
(2011) 05 AHC CK 0309

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 8081 of 2011

Ravi Kant Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 302
Penal Code, 1860 (IPC) — Section 306

Citation : (2011) 3 ACR 2679 : (2011) CriLJ 4482

Hon'ble Judges : Vineet Saran, J; Surendra Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vineet Saran and Surendra Singh, JJ.—Heard Sri Vishal Jaiswal, learned counsel for the petitioner as well as Sri D. R. Chaudhary, learned Government Advocate appearing for the State-respondents and Sri Anurag Khanna, learned counsel appearing for the respondent No. 2 - Central Bureau of Investigation. Counter affidavit on behalf of State-respondents has been filed. For our perusal, the learned Government Advocate placed before us the case diary, which is taken on record.

2. The case of the petitioner is that his son Laxmi Kant alias Neeraj Gupta met an unnatural death on 14.8.2010. The body of the victim was taken to the hospital by the petitioner, where he was declared dead. The information about the unnatural death was received by the Police from the Emergency Medical Officer of the District Hospital. Post-mortem was conducted and inquest report prepared on 15.8.2010. Thereafter, according to the petitioner, he approached the Police authorities time and again for lodging the F.I.R. which was not lodged. Ultimately on 3.3.2011 the petitioner filed an application u/s 156 (3). Cr. P.C. which was opposed by the State-respondents by filing objections. However, by a detailed and reasoned order dated 23.3.2011 the Chief Judicial Magistrate, Hamirpur

directed for lodging of F.I.R. Still when no proper investigation was being conducted by the Police authorities, the petitioner filed this writ petition with the prayer for a direction in the nature of mandamus commanding the respondents to transfer the investigation of the Case Crime No. 499 of 2011, u/s 302. Cr. P.C. Police Station Sumerpur, district Hamirpur to the Central Bureau of Investigation (C.B.I.) mainly on the ground that the Police is not conducting a fair investigation in the matter and is influenced by some senior Minister of the State of U. P.

3. The prayer made in this writ petition has been opposed by the learned Government Advocate who has submitted that there has been fair investigation in the matter. It has been urged that though initially the F.I.R. may not have been lodged by the Police but twice enquiry was conducted on the administrative side by the Police officials and nothing was found in the matter warranting lodging of F.I.R.

4. Although a detailed counter-affidavit has been filed on behalf of the State-respondents but no details of any such enquiry which is said to have been conducted on the administrative side or its report has been filed. On being asked, learned Government Advocate could not explain as to under which provision of the Cr. P.C. the enquiry on the administrative side in a criminal case of a serious offence u/s 302, I.P.C. was conducted without lodging the F.I.R.

5. It is noteworthy that the offence in the present case is of murder of the son of the informant-petitioner, which is very serious in nature. It is not understood as to why an administrative enquiry was considered necessary before lodging of the F.I.R. Sri Chaudhary has, however, stated that though the Code of Criminal Procedure does not warrant an enquiry on the administrative side to be conducted before lodging of the F.I.R. but there are several judgments of the Supreme Court which have so directed. It is noteworthy that as to when the administrative enquiry was ordered and by whom and when such report was submitted and what evidence was collected have all not been brought on record in the counter-affidavit, nor is it part of the Case Diary which has been placed before this Court.

6. We have also noticed from the perusal of the post-mortem report that the deceased herein had received one gunshot injury-wound of entry and exit is mentioned. If at all there was any fair and proper investigation or enquiry conducted by the Police, the blood samples ought to have been collected from the spot/the seat of the vehicle in question. We have also noticed that there were three witnesses namely, Jai Narain, Mahesh Kumar and Beta Lal mentioned in the F.I.R. Their statements were not recorded by the Police and instead the affidavits of Mahesh Kumar and Beta Lal were taken on 8.4.2011 disowning the prosecution case. It is also noteworthy that in its objection to the application filed by the petitioner u/s 156 (3), Cr. P.C., the police had vehemently opposed the same and had taken a definite stand that the accused were not involved, thereby trying to save the accused, making it clear that even before the lodging of F.I.R. and conducting the investigation, they had made up their mind that the accused

were innocent. It is also noteworthy that the local police had failed to discharge its statutory obligations by investigating the case in a fair manner. In the present case, the police concerned did not care to prepare a site plan, neither had recovered any blood sample from the spot nor thought the importance of sending the licensed revolver of the deceased to the ballistic expert. The local police had also failed to take into consideration before submitting the charge-sheet against the petitioner u/s 306, I.P.C. that there has been animosity between the deceased and the proposed accused-persons, namely, Virendra Singh Bhadauriya, Mahesh Singh Bhadauriya, Itruddin alias Maulana and Wasim Khan. The deceased has installed a crusher plant on Plot No. 2561 and when the aforesaid accused persons started creating nuisance/hindrance in the operation of the crusher business of the deceased, he moved several representations to the higher authorities against them. A civil suit for injunction (bearing Civil Suit No. 68 of 2010) was also instituted by the petitioner on 11.8.2010 against the aforesaid accused persons before the Civil Judge (Senior Division), Mahoba which is still pending. Apparently, aforesaid persons having strong motive for the commission of the aforesaid incident and their participation in the crime cannot be ruled out. These aspects mentioned hereinabove have been completely and intentionally ignored for the reasons best known to the local police. Perceived with this view the integrity of the police, therefore, become suspicious.

7. Interestingly, when notice of this petition was given to the State on 26.4.2011, the Police immediately sprang into action and completed the investigation in less than 10 days thereafter and also submitted a charge-sheet u/s 306, I.P.C. against the complainant himself alleging abetment of commission of suicide. Such charge-sheet has not been filed alongwith the counter-affidavit but only a mention of it has been made therein. However, the certified copy of the charge-sheet has been placed on record by the petitioner alongwith a supplementary-affidavit filed today.

8. From perusal of the charge-sheet it is clear that it was prepared on 4.5.2011. On the same day it was submitted to the Supervisory Officer for approval, which approval was granted immediately. On the very next date itself, i.e., 5.5.2011, the same was presented before the Magistrate, on which cognizance was taken the same day. The speed at which the respondent-authorities acted after receiving the notice of this petition is alarmingly fast. The Police officials prima facie appear to have turned the case in a manner where the hunter himself became the hunted, as a charge-sheet has been filed u/s 306, I.P.C. against the petitioner-complainant himself, who is the father of the deceased, which is something which this Court takes very strong note of.

9. On perusal of the Case Diary we are prima facie not satisfied with the manner in which the investigation has been conducted and finding arrived at by the Investigating Officer. What is also to be noted is that a Civil Suit for injunction (O.S. No. 68 of 2010) was filed on 11.8.2010 by the petitioner against some of the persons who are accused in the F.I.R. The incident of unnatural death

(alleged murder) of the son of the petitioner took place on 14.8.2010, three days after the filing of the suit. Initially no F.I.R. was lodged by the Police and only an administrative enquiry is said to have been conducted, for which, according to the State counsel, himself there is no provision/procedure prescribed in the Cr. P.C. The F.I.R. was lodged only after order of the Magistrate and charge-sheet filed against the complainant himself immediately after he filed this petition.

10. From all what has been observed above, a definite question mark is raised with regard to the fairness of the investigation conducted in this case by the police authorities.

11. Though this Court normally does not interfere in the matter of police investigation but the Courts also have a duty to take action in the matters where on the face of it, it is absolutely clear that the investigation conducted is not fair and proper. The Apex Court in the case of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, has held as follows :

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to C.B.I. to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasize that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude, of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to C.B.I, to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise C.B.I. would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation and Rural Engg. Services, U. P. v. Sahngoo Ram Arya*, this Court had said that an order directing an enquiry by C.B.I. should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by C.B.I. or any other similar agency. We respectfully concur with these observations.

(Emphasis supplied)

12. Sri D. R. Chaudhary, learned Government Advocate has, however, stated that the investigation conducted by the Police has been fair inasmuch as, much has been done from the side of the Police authorities by first conducting administrative enquiries and thereafter, when it found that there was no material against the accused persons and it was the petitioner himself who was guilty, a charge-sheet has been filed against the petitioner. He has stated that there is no fault in the investigation, and as such, no interference is called for by this Court.

13. Undisputedly, the accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation, i.e., to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation.

14. From what we have observed above, we are clearly of the view that the investigation in the present case has not been conducted fairly and independently by the Police officials. We are thus of the opinion that in the facts of this case, interference of this Court under its extra-ordinary jurisdiction under Article 226 of the Constitution of India is warranted to give justice to the petitioner.

15. Sri Anurag Khanna, learned counsel appearing for the C.B.I. has fairly stated that his client would have no objection to take up the investigation provided the material collected by the Police authorities during investigation is handed over. Sri Chaudhary states that all the material collected is already before the Court of the Chief Judicial Magistrate. Hamirpur from where the same can be obtained.

16. Sri Anurag Khanna states that the Joint Director of Investigation of C.B.I. at Lucknow may be required to get the preliminary enquiry conducted, of which a report can be submitted within two months.

17. In the facts and circumstances of the case and for the reasons given hereinabove, we direct the C.B.I. to make preliminary enquiry/ investigation in the matter and submit its preliminary report in a sealed cover before this Court by the next date. The question of further transfer of investigation to the C.B.I. will be considered on the next date after the perusal of the preliminary enquiry report.

18. List on 4th August, 2011.

It is needless to say that while conducting its enquiry/investigation, the C.B.I. will not be influenced by any observations made by us hereinabove in this order, and it shall draw its own inference and conclusion on merit, unfettered by the findings recorded by the Police.

19. It is further provided that considering the manner in which the charge-sheet u/s 306 has been filed against the petitioner himself in a hurried manner immediately after the filing of this writ petition, invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, we directed that the charge-sheet No. 137/11 dated 4.5.2011 u/s 306. I.P.C., in Case Crime No. 499/11, Police Station Sumerpur, district Hamirpur, the cognizance of which has been taken by the Magistrate on 5.5.2011, shall remain stayed.