

Umed Singh and ors. Vs. State of M.P. and ors.

Umed Singh and ors. Vs. State of M.P. and ors.

SooperKanoon Citation : sooperkanoon.com/503957

Court : Madhya Pradesh

Decided On : Apr-13-2007

Reported in : 2007(3)MPHT275

Judge : Rajendra Menon, J.

Appellant : Umed Singh and ors.

Respondent : State of M.P. and ors.

Advocate for Pet/Ap. : Shri. K.S. Shriyastava

Disposition : Petition allowed

Judgement :

ORDER

Rajendra Menon, J.

1. Petitioners have filed this petition being aggrieved by orders dated 14th December, 2006 filed as Annexures P-1 and P-2 respectively passed by the Police Headquarter, Crime Investigation Department, (hereinafter referred to as 'CID'), Bhopal transferring investigation into two first information reports registered at Police Station, Kailaras, District Morena for enquiry and investigation.

2. Brief facts which are necessary for disposal of this petition are that certain incident had taken place within the territorial jurisdiction of Police Station, Kailaras

on 29th March, 2006, in which it was stated that the petitioners were attacked by various persons as indicated in Paragraph 5.1 of the petition. Because of the aforesaid incident, a First Information Report was lodged by the petitioners being Crime No. 81/06 on 29th March, 2006 for offence under Sections 302,307,147 and 149, IPC. The report on the basis of which said case was registered was lodged by petitioner No. 1, Umed Singh who is said to be present on the spot. Another report was lodged by one Kamlesh Dhakad against some of the petitioners as indicated in Paragraph 5.1 of the petition. This report lodged by Kamlesh Dhakad was registered at Crime No. 80/2006 on the same day, i.e., 29th March, 2006 by Police Station, Kailaras. Copies of the First Information Reports on the basis of which the aforesaid crimes were registered are filed as Annexure P-3 and P-4 respectively. It is the grievance of the petitioners that the fight in question took place because of some caste rivalry and various other factors. At this stage, these questions are not required to be gone into by this Court as the merits of the complaints lodged by both the parties making allegations against each other is not very relevant for deciding the question involved in this writ petition. However, it is the grievance of the petitioners that with a view to frustrate the enquiry into the complaint lodged by the petitioners, a very peculiar method was devised and by the impugned orders. Annexures P-1 and P-2, the enquiry into the matter has been handed over to the CID in an arbitrary fashion. Shri K.S. Shrivastava, learned Counsel for the petitioners taking me through the principles laid down by a Division Bench of this Court in the matter of investigation of an offence by the CID, as contained in the case of Sanjay Singh and Ors. v. State of M.P. and Ors. 2006(2) MPLJ 324, argued that the action taken is unsustainable. Taking me through the judgment and observations made by the Division Bench in the aforesaid case, Shri K.S. Shrivastava emphasised that in the present case, action taken for transferring of the enquiry to the CID is wholly unsustainable. It was emphasised by Shri K.S. Shrivastava that the matter was transferred only to frustrate a proper enquiry into the matter and to grant some undue benefit to the other party who had attacked the petitioners. Shri K.S. Shrivastava emphasised that this contention stands established as after enquiry into the matter, the CID has submitted some report exonerating all the persons against whom Crime No. 81/06 has been lodged and directed for registration of the case and prosecution of not only persons who were

named in the First Information Report but also nine other persons whose names does not find place in the First Information Report lodged in Crime Nos. 80/06 and 81/06. Shri Shrivastava emphasises that the petitioner Nos. 7,10,12,13,14,15,16,17 and 18 are persons whose name do not find place in the First Information Report in spite thereof they have been falsely implicated and are being prosecuted for having committing the offence. It was emphasised that the manner in which the investigation was transferred to CID and the manner in which the investigation was done by the CID and report submitted is highly illegal, contrary to law, settled norms of justice and it is contended that right of the petitioners for a fair and proper investigation into the matter in accordance with the statutory provisions is being frustrated and the entire action stands vitiated in the light of the principles laid down by the Division Bench in the case of Sanjay Singh and Ors. (supra). Shri Shrivastava prays for interference into the matter by this Court. Even though during the course of hearing, Shri Shrivastava by taking me through the factual aspects of the matter tried to demonstrate that the action taken is vitiated by bias, ill-intention and malafide but at this stage. I am of the considered view that this question need not be looked into in this writ petition.

3. Refuting the aforesaid contention raised by Shri K.S. Shrivastava and rebutting the averments made in this petition, the State Government has filed a return. In the return, the facts with regard to registration of Crime Nos. 80/06 and 81/06 at Police Station, Kailaras is not disputed, nor is it disputed that on 14th December, 2006. The Additional Director General of Police, CID has passed the impugned orders, Annexures P-1 and P-2. It is the case of the respondents that during the investigation of the crimes in question, it was established that the petitioners have committed offence and they had lodged a false report levelling false allegations against the opposite party. Thereafter, it is stated that reports were received, cases were registered and investigation into the allegations made by both the parties commenced. However, in Paragraph 4 of the return, the reasons for transfer of the cases to the CID is indicated and the only reason indicated is that while the local police was investigating into the matter, both the parties were not co-operating in the matter of investigation, accused persons were absconding and witnesses were not coming forward for recording of their statements. It is stated that both the parties expressed their displeasure and stated that they have no faith

in the local police. Accordingly, the Station House Officer recommended to the Superintendent of Police, Morena to handover investigation to the CID because the local police was facing hurdles in the matter of investigation due to the conduct of the parties. The reports submitted by the Station House Officer and the Superintendent of Police are filed as Annexures R-1 and R-2 to indicate that the Additional Director General of Police, CID has acted in the matter without any malafide or bias only because of the recommendations made by the Superintendent of Police, Morena and the proper investigation has been completed by the CID, Shri Vivek Khedkar, learned Government Advocate submitted that there is no illegality in the matter warranting interference in these proceedings.

4. Shri Vivek Khedkar, learned Government Advocate by placing reliance on various judgments as indicated in the return has tried to emphasise that in the facts and circumstances of the present case as the Superintendent of Police, Morena and the local police authorities were facing some hurdle in the matter of proper investigation, the action taken in the matter does not warrant any interference by this Court. Accordingly, the respondents have prayed for dismissal of the writ petition.

5. Having heard learned Counsel for the parties at length and on going through the irregularities that have been pointed out and the manner in which the local police authorities have dealt with the matter, this Court is of the view that the action taken is unsustainable and this Court cannot give its stamp of approval for the reasons indicated hereinbelow.

6. As indicated in the return filed by the respondents and as is evident from the reports, Annexure R-1 and Annexure R-2, submitted by the Station House Officer, Kailaras and the Superintendent of Police, Morena, the reasons for transfer of the investigation are as under:

(i) Non-cooperation of the parties and the witnesses in the matter of enquiry;

(ii) lack of faith of the parties on the local police; and

(iii) hurdles faced by the local police as the witnesses are not coming forward to record their statements.

7. The question as to whether these are sufficient grounds for transferring of an enquiry from the local police to CID. The recommendations made by the Superintendent of Police, Morena vide letter dated 1st May, 2006 indicates that he has received report from the Station House Officer and SDOP, Kailaras that they are recommending for transfer of the case to the CID on the ground that the complainant party and the accused party in the cases did not have faith in the local police and the witnesses are not coming forward for recording their statements. Thereafter, it is indicated in this letter that both the parties are having political patronage, therefore, the Superintendent of Police has recommended for transfer of the cases to the CID.

8. Registration of a criminal case, investigation into the crime and further action to be taken on the basis of the investigation are all controlled by the statutory provisions as contained under the Cr.PC. The police authorities who have registered the cases are mandated under law to investigate and conduct enquiry into the matter and file challan in the Court of competent jurisdiction in accordance with law. The local police cannot shirk away from the statutory liability, cogent justifiable reasons are required to be established, for doing so.

9. At this stage, it would be proper to take note of certain observations made and the principles laid down in the matter by a Division Bench of this Court in the case of Sanjay Singh and Ors. (supra). In the case of Sanjay Singh and others (supra), which was decided by the Division Bench, the question of public importance that came up for consideration was as to whether a investigation into the crime can be handed over to the CID without following the mandate as contained in Chapter XII, Cr.PC, read with Regulation 16 of the Madhya Pradesh Police Regulations. In the case that was considered by the Division Bench, i.e., Sanjay Singh and others (supra), the records indicate that the investigation from the local police was handed over to the CID on the basis of the recommendations made by a Member of Parliament and order was passed by the Additional Director General of Police. While considering this question in Paragraph 5 of the judgment, the learned

Counsel has reproduced Regulation 16 of the Madhya Pradesh Police Regulations, for the sake of convenience, the same is reproduced hereunder:

16. Serious Crime: The co-ordination of the work of the Criminal Investigation Department with that of the District Police is entirely in the hand of the Deputy Inspector General incharge of that department. Superintendents will immediately report to him any case of special difficulty which baffles the local police, cases of professional or organised crime, and cases of counterfeit coining or note forgery. He will also be sent copies of the special and supplementary reports in all cases of dacoity, administering stupefying drugs by suspected professionals, and any other case of special interest. It will be for him to decide whether an officer of the Criminal Investigation Department should be deputed to assist the local police or whether the case should be taken out of the hands of the local police altogether by the Criminal Investigation Department. He will submit once a month for the information of the work done by the Criminal Investigation Department.

10. Thereafter, it has been held by the Division Bench that discretion is given to the authorities concerned to get the matter investigated by the CID and the procedure for doing so is contemplated in Regulation 16. It has been further held by the Division Bench that if every criminal case is handed over to CID, it will be difficult for the investigating agency to proceed further with the case and it will create apprehension in the minds of the people that the persons who are wielding clout in the society can stall criminal proceedings against them. The Division Bench has thereafter considered various judgments of the Supreme Court on the point-in-issue and in Paragraphs 14,15 and 16, it has been observed as under:

14. Question involved in the case is once investigation is carried out on the information received, when fresh investigation can be ordered, the scope and the circumstances under which such orders can be passed.

15. Normally, it is the investigating agency which is empowered to entrust investigation to any officer and it is also empowered to withdraw investigation from one officer and appoint senior officer for investigation. However, handing over a case for investigation to CID should be strictly in terms of Regulation 16 of the M.P. Police Regulations and in terms of provisions of Chapter XII of the Code of

Criminal Procedure.

16. Practice of handing over investigation to CID after filing of challan in Court is not permissible. Normally, investigation should not be interfered with unless strong prima facie and cogent reasons are available with the superior officer and investigation should be carried out by the same officer. If the higher authorities are of the opinion that fair investigation is not being carried out it may examine the matter and if need be, entrust the investigation to the higher officer. However, investigation cannot be handed over to Criminal Investigation Department (CID) as a matter of course or on demand by a person suspected to have committed the crime, commonly known as accused. Accused must co-operate in the investigation and if he feels that investigation is carried out properly he has remedy to move application before the Court where challan is filed against him.

(Emphasis supplied)

Thereafter, in Paragraph 18, the definition of CID in Regulation 7 has been taken note of and the purpose of functioning of CID and the purpose for which it has been created and then it was so observed as under:..Normally, investigation should not be interfered with at the instance of accused. However, if some irregularity is found or it is found that an innocent citizen is falsely implicated the case should be examined by Superintendent of Police and he may either depute senior officer to investigate the matter or may investigate the case personally. But, once investigation commenced, it should be completed without interference. If day to day working of investigation is interfered with, then it will be difficult to hold fresh and fair investigation. Handing over investigation to CID should be in a special case.

(Emphasis supplied)

11. It has been held by the Division Bench that it is only when the Superintendent of Police is satisfied for the reasons to be recorded in writing that proper investigation is not carried out, then investigating officer may be changed. The Division Bench has observed that the practice of handing over the cases to the CID is to be deprecated.

12. It is in the light of the aforesaid enunciation of law by the Division Bench in the case of Sanjay Singh and others (supra), that the question of interference in the matter of the present petition is to be decided.

13. A complete reading of the observations made by the Division Bench and in particular the provisions of Regulation 16 indicates that it is only very serious nature of crimes which are to be transferred to the CID and some of the crimes which are serious in nature are already indicated in the said Regulation. If the reasons indicated by the Station House Officer, Kailaras and Superintendent of Police, Morena as contained in Annexures R-1 and R-2 are evaluated in the light of the conditions stipulated in Regulation 16 and the observations made by the Division Bench as indicated hereinabove, it would be seen that the said reasons do not confirm to the tests laid down for transfer of the case to CID.

14. As already indicated in the preceding paragraphs, the reasons given by the local police authorities concerned for transfer of the present case are--(i) lack of faith in the local police authorities, and non-cooperation by the parties concerned, (ii) witnesses are not coming forward for recording of their statements; and (iii) political patronage of both the parties. These are not the grounds on which the local police authorities is entitled to seek transfer of the investigation to any other department. If the witnesses are not coming forward for recording their statements, Cr.PC contemplates procedure to be followed by the police authorities for recording of their statements and lack of faith by the parties concerned is not a consideration which should weigh in the minds of the investigating agency. That apart, there is nothing on record to indicate with regard to faith of the parties concerned. Once the investigating authority is bestowed with the statutory powers and when statute gives them power, lack of faith by an individual is of no consequence until and unless accusations of malafide or bias is otherwise established. Political interference or political patronage has no place in the matter of investigation by the police authority. The investigating authority should only be concerned with the enforcement of law and upholding the rule of law and they are not required to see the political or ideological considerations of either of the parties but its only concern should be the public safety and security and fair investigation into a matter, political interference cannot be a ground for shirking away from the

statutory responsibility which is imposed on the investigating authorities by the law.

15. Considering the totality of the facts and circumstance of the case, I am of the considered view that the local investigating authorities of the District Morena consisting of the Superintendent of Police, Morena, SDOP, Kailaras and the Station House Officer, Kailaras have failed to discharge their statutory duties and have merely transferred their responsibility without discharging their statutory duties for reasons best known to them. The casual manner in which the Superintendent of Police made recommendations and the casual way in which the Station House Officer opined on the investigation and withdrew from the entire matter cannot be approved by this Court. Even though, during the course of hearing, Shri K.S. Shrivastava tried to emphasise that the authorities had acted only to give undue advantage to certain interested persons. I am not inclined to enter into this area of enquiry and investigation in this petition. It is for the authorities of the State Government to look into that aspect of the matter and ensure that faith of the citizens in the matter of investigation and the local police authorities is maintained. However, as the action taken for transfer of investigation from the local police to the CID is found to be unsustainable being contrary to the statutory provisions and all norms of justice, this Court has no other option but to grant relief as prayed for by the petitioners.

16. Accordingly, the orders, Annexure P-1 and Annexure P-2, dated 14th December, 2006 transferring the Crime Nos. 80/06 and 81/06 registered by Police Station, Kailaras to the CID are quashed. Consequently, all action taken by the CID in pursuance to the aforesaid orders are also quashed. The Superintendent of Police, Morena, the respondent No. 3 is directed to ensure that Crime Nos. 80/06 and 81/06 are investigated properly in accordance with the provisions of law and the same is brought to its logical conclusion. In case the Superintendent of Police feels that the authorities of the police station concerned are not in a position to investigate the matter properly, the same may be entrusted to any senior officer under his jurisdiction or he may seek assistance of the Inspector General of Police, Chambal Range in the matter of enquiry and entrusting the same to any other senior officer of the range.

17. Accordingly, this petition stands allowed and disposed of with the aforesaid direction without any order so as to cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com