
(2016) 07 SC CK 0083

In the Supreme Court Of India

Case No : Criminal Appeal No. 635 of 2016 (Special Leave Petition (Criminal) No. 2722 of 2016)

Kuldeep Singh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 176(1A)

Citation : (2016) 7 Scale 119

Hon'ble Judges : V. Gopala Gowda and Adarsh Kumar Goel, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Parikh, Mr. Tanveer Nizam, Mr. Nitesh Acharya, Mr. Pukhrambam Ramesh Kumar, Mr. Sumit Kumar Vats and Ms. Ninni S. Thomas, Advocates, for the Appellant; Mr. Mukul Rohatgi, A.G.I, Mr. Tushar Mehta, Addl.S.G., Mr. Alok Sangwan, AAG, Govt. of Haryana, Mr. Sameer Rohatgi, for Dr. Monika Gusain and Mr. Nishant Ramakantrao Katneshwarkar, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. Leave granted. This appeal arises from order dated 16th March, 2016 in Writ Petition No. 675 of 2016 passed by the High Court of Judicature at Bombay, declining to entertain the writ petition of the appellant seeking direction for registration of F.I.R. on the basis of his statement dated 9th February, 2016 for appointing Special Investigation Team (?SIT?) for fair investigation and also for direction to conduct judicial enquiry under Section 176 (1-A) of the Cr.P.C. of the cause of death of appellant's brother in an alleged encounter as also seeking certain other directions.

2. Case of the appellant is that his deceased brother-Sandeep Ghadoli was killed by the police party in an alleged encounter. With regard to the incident in question, F.I.R. dated 7th February, 2016 being CR.No. 92 of 2016 was registered with the MIDC Police Station, Mumbai against the dead person under Sections 353, 307 and 332, IPC alleging that to prevent his arrest, the deceased

took out pistol and fired at the police party. It was stated that the deceased was wanted in criminal cases and was avoiding his arrest. In defence, the police party fired which resulted in the death of appellant's brother.

3. After making enquiries, the appellant lodged complaint dated 9th February, 2016 alleging conspiracy of murder by five members of the police party and one other person, said to be a politician, who was in jail and also sought magisterial enquiry. The appellant also met the investigating officer but since his grievance was not redressed, he filed a writ petition being W.P. No.675 of 2016.

4. The writ petition was disposed of by the Bombay High Court on 15th February, 2016 after recording the statement of learned Public Prosecutor that version of the appellant will be investigated. However, the State of Haryana filed Criminal Appeal No. 140 of 2016 (as police personnel involved were of Haryana Police) against the order of the High Court contending inter alia that the said State was necessary party but was not impleaded as a party to the proceedings. This Court vide order dated 17th February, 2016 set aside the order of the High Court and directed that the State of Haryana be impleaded as a party and a fresh order be passed by the High Court after hearing the parties. Thereafter, the impugned order has been passed by the High Court.

5. The High Court held that since F.I.R. was already registered with respect to the very same incident, investigation had already reached advanced stage and impartiality and credibility of the SIT could not be doubted, it was not necessary to register another F.I.R. It was further observed that the SIT was following the procedure laid down by this Court in *People's Union Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

6. On 27th May, 2016, when the matter came up for hearing before this Court, learned Attorney General made a statement that offence was registered against five police officials under Section 302 IPC and three private individuals in respect of Sandeep Ghadoli's death who was said to have died in the fake encounter.

7. We have heard learned counsel for the parties.

8. Learned Attorney General has made a statement before the Court that the version on which the F.I.R. was originally registered was not being acted upon and the investigation was proceeding on the basis of version of the appellant.

9. Learned counsel for the State of Maharashtra has produced a copy of letter dated 26th May, 2016 from the investigating agency to the effect that version of PSI Yadav which led to the registration of F.I.R. dated 7th February, 2016 has been found to be false and investigation was in progress for the offence of murder of brother of the appellant. A copy of letter dated 12th July, 2016 from the investigating agency has also been produced to the effect that Pradumun Yadav, Vikram and Jitender Yadav were in custody and were accused in the case.

10. In view of the above, apprehension expressed by learned counsel for the appellant that in absence of formal F.I.R. on the version of the appellant, proper

and fair investigation cannot be held, is without any basis. There is no legal bar to correct facts being found by the investigating agency irrespective of the original version recorded even without registering a different F.I.R. of the appellant, having contrary version.

11. The other point raised by the learned counsel for the appellant is that magisterial enquiry was required to be conducted under Section 176 (1-A) Cr.P.C. It is not necessary for us to go into this aspect of the matter. An application for the same prayer has already been filed by the sister of appellant before the concerned Metropolitan Magistrate of the area. We have no doubt that the same will be looked into and decided in accordance with law, without being influenced by any of the observation made by the High Court.

12. The appeal is disposed of accordingly.