
(2008) 11 AHC CK 0174
In the Allahabad High Court

Ram Gopal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 11 AHC CK 0174

Hon'ble Judges : R.M. Chauhan, J;Imtiyaz Murtaza, J

Bench : Division Bench

Judgement

R.M. Chauhan, J.—Petitioner who is serving in the Chodhary Charan Singh Post Graduate College Haivara Safai District Etawah as class 4 employee has instituted the present petition for the following reliefs.

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to get investigated the matter/offences fairly and impartially by some independent agency.

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to pay compensation to the parents of the deceased Mukesh and injured Avnish and Sunil.

(iii) Issue a writ order or direction in the nature of mandamus commanding the respondent No. 1 to take disciplinary action against the respondent Nos. 4 to 9 and transfer the respondent Nos. 4 and 5 from the district Etawah.

2. It would transpire from the record that occurrence took place on 9th Jan 2008 at Chaudhary Charan Singh P.G. College Haivara Safai District Etawah in which the police, it is alleged, unleashed terror in the college initially by abusing and provoking the students and subsequently, resorted to firing in which one of the students died and several others sustained serious injuries as a result of police action. It is alleged that the police resorted to firing at unarmed students when examinations were going on in the college, by breaking open the gate of the

college. It would further transpire that after the police had declined to lodge the report, the petitioner invoked the procedure of the Court u/s 156(3) of the Cr.P.C. and in ultimate analysis, the learned Magistrate ordered registration of the case which was registered at case crime No. 1B of 2008 u/s 447/148/149/302/307/342/506/504 IPC at P.S. Safai District Etawah. In the F.I.R as many as six police personnel have been named as culprits namely Siya Ram Sharan Aditya, S.S.P. Etawah, Rampal Gautam, Addl. Supdt of Police Etawah, Malkhan Singh Head Constable, Rajiv DubeytConstable, Krishna Saini Constable, Sanjeev Kumar Gautam Constable.

3. It is argued by the learned Counsel for the petitioner that although the F.I.R. has been lodged pursuant to the order of the court u/s 156(3) Cr.P.C., a clear attempt to scuttle the fair investigation is discernible inasmuch as firstly, the investigating officer refused to meet the complainant when he tried to contact and secondly, he was not supplied copy of the F.I.R and further that the investigating officer did not record the statements of the injured witnesses and also other ocular witnesses who mattered in the case and instead recorded statements of those who were inclined to give statement on dotted lines in support of police version. The clandestine manner in which the investigation has been taken to finality, it is further argued, has created a reasonable apprehension in the mind of the petitioner that the investigation has not been conducted fairly and it is discernible that attempt has been made to screen the high officers in the police echelons. The learned Counsel has also imputed political vendetta to police action, further alleging that since senior police officers were involved, it was not expected that the investigating officer would conduct the investigation fairly and properly.

4. In the earlier order of the Court dated 30.9.2008, the learned Government Advocate had sought time to obtain the report of the National Human Rights commission. No report has been submitted despite imperative and specific order of the Court.

5. Before proceeding further, we would like to tabulate the points argued before the Court by the learned Counsel for the petitioners in support of his contentions that it is a fit case in which the Court should step in and direct re-investigation by the agency other than the local police.

(1) That the investigation was taken to completion within 24 hours and the police submitted final report at the end of the District Magistrate Etawah.

(2) That the police did not record statements of any of the key witnesses who mattered in the case and who were cited in the F.I,R and written reports by the complainant which It is argued was done to screen the high police officers from criminal action In the matter.

(3) That unprovoked firing was resorted to by the police and the deceased received injuries from point blank range.

(4) That the injuries suffered by the police personnel were superfluous and as a matter of fact, the injuries were concocted in collusion with the doctor examining the police personnel.

(5) That the police did not act fairly but seemed to be acting at the dictates of those pulling strings from behind the curtain and at their dictates the police unleashed terror on those in the opposite camp.

6. It contended by the learned Counsel for the petitioner that the college where incident of unprovoked firing happened is a college situated in Haivara District Etawah founded by Ex Chief Minister of the State. He further contended that this incident happened in the series of actions taken by the Government targeting the Ex Chief Minister and the District police particularly S.S.P. Sri Siya Ram Aditya and A.S.P Ram Pal Gautam and accompanying police personnel at the dictates of the ruling party in the State gate crashed by breaking open the main gate of the college and once the police force headed by S.S.P. Etawah and A.S.P aforesaid¹ entered the campus of the college, rein of terror was unleashed and unprovoked firing was resorted to which culminated in injuring seriously three college students namely Mukesh, Avnish and Sunil out of which Mukesh succumbed to injuries and the book in his aid got pierced through by the shot of fire arm and was besmirched with blood. The other two students namely Avnish and Sunil were rushed to P.G.I. Safar in serious condition where they were administered treatment for about 15 days at a stretch. It is further contended that at the relevant time, the S.S.P and A.S.P aforesaid were mouthing profanities against Ex Chief Minister stating that a lesson be taught to their supporters. To sum up his contentions, the firing resorted to by the police was unprovoked and the police action exceeded to what the situation on the spot warranted, resulting in death of one of the students and serious injuries to two other students.

7. Before we come to grips with the contentions advanced across the bar, it would be useful to refer to Injuries suffered on behalf of the police. In all, it would appear three police personnel suffered injuries. One of the injured Raj Kumar, police personnel, sustained three contusions. Another police personnel is Jay Singh Parihar. He is stated to have suffered three Injuries, which are (1) red abraded contusion, (2), red contusion and (3) red contused swelling. The third police personal examined by the doctor is Satish Kumar Yadav. He is stated to have suffered three contusions.

On the other hand, the deceased Mukesh Kumar is stated to have suffered two ante mortem injuries are abstracted below.

1. Fire arm wound of entrance-a circular 1 cm diameter x abdominal cavity deep in right side of waist in anterior axillary, line, just above right iliac.... No blackening tattooing is seen, depth directed front and left side and little backward. Margins inverted.

2. Corresponding wound of exit of size 3 x 1.5 cm on left side of waist 1 posterior axillary line 1 cm below left iliac crest On Internal examination large intestine

lacerated at one place and small intestines at two places. Left iliac artery is lacerated mesenteric artery underlying iliac crest bone fractured margin everted.

8. We have searched the entire record and there is nothing on record to indicate that the police took notice of the other two injured students who received fire arm injuries and were stated to have been treated at, P.G.I. Safai. On behalf of the State, entire police papers have been filed before the Court and assiduous search did not yield any information about the other two injured students.

9. In the perspective of the reliefs sought in the petition and also the arguments advanced across the bar by the learned Counsel for the petitioner that the investigation be entrusted to some independent agency, and also learned A.G.A in opposition of the relief sought by the petitioner, the question that arises for consideration is whether the investigation was conducted fairly and properly and after taking all materials, evidence and circumstances into consideration in accordance with law and whether the manner of investigation was such that required the investigating by any agency other than the local police.

10. We may revert to the allegations made in the petition in support of the contentions justifying re-investigation by an agency other than local police.

11. On the count that fair Investigation was not done in the matter, the learned Counsel contended that the petitioner gave written report at the police station Safai the same day i.e.9.1.2008, but the same was not acted upon and all that was done by the police was to make G.D entry of the written report. Again it is further contended, a written report was given 11.1.2008 but again the same was not acted upon. Thereafter gone Udai Raj Yadav moved application to Chief Information Commissioner Lucknow asking the status report and action taken on the aforesaid written reports. On the said application, it is stated, the Chief Information Commissioner ordered the S.S.P. Etawah and Station house officer Safai to appear in person along with details relating to aforesaid written report. It is further contended that notwithstanding several orders passed by Chief Information Commissioner, police did not register the F.I.R. The learned Counsel also referred to telegrams sent to various political and constitutional heads including Chief Minister of the State, Home Minister of Union of India, Governor of the State but the same did not yield any response. The learned Counsel also referred to representation made to National Human Rights Commission New Delhi and thereafter, it is averred, recourse was taken to preferring application u/s 156(3) Cr.P.C before the court on 8.2.2008. Pursuant to order of the Court, the police registered the case and the very next day, submitted report which is annexure 4 to the writ petition. It would appear from the record that the police made G.D. entry of the written report but did not register the F.I.R against the named persons. Subsequently by means of order dated 8.2.2008, the C.J.M. Etawah directed the case to be registered attended with direction that the case be investigated by the officer other than the officers posted at Safai police station. Ultimately, pursuant to the directions of the Court F.I.R. was lodged on 1.3.2008 at case crime No. 1 B of 208 u/s 147/148/149/302/307/342/506/504

IPC Thereafter, it is stated, the petitioner contacted the Investigation officer several times but he declined to meet him and other eye witnesses of incident. Subsequently, it is argued, it transpired that the investigating officer submitted final report within 24 hours and also a report to the District Magistrate Etawah who expunged the names of the accused persons from the F.I.R. It is also alleged that in the course of investigation, the investigating officers neither recorded statement of the complainant nor any of the ocular witnesses which were cited in the F.I.R u/s 161 Cr.P.C. prior any of the injured witnesses who were injured in the incident on account of unprovoked firing by the police and the entire investigation was nothing but a travesty of the process of investigation and procedures prescribed for investigation in the statute.

12. On the contrary, the version of the police is embodied In Annexure 4. According to, the police version, on 9.1.2008, students approximating 400-500 had collected and blocked the Etawah-Mainpuri High Way. It is stated that Initially, the S.H.O on the spot tried to persuade and pacify the students to desist from blocking the highway who were, it is alleged, proclaiming that since their leader |Shiv Pal. Singh Yadav had been affronted and insulted by the police, they would avenge the insults. The students, it; is further stated, got unruly and started pelting stones at the vehicles and ultimately, they targeted the police force. Initially, it is alleged, warning was issued by the A.S.P and when it did not have the desired effect, tear gas shells were lobbed. Instead of dispersing, the mob fired at the police party and again serious warning was issued but when it did not have the desired effect and the mob grew more violent and continued to fire and pelted stones at the police. Ultimately finding no way out, the police resorted to firing in which one Mukesh died and two other students suffered fire arm injuries.

13. It is clear from the record and also it brooks no dispute that the two consecutive written reports which the petitioner submitted to the police, were not acted upon by the police. It also brooks no dispute that the F.I.R was lodged by the police pursuant to order passed by the Court u/s 156(3) Cr.P.C. on 1.3.2008 and the investigation was concluded on 2.3.2008 and report submitted to the District Magistrate Etawah and final report to the court by the Investigating officer. It is alleged that the investigating officer declined to meet the author of the F.I.R and instead, he appeared to have proceeded with undue haste into concluding the investigation and submitting the report the very next day sans recording the statements of the injured and other independent ocular witnesses. From a perusal of the report submitted by the Investigating officer it would transpire that the investigating officer recorded statements of as many as 23 witnesses and ultimately, he came to the conclusion that the allegations contained in the F.I.R are not substantiated from the statements of the witnesses. Out of 23 witnesses figuring in the report submitted by the police, the name of the complainant finds mention but the learned Counsel emphatically repudiated that the investigating officer ever approached him or called him to assist in the investigation attended with the submission that if the petitioner is

shown to have given any statement before the Investigating officer, the same has been recorded while ensconced in the police station itself without any knowledge of the petitioner. It does not appear that the police recorded statements of any of the witnesses cited in the F.I.R or any of the injured persons. It is, therefore, within the domain of doubt if the statement of the petitioner was recorded by the Investigating officer as alleged. It would thus appear ex facie that there is substance in the allegations that the Investigating officer has not discharged his statutory obligation to carry out fair and proper investigation. It appears to us from the materials on record that the investigation by the police was desultory and lackadaisical and showed want of appreciation of emergent need to get at the truth of the case. The police, it appears to us, did not record statements of those who mattered in the case and formed the tentative opinion and laboured to justify that there was no substance in the allegations made in the F.I.R. and submitted the report. Upon consideration of the materials on record, we feel compelled to say that the Investigation was channelised for collecting materials to support the view arrived at by the Investigating officer. We are at a loss to understand as to why the investigating officer did not think it necessary to record statements of the other witnesses cited in the F.I.R. and also those who had sustained fire arm injuries in the shooting resorted to by the police. It was reasonably expected of the Investigating officer to have appeared to be fair in conducting the investigation and should have exhibited greater candour and open mind, by collecting all the material available and then only eliminate that which has to be discarded and retain the rest to be used for the purpose. In the facts and circumstances of the case and the manner in which the investigating officer hastened to complete the investigation within 24 hours giving clean chit to persons named in the F.I.R. the Court is willy nilly inclined to lend ears to the contentions that the investigation was not conducted fairly and properly. We also find substance in the contentions that the investigating officer cannot muster courage to conduct the investigation fairly and properly when their senior officers' fate involved for fear of losing his job. The possibility cannot be ruled out and the cases are not uncommon where the police officers have botched up the investigation to help out; the colleagues from tight situation and are inclined to manipulate the case.

14. In *Sasi Thomas v. State of U.P* (2006) 12 SCC 421, the Division Bench of the Apex Court observed that proper and fair investigation on the part of investigating officer is the backbone of rule of law. The Apex Court further observed "The job of the investigating officer is to make investigation right direction. The investigation must be in consonance with the ingredients of the offence. It cannot be haphazard or unmethodical. A proper and effective investigation into a serious offence or particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately the, appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly

and upon obtaining apparently an Incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly. The appellant alleges that no fair investigation has been conducted. It is, dearly a matter of great concern that the authoritative did not become alive to the situation.

15. The Apex Court also took notice of the decision in *Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others*, in which the disputed question revolved round whether further investigation was warranted or not. The Apex Court in that case observed that "coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial as the ultimate object/s to arrive at the truth."

16. In the above conspectus we are of the view that in order to do complete justice between the parties, there is necessity to entrust the matter for re-investigation to the agency other than the local police which did not appear to have conducted the investigation fairly and properly. In the facts and circumstances, the investigation is ordered to be entrusted to C.B.I. which shall carry out investigation and submit report within three months before the Court for appropriate orders.

17. Yet another disquieting aspect is that the S.S.P and the A.S.P who have been named in the F.I.R have not yet been transferred notwithstanding serious allegations that they tried to scuttle the investigation by indirect pressure and petulant interference in the investigation. The Court does not view with favour that the officers aforesaid are still continuing in Etawah which would not be conducive to fair investigation. It would be in the interest of justice if the officers are immediately, transferred from Etawah. The Government Advocate shall ensure that the officers named in the F.I.R. are immediately transferred from Etawah. However, it may be clarified that in the course of investigation, the officers named in the F.I.R shall not be arrested.

18. The case is ordered to be listed in the first week pf Dec 2008 on which date the C.B.I. shall submit progress report as on date.

19. Let a copy of this order be supplied to the learned Government Advocate Let a further copy of this order be supplied to Sri G.S. Hejela learned Counsel appearing for the C.B.I. for compliance of the order.