
(2018) 03 RAJ CK 0092

In the Rajasthan High Court

Case No : Criminal Miscellaneous (Petition) No. 5510 of 2017

Moti Ram Jat @APPELLANT@Hash State Of Rajasthan

Date of Decision : 14-03-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 397, 401, 401(2), 482
Indian Penal Code, 1860 — Section 201, 302, 364, 392

Citation : (2018) 03 RAJ CK 0092

Hon'ble Judges : KANWALJIT SINGH AHLUWALIA, J

Bench : Single Bench

Advocate : Suresh Sahni, R.M.??Sharma, Prakash Thakuriya

Final Decision : Disposed Off

Judgement

Present petition has been filed under Section 482 Cr.P.C. seeking transfer of investigation in case arising out of FIR No.119/2016, registered at Police

Station Khatu Shyamji, District Sikar for offences under Sections 302, 201, 392 and 364 IPC, to Central Bureau of Investigation, Jaipur.

Petitioner-complainant had lodged a FIR to the effect that his brother owned a Camper vehicle. It is further averred in the FIR that when his brother

was returning on the Camper vehicle, on the way some persons caused his murder and took away the Camper vehicle. It was stated that the dead

body of brother of the petitioner, Jagdish Prasad, was found near the road. He was having injuries on his body. Dead body was not wearing a shirt. It

is stated in the FIR that unidentified persons, after committing murder, had concealed the dead body and took away the Camper vehicle.

Admittedly, in the FIR forming subject matter of the petition, no person has been named as an accused. Therefore, in the present petition nothing has

been stated that any particular accused is wielding any influence or prevailing upon the investigating agency and therefore, fair investigation is not

possible.

Bald oral vague allegations have been leveled without substantiating the same by averring in Para-4 of the petition as under:-

4. That the police since the inception of the case was not holding the investigation in the just and fair manner as the accused had wielded their influence over the senior police authorities and the politicians; the police has colluded with the accused and in furtherance of that nothing substantial is being done in the matter despite lapse of considerable time; the ill effect of the same is that the material evidence is disappearing.

Therefore, in the present petition impleadment of unnamed accused is neither necessary, nor can be made in case pertaining to blind FIR.

In the entire petition filed, no specific averment has been made qua any person or accused that he is very powerful and influential person or to the effect that higher police officers are involved in the offence. At the most, it is a case of abduction and ordinary murder where omnibus and vague

allegations have been leveled. The only grievance which is discernible is that from last 1½ years, investigation has not been made properly.

Consequently, this court, at this stage, dispose of the present petition by issuing a direction to the investigating agency to submit the report of

investigation alongwith the opinion of the Investigating Officer in the court of competent jurisdiction within two months so that the complainant is able

to file a protest petition and law can take its due course. Needless to say petitioner shall be at liberty to seek further investigation by filing application

before the court of Magistrate or may re-approach this court to seek change of investigation.

A day before yesterday, on 12.03.2018 a petition bearing S.B. Criminal Misc. Petition No.1247/2018, titled Ajeet Kumar Shekhawat v. State of

Rajasthan, filed by the present counsel was listed before this court in which a specific allegations of malafide were leveled against the accused named

in that petition. On the observation made by this court that the accused should be impleaded as a party, in view of judgment rendered by the Supreme

Court in State of Punjab v. Davinder Pal Singh Bhullar (2011) 14 SCC 770, relying upon Paras 72 to 75, this court had, on oral request, impleaded the

accused as a party and had transferred the investigation.

Paras 72 to 75 of the judgment delivered in the case of State of Punjab v.

Davinder Pal Singh Bhullar (supra) reads as under:-

72. In *Divine Retreat Centre* (2008) 3 SCC 542, this Court held that the High Court could have passed a judicial order directing investigation

against a person and his activities only after giving him an opportunity of being heard. It is not permissible for the court to set the criminal law in

motion on the basis of allegations made against a person in violation of principles of natural justice. A person against whom an inquiry is directed must

have a reasonable opportunity of being heard as he is likely to be adversely affected by such order and, particularly, when such an order results in

drastic consequence of affecting his reputation. (emphasis supplied)

73. In *D. Venkatasubramaniam and Ors. v. M.K. MohanKrishnamachari and Anr.* (2009) 10 SCC 488, this Court held that an order passed behind

the back of a party is a nullity and liable to be set aside only on this score. Therefore, a person against whom an order is passed on the basis of a

criminal petition filed against him, he should be impleaded as a Respondent being a necessary party. (emphasis supplied)

74. This Court in *Disha v. State of Gujarat and Ors.* AIR2011 SC 3168, after considering the various judgments of this Court, particularly, in *Vineet*

Narain and Ors. v. Union of India and Anr. AIR 1996 SC 3386; *Union of India v. Sushil Kumar Modi* (1998) 8 SCC 661; *Rajiv Ranjan Singh 'Lalan'*

(VIII) v. Union of India (2006) 6 SCC 613; *Rubabbuddin Sheikh v. State of Gujarat and Ors.* AIR 2010 SC 3175; and *Ashok Kumar Todi v. Kishwar*

Jahan and Ors. (2011) 3 SCC 758; held that the court can transfer the matter to the CBI or any other special agency only when it is satisfied that the

accused is a very powerful and influential person or the State Authorities like high police officials are involved in the offence and the investigation has

not been proceeded with in proper direction or the investigation had been conducted in a biased manner. In such a case, in order to do complete justice

and having belief that it would lend credibility to the final outcome of the investigation, such directions may be issued. (emphasis supplied)

75. Thus, in view of the above, it is evident that a constitutional court can direct the CBI to investigate into the case provided the court after examining

the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the

person against whom the investigation is sought, is to be impleaded as a party

and must be given a reasonable opportunity of being heard (emphasis supplied). CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.â??

Today, counsel for the petitioner even though no accused is named in the impugned FIR to the present petition, in order to enlighten the court has made an attempt to join academic issue by relying upon various judgments, to say that in a petition filed before High Court under Section 482 Cr.P.C.

seeking change of investigation, accused is not required to be impleaded as party respondent. The counsel has insisted that court should not shy away to decide this issue.

The courts generally and in particular never engage itself in the academic debate as it is within the realm of academicians. Suffice it to say that when

allegations of malafide are leveled against the accused or any order is sought to be passed against accused which is prejudicial to him, principles of

natural justice are adhered to. It goes without saying that as to how the investigations has to proceed and if any orders are passed to facilitate

investigation by the Magistrate, accused is not required to be heard, but at the same time, when a revisional court or this court exercising powers

under Section 482 Cr.P.C. has to pass any order which is adverse to the accused or to his prejudice especially when allegations of malafide or

interference in investigation are leveled, then the courts has to afford an opportunity of hearing to the accused by following the principles of natural

justice. In the humble opinion of this court, the judgments relied by the counsel for the petitioner to join academic issue are qua the course of

investigation, but not when the orders are to be passed against the accused by this court exercising jurisdiction under Section 482 Cr.P.C. or under

Section 397 or 401 Cr.P.C. Reference can be made to Section 401(2) Cr.P.C.Â

In view of above, the present petition stands disposed of with a hope that the issue raised by the petitioner which in respect of present petition is only

academic, shall be decided in the case where it so arise in future for adjudication.