
(1990) 01 CAL CK 0020
In the Calcutta High Court
Case No : C.O. No. 10528 (W) of 1988

Dr. Ajoy Kumar Basu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

Constitution of India, 1950 — Article 226(2)

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)

Citation : (1990) 1 CALLT 319

Hon'ble Judges : S.K. Mookherjee, J

Bench : Single Bench

Advocate : A.P. Chatterjee, Rita Mukherjee and Samapti Chatterjee, P.R. Mondal and Tanushree Chanda, for the Appellant; Abdur Rahaman and Bankim Dutta and S.B. Bhattacharya for Respondent Nos. 3 to 6, for the Respondent

Judgement

S.K. Mookherjee, J.—The present writ application is at the instance of a Medical Practitioner with prayers for issuance of a writ of Mandamus directing the Central Bureau of Investigation to take up the charge of investigation into the death of the petitioner's son Dr. Amitava Basu. It appears that the substance of the prayer made on behalf of the petitioner is for reopening cases wherein final reports have been substituted upon finding that the death of the petitioner's son was due to accidents drowning. From the materials on record it appears that the applications for reopening of the cases are pending before the Magistracies of West Bengal as also of Orissa (vide Annexures "A" and "B" to A/O. of K. Kanjilal dated 28.11.88). Mr. A. P. Chatterjee, appearing in support of the writ application, has strongly banked upon the provisions of Section 173 of the Code of Criminal Procedure and has also draw the attention of this Court to various types of factual inconsistencies and anomalies which, "according to him, establish unequivocally the perfunctory manner in which the investigations, ending with the final reports referred to above, conducted by the police authorities of the States of West Bengal and Orissa, have been carried out and these according to Mr. Chatterjee, justify the existence of the need of

investigation by an independent agency like the Central Bureau of Investigation: Mr. Chatterjee has also, in this connection relied upon the reports submitted on behalf of the West Bengal Police to the effect that the investigation might be done by the Orissa police or any other agency. The writ petitioner appears to have obtained assistance of a private detective agency in arriving at his conclusion that the investigation is needed to be reopened. On behalf of the Union of India, it has been stated before this Court that in the event the Court feels to so direct, the Central Bureau of Investigation will take up the investigation of the matter. On behalf of the state respondents a technical point has been urged, namely, that the allegations at best, constituted offences of abduction, conspiracy and murder. As far as the State of West Bengal is concerned, the police report (Annexure "B" to the Affidavit-in-opposition of Respondents 3 to 8) indicates that the offence of abduction, which is alleged to have been committed within the State of West Bengal, has not been proved and as such the writ jurisdiction of the Calcutta High Court cannot be available to the writ petitioner even for the reliefs which have been prayed for, but if so advised, he should move the Orissa High Court for such reliefs. On behalf of the private respondents, who are alleged to be involved in the murder of the petitioner's son, the results of the police investigations in the States of West Bengal and Orissa have been relied upon to suggest that this is not a fit case where reopening of the investigation can be or should be directed. Defective verification of the writ application has been emphasised to justify dismissal of the petition in limine. Lastly, it has been submitted that since without consent of the State Government, the C.B.I, cannot take up investigation and since there is no material to show that the State Government in spite of being approached has unreasonably and mala fide refused and/or withheld consent the present writ application is liable to be dismissed as premature.

2. Mr. Chatterjee in support of this argument has referred to a number of decisions both of the Supreme Court and of this Court, namely, State of West Bengal and Others Vs. Sampat Lal and Others, ; Major E.G. Barsay Vs. The State of Bombay, ; 1979 (II) CLJ 150 (A, K. Sirkar v. State of West Bengal and Anr.) ; and Mukundalal Agarwalla and Others Vs. C.C.S. and Others, A careful analysis of such decisions unequivocally establishes that on fulfilment of the statutory conditions as required under Sections 3, 5 & 6 of the Delhi Special Police Establishment Act, investigation into commission of an offence may be entrusted to the Central Bureau of Investigation if the Court feels that investigation by the local police may not be effective or in case such investigation has already been made, the same has been perfunctory. The Supreme Court has gone so far as to lay down that statutory consent would not operate as a bar when the court directs such investigation to be made by the Central Bureau of Investigation. In the facts of the present case, the aforesaid principles have some bearing but to find out the entitlement of the petitioner to the reliefs claimed, some provisions of the Code of Criminal Procedure require to be considered in addition to the aforesaid legal position. Admittedly, in the present case, as noted earlier,

applications u/s 156(3) and 173(8) of the Code of Criminal Procedure are pending before the Magistracies of this State and the State of Orissa. No doubt, in the proceeding pending before the Chief Metropolitan Magistrate, Calcutta, a Report has been submitted by the Investigating Officer to the effect that since the offence appears to have been committed within the State of Orissa, the investigation might be entrusted to Orissa Police or to any other agency but such report has not yet been accepted by the court concerned nor is it obligatory for a court to accept such report as will be clear from what follows hereinafter. Upon a careful reading of Section 173 sub-section (8) of the Code of Criminal Procedure it appears, that on submission of a report after investigation by the police four courses remain open to the court concerned to be followed :

- (i) agree with the report and ask the prosecution to drop the proceedings ;
- (ii) ignore the report and if the court feels upon evaluation of the evidence collected by the investigating agency take cognizance of the case ;
- (iii) disagree with the report and direct further investigation by the police or hold an enquiry itself or direct the same to be held by a subordinate Magistrate or
- (iv) treat the "Naraji" Petition, if any, filed by the aggrieved party as a complaint and proceed u/s 202 of the Act.

3. Courses under (ii), (iii) and (iv) are to followed when the Court is of the view that investigation is not full and complete, unsatisfactory or there is scope for further investigation.

4. Reference may be made to the cases of Abhinandan Jha and Others Vs. Dinesh Mishra, Admittedly, the extraordinary jurisdiction for writ cannot be availed of in cases where other equally efficacious alternative fora are available or where to grant the reliefs prayed for, court has to embark upon detailed factual investigation. Mr. Chatterjee has not been able to contradict that the criminal courts before which the applications by his client are pending are equally efficacious alternative forums save that disposal by such forums of the pending applications might result in unnecessary delay with possibility of loss of materials relevant for the purpose of investigation. This delay, as apprehended, may well be avoided by directing the courts concerned to expedite the disposal of the applications of the petitioner. Again issuance of a mandate on the Central Bureau of Investigation to take up investigation must be preceded by expression of a view by such writ court to the effect that the investigation has been perfunctory {vide State of West Bengal and Others Vs. Sampat Lal and Others, To arrive at such view, the factual allegations and/or contradictions as referred to by Mr. Chatterjee, have to be evaluated threadbare. A prima facie view is not sufficient for the purpose. Even if an alternative forum does not constitute an absolute bar, a writ court should not intervene unless it is in a position to form the needed view, without embarking upon a detailed factual investigation which is not possible for it to do in the present case. Since Criminal Court, however, is not debarred from embarking upon detailed appraisal of facts to find out if the

assailed investigation can be said to be perfunctory, incomplete or unsatisfactory, such evaluation should be entrusted to the Magistracies, before whom the petitioners' applications are pending. On behalf of the C.B.I. it has already been informed that if the court so directs such agency will carry out the investigation and since the Supreme Court has already laid down that in case the court (which necessarily must include criminal court also) so directs, the necessity of consent of the State Government would stand dispensed with, the petitioner should pursue his remedy before the Magistracies before which his applications under Sections 173(8) and 156(3) are pending. Such Magistracies can also direct investigation by C.B.I., if, on its findings on the lines indicated above, upon consideration of the materials that may be placed the same becomes necessary. To enable the said forums to do so it would not be proper on my part to consider and express any view on the materials relied on by the contesting parties in justification of their respective stands, as, any expression of my view, might fetter exercise such jurisdiction freely and without being influenced. I would only hasten to add that I have not accepted the submissions made on behalf of the State of West Bengal to the effect that the writ jurisdiction of this High Court is not available to the petitioner for the reason that at least a part of the entire transaction forming the cause of action, as also the respondents allegedly involved in such transaction were within the territorial limits of this State at the time the instant writ application was initiated. The non-establishment of the part of the offence allegedly committed within this State at a subsequent stage cannot deprive this Court of its writ jurisdiction. For an authority reference may be made to the case of Industrial Fuel Marketing Co. and Others Vs. Union of India (UOI) and Others,

5. The writ application, is, therefore, disposed of with the above observations and with the expectation that such magistracies will endeavour to dispose of the pending applications according to law and on merit as expeditiously as possible and preferably within a period of two months from the date of communication of this order.

6. There will be no order as to costs.

I keep it on record that I have not expressed any opinion on the merits of the factual contentions raised by any of the contesting parties.