

(2010) 09 GAU CK 0052

In the Gauhati High Court

Case No : PIL No. 58 of 2010(Ghy) and PIL No. 10 of 2010 (Imphal)

Thangjam Merina Devi & Ors.State of Manipur & Ors.

APPELLANT

Vs

State of Manipur & Ors.

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Citation : (2010) 5 GLT 702

Hon'ble Judges : Amitava Roy, J and H.Baruah, J

Bench : Division Bench

Advocate : Advocates appeared for the Petitioners: Mr.S.Jayanta, Sr.Advocate, Mr.A.Chandran, Mr.L.Gajendra, Mr.O.Kiranjit & Mr.B.K.Das, Advocates appeared for the Respondents: Mr.N.P.Singh, Sr.Advocate & Mr.R.Sharma, Asstt.S.G., Advocates appearing for Parties

Judgement

Amitava Roy, J.—The present proceeding records a prayer for a writ of mandamus and/or an appropriate direction to the State respondents herein to entrust the investigation of the case being First Information Report No. 36 (3)/2010 of the Lamlai P.S. Imphal East, Manipur, under Section 326 Indian Penal Code 1860 and 25 (1 C) of Arms Act, 1959, to the Central Bureau of Investigation, New Delhi, (for short hereafter referred to as the "CBI") and to submit a charge sheet on the completion thereof.

2. We have heard Mr. B. Das, learned Counsel for the petitioners and Mr. N.P. Singh, Sr. Advocate, for the State respondents. As at the motion stage the maintainability of the instant proceeding has been questioned on behalf of the State respondents, the parties present have been heard on this prefatory facet.

3. The abridged versions from the rival pleadings available would portray the contour of the adjudication. The petitioners' claim to be students of law in a local institution at Imphal in the State of Manipur and have introduced themselves as socially spirited individuals committed to the espousal of public causes of social justice. Their crusade herein is directed against alleged deliberate inaction on the part of the State police in investigating the aforementioned case involving the

incident in which Mr. N. Koteswar Singh, Advocate General, Manipur, had suffered a bullet injury on 6.3.2010 at about 7 to 8 P.M. near Sawombung Kabui Village when he was travelling in a car along with Mr. K. Ranjit Singh, Works Minister, Manipur and Mr. D.D. Thaisii, Tribal Development Minister, Manipur, on their way back from the seed sowing festival of the Tangkhuls at Hunphung village, Ukhru District of the State. According to the petitioners, it is learnt that there was a hot exchange of words prior to the incident between the injured and the two aforesaid Ministers inside the car whereafter he (injured) was shot at with an attempt to murder him.

4. Though the Officer in Charge, Lamlai Police Station, Imphal East, Manipur, registered First Information Report No. 36 (3)/ 2010 under the aforementioned provisions of law in connection with the incident, the petitioners have alleged that the names of the accused persons were intentionally withheld on the pressure of the higher ups in the administration. Referring to the newspaper reports dated 8.3.2010, 9.3.2010 and 10.3.2010 in the dailies "Telegraph" and "Sangai Express", the petitioners have averred that though the Chief Minister of the State informed the media that the incident was of accidental firing from the licenced gun of the two Ministers travelling with the injured, the name of the assailant was not disclosed. Public uproar condemning the incident and demanding the disclosure of the name of the said Minister and appropriate legal action against him was also mentioned. Insistencies by the legal fraternity represented by the Bar Associations referred to in the newspaper reports for handing over the investigation to the CBI has also been referred to.

5. The petitioners have further stated that on 11.3.2010 though the mother of the injured had submitted a report with the Superintendent of Police, Imphal East, to take necessary legal action against the culprit/culprits and to punish them in accordance with law, no step has been taken thereon. Newspaper reports dated 11.3.2010 and 12.3.2010 in the aforementioned dailies have also been relied upon to aver that meanwhile the statements of the two Ministers had been recorded and that the accidental firing had occurred from the fire arm of the Works Minister, Mr. K. Ranjit Singh and that the FIR case had been registered for investigation. The assurance of the Chief Minister of the State on the floor of the Assembly to mete out penalty in law to the said Minister in the event of any malafide intention on his part has also been stated.

6. The petitioners have expressed their concern that though almost two months had passed, the offence notwithstanding being a cognizable one,, the State police have not arrested any accused in connection with the FIR case being influenced and pressurised by the influential quarters of the State administration. Being apprehensive that the State police would desist from investigating the FIR case in the manner required in law due to the involvement of two Cabinet Ministers of the State, they have approached this Court for an appropriate writ or direction as alluded hereinabove.

7. The respondents 3,4 and 5 in their joint affidavit have at the threshold

challenged the maintainability of the instant petition as a public interest litigation contending inter alia that the same does not come within the ambit of the guidelines enumerated by the Hon'ble Supreme Court and adopted by this Court in such matters. According to them, the petitioners have no locus standi to institute the present proceeding in that form or even otherwise. They have dismissed the apprehension of the petitioners as unfounded being based on newspaper reports which are inadmissible in law as evidence. They have categorically denied the imputation that the State police has failed to discharge its statutory function and duties in the investigation of the FIR case and have asserted that the disclosures in connection therewith overwhelmingly establish that the unfortunate incident was purely an accident without any dishonest intention and mens rea. The receipt of the report by the mother of the injured though admitted, according to the answering respondents, the same was under public pressure. They have however pleaded that no separate FIR had been registered thereon as investigation in connection with the above mentioned FIR case had been in progress then. The respondents have averred that the two Ministers travelling with the injured had extended their full cooperation in the investigation and that not only they had laid bare all relevant facts there is neither any possibility nor any apprehension of their abscondence. The respondents have therefore asserted that not only the State police has the sufficient expertise, infrastructure and commitment to investigate the case in the discharge of its statutory function, the facts and circumstances do not justify the entrustment of the probe to the CBI as prayed for.

8. In their affidavit in reply, the petitioners while generally reiterating their averments in the writ petition have vouched for the maintainability thereof as a PIL and their locus standi. They have denied that the incident was purely an accident and that it was not spurred by dishonest intention or mens rea.

9. Mr. Das has assiduously argued with reference to the guidelines adopted by this Court for identifying the subject matters of public interest litigation that not only the issue involved herein is squarely covered thereby, the newspaper reports on which the petitioners rely provide unimpeachable foundation of their apprehension and belief and that therefore the instant petition ought to be scrutinised on merits. As the offence involved is a crime against the society as a whole, in the face of the overwhelming possibility of the investigating agency being deactivated by the lingering awe of the high dignitaries involved, it is a fit case that the matter be entrusted to the CBI, he urged. While contending that the petitioners as the students of law and imbued with the spirit of social service can well maintain the instant proceeding, the learned Counsel has urged that the inaction of the State police being apparent amongst others for their omission to arrest the offender inspite of a long lapse of time or to act on the complaint lodged by the mother of the victim, to ensure a dispassionate and meaningful investigation into the incident, the same ought to be entrusted to the CBI, he pleaded. To bolster his arguments, the learned Counsel has placed reliance on the decisions of the Apex Court in *Bodhisattwa Gautam Vs. Subhra Chakraborty*

(MS), (1996) 1 SCC 490, (2000) 2 SCC 465, Mohd. Aslam @ Bhure Vs. Union of India & Ors., (2003) 4 SCC 1, Rubabbuddin Sheikh Vs. State of Gujarat & Ors., (2010) 2 SCC 200.

10. Mr. Singh as against this has persuasively insisted that the instant petition being bereft of the quintessence of a public interest litigation, it ought to be rejected in limine. According to him, as the injured suffers neither from any disadvantage or disability to seek the enforcement of his legal and/or constitutional right if perceived to have been infringed in the incident, in absence of any remonstrance by him about the quality and credibility of the investigation, the petitioners have no locus to approach this Court to purportedly espouse their secondary interest in the garb of a PIL. The learned Sr. Counsel has further urged that having regard to the framework of the instant petition, the indictments made and the reliefs sought for, nonjoinder of the injured, the Ministers concerned and the Chief Minister of the State has rendered the instant petition not maintainable in law on the face of the records. Mr. Singh to buttress his arguments has placed his reliance in the decisions of the Apex Court in S.P. Gupta Vs. Union of India & Anr.: 1981SuppSCC 87, M/s. Holcow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra & Ors., AIR 2008 SC 913 and of this Court in Chairman, Railway Board & Ors. Vs. Chandrima Das (Mrs.) & Ors.: 1997 (3) GUI"213.

11. We have lent our anxious consideration to the pleadings of the partis and the competing arguments advanced. To begin with, we do not feel impressed with the plea that the cause of action of the instant petition is beyond the ken of the guidelines formulated for entertaining a petition as public interest litigation in the face of the category No. 8 in the guidelines which comprehends a petition relating to matters of public importance other than those specifically mentioned therein. Having regard to the gravity of the incident and the seriousness of the charge levelled, we do not feel inclined to nonsuit the petitioners on this count.

12. On the aspect of locus, the petitioners" reliance is on the decision of the Apex Court in Bodhisattwa Gautam (supra), wherein their Lordships have observed that for the exercise of jurisdiction under Article 32 of the Constitution of India, it is not necessary that the person who is the victim of violation of the fundamental rights should personally approach the Court as it can itself take cognizance of the matter and proceed suo motu or on a petition of any public spirited individual.

13. That a public law remedy in addition to one under the private law is available in situations of violations of fundamental rights or enforcement of public duties where public functionaries are involved as enunciated by the Apex Court in Chairman, Railway Board Vs. Chandrima Das (supra), has been pressed into service as well.

14. In S.P. Gupta (supra), while dwelling on the aspect of locus standi in the context of the jurisprudence of public interest litigation their Lordships observed

has hereunder in paragraph 25 of the rendering therein:

"Before we part with this general discussion in regard to locus standi, there is one point we would like to emphasise and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want." It was thus in essence underlined that whereas a member of the public having sufficient interest can maintain an action challenging the legality of any act or omission, if the person or specific class or group of person who are primarily injured as a result thereof forebear to claim any relief and accept such act or omission willingly and without any protest, the challenge of a member of the public who complains of a secondary public injury cannot be maintained as the effect of entertaining the same at his/her instance would be to impose a relief on one or those primarily injured which, he/she/they do not desire.

15. This view of the seven Judge Bench of the Apex Court has held sway in this regard progressive relaxation in the traditional concept of locus standi visavis public interest litigation notwithstanding. This view finds reiteration in the Joint Action Committee, Imphal (supra) by this Court.

16. Their Lordships of the Apex Court reiterated their concern against the burgeoning volume of public interest litigation uninformed with any genuine urge for public or social welfare and essentially propelled by factors and considerations divorced from the authentic anxiety to espouse the cause of the deprived and the disadvantaged rendering them disabled to individually or collectively seek the panacean intervention of the judicial process. Their Lordships also disapproved endeavours to initiate public interest litigation on the basis of newspaper reports sans any attempt to verify credibility thereof which otherwise do not constitute evidence. It was held that the petition based on unconfirmed news report ought not to be entertained.

17. The petitioners' effort to maintain the petition based on such reports by placing reliance on Md. Aslam Vs. Union of India & Ors. (supra) thus seems to be lacking in persuasion. The observations of their Lordships that once a notice is issued on the basis of letters, telegrams, post cards or news paper reports treating those as writ petitions, the Courts should eschew a technical or a narrow approach in matters involving public interest is of no significance in favour of the petitioners having regard to the stage of the instant proceeding.

18. Noticeably in the present proceeding, neither the injured nor the Ministers concerned have been impleaded. The categorical assertions of the answering respondents bearing on the investigation and the revelations in course thereof establishing that the incident was an accident simpliciter with no dishonest intention or mens rea of any one then present have remained unscathed in absence of excision thereof by convincing and determinative refutation of the same. The averment on oath that the Ministers concerned have cooperated with the investigation made, their statements about the incident have been rendered and that there is neither any possibility nor any apprehension of their fleeing from justice has also remained uncontroversial to be dismissed as sheer fluff lacking substance. The newspaper reports relied upon by the petitioners inter alia reveal that the Chief Minister of the State had disclosed the name of the Minister whose gun got fired with the assurance of legal action against him on proved malafides. In this background the absence of arrest of any person in the FIR case per se would not be an unimpeachable index of the failure or ineptitude of the investigating agency or a motivated inaction on its part to shield any person guilty of an offence under the sections of law on which the case had been registered. An irresistible conclusion of the investigating agency's failure to discharge its statutory and public duty on collateral factors as alleged by the petitioners, acting on the materials available is thus not possible. Their apprehension based on the newspaper reports in the facts and circumstances of the case as well as on the touchstone of the rival pleadings is considered inadequate to entertain the instant petition.

19. Though in a given fact situation as in Rubabuddin Sheikh (supra), in which with reference to the involvement of the police officials of the State in the crime under investigation it was considered appropriate to entrust the probe to the CBI, the facts as obtained in the instant case are neither akin thereto nor proclaim any reliable basis to entertain the apprehension as expressed by the petitioners. In the face of unequivocal and categorical averments made by the respondents 3,4 and 5 in charge of the investigation of the FIR case as above, we are of the firm view that the instant proceeding ought not to be furthered. The State respondents however are expected to ensure that the investigation in the case is taken to its logical end in accordance with law.

The petition in the face of the above determination is dismissed. No costs.