigation is required to be carried out as under:

"(i) proceedings to the spot; (ii) ascertainment of facts and the circumstances of

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the case, (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the commission of the offence which may consist of (a) examination of various persons including the accused and the reduction of their statements in writing, if the officer thinks fit, (b) search of places and seizure of things considered necessary for investigation and to be produced at the trial, and (v) formation of opinion as to whether on the material collected there is a case to place the accused before a Magistrate for a trial and if so taking the necessary steps for the same by filing charge sheet under S. 173(1) of the Code. The object of the investigation being to collect evidence, the investigating officer has to do all things necessary which he considers relevant and material without committing breach of the mandatory provisions of the Code of Civil Procedure. The investigating police are primarily the guardians of the liberty of innocent persons and a heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. It is of the utmost importance that people entrusted with the investigation must be scrupulously honest and efficient, otherwise cases both of innocent persons being wrongly convicted and of really guilty persons being wrongly let off are likely to occur. It is the duty of the investigation officer to discover the truth and make a relentless pursuit for the truth. Investigation cannot be merely mechanical, and it must be an intelligent one. The police in conducting the investigation must act in such a way as to inspire fully confidence in everybody concerned. If upon the completion of the investigation it appears to the police officer that there is no sufficient evidence or reasonable ground, if he may decide to release the suspected accused, if in custody. If, however, it appears to him that there is sufficient evidence or reasonable ground to place the accused on trial, he shall take necessary steps therefore u/S. 170 of the Code. In either case, on the completion of the investigation, he has to submit a report to the Magistrate u/S. 173 of the Code in the prescribed form furnishing such details. Thus, the procedure prescribed by the Code enjoins the Police Officer to file a report before the concerned Magistrate and also inform the complainant even if the police officer comes to the conclusion that no case has been made out on the materials collected by him."

10. Their Lordships of the Hon''ble Supreme Court in Nirmal Singh Kahlon Vs. State of Punjab and Others, AIR 2009 SC 984 : (2009) CriLJ 958 : (2008) 12 JT 331 : (2008) 14 SCALE 639 : (2009) 1 SCC 441 : (2009) 2 SLJ 371 : (2009) AIRSCW 60 have held that fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India, but the State has a larger obligation, i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. Their Lordships have held as under:

"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to

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maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a central agency which has acquired specialization in such cases."

11. Their Lordships of the Hon''ble Supreme Court in Rubabbuddin Sheikh Vs. State of Gujarat and Others, AIR 2010 SC 3175 : (2010) 1 JT 99 : (2010) 1 SCALE 306 : (2010) 2 SCC 200 : (2011) 1 SCC(Cri) 1109(1) : (2010) 2 SCR 991 : (2010) 1 UJ 423 : (2010) AIRSCW 722 : (2010) 1 Supreme 196 have held that the case can be transferred to C.B.I. for investigation even if the State Police had completed the investigation and charge-sheet had been submitted. Their Lordships have further held that in an appropriate case, the court is empowered to hand over investigation to an independent agency like CBI. Their Lordships have held as under:

"53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which High Police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however, faithfully the local police may carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody.

54. It is also well known that when police officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI authorities would be an appropriate authority to investigate the case.

56. In Kashmeri Devi v. Delhi Administration, (supra), this court held that in a case where the police had not acted fairly and in fact acted in partisan manner to shield real culprits, it would be proper and interest of justice will be served if such investigation is handed over to the CBI authorities or an independent agency for proper investigation of the case. In this case, taking into

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consideration the grave allegations made against the high police officials of the State in respect of which some of them have already been in custody, we feel it proper and appropriate and in the interest of justice even at this stage, that is, when the charge sheet has already been submitted, the investigation shall be transferred to the CBI Authorities for proper and thorough investigation of the case.

57. In Kashmeri Devi (supra), this Court also observed as follows:--

"Since according to the respondent charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge sheet has been submitted to exercise his powers under Section 173(8) Cr. P.C. to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge sheet, if any, in accordance with law."

60. Therefore, in view of our discussions made hereinabove, it is difficult to accept the contentions of Mr. Rohatgi learned senior counsel appearing for the state of Gujarat that after the charge sheet is submitted in Court in the criminal proceeding it was not open for this court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI."

12. Their Lordships of the Hon''ble Supreme Court in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, AIR 2010 SC 1476 : (2010) 2 JT 352 : (2010) 2 SCALE 467 : (2010) 3 SCC 571 : (2010) 3 SCR 979 : (2010) 2 UJ 1047 have held that in so far as the question of issuing a direction to 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. Their Lordships have further held that this extraordinary power must be exercised sparingly, cautiously and in exception situations where it becomes necessary to provide credibility and instill 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. Their Lordships have held as under:

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"70. 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 instill 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.

71. In Secretary, Minor Irrigation & Rural Engineering Services, U.P. & Ors. v. Sahngoo Ram Arya & Anr., this Court had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency. We respectfully concur with these observations."

13. Accordingly, respondent No. 2 is directed to handover the investigation of FIR No. 31/15 dated 4.3.2015 registered at Police Station Nagrota Bagwan, District Kangra, Himachal Pradesh to respondent No. 3 i.e. Central Bureau of Investigation, within a period of one week from today. The Central Bureau of Investigation shall investigate the matter within a period of six weeks and thereafter file challan in the competent court, if prima facie case is made out against any of the accused

14. In the light of above, the petition stands disposed of, so also the pending application(s), if any.

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