

(2022) 06 CAL CK 0001

In the Calcutta High Court

Case No : MAT No. 510, 601 Of 2022, CAN 1 Of 2022

State of West Bengal

APPELLANT

Vs

Purnima Kandu and Others

RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 20, 21
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2022) 06 CAL CK 0001

Hon'ble Judges : Prakash Shrivastava, CJ;Rajarshi Bharadwaj, J

Bench : Division Bench

Advocate : S.N. Mookherjee, Samrat Sen, Anirban Ray, T. M. Siddiqui, Debashish Ghosh, Nilotpall Chatterjee, Sandip Dasgupta, Avishek Prasad, S.S. Siddiqui, Aviroop Mitra Koustav Bagchi, Debayan Ghosh, Priti Kar, Billwadal Bhattacharyya, Samrat Goswami,

Final Decision : Dismissed

Judgement

Prakash Shrivastava, CJ

1. This order will govern the disposal of MAT 510 of 2022 and MAT 601 of 2022.
2. Both these appeals are at the instance of the respondent State in the writ petition, challenging the orders of the learned Single Judge whereby WPA 5418 of 2022 has been disposed of by directing the CBI to take over the investigation in the case.
3. Initially, MAT 510 of 2022 was filed by the State Challenging the order of the learned Single Judge dated 4th of April, 2022 whereby WPA 5418 of 2022 was disposed of. Later on, learned Single Judge had found certain typographical errors in the order dated 4th of April, 2022, therefore, the said order was replaced by the subsequent order dated 6th of April, 2022 with the same reasoning and result, therefore, MAT 601 of 2022 was filed challenging the subsequent order.

4. One, Tapan Kandu, who was elected as Councillor of Jhalda Municipality, Ward No. 12 in the recent Municipal Election, was shot dead on 13th of March, 2022, therefore, his wife and nephew had filed WPA 5418 of 2022 before the learned Single Judge making serious allegations about the biased and misdirected investigation, with a prayer to hand over the investigation to an independent agency. In the writ petition, it was alleged that late Tapan Kandu was elected as Councillor of Jhalda Municipality on the Indian National Congress symbol and since the day of declaration of elections, respondent no. 6 herein, i.e. the Inspector-in-Charge, Jhalda Police Station had resorted to various unfair means to resist the candidates from contesting against the ruling party of the appellant State and at his behest, numerous false and frivolous criminal proceedings were also initiated against the contesting candidates of INC and other political parties. A complaint in this regard was also lodged by the District President of INC to the State Election Commission on 9th of February, 2022 and several other complaints by other political parties were also lodged and WPA 3129 of 2022 was also preferred before this Court. Immediately after publication of results on 10th of March, 2022, the very next day on 11th of March, 2022, Tapan Kandu was called by the respondent no. 6 and was threatened and forced to change his allegiance from the INC and to switch over to TMC so that the TMC can form the board. This was resisted by Tapan Kandu, the husband of the writ petitioner and he was shot dead on 13th of March, 2022. In the writ petition, it was further alleged that no FIR was lodged, initially though, the writ petitioner no. 1 had immediately approached the respondent No. 6, Inspector-in-Charge, hence the complaint was made to the higher police authorities. The writ petition further mentions that there was resistance in recording the statements of the writ petitioner no. 2 under Section 164 of Cr.P.C. and there was also issue of existence of some audio clipping relating to the conversation between the petitioner no. 2 and respondent No. 6, Inspector-in-Charge of the police station which was not seized and it was also alleged that in spite of making the named complaint at the first instance after the incident, the FIR at the instance of some other person was registered protecting the real culprit. Allegations were made in the writ petition against the police authorities of Jhalda Police Station to pressurise the writ petitioner and to influence the witnesses. There was a serious allegation that Tapan Kandu was murdered by the goons of the ruling party in connivance with the respondent no. 6, Inspector-in-Charge of the Police Station and in this background, the prayer for investigation by independent agency was made.

5. Learned Single Judge had called for the report from the Superintendent of Police and had also perused the case diary and thereafter, taking note of the circumstances of the case, had found it to be a fit case to direct the CBI to take over the investigation in the case and had accordingly issued requisite directions in this regard while disposing of the writ petition.

6. Submission of learned Advocate General is that learned Single Judge has committed an error in giving a finding at this stage about the motive of the murder and that there is no allegation against the Investigating Officer and that

the learned Single Judge has noted that the investigation is in progress, therefore, there was no justification to hand over the investigation to the CBI and that as per the case diary, it is a case of sibling rivalry and had the investigation continued with the State Agency, further evidence could have been collected in this regard. In support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others reported in (2010) 3 SCC 571, in the matter of Shree Shree Ram Janki Ji Asthan Tapovan Mandir and Another vs. State of Jharkhand and Others reported in (2019) 6 SCC 777 and also in the order of this Court dated 25th of March, 2022 in WPA (P) 130 of 2022 in the matter of The Court on its own Motion, In Re: The Brutal Incident of Bogtui Village, Rampurhat, Birbhum. Learned Advocate General has further submitted that there is no proof of biased investigation and statement of all the concerned witnesses were recorded.

7. Learned Counsel for the writ petitioners has supported the order of the learned Single Judge and has submitted that the initial complaint of the wife of the deceased was not taken into consideration. In this regard, he has referred to the complaint dated 14th of March, 2022. He has further submitted that the witnesses are threatened and in this regard, he has referred to the complaint made by the witness to the Superintendent of Police and that one of the accused was arrested from the adjoining State of Jharkhand, hence, it has interstate ramification. He has also referred to the circumstances noted by the learned Single Judge to point out that the investigation was not carried out in a fair manner by the State Investigating Agency. He has also submitted that after the incident, one of the eye witnesses has died mysteriously and that since there is serious allegations against the police authorities, therefore, the investigation by the independent agency is necessary. He has also pointed out to the complaint made by the deceased to the Election Commissioner and the Superintendent of Police about the threats extended by the Inspector-in-Charge of Jhalda Police Station to the candidates and also the complaint made by the wife of the deceased on 14th of March, 2022 to the Superintendent of Police in this regard. He has also submitted that instead of registering the FIR on the complaint of the writ petitioners, the FIR has been registered at the instance of some other person to wipe off the allegation against the real culprit and that the respondent no. 6, Inspector-in-Charge of the concerned Police Station, had extended threat to the witnesses and in this regard, he has referred to the letter written by the witness to the Superintendent of Police. He has also submitted that on account of delay in registering the FIR, the vital evidence has been wiped off and that the statements of the writ petitioners were recorded only after the writ petition was filed.

8. Learned Counsel for the CBI has pointed out that in compliance of the order of the learned Single Judge, CBI has taken over the investigation and the investigation is in progress.

9. We have heard the learned Counsel for the parties and perused the record. The law in respect of the extent of jurisdiction, limitations and the power to direct investigation by the CBI in exercise of the writ jurisdiction is well settled. Hon'ble Supreme Court in the matter of R.S. Sodhi, Advocate vs. State of U.P. and Others reported in 1994 Supp (1) SCC 143 has held that if the accusation is against the local police personnel, it will be desirable in the larger interest of justice to entrust the investigation to the CBI so as to assure investigation credibility. It is also settled that in order to do complete justice in the matter and to instil confidence in public mind, investigation by the CBI can be directed in appropriate case. [Gudalure M.J. Cherian and Others vs. Union of India and Others, (1992) 1 SCC 397]. It is also settled that the Court has obligation to exercise such a power to protect fundamental right but such power should be exercised sparingly, cautiously and in exceptional circumstances. In the matter of Rubabbuddin Sheikh vs. State of Gujarat and Others reported in AIR 2010 SC 3175, the Hon'ble Court has held that such a power can be exercised when high profile officials of the State are involved in crime and investigation is not made in proper direction.

10. While directing the investigation by the CBI, learned Single Judge has taken note of the relevant judgment on the point by recording as under:

"Reliance was firstly, placed on the case of Mithilesh Kumar Singh -Vs.- State of Rajasthan & Ors, report in (2015) 9 SCC 795;

"12. Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the

Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

13. Having said that we need to remind ourselves that this Court has, in several diverse situations, exercised the power of transfer. In *Inder Singh v. State of Punjab* [(1994) 6 SCC 275 : 1994 SCC (Cri) 1653] this Court transferred the investigation to CBI even when the investigation was being monitored by senior officers of the State Police. So also in *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] investigation was transferred even when the State Police was doing the needful under the supervision of an officer of the rank of an Inspector General of Police and the State Government had appointed a one-member Commission of Inquiry headed by a sitting Judge of the High Court to enquire into the matter. This Court held that however faithfully the police may carry out the investigation the same will lack credibility since the allegations against the police force involved in the encounter resulting in the killing of several persons were very serious. The transfer to CBI, observed this Court, "would give reassurance to all those concerned including the relatives of the deceased that an independent agency was looking into the matter".

(emphasis supplied)

Reliance has also been placed on the case of *R.S. Sodhi, Advocate –Vs.– State of U.P. & Ors.*, reported in 1994 Supp (1) SCC 143;

"2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility ⁷ since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly. In so ordering we mean no

reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.”

(emphasis supplied)

Another case that was cited by the petitioners is Pooja Pal – Vs.- Union of India & Ors., reported in (2016) 3 SCC 135.

“83. A “speedy trial”, albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in “fair trial”, both being inalienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the State Police notwithstanding, has to be essentially invoked if the statutory agency already in charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness⁸ of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency

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85. As succinctly summarised by this Court in Committee for Protection of Democratic Right [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] , the extraordinary power of the constitutional courts in directing CBI to conduct investigation in a case must be exercised sparingly, cautiously and in exceptional situations, when it is necessary to provide credibility and instil confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental

rights. In our comprehension, each of the determinants is consummate and independent by itself to justify the exercise of such power and is not interdependent on each other.

86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.”

(emphasis supplied)”

11. In the present case, learned Single Judge before passing the impugned order, had called for two reports from the Superintendent of Police in respect of the investigation and had also perused the case diary. The direction to hand over the investigation to the CBI has been issued by the learned Single Judge after taking note of the following important aspects:-

- a) The main accused in the case are police officers and a Councillor of the ruling party, therefore, investigation and prosecution by the State Police would not send the proper message.
- b) There is omission in the case diary about transit remand of the persons from the appropriate Court in Jharkhand.
- c) Photography of the place of occurrence was done two days after the incident, i.e., on 15th of March, 2022.
- d) The person, who is stated by the complainant to have facilitated the crime, i.e. the Inspector-in-Charge of Jhalda Police Station, Sanjib Ghosh, has not been taken into custody till now and was performing his official duties.
- e) The mobile phone of the said Sanjib Ghosh was not seized till date which may have resulted into loss of vital data.
- f) Political rivalry between the deceased Tapan Kandu and Dipak Kandu was commonly known and Dipak Kandu had contested on the ruling party ticket against the deceased who was an INC candidate and had lost to the latter.
- g) The two political parties, i.e., the INC and the ruling party had won five seats

each in the Jhalda Municipal Elections and two other seats were won by independent candidates. The death of Tapan Kandu would have clearly tilted the balance of control of power of the Jhalda Municipal Board in favour of the ruling party.

h) In the complaint dated 14th of March, 2022, the writ petitioner no. 1 had indicated the role played by the Inspector-in-Charge, Sanjib Ghosh, in trying to woo over the deceased to join the rival political party and the threats issued by him in this regard. The writ petitioner claimed to have audio recording of such threats, demands or requests made by the Inspector-in-Charge.

i) The Superintendent of Police, Purulia District, Mr. S. Selvamurugan stated to have held a press conference a day before the order of the learned Single Judge wherein he had straightaway given a clean-chit to the Inspector-in-Charge, Sanjib Ghosh. This was done when the investigation was in progress and final report was not filed which clearly indicates the involvement of higher police officers. Learned Single Judge has also noted that the said Superintendent of Police has been summoned and is under investigation in connection with another investigation of the Enforcement Directorate, commonly referred as the coal scam.

j) Learned Single Judge found that though the investigation has progressed but with glitches and that much more relevant and evidence of substance could have been collected.

12. After noting the aforesaid circumstances, learned Single Judge has reached to the conclusion that there is need for instilling faith of the public at large in investigation that involves serious crime and having regard to the gravity and political nature of the crime, learned Single Judge has directed to hand over the investigation to the CBI.

13. Learned Single Judge has considered factual and legal position while passing the impugned order. We are of the opinion that the circumstances which are noted by the learned Single Judge in respect of the lapses on the part of the investigating agency, the nature and circumstances of the case and the legal position which has been taken note of, fully justify the direction which has been issued in the impugned order.

14. Learned Advocate General has placed reliance upon the judgment of the Hon'ble Supreme Court in the matters of Committee for Protection of Democratic Rights, West Bengal (supra) and Shree Shree Ram Janki Ji Asthan Tapovan Mandir (supra). In those judgments, it has been held that though no inflexible guidelines can be laid down for exercise of such a power but 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. In the present case, learned Single Judge has not passed the order in a routine manner or merely on the basis of allegations but had called for the report and had also examined the case diary and noted the circumstances requiring investigation by an independent agency.

15. That apart, learned Counsel for the CBI has also pointed out that the CBI has already taken over the investigation and substantial progress in the investigation has been done.

16. In view of the circumstances noted above, we do not find any error in the order of the learned Single Judge and no case of interference is made out. We make it clear that any observation made by the learned Single Judge in the order under challenge or by this Court in this order are only tentative for the purpose of deciding the present issue and they will not prejudice the trial in any manner.

17. Accordingly, MAT 510 of 2022 and MAT 610 of 2022 are hereby dismissed.