
(2011) 11 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (Criminal) 1014 of 2011

Suraj Modi

APPELLANT

Vs

Commissioner of Police, Delhi

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 9 AD 542 : (2011) 184 DLT 562

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Siddharth Aggarwal and Ms. Stuti Gujral, for the Appellant; Dayan Krishnan, Additional Standing Counsel with Mr. Nikhil A. Menon, for the Respondent

Final Decision : Disposed Off

Judgement

Mukta Gupta, J.—By this petition the Petitioner inter alia seeks transfer of investigation relating to FIR No. 114/2011 u/s 302 IPC registered at PS Vasant Kunj to Central Bureau of Investigation (CBI).

2. Learned counsel for the Petitioner contends that the Petitioner is an unfortunate father of Shobhit Modi who died a homicidal death at about 9.30 P.M. near C-5, Gali No. 2, Vasant Kunj, New Delhi. The Petitioner had specifically named the family of one Ms. Shivangi who was close to her son. The Petitioner suspects R.N. Bhadwar, father of Shivangi to possibly have a hand in his son's death. The Petitioner has specific reasons for naming them as his son and Shivangi had relations which were not approved by R.N. Bhadwar. In this context on or around 17th February, 2011 R.N. Bhadwar had visited the Petitioner's home and specifically expressed his disapproval of Shobhit's relationship with Shivangi. He had also arranged goons to misbehave with Shobhit in October, 2010. Despite R.N. Bhadwar having threatened Shobhit to maintain distance from Shivangi, they remained in touch with each other resulting in the death of the Petitioner's son. The investigations have fortified and substantiated the claim

of the Petitioner that the Petitioner's son was threatened in his college by goons at the instance of R.N. Bhadwar however, still no action is taken. The claim of the police that it has investigated and interrogated all the family members of Ms. Shivangi at length but still they do not find any material to implicate them is wholly incorrect. A perusal of the several text messages on deceased's phone also independently indicate the strained and violent relationship between Shivangi and her father and brother.

3. According to the Petitioner the Delhi Police have been resistant to look at the complicity of the Badhwar family in this crime from the very beginning of this investigation on flimsy grounds. The Respondents have investigated into all angles like road rage, random crime or for robbery etc. which have also resulted in futility. The police did not even seize the laptop and mobile phone of the deceased though they took it and returned back the same, without preparing any seizure memo. No scientific investigation has been conducted of the internet forums like email, messaging, phoning applications including Facebook, Gmail, Skype, Whatsapp have neither been analyzed nor asked to be frozen so that no interference with the data takes place. On 27th May, 2011 the Petitioner was called to meet one Deepak Malik/Deepak Singh who had allegedly confessed to have robbed and murdered Shobhit. Though the police claimed that they had recovered bloodstained clothes from Malik, and a team of officers was sent to Kanpur to seize the weapon of offence however, the same also did not yield results. In fact on further investigation it was revealed that the said Malik/Singh was not even in the city on the date when the Petitioner's son was murdered. Thus the investigation be transferred to CBI for a fair and independent probe so that culprits of the Petitioner's son are prosecuted as per law.

4. Learned Additional Standing Counsel for the State on the other hand contends that every possible endeavour has been made to ensure a proper, thorough and detailed investigation in respect of the abovementioned FIR. The guard who had first seen the Petitioner's son has been thoroughly examined. He has neither seen any scuffle nor anybody with him. The examination of the body revealed two stab injuries on the chest and two on the back of the body. There were also abrasions in the right hand and both the knees. The t-shirt was also torn. The investigation is being conducted under the direct supervision of the District DCP and besides all the nearby police stations are involved, specialized agencies like Anti Auto Theft, South, Cyber Crime Cell, EOW are also associated. As regards the phone and laptop of the deceased are concerned, the same were taken into possession and all the data available therein has been transferred into another electronic media with the technical assistance of Institute of Informatics and Communication, University of Delhi, South Campus. Since the phone and the laptop were not the suspected objects of the crime the same were returned. The investigation agency has the entire material available with it and it is still progressing. More than 272 persons have been examined in the present case, mostly on the basis of analysis of the electronic data. Besides position investigation has also been carried out to see the exact location of the suspect.

The CDR analysis and the dump data analysis has also been conducted. According to the learned Additional Standing Counsel the text messages relied upon by the Petitioner and the list of dates prepared conveniently skipped the interaction after 17th February, 2011 till 1st April, 2011. However, the CDR details show that there are enough number of calls inter se shobhit and shivangi besides messages. All persons who are mentioned in the phone book of the deceased have been examined. Since it is a murder case wherein no eye-witness has been found till date, investigations have been conducted from all angles including road rage, robbery and substance related issues. In this regard verifications were done from all bad characters of the area, TSR drivers, students in the college as well as friends, computer communication on Skype and entire CCTV footage of the mall where the deceased last visited was also examined. It is further contended that the present case does not fall within the parameters of the tests laid down by the Constitution Bench in *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, and *T.C. Thangaraj v. V. Engammal and others*, 2011 (8) Scale 488. Hence the present petition be dismissed.

5. I have heard learned counsel for the parties.

6. The present case relates to the unfortunate offence of murder of the Petitioner's son at around 9.30 p.m. on 5th May, 2011 near C-5, Gali No. 2, Vasant Kunj. The deceased had four stab wounds besides abrasions on the arm and the knees. A perusal of the status report filed by the Respondents shows that extensive investigations have been conducted from all angles however, the issue which arises in the present petition is that despite extensive investigations having been conducted which have not yielded results whether the investigation should continue with the same agency or it should be transferred to another agency. In the *State of West Bengal (Supra)* their Lordships held that the extraordinary power to direct CBI to conduct investigation in a case should be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill 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 CBI 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. Learned counsel for the Petitioner has strenuously contended that the Respondents have lost credibility. A perusal of the efforts made by the local police though may not have been able to instill confidence in the Petitioner however, the same cannot be undermined. There is no denial to the fact that the offence committed is a gruesome one, where a young college boy has been murdered with no trails left behind. In such a situation where despite extensive investigation, the investigating agency has reached a dead end to enforce the fundamental rights of the Petitioner and in the interest of justice, it is essential to transfer the investigation to another agency.

7. In the facts and circumstances of the case, I, therefore, deem it fit to transfer the investigation in case FIR No.114/2011 u/s 302 IPC registered at PS Vasant Kunj to Crime Branch of Delhi Police. Needless to direct that the investigation will be conducted under the direct supervision of DCP Crime Branch, Delhi Police.

Petition is disposed of.