

(2013) 09 AHC CK 0074

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 11245 of 2007

Ram Suresh, D.S.P., C.B. C.I.D. and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 1 ACR 67 : (2013) 83 ALLCC 885

Hon'ble Judges : Ravindra Singh, J;Anil Kumar Agarwal, J

Bench : Division Bench

Advocate : S.M.A. Kazmi, R.B. Singh, Arun Kumar, Tahira Kazmi and G.S. Chaturvedi, for the Appellant;

Judgement

Ravindra Singh and Anil Kumar Agarwal, JJ.—Heard Sri R.B. Singh, learned Counsel for the petitioners and learned A.G.A. for the State of U.P. This petition has been preferred by the petitioners Ram Suresh, Ashok Kumar and Rajendra Singh with the following prayers:

(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 1.6.2007 and 4.4.2006 passed by the respondent Nos. 4 and 2 (Annexure-10 and 8 to this writ petition).

(ii) to issue a writ, order or direction in the nature of mandamus directing the respondents to proceed against the petitioners in pursuance of the impugned order dated 1.6.2007 and 4.4.2006 (Annexure-9 and 8 to this writ petitioner).

(iii) to issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) to award the cost of the petitioner to the petition.

The facts, in brief, of this case are that an FIR was lodged by Sri Mohd. Iqbal at police station T.P. Nagar, Meerut on 10.6.2004 in Case Crime No. 178 of 2004 u/s 392 I.P.C. alleging therein that in the night of 9/10.6.2004 at about 12.30 O'clock the first informant was robbed at pistol point by two boys, who came on

a Red Coloured Motorcycle by snatching the amount of Rs. 20,000/-. In the night of 9/10.6.2004 at 0.35 A.M., its message was flashed from the City Control Room that two unknown motor cycle borne miscreants committed the offence of the robbery, after snatching Rs. 20,000/- they fled away towards Madhav Puram, on that information a team headed by A.K. Singh, officer-in-charge of police station Brahmpuri proceeded towards Sai Puram and another team headed by the petitioner Ram Suresh, Dy. S.P. also proceeded towards Lisari Road via Sai Puram, both the teams chased the miscreants, the miscreants were challenged by them to surrender before the police after dropping the fire arm at about 0.45 A.M. but both the miscreants discharged the shots indiscriminately at the police parties with an intention to commit the murder, in which the petitioners A.K. Singh, officer-in-charge and Rajendra Singh, officer-in-charge sustained gunshot injuries, they shouted loudly which gave impression that they sustained gun shot injuries, in self defence the police parties also discharged the shots towards the miscreants. In the said incident one of the miscreants also sustained gun shot injuries, he was apprehended by the police, from his possession one pistol (Italy made) was recovered, he was taken to the hospital in the injured condition, to provide the medical aid, in the said incident, Sri A.K. Singh, officer-in-charge of the police station Brahmpuri, Sri Rajendra Singh, officer-in-charge of police station Lisari Gate who were members of police parties also sustained injuries, they were also taken to the hospital by the police to provide the medical aid. From the place of incident, empty cartridges, motorcycle of the miscreants, a stolen scooter and stolen cash were recovered. The recovered pistol of the accused was Italy made bearing No. 37491, its FIR was lodged by the petitioner Ram Suresh, Dy. S.P. at Police Station Brahmpuri in Case Crime Nos. 166 of 2004 u/s 307 I.P.C. and Case Crime No. 167 of 2004 u/s 25 Arms Act on 10.6.2004. The petitioner No. 2 Ashok Kumar and petitioner No. 3 Rajendra Singh were medically examined in the night of 9/10.6.2004. The petitioner No. 2 Ashok Kumar Singh had sustained a gunshot injury, petitioner No. 3 Rajendra Singh had also sustained a gun shot injury. The miscreant who apprehended on the spot was taken to the hospital to provide the medical aid but he succumbed to his injuries, he was identified as Ashish Tyagi. According to the post-mortem examination report he had sustained gun shot injuries and blackened abrasions. During investigation, another unknown miscreant, who escaped from the place of incident, could not be traced out and the miscreant who was apprehended succumbed to his injuries, consequently, the final report was submitted in Case Crime No. 166 of 2004 u/s 307 I.P.C. and Case Crime No. 167 of 2004 u/s 25 Arms Act, Police Station Brahmpuri, Distt. Meerut and both the final reports were accepted by learned Special C.J.M. Meerut vide order dated 20.10,2004. The order dated 20.10.2004 has become final because it was not set aside by any higher Court. The miscreant Ashish Tyagi who sustained injuries in police encounter was apprehended from the place of accident but succumbed to his injuries later on, was involved in several criminal cases. It was act of bravery done by the police, at the cost of their lives by performing their duties with full devotion, considering the same, the petitioners were awarded by the higher

authority. The learned Special C.J.M. who accepted the final reports after perusing the case diary, did not find any thing requiring further investigation even no such remark was passed. All of sudden, after expiry of long period, a letter dated 4.4.2006 was sent to the Director General, C.B. C.I.D., U.P. Lucknow by Deputy Secretary U.P. Shasan, Lucknow mentioning therein that in pursuance of the letters sent by National Human Right Commission, the State Government has taken decision to get the inquiry/investigation done by C.B. C.I.D. and the copies of letters dated 4.4.2005 and 9.9.2005 sent by Human Right Commission have also been sent along with the letter dated 4.4.2006, thereafter, the S.P. C.B. C.I.D., U.P. Lucknow sent a letter dated 1.6.2007 to Dy. Secretary (Home) Human Right Commission, Anubhag-1, U.P. Shasan Lucknow mentioning therein that in the present case after completing the inquiry on 7.5.2007 it was found by the CB CID that prima facie the offence under sections 147, 148, 149, 302, 34 I.P.C. against the police personnel, is made out and the recommendation of "registering the case and its investigation" against the police personnel, has been made, the same may be accepted so that the case may be registered and investigation may be done and there was no justification to get the investigation done by any other sector.

2. Being aggrieved from the letter dated 4.4.2006 sent by Deputy Secretary, Government of U.P., Lucknow to Director General, C.B. C.I.D., U.P. Lucknow by which the State Government has taken the decision to get the investigation done by C.B. C.I.D. and the letter dated 1.6.2007 sent by S.P., C.B. C.I.D., U.P. Lucknow to Deputy Secretary (Home), Human Right Commission, U.P. Shasan, Lucknow for accepting the inquiry report submitted by the C.B. C.I.D. and granting the permission to register the case and investigate the same, against the petitioners and others, the present writ petition has been filed.

3. The present writ petition has been filed on the following grounds:

A. Because an encounter in the night of 9/10.6.2004 wherein one Ashish Kumar who was hardened criminal nature person fired upon the police party and police party injured in the said incident and one unknown criminal associated with Ashish Kumar could not be arrested by the police party who ran away in which the police party sustained injuries in serious in nature.

B. Because a first information report was lodged against the accused person in which the final report was submitted and the same was accepted by the learned Chief Judicial Magistrate, Meerut.

C. Because no restoration or protest petition was filed against the acceptance of final report dated 20.10.2004 passed by learned Chief Judicial Magistrate, Meerut.

D. Because an order was passed by respondent No. 2 for reinvestigation of the case and in pursuance of the order passed by respondent No. 2, the respondent No. 4 also passed an order against the petitioners.

E. Because the impugned orders passed by the respondent No. 2 and 4 are

illegal, arbitrary and void.

F. Because the impugned order dated 1.6.2007 as well as order dated 4.4.2006 is against the rules as well as provisions given in the Cr.P.C. is that after completion of the investigation, police report and Court proceedings order for re investigation is illegal and is liable to be quashed by this Hon"ble Court.

G. Because it is open to a person to move a restoration application, protest petition before the learned Chief Judicial Magistrate or before any Court of law against the order dated 20.10.2004 passed by the learned Chief Judicial Magistrate, Meerut.

H. Because the impugned order is barred by Judicial proceedings and its documents and evidence and on this ground the proceedings initiated against the petitioner is not sustainable in the eyes of law.

I. Because even otherwise also the impugned orders passed by the respondents No. 2 and 4 are illegal, arbitrary, suffers from material illegalities and as such the same is liable to be quashed by this Hon"ble Court.

4. It is also submitted by learned Counsel for the petitioners that the petitioners are police personnel, they discharged their duties efficiently and recovered the stolen property by arresting the miscreant. During course of chasing, the miscreants discharged the shots towards the police party, consequently petitioners No. 2 and 3 sustained gun shot injuries and in cross firing one of the miscreants namely Ashish Tyagi also sustained gun shot injury, he was apprehended and was taken to the hospital to provide the medical aid, but he succumbed to his injuries. The FIR in this respect has been lodged by the petitioner No. 1 at P.S. Brahmpuri in case crime No. 166 of 2004 u/s 307 IPC and case crime No. 167 of 2004 u/s 25 Arms Act. It is a case in which one of the miscreants could not be traced out during the investigation, ultimately the final report has been submitted and the same has been accepted by the Special C.J.M., Meerut on 20.10.2004 which has not been challenged by any party, this order has become final but without any proper reason, only on the basis of the letter sent by the National Human Right Commission, the State Government directed the C.B. C.I.D. to do the inquiry investigation whereas no case was registered against the petitioners. In such circumstances, the decision taken by the Government to get the inquiry/investigation done by the C.B. C.I.D. and its communication to D.G., C.B. C.I.D., U.P. Lucknow vide letter dated 4.4.2006 is illegal and against the interest of justice. It is submitted by learned Counsel for the petitioners that even no permission has been obtained by the State Government from the Court concerned, for referring the matter to C.B. C.I.D. for the purpose of inquiry investigation. In the present case the magisterial inquiry was also conducted but during inquiry no evidence of committing the murder etc. was found against the petitioners. It appears that the matter was referred to C.B. C.I.D. by the Government for conducting inquiry/investigation without any proper reason. The order passed by the Government and entrusting the matter

to C.B. C.I.D. for inquiry/investigation is illegal because reinvestigation is not permitted under the law inasmuch as because in this case after completing the investigation, final report has already been submitted, the same has been accepted by the learned Special C.J.M. Meerut. The inquiry/investigation done by the C.B. C.I.D. is also illegal. The same may be quashed. The permission sought by the C.B. C.I.D. on the basis of inquiry report, to register the case and investigate the same is illegal because in the report submitted by the C.B. C.I.D. is not supporting the recommendation it has been clearly mentioned that (a) in the magisterial inquiry regarding the police encounter no evidence of murder has been found, (b) there is no evidence that the deceased was brought from some where else and he was killed in fake encounter, (c) the deceased was hardened criminal and there was cash award on him also. During inquiry it was also found that in aforesaid encounter some police personnel has also sustained gun shot injuries. But report submitted by the C.B. C.I.D. recommending to lodge the FIR, does not appear to be proper and it is against the law.

5. On above mentioned report submitted by C.B. C.I.D. the State Government sought the advice/opinion from the Law Department, the Law Department of the State Government has given the opinion dated 29.1.2008 that no single person from the public had made any complaint that the police party took away Ashish Tyagi to some other place, there was no complaint that Ashish Tyagi was killed in fake encounter and there was no eye witness of the alleged incident, the final report submitted by the police had already been accepted by the Court. The police personnel who sustained injuries got their treatment in private hospital because better treatment was available there. Ultimately the Law Department of the State Government after considering all the aspects of the case submitted its opinion that there was no iota of evidence against the police personnel. The C.B. C.I.D. had submitted the report only on the basis of doubt and suspicion, the conclusion drawn by the C.B. C.I.D. is not based on the evidence, only on the basis of imagination no FIR may be lodged. The Inspector General of Police (Administration) U.P. Lucknow sent a letter to the Secretary Home (Police) Anubhag-3 U.P. Shashan, Lucknow on 4.1.2013 to know about the decision taken by the Government on the representation made by the petitioner Ram Suresh Yadav mentioning therein that the State Government has not made any communication with regard to the decision taken on representation of Ram Suresh Yadav for recalling the earlier order and to get the investigation/inquiry done by the C.B. C.I.D. again whereas a letter dated 31.10.2012 was sent from the office of the Director General of Police to the Special Secretary (Police) Anubhag-3 U.P. Government, Lucknow mentioning therein that after considering representation dated 21.7.2012 made by Ram Suresh Yadav, Deputy S.P., the inquiry report submitted by the C.B. C.I.D. and the opinion of law department, the following facts have been revealed:

(I) Out of turn promotion has been given to non-Gazetted police personnel who participated in police encounter with Ashish Tyagi on 10.6.2004.

(II) It has been alleged by Sri Ram Suresh Yadav, Deputy S.P. in his representation that the due to malice of then officer and having no evidence, the recommendation to lodge the FIR has been made by C.B. C.I.D.

(III) No FIR has been registered due to interim order passed by the Hon''ble High Court.

(IV) The law department has given the opinion that the conclusion drawn by the C.B. C.I.D. is not based on evidence, on imagination no FIR can be lodged.

(V) The National Human Right Commission New Delhi has been replied by the State Government that on the basis of inquiry report submitted, the police personnel may not be held guilty and the police encounter may not be said to be fake.

6. The Director General of Police was agreed to recall the order passed by the Government by which the inquiry was done by the C.B. C.I.D., or to hold fresh enquiry, in such circumstances the Government itself is not satisfied with the report submitted by the C.B. C.I.D. for lodging the FIR against the petitioners, therefore, the decision taken by the Government to get the inquiry be done by the C.B. C.I.D. and its recommendation to lodge the FIR may be quashed.

7. In reply to the above contention it is submitted by the learned A.G.A. that two unknown miscreants committed the offence of robbery in the night of 9/10.6.2004, its information was flashed from the City Control Room to the petitioners and other authorities, on that information the petitioners and other police personnel chased the miscreants, the miscreants discharged the shot towards the police parties with an intention to commit the murder, in the said firing petitioners No. 2 and 3 sustained gunshot injuries, in the said incident one of the miscreants also sustained gunshot injury, in the injured condition he was apprehended and he was taken to the hospital to provide medical aid but he succumbed to his injuries. From the alleged place of incident stolen scooter and stolen money of Rs. 20,000/- were recovered, its FIR was lodged by the petitioner No. 1 in which after completing the investigation, S.I.S. Meerut submitted the final report, the same was accepted by the learned Special C.J.M. Meerut vide order dated 20.10.2004, the order dated 20.10.2004 has become final because it has not been set aside. In the present case in respect of the police encounter "magisterial enquiry" was done in which no allegation has been made against the petitioners. The C.B. C.I.D. has also made inquiry, according to the inquiry report, there had been police encounter in which petitioner Nos. 2 and 3 had sustained gunshot injuries and the miscreant who sustained injury was apprehended by the police, he was involved in criminal cases but the recommendation has been made to lodge the FIR against the petitioners and other police personnel, on which legal opinion was obtained from the Law Department, according to the opinion of the Special Secretary (Law/L.R.) there was no sufficient material/evidence to show that the deceased was murdered by the petitioners therefore the lodging the FIR was not proper. The office of the

Director General of Police was not satisfied with the recommendations made by the C.B. C.I.D.. The State Government had taken the decision on the basis of the letter sent by the National Human Right Commission for getting the inquiry done by the C.B. C.I.D., in such circumstance, the State Government has not committed any error in taking the decision to get the inquiry done by the C.B. C.I.D. and on the basis of the inquiry report submitted by the C.B. C.I.D. The FIR may be lodged.

8. Considering the facts, circumstances of the case, submission made by the learned Counsel for the petitioners, the learned A.G.A. for the State of U.P. and from the perusal of the record it appears that in the night of 9/10.6.2004 two miscreants committed the offence of robbery at pistol point in which they snatched Rs. 20,000/- and the scooter of Mohd. Iqbal, its FIR was lodged by Mohd. Iqbal at the Police Station T.P. Nagar Meerut on 10.6.2004 at 1.00 a.m. The FIR was lodged against the unknown miscreants. From the City Control Room a message was flashed about the said incident and the petitioners were asked to take the action, the petitioners and other police personnel chased the miscreants, the miscreants fired at the police parties in which petitioner Nos. 2 and 3 sustained gunshot injuries. The petitioner No. 2 was the officer in charge of the police station Brahmpuri and petitioner No. 3 was the Officer in charge of the police station Lisarigate district Meerut. The police parties also discharged the shots in self defence. In such firing made by the police, one of the miscreants sustained gunshot injury, he was apprehended in an injured condition, but his associate successfully escaped from the place of incident. From the place of incident a factory made pistol (Italy made), Rs. 20,000/-, stolen Scooter and motorcycle were recovered, the arrested miscreant was identified as Ashish Tyagi, he was taken to the hospital to provide medical aid but he succumbed to his injuries, its FIRs" in case crime No. 166 of 2004 u/s 307 I.P.C., and case crime No. 167 of 2004 u/s 25 of the Arms Act were lodged by the petitioner No. 1 at Police Station Brahmpuri, District Meerut, its investigation was done by the S.I.S. Meerut who submitted the final reports, the same were accepted by the learned Special C.J.M. Meerut on 20.10.2004, the order dated 20.10.2004 has become final because it has not been set aside by any higher Court, it is a case in which magisterial inquiry was also done in which neither the petitioners nor any police personnel, was found guilty.

9. In order dated 20.10.2004 the learned Special C.J.M. Meerut has not passed any remarks against the police personnel including the petitioners, even no observation has been made for further investigation of the case or requiring any inquiry. The State Government has not obtained any such permission from the Court concerned or its higher Court, the State Government without going through the record, passed the order for holding the inquiry/investigation, by the C.B. C.I.D. which may be based on extraneous consideration i.e. the letter of Human Right Commission, it is amounting to reinvestigation of the case which is not permissible under the law, the State Government committed a manifest error by passing the order of holding the inquiry/investigation by the C.B. C.I.D., such

order and its communication are illegal and are liable to be quashed.

10. In the present case, C.B. C.I.D. completed the inquiry/investigation and submitted its final report with the recommendation that the "case may be registered and investigated" against the police personnel including the petitioners but the report itself reveals that in this case the magisterial inquiry regarding the police encounter in which the miscreant Ashish Tyagi lost his life, was conducted but no evidence to hold the police personnel guilty was found. No evidence showing that the deceased was brought from some where else and was killed in fake encounter. The deceased was a hardened criminal having the cash award on his head. It was found by C.B. C.I.D. itself that the police encounter was genuine in which some police personnel sustained gunshot injuries, on having such evidence, it was not proper to C.B. C.I.D. to recommend that the case be registered and investigated against the police personnel including the petitioners. Such recommendation made by C.B. C.I.D. is not based on the evidence collected during inquiry. The State Government sought the legal opinion from the Law Department, who considered the report submitted by C.B. C.I.D., all facts and circumstances of the case, the Law Department, and submitted its opinion dated 29.1.2008 that the conclusion drawn by C.B. C.I.D. recommending the State to lodge the FIR is not based on evidence, it is based on imagination, on imagination no FIR may be lodged. The Director General of Police also analysed the matter from all the corners and was not satisfied with the recommendation made by C.B. C.I.D. The Director General of Police had given his consent to recall the order by which the inquiry/investigation was set up or fresh inquiry be done, it has been communicated to Home Secretary through the letter dated 31.10.2012. The letter dated 31.10.2012 sent by the Director General of Police to Special Secretary Home shows that the State Government has also made communication to National Human Rights Commission New Delhi that on the basis of the inquiry report the police personnel may not be held guilty and the police encounter may not be said to be fake.

11. In such circumstances, the recommendation made by the C.B. C.I.D. in its inquiry report, for lodging the FIR (registering the case) and to investigate the same is having no substance, such recommendation is liable to be quashed and the communication made for the purpose of lodging the FIR has also become illegal, the same is also liable to be quashed.

12. In view of the above discussion, the decision taken by the State Government to get the inquiry/investigation done by the C.B. C.I.D., communicated vide letter dated 4.4.2006 by the respondent No. 2, is hereby quashed and in pursuance to letter/order dated 4.4.2006, the inquiry report having the recommendation "to register the case investigate the same" submitted by the C.B. C.I.D. is hereby quashed. In pursuance of such recommendation no FIR shall be registered against the petitioners and other police personnel

13. Interim order dated 24.10.2008 is hereby vacated. Accordingly, this petition is allowed.