

(2010) 05 AHC CK 0146

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 13848 of 2009

Syed Qamar Ahmad

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 AHC CK 0146

Hon'ble Judges : Imtiyaz Murtaza, J and Shyam Shankar Tiwari, J

Final Decision : Disposed Of

Judgement

Imtiyaz Murtaza J.

1. This lachrymose writ petition has been preferred by the shocked uncle of a young budding officer whose career was full of infinite possibility and pregnant with promises. The deceased at the relevant time was posted at Mahoba as Asstt. Manager in the U.P. Cooperative Federation. He ended his life at age of 28 years, allegedly being wearied by endlessly illicit demands of the superiors. It is alleged that the deceased initially tried to cope with the demand despite being aghast at the rampant corruption but subsequently took the extreme step of ending his life finding himself unable to bear the load on his mind. In the suicide note, the deceased tweaked by his conscience has unburdened his mind about the rampant corruption in the department.

2. The grieving uncle, it would transpire, has knocked the door of this Court disenchanted by the reluctance of the investigating agency in extending the long arm of law to the named persons who on account of their status have managed to evade appearing for interrogation. The relief sought is for a writ of mandamus commanding the respondent 1 to transfer the investigation from civil police to any other independent investigating agency attended with the relief of a writ of mandamus directing the respondents to submit the progress report in the case.

The deceased is Syed Gyas Ahmad alias Gaus who while serving at Mahoba had

his residence at Kareli Allahabad and he had come back to his residence at Kareli from Mahoba on 3.4.2009. On 4.4.2009, he committed suicide at 11 a.m by hanging himself. According to information furnished to Police Station Kareli in writing by the petitioner, it was revealed that he was informed by his wife that the deceased was hanging by rope which was tied to the peg of the ceiling of the room situated on the first floor at C 247 G.T.B.Nagar Kareli Allahabad attended with information that it seemed that he was dead. Upon receipt of this information, the petitioner immediately rushed to the scene of occurrence where he saw his nephew hanging with ropes tied around his neck. The police upon reaching the scene of occurrence, loosened the rope and took the body down and necessary formalities were undertaken and completed. According to the report prepared by Sub Inspector, the search of the body yielded a piece of paper the contents of which were read in the presence of family members of the deceased and the people who had collected on the spot. Thereafter, it would transpire from the record, the body was sent for post mortem which was conducted on 4.4.2009 at 4.30 p.m.

3. On 4.4.2009, a written application was made to Senior Supdt of Police Allahabad by the petitioner the quintessence of which is that his nephew used to lament that his seniors who were named by their designation namely, Managing Director, Managing Director (Administration) and Regional Manager (who are arrayed as respondents 5 to 7 in this petition) had been exerting pressure and demanding money studded with threat to place him under suspension in case of his failure to arrange money for them. It is also mentioned that his nephew had come to him at NOIDA in the last month and discussed with him the problem stating that Distt Magistrate Mahoba had made a telephonic call and demanded to arrange for one bag of sugar for use in the marriage of his orderly. The deceased, it is alleged, had to meet the demand by paying a sum of Rs. 2400/ out of his own packet. It is further alleged that on 29.3.2009 when the petitioner rang up the deceased, he appeared perturbed and told him on phone that his superiors were demanding to rake up Rs. 10,000/ immediately attended with information that in case his failed to meet the demand, they would spoil their career. The deceased further disclosed to the petitioner that within a span of seven months, he had to pay Rs. 35,000/ to the Distt Magistrate Mahoba and other superior officers out of his own packet and a sum of Rs. 13,000/ was collected from the subordinate officials. It was also informed that his superiors were demanding Rs. 150/ per quintal in the ensuing purchase of wheat. To the similar effect is the application made by the mother of the petitioner addressed to D.I.G. Zone Allahabad.

4. The suicide note left behind by the deceased, to rephrase it, would agreeably read studded with prologue sentence "I have given a serious thought but I am at a loss to understand (how to deal with the situation). I have come to such a pass in my longing to acquire a government job that I can neither abandon the job nor can keep up with the job. I am being called on phone from the Headquarters pressurizing to arrange for money. Wherefrom should I arrange for money, they

are not concerned with, whether I should indulge in pilferage or misappropriation. I dread I may not get trapped in criminal case which may result in lodging of F.I.R by local administration. I am not inclined to indulge in any such activities. I have already collected and paid an amount to the tune of Rs. 48000/ to the Managing Director, A.M.D, G.M. (Administration) out of which certain amount was collected from the office. Out of my total salary of Rs. 12000/ out of which on an average a sum of Rs. 5000/ goes to the pocket of the authorities. I can understand that people would blame me that I could not cope with the government job in case I decide to abandon the job. I am fed up with the rampant corruption in the P.C.F and being unable to cope with it, I am committing suicide. My last will is that whatever is available in my fund, the same should be disbursed to my younger brother Mohd. Sufiyan. The note further mentions that in case demand of headquarters is not met, he is being threatened with tarnishing his character roll attended with the threat to suspend him."

We have heard learned counsel for the petitioner and also learned counsel appearing for the State. We have also perused the record and the police papers.

5. The prayer quintessentially made in this petition is for transfer of investigation to another agency as the local police it is alleged, has wilted under pressure elaborating that the accused herein are highly placed bureaucrats and have enough clout in the corridors of powers and those at the helm of affairs in the corridor of powers that be, are interfering in the fair investigation from behind the curtains. It is further alleged that the suicide note is a version of dying man who cannot tell a lie when he himself was ending his life. It is further submitted that the accused persons have continued to evade the captivity and despite there being no questioning from any of the accused, the police still submitted the final report without any valid basis. It is further alleged that the deceased was very upright and had joined the service with certain hopes and expectations of serving the public but his dreams were shattered by the corruption rampant in the department. It is also argued that the pressure on local police is writ large from the very inception and the police has, from the very inception, attempting to close the chapter by filing final report but could not do initially on account of interference by this Court by which the Court was pleased to direct change of investigating officer but it only delayed submission of the final report and it was owing to pressure from the higher ups the police has again filed final report.

6. Per contra, Sri S.G.A. Hasnain, Additional Advocate General appearing for the State of U.P vehemently argued that the investigation has been conducted by the police strictly according to the provisions of the Cr.P.C. and the final report has been submitted before the Special Judge and it is none of the business of any of the person to canvass its validity in the jurisdiction of this Court under Article 226 of the Constitution of India nor can this Hon. Court interfere therein. The next argument advanced across the bar is that it is the Magistrate who is empowered under section 156 (3) Cr.P.C to direct or redirect the investigating

agency to make proper and fair investigation and monitor the investigation. The next submission is that after filing of the final report or charge sheet as the case may be it lies within the power of the Magistrate who can go into the question whether investigation is fair or not and whether certain aspect or certain relevant facts or statements have or have not been touched upon in the investigation. It is further argued that if any party is aggrieved by the order of the Magistrate, he can canvass the validity of the order under section 482 Cr.P.C or under Article 226 of the Constitution of India.

The investigating officer who holds the office of Circle officer police, has filed affidavit sworn by him in which he has clearly stated that he has conducted investigation in utmost fair manner and he also interrogated various employees and officials of the department and none of them testified to the demand of money by higher officers or parting with money out of his own salary for being pocketed by the higher officers. He also stated that the demand of illegal gratification has been propped up by the family members and family friends of the deceased. He has also referred to various calls made by the officers to the deceased. Both on mobile and land line which according to the investigating officer related to a period three months prior to the suicide by the deceased. In para 10, the investigating officer has stated that the deceased except making allegations in the suicide note, is not found to have made any complaint against any of the officers of the department. He also stated that in the course of investigation, he interrogated 70 persons in all. It is nowhere stated that accused persons were also interrogated in connection with the allegation of demand as alleged in the suicide note. He also referred to the amount in deposit which was to the tune of Rs. 50,000/ in the Bank account of the deceased and the point urged is that the deceased did not disclose in the suicide note as to from where he gratified the so-called illegal demand of the officers of the department. The suicide note is the last words uttered by the deceased and it cannot be taken to be a chronicle of the exhaustive details nor can it be a catalogue of everything including minor particulars. In para 14, he refers to application dated 4.4.2009 made in the aftermath of the suicide and it is stated that the allegations contained in the said application were also taken into consideration in the course of investigation but no evidence to prop up those allegations is forthcoming. It is nowhere stated that the accused persons named in the F.I.R have also been interrogated in the course of investigation by the Investigating officer.

From the facts on record, and also from the various affidavits including the affidavit of the investigating officer, the substance of what can be gleaned is that no evidence about illegal demand by the officers is forthcoming but at the same time, the element of abetment would clearly transpire from the facts on record.

7. One of the arguments advanced across the bar is that the High Court has no power to direct investigation by the C.B.I and to prop up his submission, he has elaborately cited the provisions of the Cr.P.C dwelling upon the powers of the Magistrate. Suffice it to say without burdening the judgment with copies

decisions on the point that it must be remembered the jurisdiction assigned to High Court under Article 226 is the extra ordinary jurisdiction. The Court therefore has powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed by law. Such inherent or extra ordinary jurisdiction are intended to be exercised to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliauid alicui concedit concedere videtur et LD sine quo res ipsae esse non potest" (where the law gives a person anything it gives him that without which it cannot exist). It must also be remembered that this Court under Article 226 does not function as a court of appeal or revision but has to exercise powers ex debito justitiae to do real and substantial justice for the administration of which alone court exists. In Civil Appeal Nos. 62496250 of 2001 State of West Bengal and others v. The Committee for Protection of Democratic Rights, West Bengal and others, the Apex Court in para 35 observed as under:

"As regards the power of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorized under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any government to enforce fundamental rights and "for any other purpose:.It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well i.e. for enforcement of any legal right conferred by a Statute etc. "

8. The next argument relates to the powers of the Magistrate as discussed above. Coming to the facts on record the genesis of the case is the suicide note. There is no gainsaying that it is open to an aggrieved person to exercise his legal right by filing the protest petition in case, he nurtures grievance that the investigation conducted by the police is not fair. As quoted above, the suicide note without mincing words refers to the background in which the deceased took the extreme step of taking away his own life by committing suicide. The deceased has named the accused persons by designation. Exfacie, the suicide note unequivocally refers to the acts of the accused and the roles played by them which ultimately led the deceased for taking extreme steps of taking away his life by committing suicide. It is again argued that it leaves no manner of doubt from the record that the police has not interrogated any of the accused at any point of time. However, according to the own submission of learned Addl. Advocate General, all these aspects have to be looked into by the Special Judge where the final report has been submitted. The learned Additional Advocate General admitting the legal position has also advanced the submission that even if the police files final report, it is the duty of the Magistrate to take appropriate action thereon. It is also admitted that the Magistrate would initially issue notice to

aggrieved person who is at liberty to file protest petition canvassing the shortcomings if any, of the investigation.

From a perusal of the materials on record and also from a close scrutiny of the submissions advanced across the bar, the position that is distilled and worthy of notice is that the F.I.R initially was registered under section 306 IPC and section 7 of the Prevention of Corruption Act was subsequently added. If the facts on record are literally taken at its face value, it is not the case where provisions of section 7 of the Prevention of Corruption Act is attracted. Learned Addl. Advocate General has also conceded that from a perusal of the suicide note, the ingredients of Prevention of Corruption Act are not disclosed or made out. The counsel for the petitioner emphatically stated that the perusal of suicide note attracts the provisions of section 384 IPC. The Section 384 IPC being germane to the issue involved in this case is abstracted below.

"384. Punishment for extortion Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

9. It is stated across the bar by the learned Counsel appearing for the State that the final report has been submitted by the police before the Special Judge (Prevention of Corruption Act). On being confronted and on adverting his attention to his submissions that the ingredients of offence under the Prevention of Corruption Act are not disclosed, he evaded a direct reply on this crucial aspect. Having considered the materials on record, we too are of the opinion that if no offence under the Prevention of Corruption Act is found to have been made out, the police should have filed the final report before the learned Magistrate concerned and not before the Special Judge (P. C. Act) inasmuch as cognizance, if at all required, pursuant to the final Report in the absence of sanction for prosecution cannot be taken by the Special Judge. Yet another aspect to be taken into reckoning is that as conceded by the learned Addl. Advocate General that ingredients of Prevention of Corruption act are not attracted, by this reckoning, the Special Judge cannot take cognizance under section 306 or section 384 IPC. In elucidating this position, we may refer to section 28 of the Prevention of Corruption Act and it being relevant, is excerpted below.

"28. Act to be in addition to any other law: The provisions of this Act shall be in addition to, and not in derogation of any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him."

10. The position as summed up by above discussion, boils down as under that the suicide note clearly refers to the acts of the accused and the roles played by them and further that from a perusal of the suicide note is attracted the ingredients of section 384 IPC and also that as conceded by the Addl. Advocate General, the provisions of Prevention of Corruption act are not attracted and in this view of the matter, the final report has necessarily to be filed before the

Magistrate.

11. In the facts and circumstances of the case, without delving into the merits of the argument whether submission of final report in the matter by the police is justified or not, and whether it is a fit case for being referred to any other agency for investigation afresh or not, the petition is disposed of with the direction that the Special Judge shall return the final report for representation to the appropriate court or the prosecuting agency shall withdraw Final report filed in the Court of Special Judge (P. C. Act) and file the same anew before the Magistrate concerned within 30 days from today. The Magistrate will pass appropriate orders in accordance with law however without being influenced by any of the observations made in the body of this judgment.

The petition is disposed of finally in terms of the above orders.