

(2005) 01 OHC CK 0051
In the Orissa High Court
Case No : O.J.C No. 5724 of 2002

Mamata Mohanty

APPELLANT

Vs

Director, C.B.I. and Others

RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(8), 190(1)
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2005) 1 OLR 580

Hon'ble Judges : M.M. Das, J;A.K. Patnaik, J

Bench : Division Bench

Judgement

1. Heard Mr. S.N. Kar, learned counsel for the petitioner and Mr. S.K. Padhi and Mr. Goutam Mishra, learned counsel for the C.B.I.

2. The husband of the petitioner late Debakalyan Mohanty was working as Senior Mining Engineer of Coal India Gevra Colliery Project at Gevra under the South Eastern Coal Fields Ltd. He died under suspicious circumstances on 30.12.1995 at Gevra. Suspecting that the husband of the petitioner had been murdered by some persons, the petitioner filed O.J.C. No. 11925 of 1996 for a direction to the Director, C.B.I. to investigate in the case of death of late Debakalayan Mohanty. By order dated 19.9.2001 passed in O.J.C. No. 11925 of 1996 this Court directed the Director, C.B.I. to investigate into the case. Pursuant to the said direction, RC.1 (S)/2002-JBR was registered by the C.B.I. at Jabalpur Branch under Sections 120-B and 302 I.P.C. against unknown officials of SECL and others and the case was investigated into by the Deputy Superintendent of Police. Jabalpur. After investigation was concluded by the C.B.I. on 30.6.2003, the petitioner has filed the present writ petition alleging therein that the persons who have been accused in the case along with some hardcore criminals employed by them have been coming to Cuttack, pelting stones every night at the house of the petitioner and creating all other disturbances and causing threats to the life of the petitioner, even sometimes, at the point of revolver. The petitioner initially

prayed in the present writ petition, to direct the C.B.I. to register appropriate criminal case for the Offences alleged to have been committed by the accused persons and their aides.

3. The Court entertained the writ petition and passed orders from time to time in this writ petition as well as the connected writ petition bearing O.J.C. No. 5536 of 2002 in which the petitioner has prayed for providing police protection to her. Pursuant to the said orders, police protection has been provided and by orders finally passed in O.J.C. No. 5536 of 2002, such police protection has been continued under the supervision of D.I.G. Central Range, Cuttack, Orissa.

4. During pendency of this writ petition, the C.B.I. has completed the investigation and submitted a final status report stating therein that the final report (closure) u/s 173 Cr.P.C. has been filed in the Court of the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur after approval by the competent authority of the C.B.I. and a prayer has been made on behalf of the C.B.I. before the Court of Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur to accept the said final (closure) report. The Court of Chief Judicial Magistrate (Special Magistrate C.B.I. Cases), Raipur is yet to pass orders accepting the said closure report filed by the C.B.I. u/s 173 Cr.P.C. The petitioner filed an application for amendment of the writ petition incorporating therein the objections of the petitioner to the results of the investigation by the C.B.I. The said application for amendment was allowed by the Court on 28.1.2005 in Misc. Case No. 1515 of 2004.

5. Mr. Kar, learned counsel for the petitioner submitted that the petitioner is no longer interested for the prayer made in the original writ petition for directing the opp.parties to register appropriate criminal cases for the offences committed by the accused persons and their aides against the petitioner because pursuant to the order passed by this Court in O.J.C. No. 5536 of 2002, the local police is now in-charge of the security of the petitioner under the supervision of the D.I.G., Central Range, Cuttack, Orissa. He further submitted that the petitioner has raised serious objections to the final status (closure) report filed by the C.B.I. u/s 173 Cr.P.C. after investigation. He also submitted that the post mortem report as well as all the materials collected would show that the death of the husband of the petitioner late Debakalyan Mohanty on 30.12.1995 was not on account of suicide but on account of murder by the accused persons and their professional paid agents. He argued that the closure report submitted by the C.B.I. should not be accepted and the C.B.I. should be directed to further reinvestigate the case.

6. Mr. S.K. Padhi and Mr. Goutam Mishra, learned counsel for the C.B.I., on the other hand, submitted that the law is well settled by a series of decisions of the Supreme Court as well as the order of this Court delivered on 20.1.2005 in O.J.C. No. 9456 of 1999 that the final opinion as to whether the offence has been committed by an accused person or not, after investigation, is that of the police or the C.B.I., as the case may be, and therefore, neither the High Court nor the

Magistrate can direct the police or the C.B.I. to submit a report that the accused persons have committed offence when according to the police or to the C.B.I., no such offence has been committed as per the evidence/materials collected by it during the investigation. In our order dated 20.1.2005 delivered in O.J.C. No. 9456 of 1999 and other connected cases, we have also taken a view on the basis of the decision of the Supreme Court that on completion of the investigation of the case, it is for the C.B.I. as the investigating agency to form an opinion on the basis of the materials collected by it during investigation, whether or not there were sufficient materials for prosecuting the accused person and this Court while monitoring the investigation of the case by the C.B.I. under Article 226 of the Constitution, cannot express an opinion that the materials collected by the C.B.I. in course of investigation discloses commission of offence by the accused persons and cannot direct the C.B.I. to file a charge sheet against the accused persons. In the said order dated 20.1.2005 in O.J.C. No. 9456 of 1999 and other connected cases, we have also observed that if the Magistrate finds from the materials collected during the investigation and available in the police report placed before him that the accused persons should be prosecuted, he may summon the accused persons in exercise of his powers u/s 190(1) of the Cr.P.C. We also find from the provisions of Section 173 Cr.P.C. that when the police report is filed u/s 173 Cr.P.C. further investigation in respect of the offence can be carried out under Sub-section (8) of Section 173 Cr.P.C. Hence, if the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur before whom a report u/s 173 Cr.P.C. has been filed, is not satisfied with the investigation, a further investigation by the C.B.I. can always be carried out under Sub-section (8) of Section 173 Cr.P.C. and such report and further investigation can be filed before the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases) Raipur.

7. Finally, Mr. Kar, learned counsel for the petitioner submitted that the petitioner has been unnecessarily summoned by the Court of the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur and the petitioner is suffering from various ailments and is also under threat from various persons who belong to the areas in and around Raipur and she will not be in a position to attend the Court of Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur in response to the said summons.

8. Mr. Padhi and Mr. Mishra, learned counsel for the C.B.I. explained that the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur has proposed to summon the petitioner perhaps because he does not want to pass any order on the closure report submitted by the C.B.I. until he hears the petitioner.

9. Considering the difficulties pointed out by Mr. Kar, learned counsel for the petitioner, we are of the view that the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases) Raipur, need no longer summon the petitioner or require her presence for consideration of the closure report filed by the C.B.I. u/s 173 Cr.P.C. and he will consider the report u/s 173 Cr.P.C. in accordance with law on its own merit in the light of the observations made herein and finally pass

orders thereon. Thus, warrants already issued, if any, pursuant to the orders passed by the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases), Raipur against the petitioner will not be executed.

10. With the aforesaid observations and directions, the writ petition stands disposed of.

11. Copies of this order will be furnished to Mr. Padhi, learned counsel for the C.B.I. and will be sent by the Registry to the Court of the Chief Judicial Magistrate (Special Magistrate, C.B.I. Cases) Raipur.