

(2024) 03 KL CK 0048
In the High Court Of Kerala
Case No : Writ Petition (Crl.) No.154 Of 23

Joy Kutty K.K

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 06-03-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 174

Citation : (2024) 03 KL CK 0048

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Santhan V.Nair, Christeena P George, Safal P. Salim, Ashi M.C., Dr.K.P.Satheesan

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. Petitioners' son - Sri. Joel M.J., died on 22.05.2020. Petitioners allege that the death is attributable to brutal assault by the police. Hence they seek for a writ of mandamus to handover the investigation in Crime No.1798/2020 of Adoor Police Station, Pathanamthitta to the Central Bureau of Investigation (for short 'CBI') for a proper investigation.

2. On 01.01.2020, the motor car driven by the petitioners' son met with an accident as it collided with another car whose driver assaulted their son in public apparently under the influence of alcohol. On being informed about the incident, the police reached the scene of the accident and took both the drivers to the police station. Later, at the intervention of mediators, the matter was settled. When the petitioners, along with their son, were about to leave the police station, it was intimated that Sri. Joel can leave after meeting the Circle Inspector of police. Petitioners' son had to wait till 7 pm on the said day to meet the Circle Inspector. Petitioners allege that after the Circle Inspector reached the police station, he brutally assaulted their son. As a witness to the assault, the

second petitioner even fainted and had to be taken to the hospital. Petitioners further allege that while the second petitioner was being attended to at the hospital, she overheard a conversation between the doctor and the Circle Inspector, with latter directing the doctor not to admit the second petitioner. Petitioners also allege that in the meantime, Sri.Joel, who was subjected to severe assault, was asked to keep his mouth shut during the medical examination and fearing criminal cases being lodged against him, petitioners' son did not report the incident. Later, Sri.Joel had to be subjected to various treatments due to the ill-treatment inflicted upon him and while so, on 22.05.2020, he fainted, and later passed away on the way to the hospital.

3. The death of petitioners' son resulted in the registration of Crime No.1798/2020 before the Adoor Police Station under section 174 of Cr.P.C. Petitioners raised doubts about the cause of death of their son, as they believed that it was on account of police brutality. Therefore, W.P.(C) No.11907/2020 was filed before this Court for a direction to handover the investigation to CBI. Since this Court noticed that representation had been filed before the State Police Chief, the writ petition was disposed of directing the representation to be considered. Later, pursuant to judgment dated 20.10.2020, petitioners were called for a hearing before the State Police Chief and when they went to the police headquarters, they were instructed to meet some other officer and not the second respondent. Even thereafter, no concrete steps have been initiated. Since the petitioners have lost their faith in the manner and nature of the investigation being conducted, they have approached this Court to handover the investigation to the CBI.

4. A memo has been filed by the respondents producing an action taken report prepared by the Additional Director General of Police on behalf of the State Police Chief wherein it is stated that in compliance with the direction of this Court in W.P. (C) No.11907/2020, the petitioners were called for a personal hearing by the State Police Chief on 18.01.2023 and after hearing them in detail and on scrutiny of the enquiry report of the Deputy Inspector General of Police, Ernakulam Range, the allegations raised by the petitioners were found to be without any merit and therefore the petition was closed without recommending any further action. The report also mentions that police had enquired with the doctor who conducted the postmortem, and a Senior Cardiologist of the Medical College Hospital was also consulted for expert opinion regarding the cause of death of the petitioners' son, apart from verifying all the connected records. According to the respondents, the opinion of the experts revealed that Sri. Joel died due to occlusive coronary artery disease, and the petitioners' son even had a history of cardiac arrest and was suffering from Hepatitis A. It was also opined that death could not have occurred due to any alleged assault on 01.01.2020.

5. I have heard Sri. Santhan V.Nair, the learned counsel for the petitioners as well as Sri.Ashi M.C., the learned Public Prosecutor.

6. Petitioners allege that their son Sri. Joel was assaulted on 01.01.2020 and he

died on 22.05.2020. The postmortem report revealed that death was due to occlusive coronary artery disease. There is no indication or reference to any assault in the postmortem report, as is noticed from the pleadings in the writ petition as well as the action taken report submitted by the respondents. Concededly, no complaints were ever filed between 01.01.2020 and 22.05.2020 alleging any police brutality on the said Sri. Joel. The petitioners have not produced any medical treatment records to indicate that their son was subjected to any medical treatment between 01.01.2020 and 22.05.2020. Though it was submitted by the counsel for the petitioners that Sri. Joel was treated before some Ayurveda Physician, no records have been produced to substantiate even those contentions. There is nothing on record to indicate any police brutality having been inflicted on Sri. Joel at any point of time. There is a total dearth of any material which could indicate the possibility of police brutality on petitioners' son. Other than mere allegations, petitioners have not been able to produce any material to create even a doubt on the action taken report submitted by the Additional Director General of Police before this Court.

7. Though the learned counsel for the petitioners alleged that Ext.P2 was a report prepared by the same officer against whom allegations were levelled, it was contradicted by the learned Prosecutor pointing out that the said report was not filed pursuant to the directions of this Court in W.P.(C) No.11907/2020 but was a report filed before the Human Rights Commission wherein also petitioners had filed a complaint. Thus, every report and every enquiry conducted indicated that petitioners' son was not subjected to any police brutality.

8. In the decision in Vishal Tiwari v. Union of India and Others [2024 SCC Online SC 15] Supreme Court held that power to transfer investigation must be exercised sparingly and in extraordinary circumstances. It was also observed that unless the authority statutorily entrusted with the power to investigate portrays a glaring, willful and deliberate inaction in carrying out the investigation the court will ordinarily not supplant the authority which has been vested with the power to investigate. Such powers must not be exercised by the court in the absence of cogent justification indicative of a likely failure of justice in the absence of the exercise of the power to transfer. The Court further held that the petitioner must place on record strong evidence indicating that the investigating agency has portrayed inadequacy in the investigation or prima facie appears to be biased.

9. In the instant case, there is nothing on the record to indicate any doubt regarding the credibility of the investigation carried out by the local police. Hence this Court is of the view that this is not a case which falls within the exceptional circumstances warranting investigation by the CBI.

Therefore, there is no merit in this writ petition, and it is dismissed.