
(2013) 08 P&H CK 0530

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 23593 of 2013 and Criminal Miscellaneous No. M-8930 of 2012

Ms. Sonica Malhotra and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Constitution of India, 1950 — Article 20, 21
Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2013) 08 P&H CK 0530

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Siddharta Luthra and Mr. Rohit Khanna, for the Appellant; Rita Kohli, Additional Advocate General, Punjab for Respondents No. 1 and 3 to 5 and Mr. S.S. Narula, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—The petitioners filed a petition u/s 482 Cr.P.C. for quashing of FIR No. 180 dated 04.11.2011 under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Division No. 4, Jalandhar. The said petition is still pending before this Court. Petition bearing Criminal Misc. No. M-8930 of 2012 has also been filed for transfer of investigation by raising various grounds. After issuing notice of motion, the case has been adjourned on various dates either on the request of learned counsel for the petitioners or the State counsel. Complainant-Gurcharan Singh Syal approached the Hon'ble Supreme Court by way of filing Special Leave to Appeal (Crl.) No. 5140 of 2013 to challenge the order dated 03.05.2013 passed by this Court by contending that the petitioners herein are adopting delaying tactics and not allowing the High Court to pass an appropriate order in the proceedings pending herein. Hon'ble the Supreme Court vide order dated 15.07.2013 adjourned the said appeal with a direction to dispose of criminal miscellaneous petition in the meantime. The order passed by this Court

on 03.05.2013 is reproduced as under:-

Heard.

This is application by petitioners for preponing the hearing of the main petition, which has been ordered to be listed on 11.07.2013.

No ground for preponing the hearing of the main petition is made out. The prayer for preponement appears to have been made with oblique motive of avoiding order dated 22.04.2013, whereby, the petitioners have been directed to join investigation. Accordingly, prayer for preponement of main petition is declined.

Notice of the application be, however, issued to counsel for the respondents re: prayer of learned counsel for the applicants/petitioners for staying of presentation of report u/s 173 Cr.P.C. only, for 11.07.2013-the date already fixed in the main case.

Meanwhile, presentation of final investigation report u/s 173 Cr.P.C. shall remain stayed.

2. Order dated 03.05.2013 was challenged by the complainant in the said Special Leave to Appeal, wherein, the directions have been issued to decide the application for transfer of investigation. The order passed by Hon"ble the Supreme Court is reproduced as under:-

Heard.

Mr. Mukul Rohtagi, learned senior counsel appearing for respondent nos. 1 to 3, submits that CrI.M. No. M-8930 of 2012 pending before the High Court has now been adjourned and is coming up for final hearing on 24th July, 2013. He prays that this petition could be adjourned to a date after 24th July, 2013 to enable the High Court to hear and pass a final order on the subject. Mr. Satinder S. Gulati, learned counsel for the petitioner, submits that the respondents have been adopting delaying tactics and not allowing the High Court to pass an order in the proceedings pending before it. This position is disputed by learned senior counsel for respondent nos. 1 to 3. Be that as it may, this petition is adjourned to be listed again on 29th July, 2013. We request the High Court to hear and dispose of the criminal miscellaneous petition, mentioned above, in the meantime.

3. The transfer of investigation has been sought on the ground that the conduct of the investigating agency is neither fair nor impartial and the complainant is being supported by the investigating officer directly or indirectly. The investigating agency has become tool in the hands of the complainant and in such like manner, the investigation cannot be fair. It is also the argument of learned counsel for the petitioners that they have no faith and confidence in the investigation conducted by the Punjab Police which is clear from the affidavit of the Commissioner of Police stating therein the version of the complainant word by word and even para after para. Learned counsel for the petitioners further submits that the complainant is powerful and influential person and the police is

under his pressure. The complainant is hand-in-glove with the police and because of that reason, the petitioners are being victimized by the Investigating Agency by calling time and again to join investigation. They are compelled to sit for the whole day in the police station. Even the investigation of the petitioners, who are women, was being conducted after sunset. Learned counsel further submits that the petitioners are having a reasonable apprehension that the investigation is not likely to be fair and impartial as it is a case of conspiracy executed by the complainant himself by unilaterally amending the Articles of Association without giving any notice or taking consent of the petitioners. The complainant is utilizing the police agency to cover up their own criminal actions. The police and the complainant are hand-in-glove with each other and the petitioners are being harassed unnecessarily. Instead of investigating the case in a fair and impartial manner, the investigating agency has become a mouthpiece of the complainant and is working as their spokesperson.

4. Learned counsel for the petitioners has also relied upon the judgments of Hon'ble the Apex Court in cases Babubhai Vs. State of Gujarat and Others, Rama Devi Vs. State of Bihar and Others, , Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another, and State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, in support of his contention.

5. In reply of the application for transfer of investigation, it has been mentioned that the documents alleged to be forged, were not made available till date and an opinion has been given in absence of those documents which depicts the biasness of the investigating agency. Repeated notices containing identical questions were issued to the petitioners which have already been answered. Learned counsel further submits that pressure tactics are being adopted by the Investigating Agency.

6. Learned State counsel has also filed a detailed reply and submits that the petitioners have not produced any record required by the Investigating Officer and the delay is being caused because of the conduct of the petitioners. Learned counsel further submits that neither any personal bias has been shown in the investigation nor anything has been brought on record to show that the Investigating Officer was not fair or was impartial. The petitioners are making all efforts to jeopardize and stall the investigation. Although it has been stated before this Court every time that the petitioners are ready and willing to join investigation but inspite of said directions issued by this Court also, the petitioners has neither answered the questionnaires supplied by the Investigating Agency nor produced the original record. The conduct of the petitioners is not fair before this Court also as every time, it has been stated that they are joining investigation and whatever documents are required, are being produced before the Investigating Officer but inspite of giving undertaking, the petitioners are not co-operating with the investigation. The conduct of the petitioners is clear that the statement was made before this Court as a direction was issued to the

petitioners to join investigation on 15.05.2013 but instead of joining investigation and producing record, a date was sought by the petitioners and the application was filed for preponement of the date of hearing in the main petition.

7. Learned State counsel also submits that the petitioners while joining investigation were accompanied by battery of lawyers and the stand taken by them is not correct that the investigation was conducted after sunset. Moreover, a lady constable was present during the course of investigation. The petitioners are playing hide and seek not only with the investigating agency but with the Court also, moreover upon every hearing before this Court, the date is being asked on one pretext or the other. Learned counsel also submits that no bias against any individual has been mentioned in the transfer application and nothing has been said as to how the Investigating Officer is not fair and impartial.

8. Learned State counsel has also relied upon the judgments of Hon''ble the Apex Court in cases Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, Sakiri Vasu Vs. State of U.P. and Others, , State of West Bengal Vs. S.N. Basak, , State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., Abdul Rehman and Others Vs. K.M. Anees-ul-Haq, Divine Retreat Centre Vs. State of Kerala and Others, as well as judgment of this Court in case M/s Chiranji Lal Lakhmi Chand Vs. State of Punjab,

9. Heard the arguments of learned counsel for the petitioners as well as of learned State counsel.

10. Admittedly, the petitioners have filed a petition for quashing of FIR which is still pending. The application has also been moved for transfer of investigation on the ground that the conduct of the investigating officer is not fair and the investigation is not being conducted in an impartial manner. Learned counsel for the petitioners has brought to the notice of this Court the affidavit filed by the Commissioner of Police, wherein, the stand taken by the complainant has been reiterated without any application of mind. Although the allegations of bias and prejudice have been alleged in the transfer application by stating that the investigating officer is hand-in-glove with the complainant and pressure tactics are being adopted to victimize the petitioners by calling them time and again to join investigation. It has also been argued by learned counsel for the petitioners that inspite of supplying documents and joining investigation, still the investigating officer is not satisfied with the petitioners because of bias having been in the mind of investigating officer. The stand of the State counsel is that the petitioners are not producing the original record and have not answered the questionnaires supplied by the investigating officer. The delay tactics are being conducted by the petitioners themselves, whereas, there was no fault on the part of the investigating officer. The delay is only because of the conduct of the petitioners. The transfer application has been moved on vague grounds.

11. Admittedly, the power of investigation is a statutory one and it is not to be interfered in ordinary course unless some exceptional situation or compelling

circumstances are there. A limited scope of interference is there in the investigation as power to investigate is statutory one. The code has also conferred power on the statutory authorities to direct the transfer of investigation from one police station to another under some mitigating circumstances. This power to interfere in the investigation can be exercised if that is necessary to cause justice to the party or to prevent misuse of process of law.

12. In the present case, the allegations have been levelled against the investigating officer by stating that the investigating officer is hand-in-glove with the complainant but no personal bias whatsoever has been shown except the affidavit filed by the Commissioner of Police, wherein, the stand taken by the complainant has been reiterated. The stand which has been taken in the affidavit can be said that the affidavit has been prepared without any application of mind but it cannot be said that there was a bias in the mind of investigating officer. It has come on record that notices have been sent to the petitioners to join investigation and some of the questionnaires were also supplied but neither the original record of the case has been produced so far before the investigating officer nor some of the documents required for investigation have been supplied.

13. There is no dispute that the investigation into criminal offence must be free from objectionable features or infirmities which may lead to a grievance on the part of the accused that the investigation was unfair and carried out with an ulterior motive. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct. There should not be any suspicion during investigation.

14. Although as per submissions made by learned State counsel, the investigation has been completed but the original record has not been supplied by the petitioners and in the absence of original record, the documents like notices, proceeding books, postal receipts, Memorandum of Articles of Association, computer hard disk cannot be verified and their authenticity can be ascertained only after receipt of original documents.

15. The conduct of the petitioners does not appear to be fair which is clear from the fact that inspite of directions issued by this Court to the petitioners to be present before the Investigating Agency on 24.03.2012 at 11.30 a.m. in police station, an application was moved before this Court for preponement of date. On subsequent dates also, the petitioners did not appear on one pretext or the other inspite of giving undertaking before this Court. Although the carelessness on the part of the Commissioner of Police is reflected in filing of affidavit and the stand taken by the complainant has been reiterated, which is unwarranted. That conduct of the police official can be termed as negligent but the same cannot be termed as biased. Moreover, nothing has been pointed out as to how the Investigating Officer is partial or biased except on the ground that the petitioners have been called upon to join investigation or to answer some of the questionnaires or to supply some documents. Petitioners themselves are not

serious in joining investigation and in supplying the documents. To play hide and seek with the investigating agency is also not fair on the part of the petitioners.

16. Admittedly, the Courts are reluctant to interfere in the investigation unless the compelling reasons are there or the allegations of mala fide or bias are there against the investigating officer or there is something to establish and prove the reasons to the satisfaction of the Court. Undoubtedly, the investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct investigation avoiding any type of misconduct or harassment to the accused persons.

17. No doubt, fair investigation is also a part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India as has been held in the judgment of Hon"ble the Apex Court in case Babubhai Vs. State of Gujarat and Others, It has also been held that investigation must be fair, transparent and judicious which is minimum requirement of rule of law and furthermore, it has been held that the investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner and in case of non interference of Court, it would result in failure of justice.

18. In State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , it has been held in para Nos. 57 to 61 as under:-

57...Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism....Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the investigating officer at the start of the investigation but also must insist establish and prove them from the facts and circumstances to the satisfaction of the court.

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power....

In view of the facts and also the reasons as stated above, no case is made out to transfer the investigation. The petition is accordingly dismissed.