

(2011) 09 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18650 of 2010 (O and M)

Jasleen Kaur alias Jaswinder Kaur

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 173, 319
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2011) 164 PLR 590

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The writ petition has been filed by the widow of one Sandeep Singh alias Bobby, seeking for transfer of investigation of

case FIR No.561, dated 02.08.2009, u/s 302/120-B of the Indian Penal Code read with Section 25/54/59 of Arms Act. The petitioner's

husband was killed in cold blood on 02.08.2009 and the complainant was the petitioner herself. She was not an eyewitness, but she had a ground

to suspect that one Jagtar Singh son of Jagroop Singh of Bathinda as a possible culprit. Just before the death of her husband, he (Sandeep Singh)

had been accompanied by two persons, whom the petitioner had known as persons seeking for lease of his lands at Janta Nagar in the bank of

Sirhind canal. A little later, she was informed that two persons, that had accompanied her husband, had shot him down. At the time of his death, he

was wearing a gold kara, gold ring, titan made watch and a mobile phone. All the articles had been removed from the body of her husband. The

petitioner suspected that it was only Jagtar Singh, who would have got killed her husband in connivance with two persons as a revenge for the

death of Jagtar's brother Harpal Singh and their servant Rasal Singh and for whose death, the petitioner's husband had been tried and convicted.

2. On the basis of the complaint, investigation had been undertaken and four persons, namely, Raj Kumar @ Raju, Sikander Singh, Pargat Singh

and Karan Kumar, had been taken into custody but accused Jagtar Singh had not been apprehended. While the challan was filed u/s 173 Cr.P.C.,

an Investigating Officer had reported that Jagtar Singh was evading arrest. He had secured arrest warrants from Court returnable by 31.10.2009.

The ASI, who had undertaken the investigation, had made an application for issuance of arrest warrant subsequently on 30.10.2009 and had the

warrant of arrest issued again for 27.11.2009. Suddenly within a period of one week from the day when the warrant was got issued on

30.10.2009, the SHO had made an application for cancellation of arrest warrant on 06.11.2009, stating that there was no evidence against Jagtar

Singh and, therefore, the application for warrant already issued could be cancelled. The SHO had stated that, from the investigation which was

carried out and after recording the statement of witnesses and from the mobile call details of the accused, it seemed clear that the involvement of

Jagtar Singh had not been proved except that the petitioner had complained that Jagtar Singh could have killed on account of past enmity involving

the death of Jagtar Singh's brother and his servant.

3. The Senior Counsel Sh. Cheema, arguing on behalf of the petitioner, would point out to the fact that it was not as if that the petitioner had no

reason why Jagtar Singh must have been the brain behind the trigger. On the conviction of the petitioner's husband in the murder of Jagtar Singh's

brother and his servant, there had been a prayer for grant of pardon of sentence of life imprisonment awarded to him. In the petition filed for grant

of pardon by the mother of the deceased, she had stated that her husband (father of the deceased) Teja Singh had been originally a minister in Shri

Badal's Government, but since he had defected to Congress, the Chief Minister has a serious enmity with him and got him implicated in a false

case. Jagtar Singh himself had opposed the pardon but it appears that the Governor had shown clemency and got issued the order of release dated

05.07.2006. The petitioner files in support of her contention of previous enmity, certain proceedings before the Commissioner, Faridkot, in relation to some land disputes between the deceased and Jagroop Singh and before the Additional District Judge, Bathinda, in relation to some mutation proceedings of the land holdings of the deceased's father. Apart from narrating several other civil litigations between parties, the petitioner would point out to the fact that her brother-in-law Daljit Singh, who was a permanent resident in USA, had also complained that the investigation did not proceed along the proper lines and there was a deliberate attempt to deflect the needle of suspicion elsewhere, when there were adequate materials to nail Jagtar Singh to the commission of offence.

4. The investigation seemed like proceeding along the petitioner's suspicion as credible, later it was seriously considering the fact of certain calls said to have received by the deceased from Bathinda Jail as possible confirmation of old enmity arising out of the death of Jagtar Singh's brother as the proximate cause for his death, but later on, it took a different turn eliminating Jagtar Singh from the ken of investigation and zero in on the shooter Raju belonging to Dera Jassi Wala of the same village as acting at the behest of one Swami Vivekananda. Swami Vivekananda had been apprehended on suspicion, but the Investigating Agency had released him and let afloat another theory that there had been involvement of some international land mafia and it would be better that all the family members of the deceased should leave the country. The petitioner had complained that the Investigating Agency was trying to hush up the matter and made every effort to ensure that a deeper conspiracy to eliminate the deceased had not been unraveled in all its dimensions. All the accused persons were persons belonging to some other villages with whom the deceased had never any long connections. There was no attempt made to even arrange a test identification parade for the petitioner to confirm the identity of two of the accused as persons whom she had actually seen at the house before the deceased was escorted by the said two persons. According to the petitioner, it was obvious that they were hired assassins and the way in which the Investigating Agency was conducting the case, showed that they were not at all interested to catch the main culprit.

5. The respondents, who are respectively the Senior Superintendent of Police,

Bathinda and the Station House Officer, Police Station, Kotwali, Bathinda, District Bathinda, and the Central Bureau of Investigation, Sector 30, Chandigarh, make out a common case that there was ample evidence that suggested that there was some land dispute with the nephew of Swami Vivekananda and the statements given by witnesses and the statements that led to recovery of some of the articles which had been owned by the deceased, clearly showed that there was no greater conspiracy than the involvement of four persons against whom charge-sheets had already been laid. All the respondents, who had joined investigation, would contend that the trial has already been commenced and all the witnesses have been examined. Only the petitioner was fighting shy to give her evidence. It is also contended that the investigation cannot be changed at the mere whimsical demands of the petitioner. Since time and efforts of premier investigation agency of India cannot be wasted when the State police has proceeded along definite evidence for apprehending the accused, the petitioner's suspicion against one Jagtar Singh cannot be a ground for shifting of investigation.

6. The most crucial element appears to be that there existed no active interaction between the deceased and the accused persons at any point of time, except for a very brief acquaintance with the two persons, who had accompanied the deceased just on the day of his death. A theory of murder for gain cannot be a convincing inference since the ornaments alleged to have been removed from the body of the deceased were relatively insignificant items, considering the status of the party. The assailants did not require to escort him out of the village to kill and recover a gold kara, chain and a watch. Again, the Investigating Agency was pursuing a hot chase against Jagtar Singh, who went missing and it had also applied to the Court for warrant of arrest as late as on 30.10.2009. For the same officer to apply to the Court on 06.11.2009 that the warrant could be cancelled must be the result of some event which had been taken place between 30.10.2009 to 06.11.2009. If the contention of the State through the Investigating Agency was that they had come by definite evidence between 30.10.2009 to 06.11.2009, that it was the land dispute between uncle of one of the accused, Swami Vivekananda and the deceased that supplied the proximate motive for the murder, then it should have certainly

obtained credibility. On the other hand, curiously, the statements of witnesses that led to recoveries of articles and the statements of witnesses that spoke about the land dispute with Swami Vivekananda was long prior to the day when the application for arrest warrant had been sought from the Magistrate for apprehending Jagtar Singh. The Investigating Agency was not fair and was not prepared to shed full light on what transpired between 30.10.2009 to 06.11.2009. The State in its reply has stated that one of the accused, Raj Kumar suffered a disclosure statement u/s 27 of the Evidence Act that led to the recovery of one.315 bore pistol and two cartridges and the further statements made on 10.08.2009 helped the recovery of other articles like, mobile phone, a black colour wallet and the identity card of the deceased. All that the investigation was supposed to have disclosed was that the maternal uncle (Swami Vivekananda) of one of the accused Raj Kumar, owned about 5-1/2 acres of land adjoining to the land of the deceased. Half of the land was sold by Swami Vivekananda himself but the remaining half land was forcibly occupied by the deceased and it was on account of this grudge that the murder had taken place. The respondents would state that there was no incriminating evidence that came to light which could show the connection of Jagtar Singh to the murder of the deceased. In my view, this is rather strange, when the motive suggested for the murder by the petitioner was not after all, an outlandish suggestion. The deaths of Jagtar Singh's brother and his servant were real and the deceased himself was the second accused, who was convicted for the murder, after trial. The fact that the deceased had secured an early release by Governor's pardon must have been perceived definitely as adding himself to injury to the family of the person, who had been murdered. Jagtar Singh himself was reported to have opposed the mercy plea. The motive element against Jagtar Singh was certainly very strong. Again, it is inconceivable that the investigating officer would not arrange a test identification parade to confirm the two persons cited as accused as really the persons who had accompanied the deceased before the incident. After all, the petitioner had not given the names of persons in her complaint, but had however given sufficient information regarding the identity by referring to their body stature, height and appearances in her complaint.

7. All this is not to slate that Jagtar Singh was surely involved or that the persons who have been charge-sheeted ought not to have been

proceeded with. In fact, it will be preposterous to make such inferences. At this stage all that could be said is that the whole investigation has not

proceeded on the lines of what was possible. The investigation proceeds placidly along certain threads of suspicion and materials collected in its

process that the deceased had encroached on a land of about 2-1/2 acres and that was the reason for his elimination. A deeper conspiracy was

certainly possible, when the petitioner was giving out a strong proof of the enmity between the deceased and Jagtar Singh. The fact that the life of

the accused persons and the deceased had not much meeting path, save for a couple of meetings at the house, was also surely a factor which the

Investigating Agency must have seen to gather whether the buck stopped there or whether it led to further leads. To the extent to which the

Investigating Agency secured valuable evidence by the seizure of arms and materials which the deceased had on him from some of the accused,

lent credibility to its assessment that there was a strong case against accused persons. It did not, however, surely end there. The manner in which

the investigation agency was crying halt to further investigation and was adopting a hands off-approach against Jagtar Singh betrays a lack of

fairness in investigation and does little credit to the credibility of the Investigating Officers. It would seem that they were too naive to believe that a

small time enmity of some forced occupation of land of 2-1/2 acres of land could alone result in killing the deceased or would go as far as to hire

assassins to do away with the deceased, if the version that the accused were supari killers were to be believed.

8. The deceased lived a life on razor's edge, as it were. He had several enemies and he was himself convicted for murder. A greater sweep of

investigation was surely called for in such like situation. A premature release for a convict u/s 302 IPC does not happen every day. That the father

of the deceased was a minister in a government of another political party made obvious the fact that the deceased's family was politically well

connected but he had earned enemies who were powerful. If I should hold that the investigation has not been conducted properly, especially in

view of the manner in which the investigation abruptly dropped against Jagtar Singh and let him go off the leash, I have to necessarily place the

confidence elsewhere for continuing the investigation.

9. The learned senior counsel Shri Cheema gives a long string of authorities to support the case that if the credibility of investigation is seriously

suspect and there was a complete lack of transparency, it would only be appropriate that the case is transferred to CBI, a premier investigation

agency in India. The starting point to the counsel for the petitioner would be a Division Bench ruling of the Gauhati High Court in Shri Pranab Jyoti

Gogoi Vs. The State of Assam and Others, that held that the High Court would be competent to appoint a commission or direct an inquiry through

appropriate agency if there had not been a proper investigation, or may also direct the case to be investigated by another agency like Central

Bureau of Investigation. The case dealt with death of a detainee in the custody of army authorities. Rubabbuddin Sheikh Vs. State of Gujarat and

Others, was a high profile case of death of Sohrabuddin that gained a lot of media attention from what was perceived to be a fake encounter with

the police. The case involved high officials of the State police and of yet another State and, therefore, the police machinery itself was perceived to

have an axe to grind to let the primary suspects get off the hook. In such a condition, the Court held that investigation should not only be fair but

should also be seen to be fair. In order to instill confidence in the mind of victims' relatives and general public, the Court had directed the case to

be transferred to CBI for investigation. The last law on the subject, for the time being, at least, would be a decision of the Hon'ble Supreme Court

by a Constitution Bench in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, .

The Constitution Bench examined a vital question of the Court's power to order CBI investigation without the concurrence of the State and

holding that such power existed, but however, cautioned that power under Article 226 must be used with great circumspection.

10. Both the counsel on either side would rely on the same passage in para 46 to address on the width of Court's powers, as under:-

46. 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 extraordinary 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.

The counsel for the CBI would pointedly refer to the circumspection to be allowed to be prevail, before use of the extraordinary power to provide credibility and instill confidence in investigation and where the incident might have national and international ramifications. According to him, it would also be applied in a case where it was necessary to do complete justice and enforcing the fundamental rights.

11. The death of any person, with life prematurely terminated by a deliberate, diabolic human plot is a cruel act. It adds poignancy to the situation that the death is not natural but snuffed out early by hate or avarice of other fellow beings. Deaths of the famous and the powerful cause quite a turmoil, but some get muted or subdued and cast no more than a mere whimper. While not meaning to slight the event of death of the petitioner's husband as not eventful, it was surely not an event that could have national or international ramification or sent ripples beyond the vicinity of the village. But to all types of killings, a fair investigation and apprehension of the guilty are what a society owes to itself and more particularly to the immediate members of the family. To apprehend and punish, - it is society's way of tempering its collective indignation and ire. It is no act of revenge but an orderly method of ensuring that there is no recurrence and to deter persons against commission of heinous acts. The person that

blandishes the weapon and takes away the life of another will loiter no more in freedom, but shall be caught and incarcerated as a measure of

punishment. It is this sense of righteous outrage that gets sublimated through Court's interventions. The investigation was surely not comprehensive

and it failed to pick up the possible leads that connected the incident of death to persons other than the accused also.

12. The trial that has progressed against the accused shall forthwith be stopped. I would hold that it would meet the ends of justice if I place the

investigation in the Crime Branch of the State of Punjab under the immediate supervision of the chief police functionary of the Crime Branch. He

shall nominate an officer of the rank of Senior Superintendent of Police and an Inspector of Police to constitute a team and they shall take complete

control over the investigation from the respondents 1 and 2. Having regard to the fact that the trial has already began, the Special Investigation

Team constituted by the Crime Branch shall conclude the investigation within a period of 3 months and on conclusion of such investigation, if fresh

leads point out to the involvement of other persons, they shall be at liberty to present additional charge-sheet before the Sessions Judge before

whom the case is pending. He shall invoke the powers u/s 319 Cr.P.C. to direct the arrest or summoning of the persons against whom evidence is

brought and there shall be a de novo enquiry against any person or persons, who may be later arraigned as accused and against whom the

additional charge-sheet is brought by the Special Investigation Team. The Court shall then proceed with the trial on a day to day basis and

conclude the same with utmost speed and alacrity. If, on the other hand, the Investigating Agency is of the view that no further charge-sheet is

necessary and the investigation docs not lead to any more facts than what was brought through the investigation undertaken by respondents 1 and

2, the Sessions Judge will take up the case immediately after the report from the Special Investigation Team and proceed from the stage at which

the case was stopped, conclude the trial, hear the arguments and pronounce the verdict.

13. The writ petition is disposed of on the above terms.