
(2012) 05 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1366 of 2012

Shafi Mohammad

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 19-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 173(2), 482
Penal Code, 1860 (IPC) — Section 141, 147, 148, 302, 341

Citation : (2013) 4 RLW 3407 : (2013) 3 RLW 2644

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Rajiv Surana along with B.N. Sandu and A.K. Bhargava, Amicus Curiae, Tej Prakash Sharma, Special Public Prosecutor for CBI along with S.S. Kishore, Addl. S.P. CBI, Investigating Officer of case, for the Appellant; G.S. Bapna, Advocate General along with Pradeep Shrimal and Peeyush Kumar, PP for State of Rajasthan, for the Respondent

Judgement

Mahesh Chandra Sharma, J.—This criminal misc. petition has been filed u/s 482 Cr.P.C. in the matter of FIR No. 134/2011 registered at Police Station Gopalgarh, District Bharatpur and subsequent FIR No. RC 5(s) 2011 CBI SC 111/New Delhi dated 21.11.2011 for the offence under Sections 302, 148, 147, 141 and 341 IPC. Brief facts of the case in nutshell are that on 14.9.2011 at about 5.00 p.m. at the time of Asar Namaj at Idgah, Gopalgarh, Mev community persons were observing Namaj. It was alleged that at that time Gurjar community persons along with police force came there and they were hand in glove with each other. Gurjar community is dominating in Rajasthan more particularly in Districts Dausa, Bharatpur, Dholpur, Alwar, Bundi, Sawai Madhopur and other places. Since Gurjar community is dominated by Gurjar leaders and Chief Minister of Rajasthan and other political parties directly and indirectly support them, as such Government was unable to take any penal action and administration of justice completely failed. Mev Muslim Community from the very beginning have been oppressed by various communities and most of the Mevs are below the poverty

line. Most of the persons are landless persons, without job, illiterate and there are various drawback. They are leading miserable life and they have been treated as a second grade citizens. They have been exploited politically from time to time. Gurjars are dominated Hindu, attacked on the Mev community on 14.9.2011 while peacefully observing Namaj at Idgah at about 5.00 p.m. For that purpose number of FIRs. have been lodged. Deceased Jakir was 35 years of age and working at small shop and he was a peaceful person. Complainant has also received the injuries at the hands of the Gurjars. Curfew was imposed and petitioner was not allowed to meet his brother nor he was taken to Hospital. There was a complete terror and curfew was imposed for months together and direct and direct curfew was prevalent. In this petition the petitioner has alleged allegations against the local police officers as well as against the officers of the CBI and he has moved this petition with the following prayer:

It is therefore, prayed that this criminal misc. petition may kindly be allowed and an appropriate order or direction be issued to CBI to get it recorded the statement of 38 injured witnesses and independent witnesses, in connection with FIR No. RC5 (s) 2011/CBI SC 111/New Delhi dated 21.11.2011 u/s 164 Cr.P.C. before the Magistrate and direction be given that investigating officer may kindly be changed and fair and impartial investigation be done. Furthermore, since the CBI is not conducting fair investigation, as such this case may kindly be transferred to National Investigation Agency.

3. Upon that this court has issued notice to the CBI. Today the Investigating Officer of the CBI along with Mr. Tej Prakash Sharma, Special Public Prosecutor for the CBI are present along with the case diary.

Mr. Rajeev Surana, learned counsel for the petitioner has contended that the CBI is not investigating the matter fairly, properly and impartially. He has further requested to this court that the direction should be given to the CBI to record the statements of the injured persons. The Investigating officer of the CBI may kindly be changed for fair, proper and impartial investigation. Thereafter he further requested that since the CBI is not investigating the matter fairly, properly impartially the investigation of the case be transferred to the National Investigation Agency.

On the contrary, Mr. S.S. Kishore, Addl. Superintendent of CBI, and investigating officer in the case along with Mr. Tej Prakash Sharma, Special Public Prosecutor for the CBI have contended that the CBI has registered the FIRs. as soon as the State of Rajasthan transferred these matters to the CBI through the Notifications dated 21.9.2011 and 11.10.2011. Notification has been issued by the Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 30.1.2012 and all the 18 cases were transferred to the CBI for investigation. After investigation a report u/s 173(2) Cr.P.C. against 15 accused persons belonging to both communities have been filed in the competent court at Jaipur and further investigation is in progress.

Mr. Tej Prakash Sharma, Special Public Prosecutor for the CBI has pointed out certain portion of the statements of the witnesses for the perusal of the court but this court does not want to reproduce or include those statements in the order as the investigation is going on and it will affect the investigation. Mr. Tej Prakash Sharma, Special Public Prosecutor has also shown Photographs and other relevant evidence in order to show that the petitioner is also member of the unlawful assembly and still the matter is under investigation. He has further pointed out that the CBI has investigated the matter fairly, properly and impartially and whatever result will come out from the investigation the same will be submitted before the court concerned, hence the matter should not be transferred to the National Investigation Agency as it is not notified for this purpose.

We have called Mr. G.S. Bapna, Advocate General of the State of Rajasthan and he has fairly requested to this court that the State Government is completely fair as it is not protecting or favouring any person or community and in the interest of justice the State Government has transferred these matters to the CBI suo motu for fair, proper and impartial investigation.

I have heard learned counsel for the parties. Looking to the facts and circumstances of the case and without expressing any opinion as the investigation is going, however, I dispose of the petition with the following directions:

- (1) The CBI is directed that they will investigate the matters fairly, properly and impartially and submit the progress report before the court concerned.
- (2) The Director CBI is directed to monitor the investigation in the case. This petition is disposed of.