

(1997) 09 GAU CK 0046
In the Gauhati High Court
Case No : Civil Rule No. 321 of 1995

Ratan Lal Nath

APPELLANT

Vs

State of Tripura and Ors.

RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226
Criminal Procedure Code, 1973 — Section 173(2), 190(b)
Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 190(b)

Citation : (1997) 1 GLJ 124 : (1997) 2 GLR 415 : (1997) 3 GLT 418 : (1996) 3 GLT 418

Hon'ble Judges : N.Surjamani Singh, J

Bench : Single Bench

Advocate : S.Das, B.Deb Nath, B.Bhattacharjee, Advocates appearing for Parties

Judgement

1. Heard Sri BB Deb, learned senior counsel assisted by Sri B. Bhattacharjee for the petitioner as well as Sri S. Das, learned counsel for the respondent No. 1. Respondent Nos. 2,3 and 4 did not file any affidavit in this case. In view of the existing facts and circumstances of the case, this Court proposes to dispose of this case at the admission stage and accordingly, this writ petition is being disposed of by the following judgment.

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for issuing a writ of Mandamus, and/or any appropriate writ of the like nature commanding the investigation to be conducted by an independent investigating agency afresh relating to Sedhai Police Station Case No. 171 of 1994 under section 307/118 IPC, and also for quashing the impugned order dated 28.4.1995 passed by the learned Chief Judicial Magistrate, West Tripura whereby the final report submitted in connection with the Sedhai Police Station Case No. 171 of 1994 was accepted.

2. The facts of the case in a short compass are as follows: The writ petitioner Sree Ratan Lal Nath is an Advocate by profession of Agartala Bar and he is also

an elected and sitting MLA of the Tripura Legislative Assembly from No.2 Mohanpur Assembly Constituency. He is also the General Secretary of Tripura Pradesh Congress Committee and also an elected member of All Indian Congress Committee. According to the writ petitioner the respondent No. 1 State of Tripura committed some fatal illegalities and irregularities regarding the appointment of Panchayat Election Commission, regarding delimitation of Panchayats and also preparation of Electoral Rolls relating to Panchayat Election. Being dissatisfied, the petitioner moved this Court in a public interest litigation under Article 226 of the Constitution of India being Civil Rule No.74 of 1994 against the respondent No. 1 and others. In the State of Tripura, the Indian National Congress to which the petitioner belongs and the Communist Party of India (Marxist) are the rival major political parties. After the litigation relating to the Panchayat Election was over, the respondent No. 1 held Panchayat Election thorough out the State and that date of poll was fixed on 27.8.1994 in West Tripura District including the Panchayat Constituencies falling under Sedhai Police Station. The writ petitioner being politically dedicated person, people representative as well as organisational office bearer took utmost endeavour in electioneering the said Panchayat Election during the month of July and August, 1994. The petitioner supervised the election machineries of the parties on 27.8.1994, the date of poll for the three tier panchayat system under Sedhai Police Station in order to ensure free and fair election and also for giving protection to the Congress volunteers around different polling stations within the jurisdiction of the said Sedhai Police Station on the said date viz 27.8.1994. The petitioner having supervised and observed the progress of election at Ishanpur proceeded towards Mohanpur being accompanied by party workers and one ADC Member namely Subodh DeBarma with three jeeps and one Maruti van which were hired by the petitioner's party for the aforesaid purpose. Those vehicles bears registration number namely TR 012124, 1R 012518, TRT1308, TR 01 0407 (Maruti). At the relevant time the petitioner was sitting in the vehicle bearing registration No. TR 01 2518. By virtue of this Court's order passed in Civil Rule No. 195 of 1994, the petitioner was provided with Armed Escort numbering five and to accommodate the escort party of the petitioner and his workers four vehicles as stated above had been with the petitioner. While the petitioner along with his company as stated above reached in front of Ishanpur PACS office having a distance of less than 1 KM from Ishanpur school towards South, the petitioner saw and heard that the 3rd respondent namely Sri Anil Sarkar, a Cabinet Minister ordered his escort party to open fire to the petitioner and without delay, the escort party of the 3rd respondent opened 7/8 rounds fire from their 303 rifles and two round of firing hit directly the vehicle bearing registration No. TRT 1308 in which the petitioner's party workers were sitting. Fortunately the bullets could not hit any person though attempt was made to kill the petitioner at the instance of the 3rd respondent without any reason or provocation. After observing the situation, the petitioner's escort party got down and cried out identifying them to be the police personnel and requested for sloping the firing and no further firing happened. Thereafter, the petitioner along with his fellow workers rushed to Sedhai Police

Station on the same day i.e. 27.8.1994 at about 4 PM and lodged an FIR being written by Congress worker Sri Madan Mohan Sana at the dictation of the petitioner himself. Thereafter, the petitioner handed over the written FIR to the Duty Officer, SI Santi Das as the OC, 2nd respondent, was not in Police Station building at that moment. It is also the case of the petitioner that before handing over the written FIR, it is noticed that the 3rd respondent along with his security personnel and accompanying an employee namely Dilip Kumar Dey entered in the Police Station building and started rebuking with filthy and provoking languages and threatened the petitioner. After few days the petitioner learnt that the 2nd respondent instead of registering I the petitioner's FIR as stated above registered another FIR bearing Sedhai Police Station Case No.111 of 1994 as against the petitioner and the said FIR was lodged by the said Dilip Kumar Dey, a Govt employee of the 3rd respondent Being apprehended, the petitioner moved an anticipatory bail petition before this Court under Criminal Original Petition No.1 89 of 1994 in connection with the said case. While disposing the said Criminal Original Petition No. 198 of 1994 this Court by an order dated 16.12.1994 allowed the 2nd respondent to take a carbon copy of the complaint of the petitioner as available in the said Criminal Original Petition and treat it as FIR and take all necessary action in accordance with law provided he is satisfied that the said complaint, prima facie, discloses the commission of cognizable offences. This Court further directed the petitioner to lodge appropriate complaint with the Officer Incharge of Sedhai Police Station containing all those allegations and whatever transpires from the order which this Court passed in connection with the said case, and therefore, the said Officer Incharge of Sedhai Police Station shall register the same as an FIR if he finds that the said complaint that may be lodged by the petitioner prima facie discloses commission of offence under Chapter XI of the Indian Penal Code and any other provision of the Code, and accordingly, the petitioner lodged a formal FIR on 22.12.1994 against SI Santi Das for concealment of the petitioner's FIR on 27.8.94. Thereafter the police registered a case on 17.12.1994 in respect of the FIR 27.8.1994 lodged by the petitioner as against the 3rd respondent as per order and direction dated 16.12.1994 passed by this Court as stated above. The petitioner went on to state that though the 2nd respondent registered the petitioner's FIR vide Sedhai Police Station Case No. 171 of 1994, he did not at all undertake or conduct any investigation of the said case in its legal spirit and the 2nd respondent did not even record the statement of the eye witnesses, though some of the eye witnesses have been interrogated by him. Moreover, the 2nd respondent did not examine and record any statement of the driver of the vehicle which sustained bullet injury as a result of firing committed by the escort party of the 3rd respondent. The damaged and effected vehicle had never been inspected or seized by the police. In the meantime the 2nd respondent furnished final report purportedly for want of evidence on 10.4.1995 in the Court of the learned Chief Judicial Magistrate who accepted the final report vide his order dated 28.4.1995. According to the petitioner, on 23.1.1995 and 27.1.1995 he received threatening telephonic calls pressing the petitioner not to proceed with the case against the

Minister, for which the petitioner promptly reported the matter to the OC Sedhai Police Station vide his complaint dated 24.1.1995 and the OC West Agartala PS on 27.1.1995. The eye witnesses sworn affidavit narrating the incident what they have seen and what happened on that day of incident for which the petitioner annexed the copies of the affidavit of as many as six witnesses along with English renderings which are marked as Annexure 8A, 8B, 8C, 8D, 8E, 8F, 8G and 8H respectively to the writ petition. The petitioner went on to state that since the 3rd respondent, a Cabinet Minister is involved in the commission of a crime, the 2nd respondent the OC of Sedhai Police Station being Investigating Officer failed to investigate the case in its true spirit. The 2nd respondent deliberately did not record the statements of the eye witnesses under section 161 CrPC in connection with the said FIR case in which the 3rd respondent is involved. The petitioner further averred to the extent that where a politician like a Minister is involved in the commission of crime, the State police would be reluctant to conduct free and fair investigation which happened in the present case, and, as such, for the faulty purported investigation done by the 2nd respondent, the offence committed would go unredressed and the petitioner grievance touching the commission of criminal offence would go untried, unless an independent agency is directed to conduct the investigation, Unless an order for reinvestigation to be conducted by any independent agency like CBI is ordered by this Court, the offence committed by the respondent No.3 would go untried the petitioner contended.

3. It is also the case of the petitioner that when he applied for certified copy of the statements of the witnesses if recorded, during the investigation of the present case, the petitioner was informed in writing by the office of the Chief Judicial Magistrate, Agartala that no statement of witnesses recorded under section 161 CrPC is available, and, as such, no copy could be supplied.

4. As per direction and order of his Court, the relevant copies of the statement of the witnesses recorded by the police under section 161 CrPC were supplied to the petitioner and the copies of the same also have been placed on record.

5. The respondent No. 1 resisted the case of the petitioner by filing counter affidavit and contended, inter alia, that the petitioner did not suffer any injury of substantial nature and; the fundamental rights of the petitioner have not been violated as alleged in the said petition and as such the petitioner cannot seek for redress under Article 226 of the Constitution of India. According to respondent No.1, on 27.8.1994 the writ petitioner Sri Ratan Lal Nath being accompanied by some of his party workers and one ADC Member Sri Subodh De Barma with three jeeps and one Maruti was returning from Ishanpur to Mohanpur after the incident occurred at Ishanpur. On that day around 15.55 hours there was a hot altercation between the supporters of CPI (M) led by Sri Prana Deb Barma, MLA and supporters of Congress (I) led by the petitioner in front of Ishanpur High School on Agartala Simna Road and as a result of which supporters of both the parties turned violent and resorted hurling of bombs etc. For safety and security of both MLAs their security personnel/PG open fired, and there was no casualty

nor any injury in any side due to the fire of the security personnel. This incident gave rise to police cases, one was instituted by the petitioner and another by Prana Deb Barma. Those cases are registered as Sedhai Police Station Case No.112 of 1994 under section 148/149/307 IPC and 3/5 of the Explosive 8 Substance Act lodged by the petitioner and Sedhai Police Station Case No.115 of 1995 under section 148/149/307 IPC and 3/5 of the Explosive Substance Act lodged by Sri Prana Deb Barma, MLA of CPI (M). Investigation of both the cases are completed and the FR (T) No.20 dated 27.2.1996 has been submitted in Sedhai PS Case No. 112 of 1994 and charge sheet No. 100 dated 28.6.1995 under section 147/148/149/307 IPC and 3 of ES Act and 27 Arms Act has been submitted in respect of Sedhai PS Case No. 115 of 1995. While the petitioner and his men were returning from Ishanpur School after the incident, on that day a convoy of Hon''ble Minister for Education reached near Ishanpur PACs located about 500 yards South from Ishanpur School and the security personnel of Minister heard the sound of firing coming from the convoy of Sri Nath, the writ petitioner. It was found that when the writ petitioner leaving Ishanpur after the first incident, this security personnel continued firing at the time of leaving the said school. On hearing the sound of firing the security personnel of the Hon''ble Minister for Education apprehended a danger which may be detrimental to the safety of the Hon''ble Minister. One of the security personnel of the Hon''ble Minister made five round fire on air. The motor vehicle bearing registration No.TRT 1308 has not been hit by the bullets. As soon as the security personnel of the writ petitioner got down from the vehicle, they gave their identity as police personnel and later on, the firing was stopped and misunderstanding between the two parties was immediately removed. It is also the case of the respondent No. 1 that the then O/C Sedhai Police Station, respondent No.2 herein, was present at that time. At the Sedhai Police Station there was hot altercation between the Hon''ble Minister for Education Sri Anil Sarkar, 3rd respondent and his party on one side and the petitioner and his party on the other side after the incident of Ishanpur School, but the parties were pacified by the staff of the Police Station and there was no complaint in this regard. An appropriate measures was taken by the respondent No. 1 for the safety of the petitioner on that day. It is true that on 27.8.94 two cases were registered at Sedhai Police Station relating to the said incident vide Case No.111 of 1994 under section 147/148/149/307 IPC. On the complaint of one Dilip Kumar Dey accompanying Government employee of the 3rd respondent and Case No. 112 of 1994 under section 147/148/149/307 and 3/5 of Explosive Substance Act on the basis of the complaint by the present petitioner. Respondent No. 1 went on to state that both the cases were investigated duly and after completion of the investigation a report as contemplated under section 173 CrPC were submitted in both the cases before the Chief Judicial Magistrate, West Tripura, Agartala, and thereafter, the learned Chief Judicial Magistrate accepted both the reports submitted by the Investigating Officer. After investigation, the final reports in respect of both these two cases had been submitted in the Court of the learned Chief Judicial Magistrate, West Tripura, Agartala as in Annexure R1 and R2 respectively.

Nothing has been done by the authority in a bias manner as alleged in the writ petition. After completion of the investigation Sedhai PS Case No.112 of 1994 has ended in FRT No.20 dated 27.12.1996 and as the same was subsequently accepted by the learned Chief Judicial Magistrate, West Tripura, Agartala, but, in respect of the Sedhai PS Case No.15 of 1994, the Investigation Officer after completion of the investigation submitted charge sheet No. 100 dated 20.6.1995 before the learned Chief Judicial Magistrate who took cognizance of the offence under section 147/148/149/307 IPC and 3 of ES and 27 Arms Act.

6. The respondent No. 1 went on to state that as per direction and order of this Court passed on 16.12.1994 directing the OC Sedhai PS to register a case on the basis of carbon copy of FIR, a case was registered by the respondent No.2 as Sedhai PS Case No. 171 of 1994 under section 307/114 IPC. The case was treated with all its earnestness and the investigation was carried out in all legal spirits. During the course of the investigation of the said case, 15 witnesses were examined and their statements were recorded by the investigating machineries under section 161 CrPC but nothing was available from their statements to add the new facts as stated earlier and no marks of injury by firing was detected in any of the vehicle of the convoy of the petitioner. It is also the case of the respondent No. 1 that the police held enquiry to establish the identity of the threat maker on the telephone as reported by the petitioner, but to no avail. For the alleged concealment of FIR a case was registered against SI Santi Das in compliance with the order passed by this Court which refers to Sedhai PS Case No.173 of 1994 under section 201/204/127 IPC and the said case has been investigated by the CID officer of the State as per order of this Court.

7. On perusal of the relevant case diary and the statements of the witnesses recorded by the Investigating Officer under section 161 CrPC in connection with Sedhai PS Case No. 171 of 1994 under section 307/114, I cannot agree with the contentions of Sri BB Deb, learned senior counsel for the writ petitioner that the respondent No.2 did not record the statements of the eye witnesses. Therefore, the prayer of the writ petitioner for issuing a writ in the nature of Mandamus commanding the investigation to be conducted afresh by any independent investigating agency other than the police authority in respect of Sedhai Police Station Case No. 171 of 1994 under section 307/114 IPC is devoid of merit, and the same has no basis inasmuch as there is material on record for establishing the fact that the investigating machinery had investigated the case and recorded the statements of the witnesses as discussed above.

8. So far the second prayer of the writ petitioner for quashing the impugned order dated 28.4.1995 passed by the learned Chief Judicial Magistrate, Sadar Police Court, West Tripura, Agartala in Sedhai PS Case No. 171 of 1994 is a reasonable prayer inasmuch as in my considered view, the impugned order dated 28.4.1995 passed by the learned Chief Judicial Magistrate is an order passed on dictation by the police/CI(S). The impugned order of 28.4.1995 highlighted the fact that the FIR was accepted by the learned Chief Judicial Magistrate as

recommended by CI (S). Thus the CJM has allowed the said CI (S) to dictate him in the matter and the learned CJM surrendered his judicial wisdom. For better appreciation of the existing circumstances and for ascertaining the real position, the impugned order dated 28.4.1995 is quoted below :

"Order dated 28.4.95 S

Recieved FPT No.64 dated 10.4.1995 in c\\w Sidhai PS,Case No.171 of 1995 under section 307/118 IPC.

Seen the FR considered. FR is accepted as recommended by CI(S) illegible but wanting evidence.

Inform the complainant.

Sd/N.Charkraborty,

Chief Judicial Magistrate W.Tripura, Agartala "

9. On perusal of the impugned order of 28.4.1995. I am of the view that the learned Chief Judicial Magistrate did not peruse the relevant case diaries and the relevant statements of the witnesses recorded under section 161 CrPC at the time of passing of the impugned order, and the learned Chief Judicial Magistrate did not pass a reasoned order.

10. For the reasons stated above, I hereby quash the impugned order dated 28.4.1995 passed by the learned Chief Judicial Magistrate, Sadar Police Court, West Tripura, Agartala in Sedhai PS Case No. 171 of 1994.

11. It is well settled that when the report forward by the Officer Incharge of a police station to the Magistrate under subsection (2) (i) of section 173 CrPC comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things; (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with report and drop the proceeding or (3) he may direct further investigation under subsection (3) of section 156 CrPC. In a case where the Magistrate to whom a report is forwarded under subsection (2) (i) of section 173 CrPC decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. The position may, however, be a little different when the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. However, if a person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding for what action he should take on the report, and such

injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him, even though Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured or to any relatives of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relative of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report. This principle of law finds its place in a decision of the Apex Court rendered in *Bhagwat Singh vs. Commissioner of Police & another*, reported in AIR 1985 SC 1285.

12. Recently, the Supreme Court in a case between *Mrs. Rupan Deol Bajaj & another vs. Kanwar Pal Singh Gill & another* reported in AIR 1996 SC 309 (equivalent to 1996 CrL LJ 381) held thus :

"Since at the time of taking cognizance the Court has to exercise its judicial discretion it necessarily follows that if in a given case as the present one the complainant, as the person aggrieved raises objections to the acceptance of a police report which recommends discharge of the accused and seeks to satisfy the Court that a case for taking cognizance was made out, but the Court overrules such objections, it is just and desirable that the reasons therefore be recorded. Necessity to give reasons which disclose proper appreciation of the issues before the Court needs no emphasis. Reasons introduce clarity and minimise chances of arbitrariness. That necessarily means that recording of reasons will not be necessary when the Court accepts such police report without any demur from the complainant. As the order of the learned Magistrate in the instant case does not contain any reason whatsoever, even though it was passed after hearing the objections of the complainant it has got to be set aside and we do hereby set it aside. Consequent thereupon, two courses are left open to us; to direct the learned Magistrate to hear the parties afresh on the question of acceptance of the police report and pass a reasoned order or to decide for ourselves whether it is a fit case for taking cognizance under section 190 (1) (b), CrPC. Keeping in view the fact that the case is pending for the last seven years only on the threshold question we do not wish to take the former course as that would only delay the matter further. Instead thereof we have carefully looked into the policereport and its accompaniments keeping in view the following observations of this Court in *HS Bains vs. State*, AIR 1980 SC 1883, with which we respectfully agree :

"The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusion arrived at by the complainant in a complaint. If a complainant states the relevant facts in his complaint and alleged that the accused is guilty of an offence under section 307, Indian Penal Code the

Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under section 324 IPC only and he may take cognizance of an offence under section 324 instead of section 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eye witnesses to a murder but that for various reasons the witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report."

13. Keeping in view of the above decisions of the Apex Court and also considering the existing facts and circumstances of the case. I direct the learned Chief Judicial Magistrate, Sadar Police Court, West Tripura, Agartala to hear the parties including the present writ petitioner Sri Ratan Lal Nath afresh on the question of acceptance of the said police report and pass a reasoned order in accordance with law after taking into consideration of the statements of the witnesses recorded under section 161 CrPC, relevant case diaries and other available materials on record.

14. With the above observations and directions this writ petition is disposed of. The party shall bear their own costs.

15. Let a copy of this judgment be sent to the Chief Judicial Magistrate, Sadar Police Court, West Tripura, Agartala forthwith.