
(2007) 08 MP CK 0102
In the Madhya Pradesh High Court

Kedarnath Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 174
Penal Code, 1860 (IPC) — Section 201, 302, 306

Citation : (2007) ILR (MP) 1579 : (2008) 2 JLJ 400 : (2008) 1 MPHT 233

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Petitioner, a 82 years old person has invoked the writ jurisdiction of this Court aggrieved by the manner in which the process of investigation and inquiry into the death of his daughter, Kumari Chetana Sharma who was working as Sub Inspector in District Bhind is being carried out. Inter alia contending that investigation in the matter is not conducted properly and the then Superintendent of Police, Bhind, one Shri Rajababu Singh has in fact murdered petitioner's daughter, the First Information Report lodged by him is not properly registered, action is not being taking for registering the case u/s 302 of IPC, petitioner has filed this petition and the reliefs claimed are that a writ of Mandamus or any other writ be issued directing the respondents to handover investigation of the offence to the Central Bureau of Investigation (CBI) for its fair and impartial investigation and CBI be directed to register a case u/s 302, IPC, against the accused persons which include Shri Rajababu Singh and investigate the matter in accordance with law.

2. Facts in a nutshell relevant and necessary for disposal of this petition are that late Chetana Sharma was a member of the District Police Force, Bhind. She was working there since May, 2006 and was posted as Sub Inspector, Police Station (Dehat), Bhind. Chetana Sharma at the relevant time was staying in the official

quarter allotted to her by the department and on the date of the incident, i.e., 29th/30th November, 2006, it is stated that she was alone in the house. When the servant lady who does domestic work in the house of late Chetana Sharma, one Renu w/o Ramsiya came to the house at 7.30 A.M., of 30th November, 2006 and when she did not receive any response, she called certain ladies living in the neighbourhood, one Smt. Jadon with others came along with Renu and on a slight push, the door opened, when they went inside the house, it was found that Chetana Sharma was lying in the bed (indicated as Thakat in the investigation report) with a razai covering up to her forehead, the razai was removed from the forehead and blood was seen on the nose and the region of the mouth, it was though that this was due to snake bite. Accordingly, the matter was reported to the Police Station, Kotwali, Bhind. Officials came and on investigation it was found that Chetana Sharma is dead, the razai was removed and a service pistol issued to the deceased was found on the bed. Injuries were found on the breast and also on the back side. It is stated that crime was registered u/s 174, Cr.PC, panchnama was prepared, and accordingly all concerned were informed and investigation into the matter progressed.

3. Grievance of the petitioner is that immediately after he received the information, he came to Bhind from Gwalior and even before that his relatives, namely; Brijmohan Sharma, uncle and aunti Vimala Sharma of Chetan Sharma and nephews, Radhakrishna Sharma and Chandra Kant Sharma of the deceased had reached the spot as all of them were staying in Bhind and requested the police authorities not to remove the dead body and send it to post-mortem till the petitioner and his family members arrives. Grievance of the petitioner is that at the instance and intervention of Shri Rajababu Singh, the S.P. of Bhind, the dead body was sent for post-mortem without waiting even for the I.G., and D.I.G., who were coming to Bhind from Gwalior. It is stated that before the aforesaid senior officials could come from Gwalior, at the instance of the then Superintendent of Police, panchnama was prepared, the entire site of the incident was disturbed and the body was sent for post-mortem. According to the petitioner, immediately after he came to the spot and after meeting various people, it became clear to him that his daughter has not committed suicide but she has been killed and the then Superintendent of Police is responsible for the same. It is stated that petitioner immediately submitted a written report to the Inspector General of Police on 30th November, 2006 itself before post-mortem vide Annexure P-3 demanding registration of a case u/s 302 of IPC, and further investigation into the matter. It was stated in the complaint that his daughter, Chetana Sharma had been informing him for the last three to four months that the Superintendent of Police, Shri Rajababu Singh is troubling, harassing and insisting upon her accompanying him in official trips to Delhi and Bhopal, he had tried to give her gifts and when she refused to accept them, the same were sent through a constable. It was pointed out that before her death on 29th November, 2006, when the Superintendent of Police has misbehaved with her after calling her to his house, Chetana Sharma had sent a compliant to the President of the

National Women Commission, New Delhi vide Annexure P-1 making allegations against the then Superintendent of Police. In this complaint, it is stated that certain gifts were proposed to be offered to her by the then Superintendent of Police and when she refused to take the same, the gifts were sent through a constable to her official residence and she was left with no option to accept them. According to Chetana Sharma, the then Superintendent of Police was harassing her in many ways which included sexual harassment. According to the petitioner, when the investigation and processing of the matter on 30th November, 2006 was proceeding under the direct supervision of the then Superintendent of Police, he submitted objection vide Annexure P-3 to the Inspector General of Police, and thereafter his son also made persistent requests to the police authorities to get the post-mortem done by a team of doctors from Gwalior and ensure proper investigation into the matter after registration of First Information Report on the basis of the complaint, Annexure P-3. It is stated that various complaints were made, to the National Women Commission, New Delhi vide Annexure P-4, the Chief Minister vide Annexure P-5 and the Director General of Police and the Principal Secretary, Home on various dates, upto 3-12-2006, pointing out to that the case is not being properly investigated, it is being treated as a case of suicide whereas it is a case of murder of Chetana Sharma by the then Superintendent of Police, inter alia contending that no action was taken on the complaint submitted by the petitioner and the investigation is not being properly conducted, petitioner has filed this petition on 5th January, 2007.

4. From the averments made in the petition, it is seen that after the incident was reported to the police on the basis of complaint made by Smt. Renu, a case u/s 174 of Cr.PC, was registered as Merg No. 50/06 by Police Station, Kotwali, Bind. The body was sent for post-mortem. The post-mortem report was received and it was indicated to be a case of suicide. In the meanwhile, there had been a public out cry in the matter, various agitations were taking place and even the parents of the deceased, Chetana Sharma were not willing to accept the body for cremation, they were insisting upon proper inquiry and investigation into the matter and arrest of the then Superintendent of Police for his alleged involvement in the entire episode. However, because of the intervention and on some assurance given by the Inspector General of Police, and the Deputy Inspector General of Police and the district administration for proper investigation into the matter, the dead body was taken over and cremated on 1st December, 2006. In the meanwhile, the Inspector General of Police passed orders directing the DIG, Chambal Range to carry out the investigation and thereafter the investigation was conducted by the DIG from 1st December, 2006 to 5th December, 2006. On 6th December, 2006, the matter was transferred to Crimes Investigation Department, Bhopal (hereinafter referred to as "CID") by orders of the Competent Authority. From 6th December, 2006 to 27th December, 2006, the CID conducted inquiry and registered the First Information Report on 27th December, 2006 as Crime No. 4/66 for offences u/s 306 read with Section 201,

IPC, and in the aforesaid First Information Report, the then Superintendent of Police, Rajababu Singh was accused of having committed offence u/s 306 read with Section 201, IPC. In the meanwhile, the then Superintendent of Police, Rajababu Singh was transferred from Bhind on 5th December, 2006 and he was relieved on 12th December, 2006 and is now posted as Commandant, First Battalion, SAF, Indore.

5. The petitioner has also contended in the petition that the then Superintendent of Police, Shri Rajababu Singh is related to certain office bearers of the ruling party of the State Government, namely: Bharatiya Janta Party and at the instance of political influence, he is being protected.

6. Respondents have filed a return and they have refuted the aforesaid contentions. The respondents have denied the fact of irregularity or illegality in the matter of investigation. They have also stated that investigation is being properly conducted by the CID and there is no illegality as alleged by the petitioner. Involvement of the then Superintendent of Police is denied and it is submitted that from the material that have come on record, registration of a case u/s 302, IPC, is not made out at this stage. It is stated by the State Government that on further investigation, if the CID finds any material to register a case u/s 302, IPC, they will do so after the material is brought out on record. The learned Counsel for the State argued that no case is made out for transfer of the case to the CBI nor registration of the case u/s 302, IPC, is made out against the then Superintendent of Police on the basis of material available on record for the present.

7. The respondent No. 7, CBI have also filed a short return and they have stated that they have no objection for taking over the investigation of the case if directed by the Hon"ble Court.

8. The then Superintendent of Police, Rajababu Singh was permitted to intervene in the matter. He has filed a separate return. In the return, he has tried to point out that he is respectable IPS Officer with a unblemished service career and the petitioner is attempting to malign and disrepute him and in fact, the petitioner is trying to black mail him. Various allegations are made against the son and other family members of the petitioner. It was pointed out that Chetana Sharma had tried to commit suicide earlier also when she was working at Mandsaur as Sub Inspector. Her brother also tried to commit suicide and it is alleged that the petitioner wants to convert a case of suicide into a murder case only to get Rs. 10,00,000/- from the insurance company on the basis of the insurance policy taken by the deceased. The said intervenor-respondent submits that no case for interference is made out and the investigation being conducted by the CID is going in the right direction, and therefore, at the instance of the petitioner on the basis of the material adduced, it was argued that no case is made out for granting any relief to the petitioner.

9. During the course of hearing of the petition on 7th, 8th and 9th August, 2007,

Shri Abhishek Nagarajan, Advocate along with Shri Jitendra Sharma, Advocate representing the petitioner took me through the material available on record and tried to emphasise and demonstrate that the investigation in the matter is wholly misdirected and is being progressed in such a manner so as to protect the main accused persons which included Shri Rajababu Singh, the then Superintendent of Police. From the photographs, post-mortem report and the other documents available on record, it was emphasised that prima facie the theory of suicide as is being put forth by the respondents is not made out. It is further argued that from the facts that have come on record, the entire investigation is seem to be tainted with malafides and arbitrariness. Learned Counsel argued that this is a fit case where powers under Article 226 of the Constitution should be invoked and the reliefs claimed by the petitioner can be granted.

10. Inter alia contending that when the information is made to the police authorities in the matter of committal of a cognizable offence, Section 154, Cr.PC, mandates the police authorities to register the First Information Report and take action in the matter. It is argued by learned Counsel for the petitioner that in this case even though the complaint is made and the information is given by the petitioner to the effect that his daughter, Chetana Sharma was murdered by Shri Rajababu Singh, no First Information Report is registered as required u/s 154 of Cr.PC, and no case is registered by the police authorities against Rajababu Singh. Placing reliance on various judgments as indicated hereunder, learned Counsel tried to emphasise that the entire action of the respondents is not only malafide but is also contrary to the statutory provisions pertaining to registration and inquiry as contemplated under the Code of Criminal Procedure, 1973, and therefore, interference in the matter is sought for. Learned Counsel taking me through in detail to the statements of some of the witnesses, findings of the post-mortem report and the photographs available on record, and pointing out various infirmities in the investigation and conclusion being drawn by the Investigating Officer tried to demonstrate that the investigation and inquiry is not being conducted in a proper manner. The judgments relied upon by learned Counsel for the petitioner are as under:

- (a) Mohindro Vs. State of Punjab and Others, ;
- (b) Parkash Singh Badal and Another Vs. State of Punjab and Others, ;
- (c) Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, ;
- (d) Kashmeri Devi v. Delhi Administration and Anr. 1988 SCC 864;
- (e) R.S. Sodhi Vs. State of U.P. and others, ;
- (f) Mohammed Anis Vs. Union of India (UOI) and Others, ;
- (g) Central Bureau of Investigation Vs. State of Rajasthan and Another, ;
- (h) State of Bihar and another Vs. Ranchi Zila Samta Party and another, ;
- (i) Giridhari Lal Kanak Vs. State and Others, .

Accordingly, it was emphasised on behalf of the petitioner that in the facts and circumstances of the case, a prima facie case is made out for investigation and inquiry into the matter by the CBI.

11. Shri Brijesh Sharma, learned Counsel for the State submitted that registration of the case u/s 154 of Cr.PC, is not necessary when the investigation after registration of merg u/s 174 of Cr.PC, is already in progress. It was argued by him that immediately when the matter was reported, the higher officials of the department including the I.G., from Gwalior and the DIG, Chambal Range, Gwalior came to the spot and the Inspector General of the Police immediately ordered for taking over of the investigation by the DIG Chambal Range, Gwalior. The investigation was taken over on the same day and from 1st December, 2006 to 5th December, 2006, investigation was conducted under the guidance and supervision of DIG, Chambal Range, Gwalior and thereafter from 6th December, 2006, the matter was transferred to the CID and even now the matter is being investigated by the CID but due to pendency of this writ petition investigation is stopped as the case diary is produced in this Court, it is submitted by the respondents that no case is made out for transfer of the case to the CBI as prayed by the petitioner. By taking me through the case diary and indicating the action taken by the Inspector General of Police, DIG, Chambal Range, Gwalior, the Additional Director General, CID and other material available on record, it was argued by the learned Government Advocate that the investigation is moving forward in the right direction by the competent officials of the department and the apprehension of the petitioner is wholly unsustainable, and therefore, it is stated that no case is made out for inference. It was argued by learned Government Advocate that investigation of a crime is a statutory right and duty of the police authorities and this right cannot be taken away at the instance of the petitioner on the basis of vague and misconceived contentions of the petitioner. According to the learned Counsel for the State Government, the State Government has taken all steps as are permissible, and therefore, there is no illegality in the matter warranting interference and transfer of the case to the CBI. In support of his contention, Shri Brijesh Sharma places reliance on the following judgments:

- (a) C.V. Rajendran and Another Vs. N.M. Muhammed Kunhi, ;
- (b) Hari Singh Vs. The State of U.P., ;
- (c) Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, ;
- (d) Shashikant v. Central Bureau of Investigation and Ors. (2007) 1 SCC 630;
- (e) Adri Dharan Das Vs. State of West Bengal, .

12. Shri M.P.S. Raghuvanshi, Advocate, Shri Mrigendra Singh, Advocate and Shri Prashant Sharma, Advocate for the intervener, Shri Rajababu Singh submits that the petitioner has not come before this Court with clean hands. Attributing mala fides on the part of the petitioner in the matter of making allegations against

him, learned Counsel for the intervener tried to emphasise that the intervener has a fundamental right to protect his life and dignity and on the basis of the vague and misconstrued notions of the petitioner, a case u/s 302 of IPC, cannot be registered against the intervener and the matter is not required to be transferred to CBI. It was emphasised that the petition is filed by the petitioner with malafide intention only to black mail the intervener without any just cause or reason.

13. Shri Mrigendra Singh, learned Counsel representing the intervener had made certain submissions by placing reliance on a judgment of the Supreme Court in the case of Common Cause, A Registered Society Vs. Union of India and Others, , it was argued by him that the police had a right to discharge its statutory duty as per law and this right cannot be taken away by issuing any direction for transfer of the investigation to the CBI as prayed for by the petitioner. Placing reliance on the following judgments, learned Counsel for the intervener tried to emphasise that by issuing and direction of the nature as claimed for by the petitioner, this Court would be contravening the statutory provisions and therefore, the same is not permissible, the judgments relied upon on behalf of the intervener are:

(a) Rajesh and Ors. v. SHO Ist Town, Kadappa, 2001 (10) SCC 759 ;

(b) T.T. Antony Vs. State of Kerala and Others, ;

(c) Popular Muthiah Vs. State represented by Inspector of Police, ;

(d) State of West Bengal and Others Vs. Sampat Lal and Others, .

14. Apart from the aforesaid, during the course of hearing, Shri Raghuvanshi had invited my attention to the principles of law laid down in the case of Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , to submit that prima facie no case is made out for transfer of investigation to the CBI.

15. Finally, on behalf of the intervener, it was submitted that in the facts and circumstances of the case if this Court comes to the conclusion that the investigation is not properly done, this Court can always issue direction to the CID and get the investigation done under the supervision of this Court and for this purpose, it is stated that no direction as prayed for by the petitioner is required to be issued.

16. During the course of hearing, learned Counsel for the State and the intervener placed much emphasise on the fact that the petitioner and his family members are not co-operating in the enquiry being conducted, they have not even cared to come and record their statements u/s 161, Cr.PC, even though notices have been issued. Instead of co-operating into the fair investigation and inquiry in progress, petitioner has rushed to this Court with a totally unjustified claim and unwanted relief is being claimed for. Accordingly, the learned Counsel for the respondents and the intervener seek for dismissal of this petition.

17. I have heard learned Counsel for the parties, perused the record and the original case diary.

18. Before venturing into marshalling of the facts, it is proper to consider the legal position with regard to powers that can be exercised by this Court in the matter of directing for inquiry and investigation into a criminal case by an independent authority like CBI.

19. In the case of Common Cause, A Registered Society (supra), relied upon by Shri Mrigendra Singh, the Supreme Court has laid down the principles in detail and according to the principles laid down in the said judgment as contained in Paragraphs 174 and 175, this Court cannot issue direction to the CBI to investigate as to whether a person has committed an offence or not. It is held by the Supreme Court that 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. It has been held that such a direction to investigate whether any person has committed an offence or not is in complete negation of various decisions in which the concept of "life and liberty" is considered and explained. However, the judgment of the Supreme Court in the case of Common Cause, A Registered Society (supra), was again taken note of in a subsequent case by the Supreme Court in the case of Secretary, Minor Irrigation & Rural Engineering Sendees, U.P. and Ors. (supra), and while considering the scope of interference in such matters under Article 226 of the Constitution, it has been held by the Supreme Court in Paragraphs 5 and 6 of this judgment that the High Court has power under Article 226 of the Constitution to direct inquiry and investigation by the CBI but the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is need for such an inquiry, a complete reading of the principles laid down by the Supreme Court in both the aforesaid cases indicates that even though direction as prayed for by the petitioner for directing CBI to register a case against the intervener and conduct inquiry cannot be granted but a direction to investigate the entire case properly so as to bring the accused after such investigation to book can be issued by this Court as held by the Supreme Court in the case of Secretary, Mining Irrigation & Rural Engineering Services, U.P. and Ors. (supra). However, this direction also can be issued only if this Court is satisfied that prima facie inquiry conducted in the matter by the police authorities and the CID is not proper, and therefore, inquiry by a independent agency like the CBI is necessary.

(Emphasis supplied)

20. That being the scope of interference by this Court, in this petition, it is appropriate to consider the manner in which the investigation has progressed, outcome of the same and the circumstances that have come on record in required to be assessed so as to ascertain whether a prima facie case for investigation by the CBI is made out or not.

21. From the complaint, Annexure P-1 submitted by Chetana Sharma on 29th

November, 2006 to the President, National Women Commission, New Delhi and from the complaints, Annexures P-3, P-4 and P-5 submitted by the petitioner to various authorities and from the statement of Chetana's mother, Smt. Pratiba as recorded by the authorities during the course of investigation, so also, from the statement of one Anjali Kaushik daughter of Hemchand, a close friend of the deceased, Chetana Sharma, it is seen that during her life time. Chetana Sharma had made serious allegations against the then Superintendent of Police, in the complaint, Annexure P-1. Chetana Sharma has indicated that the then Superintendent of Police (i.e., the intervener, Shri Rajababu Singh) was harassing her and has also made sexual advances, offered gifts to her and was insisting on her accompany him to Bhopal and Delhi on official visits. The respondents have objected to the consideration of this letter, Annexure P-1 said to have been sent by late Chetana Sharma to the National Women Commission, New Delhi. It is stated that this letter is created subsequently and is a fabricated document made after 30th November, 2006 and is an after thought. However, this contention seems to be prima facie baseless in view of the fact that available on record is another letter written by one Gurpreet Kaur, Deputy Secretary of the National Commission for Women, New Delhi to the Director General of Police, Government of Madhya Pradesh, Address--Police Head Quarters, District Bhopal, Madhya Pradesh vide Annexure P-13, dated December 19, 2006. In this letter, it is indicated that the letter dated 29th November, 2006 is received by the Commission by post and on verifying the postal seal available on the envelope this letter is seen to have been posted from Bhind on 29th November, 2006. Even though during the course of hearing, learned Counsel for the intervener and the respondents tried to emphasise that the postal seal is a fabricated one but at this stage it is not necessary for this Court to look into this question as the same is within the realm of the Investigating Authority. In this complaint made by Chetana Sharma, allegations are levelled against Rajababu Singh, the then Superintendent of Police. This fact would become more relevant when the subsequent conduct of the State Government in the matter of taking action against the then Superintendent of Police is analysed.

22. When the matter was reported to the authorities concerned by Smt. Renu at 7. 30 in the morning on 30th November, 2006, the records indicate that certain police officers including the Additional Superintendent of Police, Dy. Superintendent of Police and the Superintendent of Police, Shri Rajababu himself came to the spot. At that relevant time, one Radhakrishna Sharma, Chandra Kant Bohare, nephews, Brijmohan Sharma and Smt. Vimala Sharma, uncle and aunt, of late Chetana Sharma are said to have reached the spot. The complaint made by the petitioner indicates that these persons requested the then Superintendent of Police not to take the body for post-mortem. It was requested that body of the deceased be kept at the spot till her parents, I.G. and D.I.G., arrive from Gwalior. In spite of this, the intervener, Shri Rajababu Singh is said to have been instrumental in sending the body for post-mortem at 10.30 A.M., even before the I.G. and DIG, came to the spot. Before doing so, panchanama,

inquest report and various other procedures in the course of investigation were conducted. However, interestingly, the then Superintendent of Police failed to call the finger print expert to take the finger prints on the revolver and other areas of the spot and the house. Thereafter, when the body was sent for post-mortem and when the body was lying in the hospital for postmortem, the records indicate that the petitioner himself had arrived at the spot and by submitting written representation sought for post-mortem to be conducted by expert doctors from Gwalior.

23. A perusal of the case diary indicates that most of the complaints in this regard submitted by the petitioner and his son are available on record. However, the post-mortem is done by a team of doctors from Bhind itself and the report is submitted. The case diary indicates that the investigation was taken over and the case diary was transferred to DIG, Chambal Range on 1st December, 2006 and when the case was transferred to him various processes and actions which form important part of the investigation were already completed. Amongst others, post-mortem was over, the report of post-mortem was available, panchanama of the dead body, spot map and all other seizures were completed and materials for further analysis by the forensic laboratory were collected, packed and sealed. After the case was transferred to DIG on 1st December, 2006, he has only visited the site along with some experts of the forensic laboratory and has tried to reconstruct the site and find out as to what is the cause of the death. However, no concrete step was taken by him to conduit further inquiry into the matter or to undo the irregularity, if any in the investigation or to find out the effect of these irregularities. He has only visited the spot at various times for four days up to 5th December, 2006 and thereafter, the entire case diary is transferred to CID. Except visiting the spot and collecting some particulars, the DIG, Chambal Range, the case diary indicates has not taken any concrete step in the matter of investigation. Thereafter from 6th December, 2006 the matter is being investigated by the CID. The CID also except for recording statements of various persons and processing the material already available on record have not taken any such step which may be said to be material for considering the complaint made by the petitioner with regard to murder of his daughter or to remedy the irregularity in the investigation which is found to be established. On a close scrutiny of the entire case diary and other documents available on record, following factual aspects come to light:

(a) Chetana Sharma is said to have died because of gun shot injury. She is said to have used her service pistol for the said purpose and by keeping the nozzle of the pistol on her chest towards the left side. She is said to have fired by lying sideways as a result the bullet entered into her body from chest side and came out from back side and was found on a wooden door in the room. The shot is fired from such a close range that the entire lung is pierced and heart has been damaged. If this is the manner in which suicide is said to have been committed then the photographs available on record does not indicate these facts, because,--

(i) the statement of Smt. Renu who is the first person along with Madam Jadon who had seen the dead body, says that they saw the deceased lying covered with the razai up to the forehead. They removed the same and found blood in the nose and the mouth region. Bullet mark is found on the T-shirt worn by the deceased and it is stated that she has fired from in between the razai and her body. If that be so, after receiving such a severe bullet injury, the position in which Chetana Sharma is lying by putting razai over her forehead cannot be possible; her left hand is found to be under her head and right hand is on the pillow. Pistol which is said to have been used for killing herself is lying on the left side of the body and the nozzle is facing away from the body.

(ii) If the scene of incidence is recasted and the entire episode as narrated hereinabove is reviewed it is impossible to convince that a person after receiving such a bullet injury would lay on the bed and that also under a razai covered upto forehead and the pistol facing towards the other side, i.e., away from the body, prima facie material available on record does not tally with the story put forth by the Investigating Authority and the photographs do not confirm the story of the suicide put forth the respondents; and

(iii) These facts and various other material available on record if analysed, prima facie go to show that committing suicide in the manner as stated is not possible.

24. Accordingly, I am of the considered view that the Investigating Authority has not analysed the matter properly and prima facie it is seen that they have not made any efforts to enquire into the above aspect of the matter in a proper manner, on the contrary they have tried to put forth the theory of suicide without trying to enquire into or investigating into the matter on the basis of any other theory.

25. The records also indicate that the legs of the deceased were lying one over the other when her body was found. This also seems to be impossible. Thereafter, if it is assumed that blood which is found in the mouth, nose and on the clothes are because of shock and struggle just before the death then the position in which the body of the deceased is found is not correct. All these factors indicate that there are many questions which remain unanswered and investigation into the matter done so far by the authorities concerned has totally failed to enquire into and find out the correct facts.

26. Investigation was derailed at the very outset after the then Superintendent of Police, Shri Rajababu Singh came to the spot and removed the body immediately and sent it for post-mortem and in the process has disturbed the entire place of the incident in such a manner that proper investigation and inquiry is not possible. Because of this act on his part, he has been charged u/s 201, IPC. These factors are prima facie established and that is the reason why First Information Report is registered by the CID against the then Superintendent of Police, Shri Rajababu Singh, however, in spite of this, no steps are taken by the Investigating Authorities to undo the irregularity committed in the matter by

the then Superintendent of Police and find out to what extent the irregularity committed by him has adversely effected the investigation and the damage done for destroying the evidence. There is no thing on record to suggest as to what CID has done in the matter to find out the damage caused because of the action of the then Superintendent of Police and no effort is taken to ascertain the extent of damage done to the investigation and find out the truth.

27. During the course of hearing, it was emphasised that investigation is still in progress and inquiry could not be completed because of the requisition of the case diary by this Court. This excuse cannot be accepted. The investigation was transferred to the CID on 6th December, 2006. The case diary indicates that the proceedings up to 16th January, 2007 are recorded therein and during the investigation conducted by the CID from 6th December, 2006 to 16th January, 2007, except for recording statement of various persons and collecting the reports from various laboratories and forensic institutes, no concrete effort is made to inquire into the matter and to find out whether the contentions put forth in the complaint made by the petitioner is correct or not. Even if the petitioner and his family members are not co-operating and are not coming forward to record their statements, it was the duty of the Investigating Authorities to find out and make efforts for finding out the correct fact even in the absence of any such co-operation from the petitioner. The case diary does not indicate that any such steps were taken by the authorities concerned. In this regard, it is seen that much emphasis was laid during the course of hearing to the effect that the CID is still investigating the matter and as the case diary is produced in the Court, the investigation has not progressed since January, 2007. This contention seems to be totally misconceived and cannot be accepted. The petition was filed on 5th January, 2007 and on 12th January, 2007, notice was issued to the respondents to produce the case diary and the case was fixed for 22nd January, 2007. The case was taken up on 24th January, 2007. The case diary was produced before the Court and prima facie case for investigation by the CBI was found to be made out on going through the case diary. Accordingly, CBI was directed to be impleaded as party and the case diary was returned back to the Government Advocate and she was directed to keep it in the custody in the office of the Additional Advocate General. However, after 24th January, 2007, the case has been adjourned on various dates. Return was filed by the State Government on 3rd April, 2007 and during the period from 24th January, 2007 till hearing of the case, even though there was no stay with regard to inquiry or investigation, respondents could have proceeded with the investigation after obtaining case diary from the office of the Additional Advocate General by moving an appropriate application. For the reasons best known to the respondents, they have not taken any such step and the only excuse made is that they have kept the case diary in the office of the Additional Advocate General without taking any action from 24th January, 2007 till date. If the respondents were really interested in conducting the inquiry expeditiously, they could have requested this Court for the same however that was not done.

28. The records further indicate that before post-mortem was done videograph of the same was ordered and the communication available on record indicate that a local videographer was engaged for the same and a 24 minutes video of the entire post-mortem was recorded. It is indicated in thci communication that as a fresh blank cassette is not available, the videograph was done in a cassette wherein some marriage ceremony is already recorded and the twenty-four minute in this video cassette is the post-mortem done and recorder. Surprisingly, the video cassette does not form part of the case diary, may be it is kept somewhere else. However, the case diary does not indicate that any effort was made to go through this video cassette and find out the discrepancies, if any, in the matter of conducting post-mortem on the body of the deceased.

29. When the case was registered u/s 174, Cr.PC and investigation progressed immediately, investigation was entrusted to one Shri B.P. Trivedi of Police Station, Kotwali, Bhind. After making inquest report, by his communication available at Page 10 of the case diary, Shri Trivedi forwarded the body of the deceased for post-mortem. In the forwarding memo addressed to the District Hospital, Bhind, he had forwarded the dead body along with the clothes and other material as indicated in item Nos. 1, 2, 3, 4 and 5 and it was requested by him that the post-mortem be conducted by a team of doctors. Thereafter, in this memo there is a requisition in a different handwriting and an endorsement is made by an unknown person whose signature is very different from that of Shri Trivedi, by this endorsement name of two doctors are mentioned and it is stated that one of these doctors whose name is mentioned should be a member of the team of doctors which is to conduct the post-mortem. It is not known as to at whose instance this request is made for a particular doctor to be included in the team of doctors for conducting the post-mortem of the body. Records indicate that the doctor whose name is indicated was in the team which conducted the post-mortem. When case was being investigated by Shri B.P. Trivedi, endorsement by a third person in the matter of conducting the post-mortem is a serious anomaly which has to be taken note of by this Court. Thereafter, available at Page 174 of the case diary is a letter written by the Central Forensic Laboratory, Hyderabad to whom some samples were forwarded for analysis. This sample is not tested and returned back by the CFL, Hyderabad. The reason given for not accepting the sample was that the sample is tampered with and not in a proper form capable of being tested. The sample was sent even before the case was handed over to CID on 6th December, 2006 from Police Station, Kotwali through one Shri Vijay Singh Tomar of District Police Force, Bhind. In his report, Shri R.S. Mohali, Deputy Superintendent of Police, CID, Bhopal as contained in Page 245 of the case diary has mentioned about certain discrepancies in sealing of the sample which were sent for examination and scientific test and it is observed that these irregularities have been committed in the matters prior to his taking over of the investigation. Again in her report dated 12th December, 2006, Smt. Reena Mitra, the Additional Director General, CID has observed that the then Superintendent of Police and other officers had reached the spot

immediately after the matter was reported to them and within one and half hours, they sent the body for post-mortem and also took the photographs and FSL without calling the finger printing expert and before I.G., could come from Gwalior. The spot has been disturbing and it has caused great impediment in the matter of investigation. She further narrates that while making investigation, Anjali Kaushik, while talking to her into the matter gave some incriminating material, some secretes were brought to her notice but the said Kumari Anjali Kaushik expressed her desire not to record her statement, details of the facts revealed are not recorded in the diary. Thereafter, when Anjali was interrogated, she was interrogated by some other person and not by Smt. Reena Mitra and the facts with regard to the matter indicated in Paragraph 5 of this report dated 12th December, 2006 at Page 503 are totally ignored. What were those informations which Anjali Kaushik revealed are not mentioned in the report and the entire investigation does not indicate as to what steps were taken to find out about the veracity and truth of the information said to have been disclosed by Anjali Kaushik to Smt. Reena Mitra.

30. Apart from these factors that are revealed from the case diary, two more striking features have to be taken note of for considering the grievance of the petitioner.

31. The first striking feature is that the petitioner has made an allegation that death of his daughter is not suicidal but is homicidal. Petitioner may be right or may be wrong, it may be his apprehension but when such an allegation is made and prima facie material available on record shows that the initial investigation was tampered with and evidences were tried to be destroyed, the Investigating Authorities should have made some inquiry on this theory also and direct some inquiry to find out as to whether this allegation of the petitioner has any substance or not. The entire case diary and the manner in which the investigation has progressed indicates that the authorities have only proceeded to investigate the matter on the theory of suicide as was indicated by the Local Police Authorities at the initial stage of investigation and no effort is made to even remotely to explore the possibility of there being any other reason for death of Chetana Sharma, no such effort to explore any other possibilities that may have caused the death is at all made and therefore, it can be said that the respondents except for contending that the petitioner is not co-operating the Investigating Authorities have not made any effort to explore the possibility of any other act being committed and if so, by whom?

32. The second striking feature which cannot be ignored by this Court and which has great bearing with regard to apprehension of the petitioner is the attitude of the State Government in the matter of dealing with the then Superintendent of Police, Shri Rajababu Singh. The investigation is taken over by the CID on 6th December, 2006 and after conducting preliminary inquiries, they have registered the First Information Report on 27th December, 2006 and in the First Information Report allegations of destroying evidence are levelled against Shri Rajababu

Singh. The allegations levelled against him are twin folded; (i) the allegation of harassing Chetana Sharma is found to be established as a result, it is assumed that she has committed suicide, therefore, he is alleged to be responsible for having committed offence u/s 306 of IPC. An offence u/s 306, IPC is a cognizable offence and non-bailable offence. Even though, First Information Report was registered on 27th December, 2006, there is nothing on record to indicate as to what steps were taken to arrest, Shri Rajababu Singh or even to interrogate him or record his statement, and (ii) the investigation even if assumed to be preliminary in nature as contended by the respondents has resulted in registration of First Information Report after it is found that Shri Rajababu Singh has visited the spot of the incident immediately and was instrumental in destroying vital evidence. This goes to show the manner in which he has acted a conduct unbecoming of a senior Police Officer who is responsible for proper investigation and inquiry into the offence committed within the jurisdiction of his district, a senior IPS Officer, himself is alleged to have committed an offence of destroying the evidence in a case pertaining to death of young police officer aged 29 years working under him. It is surprising that the Government has slept over the matter and even after more than ten months have passed no action is taken against Shri Rajababu Singh. In the backdrop of the serious allegations found to be established, *prima facie*, which has resulted in registering of a First Information Report, the conduct of the respondents has to be considered by this Court. If such an offence is committed by an ordinary person, the police would have taken all steps, normally, including taking the person into custody, interrogation and recording his statement, but the same is not done in the present case. Considering the *prima facie* material on record, the authorities concerned should have arrested Shri Rajababu Singh or at least taken into custody, interrogated him and his statement recorded to find out the correct position. In the present case, even though the investigation by CID is in progress from 6th December, 2006, the First Information Report is registered on 27th December, 2006 and the case diary was available with the authorities up to 16th January, 2007, nothing is done either to arrest or interrogate or record the statement of Shri Rajababu Singh in the matter. This attitude of the State Government in dealing with the officer in such a manner gives credence to the apprehension of the petitioner that justice may not be done to him in the matter of fair investigation and inquiry by the State Government.

33. Apart from this aspect of the matter, the intervener is holding the post of Superintendent of Police, i.e., he is head of the District Police Force and Chetana Sharma was working under him. She has made serious allegations of harassment and misuse of the office by Shri Rajababu. The allegations may be wrong or may be right but that is not relevant at this point of time. If such serious allegation is made against a senior officer then the principle laid down by the Supreme Court in the case of *Vishaka and others Vs. State of Rajasthan and Others*, is attracted. The State Government in such circumstances was expected at least to issue a show-cause notice and proceed departmentally against the senior officer when

such serious allegations are made. This is also not done by the State Government in the present case. The attitude of the State Government in the matter of dealing with the intervener, Shri Rajababu Singh remains unexplained. The callous manner in which the matter is being dealt with by the State Government is evident from the fact that on the basis of the report, Annexure P-1 received by the National Women Commission, New Delhi, correspondence is being made by the National Women Commission and the State Government is being requested to take action in the matter and submit a report to the Commission so that the Commission can take further steps. Even though more than ten months have passed, there is nothing on record to indicate that the State Government has even responded to the queries made by the National Commission for Women. Even yesterday, i.e., 8-8-2007 during the course of hearing when the learned Counsel for the State was asked as to whether any action was taken by the State Government, he was unable to give a convincing reply, and therefore, it has to be presumed that till date, the State Government has not responded to the queries made by the National Commission for Women which is also enquiring into various allegations including harassment by Shri Rajababu of the deceased, Chetana Sharma. Added to this, the petitioner a 82 years old senior citizen is making complaint after complaint to the Chief Minister, Principal Secretary of the Home Department, and various other higher authorities of the State Government and none of these authorities have even cared to reply to the petitioner or to ensure him that the State Government will take all possible steps in the matter and justice will be done. All these factors that have come on record compels this Court to believe that the petitioner is right in apprehending that the State Government will not do justice to him, and therefore, he is seeking transfer of the matter to the CBI.

34. In the light of the circumstances as indicated hereinabove, this Court is of the considered view that sufficient prima facie material are available on record to indicate that the inquiry being conducted by the CID is not convincing enough to hold that the State Government is conducting a proper and impartial inquiry into the matter. At this stage, it would be proper to take note of certain observations made by the Supreme Court in the case of Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, . Speaking for the Bench and writing the judgment, Hon"ble Mr. Justice Arijit Pasayat in the said case started the judgment with a quotation by Abraham Lincoln. The quotation reads as under:

If you once forfeit the confidence of your fellow citizens you can never regain their respect and esteem.

After reproducing the aforesaid quotation, the Supreme Court has expressed serious concern with regard to custodial violence, torture and abuse of police power which are not peculiar to this country, but is widespread. In Paragraph 3 of the judgment, it is so observed:

If it is assuming alarming proportions, nowadays, all around, it is merely on account of the devilish devices adopted by those at the helm of affairs who

proclaim from roof tops to be the defenders of democracy and protectors of people's rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace-loving puritans and saviours of citizen's rights.

35. Thereafter taking note of Article 21 of the Constitution, a sacred and cherished right, i.e., life or personal liberty the human dignity approach is highlighted. In Paragraph 35 after observing the principles laid down by the English Court in the case of *Jennison v. Baker* All ER P. 106 d, it has been observed by the Supreme Court that the Courts have to ensure that accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. It has been held by the Court that justice has no favourite, except the truth.

36. Keeping in view the principle laid down by the Supreme Court in the case of *Shakila Abdul Gafar Khan (Smt.)* (supra), and analysing the manner in which the investigation has progressed in the peculiar facts and circumstances of the present case, this Court is of the considered view that apprehension of the petitioner that justice is not being done to him is not free from doubt, that being so, interest of justice require that part of relief claimed by the petitioner pertaining to transfer of the investigation to the CBI should be allowed.

37. The judgments relied upon by the parties concerned, and in particular by Shri Mrigendra Singh, learned Counsel for the intervener and Shri Brijesh Sharma, learned Government Advocate are with regard to registration of offence u/s 154, Cr.PC, on information and protection of right and liberty of even the accused persons in the matter of registering a case, this Court is conscious of the aforesaid right of the intervener, and therefore, does not propose to grant relief claimed by the petitioner for registering an offence u/s 302, IPC, against the intervener at this stage and proceeding to investigate into the matter. If this is done, the same would be contrary to the principles of law laid down by the Supreme Court in the case of *Common Cause, A Registered Society* (supra). To that extent, the prayer made the petitioner cannot be allowed.

38. The cases relied upon by Shri Brijesh Sharma, learned Government Advocate and S/Shri M.P.S. Raghuvanshi and Mrigendra Singh, learned Counsel for the intervener pertains to statutory right of the police to investigate the matter, action to be taken u/s 154, Cr.PC and Section 174, Cr.PC, and the individual's right in the matter of investigation of a crime. In the case of *Hari Singh* (supra), the Supreme Court has refused to interfere in the matter in a petition under Article 32 of the Constitution in view of specific remedy available under the Code of Criminal Procedure. In the case of *Prakash Singh Badal and Anr.* (supra), also the question pertains to interference in criminal matters and the control to be exercised by the High Court and the Supreme Court in such cases. Both these judgments are not very much relevant in the facts and circumstances of the

present case as it is well settled in law that in a given case, if the material indicate prima facie irregularity in the matter of investigation, the Supreme Court and the High Court have power to order for investigation by CBI or by any independent agency. These principles are enumerated in the judgment of the Supreme Court in the case of R.S. Sodhi (supra), Secretary, Minor Irrigation & Rural Engineering Services, U.P. and Ors. (supra), Ranchi Zila Samata Parly and Anr. (supra) and Mohammed Anis (supra). After considering the principles laid down in all these judgments, there cannot be any iota of doubt that in a given case jurisdiction in a writ petition under Article 226 of the Constitution can be exercised by this Court for ordering investigation by CBI or an independent agency.

39. In the present case, prima facie the inquiry and investigation being conducted by the CID and the attitude of the State Government is found to be not in conformity with the requirements of conducting a proper investigation into the matter, that being so, interest of justice require that the investigation and inquiry should be done by an independent agency which is not influenced in any manner whatsoever either by the State Government or the Local Police Authorities.

40. Accordingly, the petition is allowed. The respondent No. 7, Director, Central Bureau of Invesligation (CHI) is directed to take over the investigation of the matter and on the basis of the material available on record, proceed to enquire into the matter and bring it to its logical conclusion in accordance with law.

41. Case diary received from the Stale Government be kept in a sealed cover in the safe custody of the Registrar of this Bench. Respondent No. 7 is directed to collect the case diary available with the Registrar of this Bench after completing the necessary formalities. The respondent No. 7 is further directed to nominate an officer or a team of officers under his control to conduct investigation and proceed to investigate into the matter in accordance with law.

In the matter of investigation into the matter, it is expected that the State Government and the Local Police Authorities and the authorities of the CID shall co-operate with respondent No. 7.

42. Before parting, it would be appropriate to observe that this Court has not given any conclusive finding with regard to any of the allegations made by the petitioner or refuted by the respondents and the intervener. The findings recorded and the observations made in this order are only prima facie assessment of the material to find out existence of a prima facie case for transfer of the investigation to the CBI. The observations made are only to that extent and shall not be construed to mean that the findings are conclusive finding on any fact or material indicated therein. Needless to emphasis that it is for the Investigating Authority, CBI to investigate and inquire into the matter in accordance with law and come to a independent conclusion uninfluenced by any observation made in this order.

43. Accordingly, this petition is allowed to the extent indicated hereinabove and disposed of without any order so as to cost.