
(2001) 02 AHC CK 0001
In the Allahabad High Court
Case No : Criminal M.W.P. No. 696 of 2001

Smt. Ramwati and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 302, 394, 506

Citation : (2001) 1 ACR 874

Hon'ble Judges : S.K. Jain, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Umesh Chandra Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—s writ petition under Article 226 of the Constitution has been filed praying that the order contained in telex message dated 30.1.2001 be quashed and a writ of mandamus be issued commanding the Respondents not to transfer the investigation of Crime No. 205 of 2000 u/s 302/394/506, I.P.C. of P.S. Kotwali, district Auraiya from C.B., C.I.D. to local police.

2. The record shows that a F.I.R. was lodged by Jagat Narain Pandey at 6.30 p.m. on 3.5.2000 at P.S. Kotwali alleging that he along with his two sons had gone to purchase vegetable in the market at 5.30 p.m. when Ambrish Kumar Mishra and Rajesh Kumar Mishra armed with rifles, Ashok Kumar Mishra and Kalle armed with double barrel guns arrived there. All the four accused started firing from their weapons due to which Pramod Kumar and Kapil Kumar received gunshot injuries and died on the spot. The assailants also carried away the rifle of Pramod Kumar. The F.I.R. also mentioned names of some persons who had seen the occurrence.

3. It is averred that after the case was registered at the police station, the local police started investigating the same. The Petitioner No. 1 Smt. Ramwati Devi,

who is mother of accused Ambrish Kumar and Rajesh Kumar moved an application before the Chief Minister praying that the investigation of the case may be got done by the C.B., C.I.D. Thereafter, the State Government took a decision that the investigation of the case be done by C.B., C.I.D. and the said decision was communicated to the Director General of Police, U.P. by means of a letter dated 29.5.2000 sent by a Deputy Secretary of U.P. Government. According to the Petitioner, the C.I.D. commenced investigation of the case. However, on 19.1.2001, a Government Order was issued for transferring the investigation of the case from C.B., C.I.D. to local police and thereafter a telex message was sent on 30.1.2001 in compliance of the said order. The present writ petition has been filed challenging the aforesaid order by which the investigation of the case has been transferred back to local police.

4. Sri U. C. Mishra, learned Counsel for the Petitioners has submitted that once the investigation had been entrusted to C.B., C.I.D., it was not open to the State Government to rescind the said order and entrust the investigation to the local police. In support of his submission learned Counsel has placed reliance on a decision of this Court rendered in *Ram Bharose Dubey v. State of U.P.* W.P. No. 16355 of 1994, decided on 20.9.1994 and *Chandra Vir and Ors. v. State* 1995 ACC 683.

5. The State Government has issued a Government Order on 15.9.1995 laying down the conditions under which an order entrusting investigation of a criminal case to C.B., C.I.D. may be passed. It also mentioned the authority who will be competent to pass such an order. Since the State Government has itself laid down a policy regarding entrustment of investigation to C.B., C.I.D., the controversy raised in the present petition has to be examined in the light of the aforesaid Government Order.

6. This Government Order has been quoted in extenso in a Division Bench decision rendered in *Bhopal and Ors. v. State of U.P.* 1997 ACC 371, to which one of us (G. P. Mathur, J.) was a party. The Government Order provides that normally the investigation should be done by local police and transfer of investigation to C.B., C.I.D. can be made only if there is sufficient ground for the same. Following 4 grounds are mentioned for exercise of such a power.

1. The nature of the crime is so complicated and involved that it is not possible for the local police to properly investigate the same.

2. The crime has international, inter-State or inter-division ramifications.

3. The local conditions are such due to which it has become difficult for the civil police to investigate the case fairly.

4. Such conditions have arisen due to which a doubt is created in the mind of general public that the local police is not investigating the case fairly.

7. The Government Order further provides that before taking any decision, a report shall be called from the concerned police officers and other local officers-

in-charge with administration in the district who shall give a proper report and also opinion whether the investigation should be transferred to C.B., C.I.D. or not.

8. We have considered the various clauses of the Government Order and, in our opinion, they appear to be quite reasonable. Our experience shows that whenever a case is entrusted to the C.B., C.I.D., its investigation takes a long time and further till the conclusion of investigation, no effort is made to arrest the accused and as a consequence thereof, they roam about freely for number of years. Delay in investigation of a case is normally to the advantage of the accused as the witnesses become reluctant to give evidence and consequently, it results in miscarriage of justice. If a large number of cases are entrusted to C.B., C.I.D., it is obvious that it cannot perform its duty properly and the purpose for which investigation is taken over from the local police and is entrusted to C.B., C.I.D. is lost. Therefore, the different guidelines laid down in the Government Order dated 15.9.1995 appear to be just and proper. It may be pointed out here that in the present case also, none of the accused have been arrested.

9. The F.I.R. shows that the incident took place at 5.30 p.m. on 3.5.2000 in a vegetable market. The accused are alleged to have fired from their respective weapons upon the two deceased who received firearm injuries and died on the spot. The F.I.R. was promptly lodged at 6.30 p.m. at P.S. Kotwali, which is two kilometres from the place of occurrence. Besides the first informant, names of 4 other persons are mentioned as witnesses of the incident. Prima facie, the case does not appear to be a highly complicated one and, therefore, it cannot be said that it is not possible for the local police to investigate the same. Therefore, the case does not fall within the purview of ground No. 1 mentioned in the Government Order. There is no averment in the writ petition nor there is any material to show that the case falls within the purview of grounds No. 2, 3 and 4 of the Government Order. In fact Sri U. C. Mishra, learned Counsel for the Petitioners could not point out any such fact or circumstances which may bring the case within the purview of the Government Order. A copy of the application moved by Petitioner No. 1 to the Chief Minister for transferring the investigation of the case to C.B., C.I.D. has been filed as Annexure-3 to the writ petition. What is mentioned therein is that the accused are wholly innocent and had been falsely implicated; that Ambrish Kumar accused, who is employed as clerk in a college in Niranjana Nagar was present on duty on the date of occurrence; that no witnesses of the neighbourhood had been named in the F.I.R. and all the witnesses were relations and that the local police was not conducting the investigation fairly. It was on this application that the initial order for transfer of investigation to C.B., C.I.D. was made which was communicated by the letter of the Deputy Secretary dated 29.5.2000 sent to the Director General of Police, U.P. The application sent by Petitioner No. 1, which formed the basis for transferring the case to C.B., C.I.D., itself does not disclose any such ground which may fall within the purview of Government Order dated 15.9.1995 so as to warrant transfer of the case to C.B., C.I.D.. There is no report of any superior officer of the police department that such local conditions had developed on account of which a doubt had arisen

in mind of public at large that the local police was not investigating the case fairly. It is important to emphasise that ground No. 4 relates to the impression or feelings of public at large regarding the fairness of investigation and not that of the concerned persons, namely, the complainant or the accused. Whenever, the police will investigate the case and collect evidence against an accused, the accused is likely to make all kinds of allegations against the Investigation Officer and, therefore, the mere allegation of the accused that the police is not investigating the case fairly can be no ground for transferring the investigation of the case. Such an allegation by the accused would also not come within the purview of ground No. 4 of the Government Order. Except for the bald allegation of Petitioner No. 1, who is none else but the own mother of two accused, there was no material at all to show that the local police was not investigating the case fairly. The F.I.R. was lodged at 6.30 p.m. on 3.5.2000 and the decision of the State Government to transfer investigation to C.B., C.I.D. was taken before 27.5.2000. There is no averment in the writ petition that any report from the S.S.P. of the district or D.I.G. of the range has been called by the State Government. There is also no averment in the writ petition that either the nature of the case was so complicated or the conditions on the spot were such due to which fair investigation could not be done by the local police. In fact there is not even a whisper in the writ petition to show that the nature of the case or the situation on the spot was such so as to bring the case within the purview of the Government Order. The sequence of events, namely, order for transferring investigation to C.B., C.I.D. being passed within 24 days of occurrence also shows that the order was passed simply on the application moved by the mother of the accused without calling any report from S.P. or other district officers. If the Government has issued a Government Order laying down the conditions under which the investigation of a criminal case can be transferred to C.B., C.I.D., it is expected that the said order would be strictly followed. If the State Government itself does not follow the guidelines issued by it, it will only result in chaos affecting the system and a break down of the State machinery. We are, therefore, clearly of the opinion that the initial order passed by the State Government transferring the investigation of the case to C.B., C.I.D. was wholly unjustified on the facts and circumstances of the case and was clearly illegal. The impugned order of the State Government dated 19.1.2001 which has been communicated by telex message dated 30.1.2001 directing C.B., C.I.D. not to investigate the case and handing over investigation of the same to the local police is, therefore, perfectly legal and valid in law.

10. In *Union of India and another Vs. W.N. Chadha*, , the Supreme Court has held as follows in para 90 of the report:

.... The accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report u/s 173(2)...

11. In *M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another*, it was held that the investigation into an offence is a statutory function of the police and superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. In *Central Bureau of Investigation and another Vs. Rajesh Gandhi and another*, it was held by the Apex Court that the accused cannot have a say in the matter who should investigate the offence he is charged with. These authoritative pronouncements by the Supreme Court clearly show that the accused can have absolutely no say in the matter of investigation and normally the Court should be very reluctant to interfere in a matter of investigation until there are compelling reasons justifying such a course of action. The Petitioner Nos. 2 to 5 are accused of the criminal case and Petitioner No. 1 who is mother of two accused have, therefore, absolutely no right to challenge the impugned order of the State Government by which investigation has been transferred back to the local police.

12. There is another aspect of the case which also deserves notice. By means of a supplementary affidavit, copy of an order dated 29.6.2000 passed by C.J.M., Auraiya has been filed. A perusal of this order shows that the local police completed the investigation of the case and submitted charge-sheet on which cognizance of the offence was taken. Thereafter, an application was moved by C.B., C.I.D. for being granted permission u/s 173(8), Cr. P.C. to investigate the case. The C.J.M. by his order dated 29.6.2000 granted permission to C.B., C.I.D. to investigate the case and also directed that the proceedings in the case shall remain stayed till the completion of investigation by C.B., C.I.D. Now that the order for investigation by C.B., C.I.D. has been revoked by the State Government, the question of submission of any report by the said agency does not arise and the proceedings before the C.J.M. should no longer remain stayed and should proceed in accordance with law. It may be pointed out that even if an order for investigation by C.B., C.I.D. is passed, the proceedings before a Court should not be stayed if cognizance has already been taken. This question was examined in *Daya Shankar Singh v. State of U.P.* 1988 ACC 270, wherein, it is held that the proceeding in the trial should not be stayed indefinitely merely on the ground that an order for reinvestigation by C.B., C.I.D. has been made. Similar view was taken in *Julfikar Beg v. State* 1992 ACC 260. The C.J.M., Auraiya should, therefore, proceed with the case in accordance with law.

13. For the reasons mentioned above, there is no merit in this writ petition, which is hereby dismissed summarily at the admission stage.

14. Office is directed to send an authentic copy of this order to C.J.M., Auraiya within a week.