

(2019) 02 J&K CK 0105

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 297 Of 2018, IA No. 01, 02, 03 Of 2018

Vivek Bassan

APPELLANT

Vs

State Of Jammu & Kashmir Another

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164A, 174, 175, 438, 482
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 304B, 498A
Arms Act, 1959 — Section 30
Code Of Criminal Procedure, 1898 — Section 561A
Dowry Restraint Act, 1960 — Section 2

Citation : (2019) 02 J&K CK 0105

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Paras Gupta, Sunil Sethi, A.P. Singh, T.R. Wani

Final Decision : Dismissed

Judgement

1. Through the instant petition filed under Section 561-A Cr.P.C. for quashing the FIR No.0085/2018 dated 18.05.2018 registered with Police Station, Pacca Danga, Jammu against the petitioner for commission of offences under Sections 498-A, 304-B RPC and 30 Arms Act and also quashing the proceedings/investigation being conducted against the petitioner by the respondent No.1 in the impugned FIR.

2. The brief facts of the case are that the petitioner is presently serving as Inspector in J&K Police and posted at Company Commander "D" Coy IRP 7th Bn. Amb Garota, Jammu. He was married to Ms. Neha Kumari in accordance with Hindu rites and customs. Their marriage was solemnized on 07.12.2014. The relations of the petitioner with his wife were cordial and there was neither any fight nor any issue between them. The wife of the petitioner unfortunately died from a gunshot injury from the service revolver of the petitioner on 26.02.2018 and proceedings under Section 174 Cr.P.C were initiated by the Police and on the

basis of inquest proceedings which mainly consists of report of the Ballistic Expert, the Enquiry Officer came to the conclusion that since the death of the deceased is not because of natural cause, FIR is required to be registered and it is due to these findings of Ballistic expert, impugned FIR No.0085 of 2018 dated 18.05.2018 has been registered with Police Station, Pacca Danga, Jammu against the petitioner for commission of offences under Sections 498-A, 304-B RPC and 30 Arms Act.

3. The petitioner is aggrieved of the impugned FIR No.0085 of 2018 dated 18.05.2018 and the proceedings/investigation being conducted against the petitioner, therefore, seeks to challenge the same on the following grounds:-

a) That the impugned FIR registered by the respondent against the petitioner is totally illegal, arbitrary and contrary to the provisions of law, therefore, the same deserves to be quashed.

b) The reason for registration of FIR is absolutely illegal and legally not sustainable. The death case of the deceased in which the petitioner has been wrongly and falsely roped into from every angle is not a case of 498-A and 304-B RPC.

c) That all cases of unnatural death within seven years of marriage are not covered by section 304-B. In the instant case there was no evidence collected or surfaced during the enquiry/inquest proceedings which even remotely suggested existence of offence punishable under Section 498-A or 304-B RPC against the petitioner. Section 304-B RPC reads as under:-

"304-B. Dowry Death:-

i) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry, such death shall be caused "dowry death" and such husband or relative shall be deemed to have caused that death Explanation:-1. For the purpose of this sub-Section, the "dowry" shall have the same meaning as mentioned in Section 2 of the Dowry Restraint Act, 1960.

Explanation:- 2. For the purpose of this sub-section "cruelty" shall have the same meaning as in Section 498-A of this Code.

ii) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

For invoking Section 304-B against the petitioner and for roping the petitioner for commission of offence punishable under Section 304-B RPC, much more was required to be proved in the inquest proceedings. No allegations with any evidence documentary or otherwise with request to harassment or cruelty

alleged to have been meted out to the deceased soon before her death has come against the petitioner during inquest proceedings. Therefore, it is highly illegal on the part of the respondent to register the impugned FIR against the petitioner. On this ground also, the impugned FIR deserves to be quashed.

(d) That the consent of the petitioner has already been taken for Lie Detection Test but the same has not been done so far. It has been specifically indicated in the impugned FIR that the lie detection test is yet to be conducted of the petitioner. Without any concrete evidence documentary or otherwise, the petitioner has been wrongly and falsely roped into the impugned FIR.

(e) That as the investigation is still at the inception for inquest proceedings, there was no reason to believe the existence of prima facie offence under Section 304-B RPC against the petitioner. A bare perusal of Section 304-B RPC clearly shows that the lady has to be subjected to cruelty or harassment soon before her death in connection with demand of dowry. In the instant case, there is neither demand of dowry nor harassment "soon before her death" and as such the case could not have been the case of 304-B RPC. It will not be even a case of suicide prima facie rather it may be accidental fire also which has not been ruled out. The whole purpose of inquest proceedings under Section 174 Cr.P.C is to collect some sort of evidence to look to the commission of offence in cases of unnatural death. However, in the instant case the inquest proceedings have nothing more than pointing the case as unnatural death which even otherwise was the position even when inquest proceedings started because the death occurred because of gunshot.

(f) That the inquest proceedings have been taken by the respondents to be more formality in the instant case.

(g) That there should be some evidence pointing towards the guilt of the petitioner before FIR can be registered against him, which is not the case in hand.

(h) That there was no complaint of harassment or cruelty alleged against the petitioner right since his date of marriage till the death of his wife. This crucial aspect of the case has been completely overlooked by the respondent which registering the impugned FIR.

(i) That a perusal of the impugned FIR more particularly the allegations contained therein do not remotely constitute the offences punishable under Sections 498-A 304-B RPC and 30 Arms Act. As is apparent from the bare perusal of the aforesaid sections of Ranbir Penal Code, none of the ingredients of these Sections are coming forth from the allegations which have been alleged against the petitioner and which have been made basis for registration of impugned FIR against the petitioner. In the absence of any such allegations no offence much less offences punishable under Sections 498-A and 304-B RPC is remotely made out against the petitioner. This crucial legal aspect of the matter has been completely overlooked and brushed aside by the respondent while registering the FIR and on this ground also, the impugned FIR deserves to be

quashed.

(l) That the FIR impugned is being used as a tool of harassing and victimizing the petitioner notwithstanding the fact that the petitioner is not involved in any offence muchless the offence punishable under aforesaid Sections. The respondent has registered the FIR by abusing his official position which is quite apparent and evident from the perusal of the FIR impugned.

(n) That Principles relating to exercise of jurisdiction under Section 561-A of the Code of Criminal Procedure (Section 482 of Central Cr.P.C) to quash complaints and criminal proceedings have been stated and reiterated by the Hon'ble Supreme Court of India in several landmark decisions, reference whereof will be respectfully made during the course of hearing of the instant petition. The allegations as contained in the impugned FIR if are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the petitioner.

(o) That even if the allegations are taken on their face value, even then no case is made out against the petitioners and mensrea missing makes the allegations of offence non-workable.

4. The stand taken in the objections filed by respondent No.2 is that the aforesaid application seeking interim relief of staying the FIR No. 0085/2018 for commission of offences under Section 304-B, 498-A RPC and admitting the petitioner to bail is not maintainable in the present petition under Section 561-A Cr.P.C. as settled by a catena of the judgment of the Hon'ble Supreme Court. The petitioner has obtained an ex-parte order dated 28.05.2018 that no coercive action to be taken against him in the present petition which has not been challenged by the State till date and it appears that the State is not interested in challenging the ex-parte order which on the face of it is contrary to law settled by the Supreme Court. The answering respondent/applicant has already sought the transfer of the investigation from State to another independent agency in the light of Shabby and partisan investigation conducted by the Police into the death of the respondent's daughter who was killed by gunshot injury with the service revolver of the petitioner. The direction of the Court of not arresting the petitioner besides has been contrary to the Supreme Court Judgment in State of Telangana vs. Habib Abdullah Jeelani & Ors. 2017 AIR (SC) 373 is not legally tenable and that too in a heinous crime of the nature, for which the answering respondent has already prayed for conversion of aforesaid FIR from 304-B to 302 RPC in a connecting matter (OWP No.1171/2018).

5. I have considered the rival contentions of learned counsel for the parties. Counsel for petitioner has reiterated all grounds taken in memo of petition. Learned counsel for the petitioner has relied upon the judgment in decision of Hon'ble Supreme Court in 1) 2011 AIR (SC) 3616 titled, Gurdeep Singh versus State of Punjab & Ors. decided on 25.08.2011; 2) 2003 AIR (SC) 11 titled, K. Prema S. Rao versus Yadla Srinivasa Rao decided on 25.10.2002; (3) 2014 AIR

(SC) 227 titled, Rajeev Kumar versus State of Haryana decided on 31.10.2013.

6. Whereas counsel for complainant and State has argued that a coordinate bench has already transferred the investigation of case to CBI and this petition has thus become infructuous. It has also been argued that there is prima facie case of murder committed by petitioner of deceased who was his wife with his service revolver.

7. I have given my thoughtful consideration to whole aspect of the matter and gone through the law on the subject.

8. In *Som Mittal v. Govt. of Karnatak* 2008 (3) SCC 753, it has been held as under:-

"(10) In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under Section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(11) This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

(12) We now refer to a few decisions of this Court deprecating the exercise of extra ordinary or inherent powers by the High Court according to its whims and caprice.

(13) In *State of Bihar v. J.A.C. Saldanha* (1980) 1 SCC 554 this Court pointed out at SCC p. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is

complete. We say no more.

(14) In *Hazari Lal Gupta v. Rameshwar Prasad* (1972) 1 SCC 452 this Court at SCC p. 455 pointed out:

In exercising jurisdiction under Section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

(15) In *Jehan Singh v. Delhi Administration* (1974) 4 SCC 522 the application filed by the accused under Section 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

(16) In *Kurukshetra University v. State of Haryana* (1977) 4 SCC 451, this Court pointed out:

It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. (emphasis supplied)

(17) In *State of Bihar v. Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not."

9. Apex court in case titled *Dineshbhai Chandubhai Patel Vs. State of Gujarat & Ors.* . CRIMINAL APPEAL No.12 of 2018 (Arising out of S.L.P.(Crl.)No.5155 of 2017); *Balubhai Ravjibhai Ahir Vs. State of Gujarat & Ors.*, . CRIMINAL APPEAL No.13 of 2018 (Arising out of S.L.P.(Crl.)No.5322 of 2017); *Arjun Shankarbhai Rathod ... Vs. Harishbhai Ramanbhai Rathod & Ors. Etc.* CRIMINAL APPEAL No.15 of 2018 (Arising out of S.L.P.(Crl.) No.5476 of 2017); decided on 05.01.2018, reported in 2018 0 Supreme (SC) 10, has held as under:-

"27) This Court in *State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors.*

(AIR 1982 SC 949) had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle:

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. The condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences."

28) Keeping in view the aforesaid principle of law, which was consistently followed by this Court in 16 later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see-paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

29) In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage. The High Court, in our view, failed to see the extent of its jurisdiction, which it possesses to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

31) At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the 18 Complainants and vice-versa. In such a situation, it becomes the job of the investigating

authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

32) In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

33) The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part lead us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

34) The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here."

10. It is thus settled law that FIR can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression 'ends of justice' and 'to prevent abuse of process of any court' are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it. This court while exercising the power under section 561-A Cr.P.C, does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution.

11. In present case, from the perusal of documents produced during arguments and those have already been annexed with petition, it is evident that father of deceased filed a writ petition OWP No.1171/2018 before this court for transferring the investigation in impugned FIR No.85/2018 under section 304-B/498-A RPC from P/S Pacca Danga to CBI. A coordinate bench on 28.01.2019 has allowed the petition. The relevant extract of order of Co-ordinate Bench reads as under:-

"Based upon the enquiry conducted by the officer concerned and the report of the Ballistic expert from FSL, Jammu as also the post- mortem report, it was established by the enquiry officer that deceased, Neha Kumari had died due to a gun shot from the service weapon of her husband, Vivek Bhasin and, therefore, inquest proceedings were converted into a case bearing FIR No. 85 of 2018 under Sections 498-A/304-B RPC read with Section 30 of the Arms Act and investigation initiated by the concerned SHO.

7. In the response, it is stated that the concerned officer during the course of investigation took up the matter with the Commandant IRP 7th Battalion for presence/arrest of Inspector, Vivek Bhasin but the said Inspector had proceeded on casual leave and did not report back on time and was marked as absent. Visits to the house of the accused also reflected that the house was locked. In the meantime, it is stated that a Co-ordinate Bench of this Court issued an order whereby coercive action against the said accused was stayed. The said petition is also stated to be pending.

8. Learned counsel for the petitioner urged that the manner in which the police authorities have proceeded showed a clear attempt on their part to shield the accused. It was urged that the accused was an Inspector, who was working as a Security Officer with the Chief Minister in the Chief Minister's Security Wing and was, thus, quite influential. It was urged that it was because of the influence of the accused that the investigating officer had not only failed to investigate the case in its correct perspective in a free and fair manner, but had also managed to shield the accused by not registering a case for murder, but only under Sections 498-A/304-B RPC read with section 30 of the Arms Act. It was urged that the statement of the petitioner was recorded as late as on 13.07.2018 under Section 164-A despite the fact that the petitioner had been approaching the investigating officer for getting his statement recorded. It was the urged that there was no reason for the investigating officer to have totally ignored the angle of murder by the accused and instead relied only on the Lie Detector Test with a view to shield the accused and book him in a much lesser offence under Sections 498-A/304-B RPC read with section 30 of the Arms Act. It was urged that the petitioner had in his statement recorded under Section 164-A of Cr. P.C. deposed that the deceased was a right hander, whereas the gun shot was fired on her left side and had made the exit from the right side of the head. It was also stated that the deceased had no knowledge about handling the revolver which had been officially issued in favour of the accused. Learned counsel also took pains to read at length the statement of the petitioner given in terms of Section 164-A of the Cr.P.C.

9. Admittedly, the accused, as per the reply affidavit, has not at all been arrested till date despite the fact that the offence is stated to have been committed on 26.02.2018. No steps at all were taken by the official respondents to get the interim orders passed by a Co-ordinate Bench in a petition under Section 561-A vacated, which would enable the investigating officer to subject the accused to interrogation. Witnesses, namely, Arti Devi and Smt. Asha Devi also appear to be witnesses belonging to the family of the accused. Although the accused had been subjected to a polygraph test, no effort was made by the investigating officer to even carry forward the process in regard to obtaining sanction for subjecting the accused to a Narco Analysis test which request had been made as early as on 25.03.2018. The Investigating Officer also does not appear to have taken up the issue with the Ballistic expert as to what was the distance from which the weapon had been fired to determine as to whether it was a case of suicide or one of murder.

10. The report of the Ballistic expert also appears to be illusory and cryptic and does not lay down the basic scientific parameters, based upon which, an expert investigator could come to a definite conclusion. If the report of the Ballistic expert was cryptic, the investigating officer should have been quick to get the necessary clarifications which are found conspicuously absent in the present case.

11. As per the report of the Ballistic expert, the gun shot had been fired through a Semi-Automatic Glock pistol which might have been issued to the accused in his capacity as a part of the security wing of the Chief Minister. In such a position, where the accused was a part of the security apparatus of the Chief Minister, the fact that he would have a considerable influence to derail the fair investigation in the matter, cannot be denied.

12. On a perusal of the post-mortem report, which was prepared on 26.02.2018, the following observations have been recorded.

1. Firearm entry wound: A punctured wound measuring 1.5 X 1 cm with irregular, invested and abraded margins is present on the left side of the head on left parietal Region, 4.5 above left ear helix. No tattooing or blackening present.

2. Firearm exit Wound: A lacerated wound measuring 4.5 X 4 cm, irregular in shape with overt margins and ragged flaps present on Right side of head on Right temporal area, 1.5 cm above the Right helix.

On dissection from Injury No. 1, the track is directed forward and inward towards the Right side of cranial cavity, piercing the skin, Subcutaneous tissue including muscles of scalp, fracturing the skull bone, damaging the brain tissue and making an exit wound through the Right temporal Region of head, thereby causing multiple fractures of skull bones and protruding out of brain substance and part of fractured skull bone through exit wound.

All injuries are ante-mortem in nature."

13. With reference to the aforementioned report, learned counsel for the petitioner had urged that there was no tattooing or blackening present on the left side of the head i.e. the entry point of the bullet, from which it could only be inferred that the shot was not a close contact shot and, therefore, the only inference that could be drawn is that the deceased was murdered.

14. Another factor highlighted by the learned counsel for the petitioner was that if the injuries sustained by the deceased as per the post-mortem examination report were all ante-mortem in nature and if it had been established that the deceased had died on account of bullet shot, the officer concerned should not have waited till 18.05.2018 to register a case and that the Investigating officer had no reason to sit over and continue with the inquest proceedings till 18.05.2018.

15. While it may not be open to this Court to opine whether it was a case of murder or not, with reference to the report of the Ballistic expert, one thing is

certain that the Investigating Officer does not appear to have acted fairly in conducting the investigation. There is considerable force in the arguments of the learned counsel for the petitioner which find support in Apex Court Judgment of Ashok Kumar Todi v. Kishwar Jahan and others, 2011 (3) SCC 758, wherein at paragraph 52 of the judgment, the Apex Court held as under:

"52. The inquiry/investigation under section 174 read with Section 175 of the Code may continue till the outcome of the cause of the death. Depending upon the cause of the death, police has to either close the matter or register an FIR. In the case on hand, as per the post mortem report dated 22.09.2007, the cause of death of Rizwanur Rahman was due to the effect of ten injuries on the body and which were ante-mortem in nature. In such circumstances, the proceedings under Section 174 of the Code were not permissible beyond 22.09.2007 and registration of an FIR was the natural outcome to ascertain whether the death was homicidal or suicidal....."

16. In Mithilesh Kumar Singh v. State of Rajasthan, 2015 (9) SCC 795 the Apex Court under lined the importance of fairness of the investigation, which it held ought to be judicious, transparent and expeditious to ensure compliance with the basic rule of law. Reliance was also placed on Sasi Thomas v . State and ors., 2006 (12) SCC 421, which held as under :

"15. Proper and fair investigation on the part of the investigating officer is the backbone of rule or law. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately, the appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly and upon obtaining apparently an incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly."

17. What was held by their lordships in paragraph 12 of the judgment in Mithilesh Kumar Singh's case can beneficially be reproduced hereunder:

"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 extra ordinary 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 process of any investigation and who can do it better than an agency that is independent."

18. In *Kashmiri Devi v. Dehli Administration*, 1988 (Supp) Supreme Court Cases 482, the Apex Court had transferred the investigation to be conducted by the CBI on the ground that the investigation with regard to death in police custody had not been conducted fairly and that an effort had been made to protect and shield the guilty officers of the police, who had perpetrated the offence of murdering the deceased Gopi Ram by beating and torturing.

19. In the present case also, since the accused is a police officer, there appears to be a definite attempt to shield the said accused by fellow police officers which is amply reflected in the manner in which investigation has been conducted. In my opinion, a case has been made out for transferring the case for investigation by the Central Bureau of Investigation. CBI shall forthwith conduct the investigation and investigate the circumstances leading to the death of deceased, Neha Kumari and determine whether the case was suicidal or homicidal. Notwithstanding the fact that the case is registered only in terms of Sections 498-A/304-B RPC read with Section 30 of the Arms Act, depending upon the investigation so conducted, it shall be open to the CBI to book the accused under such offences as the CBI determines during the course of the investigation.

20. With the aforementioned direction, this petition along with connected IA(s) stands disposed of accordingly."

12. From bare perusal of this order, it is evident that court while passing the above order has given detailed reasons and held that prima facie case is made out against the petitioner/accused and there appears to be a definite attempt to shield the said accused by fellow police officers which is amply reflected in the manner in which investigation has been conducted. It is admitted fact that Neha Kumari -deceased had died due to a gun shot from the service weapon of her husband Vivek Bassan- the petitioner; during the course of investigation, it has come that when the matter was taken with the Commandant IRP 7th Batallion

for presence of petitioner, he proceeded on casual leave and did not report back on time and was marked as absent. There is also evidence in the shape of post-mortem report about non tattooing or blackening on the left side of the head i.e. the entry point of the bullet, from which it could only be inferred that the shot was not fired from close range and which may falsify the commission of suicide by shooting herself by fire arm by the deceased. All these suspicious facts are required to be investigated by police. All the pleas taken in this petition are pertaining to facts, which this court cannot consider in this petition. Now whether on the basis of allegations leveled in FIR and evidence collected so far during investigation, offence under section 304-B/498-A RPC is made out or not is not the domain of this court while exercising power under section 561-A Cr.P.C. It is not the case of petitioner that, there is some legal bar engrafted in any law for lodging of FIR and conducting investigation. Further investigation is at thresholds and is pertaining to serious offence of unnatural death of deceased within seven years of marriage, as defined under section 304-B RPC; if investigation or FIR is quashed at this stage, it would amount to killing of unborn child in womb. The laws formulated in, Gurdeep Singh v/s State of Punjab & Ors., K. Prema S. Rao v/s Yadla Srinivasa Rao and Rajeev Kumar v/s State of Haryana (supra) are not applicable in present set and circumstances of case, as these laws have been made after full trial.

13. The argument of learned counsel for respondent No.2/complainant that in petition under section 561-A Cr.P.C., the bail cannot be granted, is legally correct because in case titled State of Telangana v. Habib Abdullah Jeelani and others reported in AIR 2017 Supreme Court 373, the Apex Court has held as under:-

"Inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court. Said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate.

In the instant case, the High Court has not referred to allegations made in the FIR or what has come out in the investigation. It has noted and correctly that the investigation is in progress and it is not appropriate to stay the investigation of the case. It has disposed of the application under Section 482 CrPC and while doing that it has directed that the investigating agency shall not arrest the accused persons. This direction "amounts" to an order under Section 438 CrPC, albeit without satisfaction of the conditions of the said provision. This is legally unacceptable."

14. In view of above, no case for quashing of FIR is made out. This petition is dismissed; interim direction, if any, is vacated.