
(1999) 05 DEL CK 0022

In the Delhi High Court

Case No : Criminal Writ Petition No. 268/99 and Criminal Misc. No. 2119/99

Rajesh Ranjan @ Pappu Yadav

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Citation : (1999) 51 DRJ 449 : (1999) 3 RCR(Criminal) 512

Hon'ble Judges : A.K. Srivastava, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. R.K. Anand, Mr. A.K. Bajpai and Mr. Anil Nag, for the Appellant; Mr. Kirat N. Raval, A.S.G., Mr. A.D.N. Rao, Mr. H.S. Phoolka and Mr. Lala Chaudhary, for the Respondent

Judgement

1. In this writ petition the petitioner inter-alia seeks the following reliefs:

"(a) Writ of Mandamus or any other appropriate writ quashing the investigation being conducted by CBI pursuant to Crime Case No.RC-12)5)/98/SIC.IV/ND registered with them as per the order passed by Central Government under Sub-section (1) of Section 5 r/w Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No.25 of 1946).

(b) Quash the impugned notification issued by the Central Government vide which the fresh investigation of Case No.230/98P.S. Hat, Purnia, Bihar is handed over to the CBI."

2. The facts leading to the filing of the writ petition are as follows:-

On June 14, 1998 an FIR being No. 230/98 was registered by Bihar Police u/s 302 read with section 34/120-B IPC and section 27 of the Arms Act at Police Station Khajanchi Hat, Purnia, Bihar, relating to murder of four persons. After registration of the FIR the State Police took up the investigation in the matter. However, by order dated August 11, 1998 the State of Bihar accorded its sanction u/s 6 of the Act to the investigation of the case by the members of the

Delhi Special Police Establishment. In the meantime, the Bihar Police on September 20, 1998 filed an incomplete challan u/s 173(2) against five persons in the court of Chief Judicial Magistrate, Purnia. While taking cognizance of the offence the Chief Judicial Magistrate, Purnia, vide his order dated September 23, 1998 observed as follows :-

xx xx xx "The I.O. has submitted the charge-sheet for the offence u/s 302, 324, 326, 307, 120(B), 34 IPC and 27 Arms Act against the accused and supplementary investigation is in continuance against the accused (1) Bipin Singh @ Bipin Choudhary (2) Diwakar Choudhary (3) Jawahar Yadav @ Nirmal Yadav (4) Abdul Sattar (5) Pappu Deb @ Sanjay Deb and supplementary investigation is in continuance against the accused (1) Pappu Yadav (2) Harish Chaudhary (3) Amar Yadav (4) Prabhat Yadav (5) Pawan Yadav (6) Pankaj Yadav (7) Santosh Yadav (8) Raju Yadav (9) Rajan Tiwari (10) Manoj Yadav (11) Anil Yadav....."

xx xx xx " "Let a separate file be opened against the accused persons, whom the investigation is continuance."

3. On September 28, 1998 the Central Government issued a notification whereby the investigation of the matter was transferred to the Central Bureau of Investigation (for short "C.B.I.") Pursuant to the notification of the Central Government, the C.B.I. registered the case as RC No. 12(S)/98-SIC.IV/N.D. on October 12, 1998. Aggrieved by the registration of case RC No. 12(S)/98-SIC.IV/N.D. by the C.B.I. and the issue of notification by the Central Government dated September 28, 1998 the petitioner has filed the instant petition.

4. Learned senior counsel appearing for the petitioner submits that the further investigation in the matter can only be carried out by the Bihar Police and the C.B.I. has no power to undertake the same u/s 173(8) of the Code of Criminal Procedure. In support of his submission he has placed reliance upon a decision of the Supreme Court in K. Chandrasekhar Vs. The State of Kerala and Others, .

5. We have considered the submission of the learned senior counsel for the petitioner. There is nothing in section 173(8) of the Code of Criminal Procedure which precludes further investigation of the matter by the C.B.I. We are of the opinion that the C.B.I. is not disentitled from further investigating the matter merely because in the first instance the investigation in respect of the offence was carried out by the State Police and an incomplete challan was filed in the court of Chief Judicial Magistrate, Purnia. It has been rightly pointed out by the learned Additional Solicitor General that an accused has no locus standi to object to the agency which is selected to further investigate the matter. It appears to us that the proposition advanced by the learned senior counsel for the petitioner is not warranted in law. An accused has no locus standi to raise any objection to the agency which is selected to investigate the case. In Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, , it was held that the accused cannot have a say as to who should investigate the case. The Supreme

Court also observed that further investigation in respect of an offence can be carried out u/s 173(8) of the Code of Criminal Procedure even after a report under sub-section (2) thereof has been forwarded to the Magistrate. The judgment of the Supreme Court in K. Chandrasekhar's case (supra) relied upon by the learned senior counsel for the petitioner does not advance the case of the petitioner. In that case the investigation was transferred to the C.B.I. pursuant to the consent given by the State of Kerala u/s 6 of the Act. The C.B.I. completed the investigation and submitted its final report u/s 173(2) of the Code of Criminal Procedure. Accepting the report the magistrate discharged the accused. Thereafter, the State of Kerala by means of a notification withdrew its consent earlier given for the investigation by the C.B.I. The object of the said Notification was reinvestigation of the said case by the State Police officers. Subsequently, by another notification the word "reinvestigation" was substituted by the words "further investigation". The Supreme Court held that withdrawal of consent by the State Government was mala fide and patently invalid. In the circumstances, it also held that the State Government was not entitled to further investigate the matter. In the fact situation of that case the Supreme Court held that even after withdrawal of the consent by the State Government if further investigation of the matter had to be done it was the C.B.I. alone which could do so. Coming to the case in hand we have no hesitation in holding that the C.B.I. has the jurisdiction and power to further investigate the matter and the argument of learned senior counsel for the petitioner has no merit. It seems to us that the instant writ petition has been filed by the petitioner to thwart further investigation by the C.B.I.

6. Even otherwise we find that the petition needs to be dismissed on the ground that the petitioner has tried to mislead this court. In para 10 of the petition it is averred that the petitioner is a resident of Delhi and has completed two terms as Member of Parliament and as such there is no question of his absconding from prosecution. In support of the averments made in the petition, the petitioner has filed his affidavit dated March 26, 1999 wherein he has given his address as 137 North Avenue, and RZ-70, Vijay Park, Narjafgarh, New Delhi. Learned Additional Solicitor General has invited our attention to the counter-affidavit where it is stated that material has come on record during investigation which prima facie indicates involvement of the petitioner. The affidavit also alludes to the fact that non-bailable warrants were issued against the petitioner by the Special Magistrate, C.B.I., on March 6, 1999 and the same is pending for execution. It is also stated therein that the petitioner is absconding. The learned Additional Solicitor General has also drawn our attention to Annexure R-3 to the counter-affidavit in support of the submission that the petitioner is absconding.

7. Having regard to Annexure R-3 to the counter-affidavit it cannot be disputed that the petitioner has been declared an absconder and non-bailable warrants have been issued against him. The petitioner has also suppressed the fact that he had earlier filed an application for anticipatory bail which was subsequently withdrawn by him. In view of the fact that the petitioner has taken liberties with

truth this petition needs to be thrown out on this score alone.

8. In view of the above discussion, the writ petition is dismissed with costs of Rs.25,000/-.

9. Before parting with the order we would like to point out that there is a growing tendency to file false affidavits in the courts. This tendency must be curbed to maintain purity of the judicial system. In the circumstances, we direct the Registrar of this Court to file a complaint before the appropriate court against the petitioner for stating in para 10 of the petition that there was no question of his absconding from prosecution, when it is clear that the petitioner had been declared as an absconder and non-bailable warrants had been issued against him which still remain unexecuted.