

Asha Ram Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-02-2001

Reported in : 2002CriLJ1560

Judge : R.K. Dash, J.

Acts : Code of Criminal Procedure (CrPC) 1974 - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307

Appeal No. : Criminal Misc. Appln. No. 1865 of 2001

Appellant : Asha Ram

Respondent : State of U.P. and ors.

Advocate for Def. : A.G., ;R.K. Rathor and ;Surendra Singh, Adv.

Advocate for Pet/Ap. : Apul Misra, Adv.

Disposition : Application dismissed

Judgement :

ORDER

R.K. Dash, J.

1. Sri Apul Misra, learned counsel for the petitioner, Sri R.K. Rathor, counsel for respondent No. 3 and Sri Surendra Singh, learned A.G.A. are present. Pursuant to

order dated 12-4-2001, counter-affidavit sworn to by Special Secretary, Home Department, Government of U.P. has been filed.

2. Heard the counsel for the respective parties.

3. The petitioner, accused of a murder charge by filing this petition under Section 482, Cr.P.C. has prayed for quashing the State Government's order dated 20-1-2001 whereby investigation in case crime No. 214 of 2000 under Sections 302 and 307, I.P.C. of P.S. Kisni, District Mainpuri has been transferred from C.B.C.I.D. to general police. Further prayer has also been made to direct the C.B.C.I.D., Agra Division to investigate the aforesaid case in accordance with law.

4. Sri Apul Misra, counsel for the petitioner contends that on the basis of the F.I.R. lodged by respondent No. 3, the aforesaid case was registered at Kisni P.S. and investigation commenced. In the meanwhile, an application being moved before the Chief Minister, U.P., investigation was transferred to C.B.C.I.D., Agra Division. Thereupon, the case while being investigated by the transferee agency, the State Government again entrusted the investigation to general police vide impugned order dated 20-1-2001, copy whereof at Annexure 4. It is submitted that without assigning any reason the State Government transferred the case for investigation from one agency to the other as a shuttle-cock. The impugned order, Annexure 4, being based on no reason, submits Sri Misra, the aforesaid case should be transferred to C.B.C.I.D. which is equally competent to investigate.

5. At the time of hearing on admission, it was felt necessary to notice the Special Secretary, Home Department of the State of U.P. to enlighten the Court as to what necessitated the State Government to transfer the investigation from C.B. C.I.D. to general police. On being noticed, Special Secretary though has filed counter affidavit today, he has not assigned good reasons transferring the investigation. On the other hand, he has challenged the locus standi of the petitioner to assail the impugned order of the State Government.

6. Crime detection and maintenance of law and order are the functions of the State. Under the Code of Criminal Procedure, this power has been entrusted to the police and it is, therefore, the statutory duty of the police to investigate the

facts and circumstances where commission of cognizable offence is suspected. It is not disputed that State Government can transfer the investigation of any particular case from General police to any other agency, such as, C.B.C.I.D. or C.B.I. But it has come to the notice of the Court that in large number of cases the State machinery in a routine manner and without applying mind has been transferring the investigation from general police to C.B.C.I.D. It is desirable that the State Government should exercise such power in rare cases where situation so warrants. It is submitted at the Bar that unscrupulous litigants involved in heinous crimes somehow could influence the State machinery and get the investigation transferred to C.B.C.I.D. which machinery does not possess sufficient manpower. So once the investigation is transferred to C.B.C.I.D, it becomes difficult to apprehend the culprit and complete the investigation with reasonable time.

7. In the case in hand, the case once transferred to C.B.C.I.D. was again transferred to general police and the reason assigned by the Special Secretary is that it was felt necessary for ends of justice. It should be borne in mind that transfer of investigation from general police to another agency will demoralise the police and affect their credibility. I am not oblivious of the legal position that State has power to transfer the investigation from general police to any other investigative agency, but such power, as stated earlier should be exercised sparingly and not in a routine manner. I, therefore direct Principal Secretary/Special Secretary or other officials dealing with application for transfer of investigation to apply their mind and before taking any decision shall call for a report from concerned S.S.P./S.P., if any allegation touching upon the integrity or fairness of the local police is made and on receipt of such report a decision be taken recording the reasons either allowing or rejecting the application.

8. Coming to the present case, I would have taken a decision transferring the investigation to C.B.C.I.D. as earlier ordered by the State Government but since the investigation has culminated in filing chargesheet. I feel not inclined to pass such order.

9. In the result, Criminal Misc. Application fails and the same is dismissed.

10. A copy of this order be sent to the Chief Secretary; Principal Secretary and Special Secretary of Home Department, Government of U.P. for future guidance.

11. A free copy pf this order be given to the learned A.G.A.

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