

(2014) 07 BOM CK 0071

In the Bombay High Court

Case No : Criminal Writ Petition No. 919 of 2014

Rabia Khan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 07 BOM CK 0071

Hon'ble Judges : V.M. Kanade, J;P.D. Kode, J

Bench : Division Bench

Advocate : Subhash Jha a/w Dinesh Tiwari, Rushita Jain, Swapnil Ambure, Ashwini Sawant, Arunesh Mishra, M. Dey, Hardik Vyas and Riya Panchal, i/b Dinesh Tiwari and Associates, Advocate for the Appellant; P.H. Kantharia, APP, Shyam Mehta, Learned Senior Counsel and Rebecca Gonsalvez, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard the learned counsel appearing on behalf of the petitioner, learned counsel appearing on behalf of the State and learned counsel appearing on behalf of Central Bureau of Investigation (CBI).

2. By this petition, which is filed under Article 226 of the Constitution of India, petitioner is seeking an appropriate writ order and direction for transferring the investigation and for directing the further investigation/fresh investigation in respect of an incident which had taken place on 3rd June, 2013 in which the daughter of the petitioner was found hanging in one of her bedrooms.

3. The allegations of the petitioner are that the investigating officer in the said case did not consider the possibility of murder of her daughter and that the entire investigation had proceeded on the hypothesis that it is a case of suicide. She is, therefore, seeking an appropriate writ order and direction for further investigation by an independent body such as Special Investigation Team (SIT) or F.B.I., with a specific direction to re-investigate the matter or to carry out

further investigation and probe it from the point of view of homicidal death rather than suicidal death.

4. Learned counsel Mr. Subhash Jha appearing on behalf of the petitioner has taken us through the postmortem report and also through the other documents including the statements of witnesses which have been recorded. He submitted that several crucial aspects have not been taken into consideration by the investigating officer. He has brought to our notice certain injuries which are found in the postmortem report and which are not properly explained/considered by the investigating officer.

5. The learned counsel for the petitioner has further submitted that the sequence of events reveals that the petitioner's daughter and the accused, against whom charge-sheet has been filed for abetment of suicide, had a quarrel just before her death. He has submitted that the various circumstances which had taken place on the date of incident and prior to that, indicates that the death may not be suicidal, but homicidal. He has pointed out a list of discrepancies which were not properly explained by the prosecution. He also invited our attention to Forensic reports given by Dr. R.K. Sharma and Dr. R.N. Jerajani. He submitted that these two reports are given by the experts in the field and they also have certain doubt about the lacuna in the investigation and various other aspects which are not taken into consideration by the investigating officer. He has also pointed out various defects in the investigation. He has submitted that if the Court comes to a conclusion that the investigation has not been carried out properly then the Court, by exercising its jurisdiction, has an authority and power to transfer further investigation to an independent agency.

6. He has relied on number of judgments of the Apex Court, more particularly, in the case of (i) Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others, (ii) Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, and (iii) Bharti Tamang vs. Union of India W.P. (Crl.) No. 159/2012 of Supreme Court.

7. He submitted that this is a fit case for transferring the matter either to Special Investigation Team (SIT) or to the Central Bureau of Investigation (CBI).

8. On the other hand, Mrs. P.H. Kantharia, learned APP appearing for the State has vehemently opposed these submissions. She submitted that the investigating officer has taken proper care and has considered all the angles while investigating the crime and only thereafter charge-sheet has been filed against the accused for the offence of abetment of suicide. She has taken us through the charge-sheet which has been filed by the prosecution in support of the said submission. She has submitted that the postmortem was conducted by four doctors who had given an opinion that the cause of death was "Asphyxia due to hanging". She has also submitted that all the injuries found on the person of the deceased have been mentioned in the postmortem report. According to her, correct opinion has been given by the doctors that the death was suicidal and not homicidal. She has also invited our attention to Chapter-19 of Modi's Medical

Jurisprudence, which deals with the "Deaths from Asphyxia" and the distinction between the case of hanging and strangulation which is discussed in detail in the said chapter. Learned APP also submitted that in the present case the petitioner's daughter had earlier tried to commit suicide and had suicidal tendency and because of break-up with the accused in the case, she had committed suicide.

9. After the matter was heard by us at length and argument was concluded, we had expressed our opinion that we will be delivering the judgment at 3.00 p.m. and we are inclined to transfer the investigation to C.B.I. in order to find out the true cause of death and to ascertain the truth in this case.

10. In the afternoon session, however, Ms. Rebecca Gonsalvez appearing on behalf of C.B.I. submitted that, C.B.I. had its own reservations for the matter to be transferred to it. She has relied on two judgments of the Apex Court namely in the case of Sakiri Vasu Vs. State of U.P. and Others, and State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others,

11. She submitted that in both these cases, Apex Court has observed that while exercising its writ jurisdiction under Article 226 of Constitution of India, this Court should exercise the said powers sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigation or where the incident may have national and international ramifications.

12. She has submitted that Central Bureau of Investigation (CBI) has only eleven officers who could carry out the investigation. She further submitted that this Court had very recently transferred a case of accidental death to C.B.I. She further submitted that when limited resources are available with C.B.I. it may not be possible for C.B.I. to carry out the investigation.

13. In the present case, it is necessary to examine the sequence of events. The incident in question took place on 3rd June, 2013 somewhere between 21.00 to 23.30 hours. Police received information about the incident at about 23.45 hours. Police officer visited the spot at about 23.55 hours and at 2.20 a.m. the accidental death report No. 61 of 2013 was registered at Juhu police station. Inquest panchanama was conducted at Cooper hospital. Injuries on chin, ligature mark around the neck, black scar on left hand on the upper side of elbow were found.

14. Learned counsel Mr. Jha for the petitioner submitted that there was injury mark on the forehead of the deceased, which is not reflected in the postmortem notes. After investigation was conducted and statements of witnesses were recorded, the accused was arrested on the allegations of abetment to commit suicide and later on released on bail. Charge-sheet was then filed. We have seen the postmortem notes and also photographs of the deceased which were taken soon after her death.

15. We are of the view that the investigation has mainly proceeded on the hypothesis that this is a case of suicide and no effort has been made to examine it from the angle that the deceased might have been hanged after she was murdered. Both the doctors, Dr. R.K. Sharma and Dr. Krishnamoorthy who are the experts in Forensic Science, have expressed a doubt. We do not propose to express any opinion on merits on various aspects which are mentioned by the two experts, but at the same time, we believe, that the possibility of some person having entered the house from the window ought to have been examined properly. The incident had taken place in June, 2013 and almost one year has passed. Some of the evidence, we believe, may not be available now but even on the basis of material which is collected by the police machinery, we feel that an independent agency can re-examine the said material and carry out further investigation and come to a conclusion whether this is a case of homicide or suicide. We are not experts in the field of medicine or investigation and therefore, we believe, that it is necessary to handover the investigation to an independent agency.

16. We are of the view, that formulation of Special Investigation Team (SIT) may not be advisable since the officers of SIT are still the officers from the State police machinery and therefore, we are of the view that it is essential to appoint an independent agency such as Central Bureau of Investigation (CBI) to look into the matter.

17. We are surprised and anguished by the stand taken by the C.B.I. In the first place, we are of the view that the concerned officer does not have the appropriate authority to give the instructions which were made by Ms. Rebecca Gonsalvez, learned advocate for C.B.I. on the instructions of Mr. Singh, Additional S.P. Secondly, if C.B.I. has any difficulties, in respect of getting logistical support and other support from local police, request could have been made to the Court and this Court could have directed the State to provide such logistical and other support. In our view, ultimately the interest of a citizen is more important. An agency such as C.B.I. can not come up with an excuse that it does not have additional infrastructure or machinery to carry out investigation. Ultimately when an offence is committed, it is a crime against society at large and it is the duty of the State to protect its citizen and it should come forward to investigate. It is not expected that C.B.I. should come with an excuse that the matter should not be transferred to it because, it does not have adequate machinery or officers for the purpose of carrying out investigation. It is unfortunate that we are informed that there are only eleven officers in its investigation team. In a country which has population of more than one billion, it is not expected that the C.B.I. should come up with such an excuse, since maintenance of law and order is the prime responsibility of the State and also of the Union of India. We must point out here that the petitioner's daughter is a U.S.A. citizen and two officers from the United States Consulate were present throughout the hearing, not only today but also day before yesterday when the matter was heard at length. We believe that the State should take note of this

fact and we hope, that such type of ridiculous and unfortunate submission should not be made across the Bar. We must express our displeasure over the attitude and stand taken up by the C.B.I. If the C.B.I. takes such a stand that it does not have additional machinery, then one wonders, where a citizen should go, if the State machinery is found deficient in providing protection and conducting investigation.

18. In this context, it would be fruitful and profitable to consider the guidelines given by the Supreme Court in "Bharti Tamang vs. Union of India"(supra), which read as under:

Para-37- "From the various decisions relied upon by the petitioner counsel as well as by respondents counsel, the following principles can be culled out.

- a) The test of admissibility of evidence lies in its relevancy.
- b) Unless there is an express or implied prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.
- c) If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.
- d) It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.
- e) In order to ensure that the criminal is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also given appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.
- f) While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.
- g) In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.
- h) In exceptional circumstances the Court in order to prevent miscarriage or criminal justice and if considers necessary may direct for investigation de novo."

19. The said guidelines are given by the Apex Court after taking into consideration various judgments of the Apex Court on this point. In clause (g) of para 38 of the said Judgment, the Apex Court has laid down the following

guideline:

(g) "In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice."

20. In our view, this is a fit case where the said direction needs to be given. We have not expressed any opinion on merits on the various angles of the case. We believe, that therefore, the investigation should be conducted independently, fairly and without being influenced by the observations made by this Court and submissions made by the learned counsel for the petitioner or any opinion expressed by any of the experts, on which reliance has been placed by the petitioner.

21. We must also make it clear that we do not wish to find any fault with the State investigating agency. However, we are of the view, that no useful purpose will be served by asking the same agency to carry out the investigation. We are informed that pursuant to the order passed by this Court, the petitioner had met with the Commissioner of Police who had set up a team of investigating officers. However, it was noticed that one of the same officers, who was investigating earlier was also a part of that team. Under these circumstances, therefore, we feel, that no useful purpose will be served in either appointing S.I.T. or asking some other officer from the State to carry out further investigation. It is for this reason, we are of the view, that Central Bureau of Investigation (C.B.I.) should be given direction to carry out further investigation.

22. We must also mention here, that initially one other petition has been filed by the petitioner making prayer for transferring the case to C.B.I. vide Writ Petition No. 3553 of 2013 and at that time, petitioner was of the view that one more chance should be given to State agency and therefore prayer for transferring the case to C.B.I. was not pressed. Accordingly, direction was given to the Commissioner to constitute a new team, however, when the petitioner noticed that same officer was included in that team, she has filed this present petition.

23. We, therefore, direct the Central Bureau of Investigation (C.B.I.) to carry out further investigation and then submit a report to the concerned Court. State Government is directed to give all logistical and other support which is required to the investigating officer of C.B.I.

24. We would like to clarify, that we have not expressed any opinion and we have merely directed the C.B.I. to consider whether this is a case of suicidal or homicidal death. If it comes to a conclusion, that it is a homicidal death then, further investigation be made to find out who is the perpetrator of the crime and accordingly action be taken.

25. Petition is accordingly disposed of.