

(2024) 02 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (Crl.) No. 641 Of 2023

K. G. Mohandas

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Indian Penal Code, 1860 — Section 33, 302, 307, 324, 333, 341
Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012 — Section 3, 4

Citation : (2024) 02 KL CK 0049

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Sruthy N. Bhat, M.Revikrishnan, P.Vijaya Bhanu, Ajeesh K.Sasi, Rahul Sunil, P.M.Rafiq, Nikita J. Mendez, Sruthy K.K, P.Narayanan, Biju Antony Aloor, Grashious Kuriakose, K.P.Prasanth, Archana Suresh, Haritha Hariharan, M.Abdul Rasheed, Akhilesh Sudhakar

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. In the early hours of 10.05.2023, a young lady doctor was attacked by a patient. The doctor later succumbed to her injuries. The tragic death of Dr.Vandana Das-daughter of the petitioners, was a rude awakening for all. The alleged culprit, Sri. Sandeep, the additional 5th respondent in this writ petition, is stated to have attacked the deceased with a pair of scissors taken from the treatment table. The incident caused profound pain in every Keralite. As the investigation proceeded, the parents of the victim approached this Court, wanting the investigation to be carried out by the Central Bureau of Investigation (for short 'the CBI').

2. Crime No.1202 of 2023 of Kottarakara Police Station was registered on 10.05.2023 alleging that Sri. Sandeep had stabbed Dr. Vandana Das repeatedly, using a pair of scissors and committed the offences under sections 341, 324, 333

and 307 apart from sections 3 and 4 of the Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and Damage to Property) Act, 2012. After the injured doctor succumbed to her injuries, the offence under section 302 IPC was also added.

3. Petitioners allege that the investigation has not been fair or transparent and should be conducted by a more specialized and independent agency. During the pendency of this writ petition, the investigation was completed, and the final report was also filed. Referring to the final report, petitioners have, through their reply affidavit, contended that the investigation has absolved the omissions of the police officers who failed to prevent the crime despite being present at the scene. Petitioners alleged that a fair investigation was not conducted by the local police, and hence, the circumstances require an investigation by the CBI.

4. In the counter affidavit filed by the investigating officer, it is mentioned that statements of more than 100 witnesses have been taken with 86 documents seized, and the investigation was being conducted in a highly professional manner and all scientific methods have been used to unearth the truth. The narrative also mentions the manner in which the unfortunate event unfolded in the early hours of 10-05-2023 and how the accused grabbed a pair of scissors from the procedure room clandestinely and stabbed his relative Rajendran Pillai, a neighbour Manu, apart from three Police personnel viz. Shri. Baby Mohan, a Grade Sub Inspector, Home Guard Alex Kutty, and Grade ASI Manilal, who was on aid post duty. It refers to the sequence of events and how Dr.Vandana Das got caught inside the observation room of the hospital, unknown to anyone, and was attacked by the accused. The young House Surgeon received 16 stab injuries, six each on her head and chest, three on her left arm and one on her shoulder. On hearing her screams, Dr.Muhammed Shibin the defacto complainant, came running towards the observation room, and he found Sandeep sitting on the floor, stabbing Dr.Vandana Das, who had by then fallen down. Dr. Shibin pulled her by the leg and dragged her out, and both of them went out walking. The police thereafter bolted the main door from the outside to secure the culprit. The injured doctor was shifted to Vijaya Hospital, Kottarakkara, from where she was referred to KIMS Hospital for specialised treatment and later, at 8.25 am, she was declared dead.

5. As the investigation was completed, the case diary was made available to the court for perusal along with a pen drive containing the CCTV footage of the reception area of the hospital, which forms part of the record of the case. The final report arrays Sri. Sandeep as the lone accused, and he has been charged with various offences, including murder. The proceedings before this Court also indicate that on 03.10.2023, the State Police Chief was directed to summon the case diary and interact with the petitioners as a measure of redressing their grievance, if possible and to submit a report to this Court. A report submitted by the State Police Chief is also placed before the court for consideration as well.

6. Sri. P. Vijayabhanu, the learned Senior Counsel, contended that there were

several anomalies in the investigation, which required a detailed probe by an independent agency like the CBI. Relying upon the decisions in *R.S Sodhi, Advocate v. State of U.P. and Others* [(1994 Supp 1 SCC 143)] and in *Rubabbuddin Sheikh v. State of Gujarat and Others* [(2010) 2 SCC 200], it was submitted that when the accusations are against the police personnel, to ensure that a fair and unbiased investigation takes place, it is necessary that an independent agency is entrusted with the investigation. The learned Senior Counsel also submitted that the police who were there at the hospital were guilty of cowardice, and the present investigation had not brought out any of the issues relating to the inaction or omission of the police personnel who were present at the scene and at the time of occurrence.

7. Sri. Grashious Kuriakose, the learned Additional General of Prosecutions, contended that none of the circumstances warranting an investigation by the CBI exist in the instant case. He contended that the accused was brought into the hospital only as a complainant, and there was no reason for the police officers who accompanied him to assume that such an incident would occur. The learned Prosecutor also submitted that there was no direct involvement of any police personnel in the crime, and at the most, it can only be alleged that there might have been an error in their calculations, which is insufficient to mulct them with any criminal liability. In addition to the above, it was informed that the State Government is taking every step to enable a speedy trial and that even a Special Public Prosecutor at the choice of the petitioners is about to be appointed and that if further investigation by the CBI is ordered, it would only delay the trial giving undue benefit to the accused.

8. Sri.B.A.Aloor, learned counsel for the 5th respondent, contended that the 5th respondent is totally innocent and that the CBI enquiry ought to be conducted so as to bring out the truth of the allegations and the faulty nature of the investigation conducted by the local police.

9. Sri. K.P. Satheeshan learned Senior Counsel assisted by Adv. Sudhin Kumar, appearing for the CBI was also heard.

10. The solitary question to be considered is whether the investigation into Crime No.1202 of 2023 of Kottarakara Police Station should be handed over to the CBI or not. Concededly, the investigation has already been completed, and the final report has been filed. The scope of the power of this Court to order an investigation by the CBI, despite the local police filing the final report, is already settled. Reference to *Rubabbuddin Sheikh v. State of Gujarat and Others* [(2010) 2 SCC 200] is relevant in this context. Thus, despite the filing of the final report, if the circumstances warrant, this Court can direct the CBI to investigate the case.

11. The unfortunate incident that occurred on 10.05.2023 led to the death of the only child of the petitioners, who was a budding Doctor. In the early hours of the day, police had brought an injured Sandeep to the hospital. While at the hospital, without any provocation, the accused stabbed the policemen, his neighbour who

had accompanied him to the hospital and even Dr. Vandana Das. After the young doctor fell down, the accused is alleged to have continued to stab her until Dr. Shibin came and rescued her. There were a total of 16 stab wounds on the unfortunate victim. The police personnel who had brought the accused to the hospital panicked and, instead of protecting the people, allegedly fled from the scene of occurrence after being attacked by the accused. They are alleged to have bolted the door from outside after getting injured and fled. The circumstance that Dr. Vandana Das got caught up with the accused in the observation room of the hospital was not known to anyone until Dr. Shibin heard her screams. The incident happened in a matter of two minutes.

12. The circumstances that unfolded on the morning of 10-05-2023 reveal that Sri. Sandeep was picked up at 03.45 am by an ASI and a Home Guard after he complained of an injury and was behaving in an abnormal manner. The contention that the police ought to have probed into the behaviour and character of the accused at that stage is too far-fetched. This Court bears in mind that Sri. Sandeep was not picked up by the police as an accused but as a victim, and therefore, normally, there could not have been any reason to keep him under strict vigil, even while at the hospital. However, after Sri. Sandeep started attacking, ideally, the police should have remained at the scene and prevented the condition from going out of hand. Such an ideal situation did not happen. Instead, the ASI, the Home Guard and the police Driver, all of whom had come under attack, apparently moved out of the room. In the meantime, the hapless Dr. Vandana Das, unknown to others, was in the observation room, and the accused cornered her and stabbed her repeatedly.

13. The investigation was conducted by a Special Investigation Team led by a Deputy Superintendent of Police and nine other police Officers. As many as 106 witnesses were questioned, and after an exhaustive investigation, the final report was filed on the 89th day. Sri. Sandeep is arrayed as the solitary accused. No serious flaws could be pointed out by the petitioners in the manner in which the investigation was conducted. Except for certain omissions on the part of the police who had accompanied Sri. Sandeep to the hospital, there is no allegation of any direct involvement of any of the police officers in the crime. No criminal intent is attributed to the police for their omission to protect the public from the attacks of the accused.

14. The circumstances in which a CBI can be called upon to investigate a crime is no longer *res integra*. Though under Article 226 of the Constitution, this Court is vested with wide powers and is subject only to self-imposed restrictions, the very plenitude of the power requires great caution in its exercise. Further, no one can insist that the offence should be investigated by a specific agency as the request can only be that the offence be investigated properly. While considering the question of handing over of investigation to the CBI, a Constitution Bench of the Supreme Court in *State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others* (2010) 3 SCC 571 observed that

orders directing CBI to investigate must not be issued as a matter of routine merely because a party has levelled some allegations against the local police. The extraordinary powers are to be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations. The power can also be exercised where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice in enforcing fundamental rights.

15. Similarly, in *K.V.Rajendran v. Superintendent of Police, CBCID, South Zone, Chennai and Others* [(2013) 12 SCC 480], it was reiterated that the transfer of investigation to agencies like the CBI must be invoked only in rare and exceptional cases. In another decision in *Vishal Tiwari v. Union of India and Others* [2024 LiveLaw (SC) 2], it is observed that unless the authority statutorily entrusted with the power to investigate portrays a glaring wilful and deliberate inaction in carrying out investigation, the court will ordinarily not supplant the authority which is vested with the power to investigate. The Court went on to further observe that such powers must not be exercised by the court in the absence of cogent justification indicative of a likely failure of justice unless the investigation is transferred. It was held that the petitioner must place on record strong evidence indicating inadequacy in the existing investigation or, *prima facie*, appeared to be biased.

16. Though the aforesaid principles indicate that only in rare and exceptional circumstances that the investigation must be transferred to the CBI, in *R.S. Sodhi v. State of UP and Others* [(1994) Supp 1 SCC 143], the Supreme Court has also observed that when the accusations are directed against the local police personnel, it would be desirable to entrust the investigation to an agency like the CBI so that all concerned, including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend final outcome of the investigation credible. It was further observed that however faithfully the local police may carry out the investigation, they will lack credibility since the allegations are against the police. Similar observations were also made in *Rubabbuddin Sheik v. State of Gujarat and Others* [(2010) 2 SCC 200].

17. It is thus evident, from an appreciation of the aforementioned decisions, that in cases where the police are under a scanner of doubt, and the fingers are pointed against them, investigation can be entrusted to the CBI. However, the said principle is not an inflexible rule. The circumstances in each case will determine whether such a course is warranted or not.

18. In the instant case, as noticed earlier, there is no allegation of any criminal intent or act committed by any of the police officers. Petitioners only allege 'an act of cowardice' by the police. Though an 'omission' can, under section 33 of the Indian Penal Code, 1860, amount to a criminal act, the omission must be coupled with a criminal intent. An omission to act in an expected manner cannot by itself

impute criminality. The person who omitted to act cannot be mulcted with criminal liability under the Indian Penal Code, except in a few instances where the omission was the *causa causans* for the death. There is no allegation even, that the Assistant Sub Inspector of Police, the Home Guard, or the Police Driver, who had brought Sri. Sandeep to the hospital, had any criminal intent while allegedly fleeing away from the scene of occurrence. An error in their judgment or mistaking the gravity of the acts of the accused are not reasons to assume complicity in the crime.

19. Petitioners also do not have a case that any of those police officers had any motive or criminal intent or that they had allegedly withdrawn themselves from the scene of occurrence with criminal intent. Therefore, unlike in *Rubabbuddin Sheik's* case (*supra*) and *R.S. Sodhi's* case (*supra*), where the allegations were about fake encounters by the police, the allegations in the instant case do not strictly point to the involvement of any police personnel in the crime. Moreover, the disciplinary proceedings against them are admittedly pending.

20. Since the petitioners have not been able to point out any specific reason to doubt the integrity or credibility of the investigation, this Court finds no reason to interfere with the investigation already conducted or to transfer it to the CBI.

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