

**The State of Rajasthan and ors. Vs. Phool Chand Garg and anr.**

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**Court :** Rajasthan

**Decided On :** Jan-30-1989

**Reported in :** 1991CriLJ125; 1990(1)WLN201

**Judge :** M.B. Sharma and I.S. Israni, JJ.

**Acts :** [Delhi Special Police Establishment Act, 1946](#) - Sections 2, 3, 5 and 6; Indian Penal Code (IPC) - Sections 279, 304A and 338; Code of Criminal Procedure (CrPC) - Sections 173(8); [Constitution of India](#) - Article 226

**Appeal No. :** Civ. Spl. Appl. No. 203 of 1987

**Appellant :** The State of Rajasthan and ors.

**Respondent :** Phool Chand Garg and anr.

**Advocate for Def. :** J.P. Goyal and; S.C. Agrawal, Advs.

**Advocate for Pet/Ap. :** N.L. Pareek, Addl. Govt. Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.B. Sharma, J.**

1. Ordinarily we would not have liked to go in this appeal into the question to legality of the order 1987 Raj Cri C 72 dated February 6, 1987, of the learned

single Judge made in Writ Petition No. 2386/86 as after the aforesaid order was made, investigation was taken over by the CBI and the investigation is said to be almost complete but because a larger issue about the powers of this court to interfere at the stage of investigation or transfer of the case from the local police to CBI, is involved we will proceed to examine the issue.

2. We may at the outset State that we would not like to go into the question whether the death of Praksah Chand Garg was as a result of the accident as alleged by the prosecution or was a murder as alleged by Phool Chand Garg, his brother. This is a matter which depends on the collection of evidence and is to be adjudged by the court. All that we may state in this Special appeal is that one Damodar Prasad who is said to be the nephew of Phool Chand Garg, the petitioner in the aforesaid writ petition in this Court, now presented FIR No. 294/86 lodged on August 1, 1986, at 10 p.m. Police Station Sawai Madhopur that Prakash Chand Garg was coming on a motor cycle from Anaj Mandi and near a kund there was an accident in between motor cycle and one jeep as a result of which Prakash Chand received serious injuries and the motor cycle was broken. Prakash Chand was taken to the Hospital. On a report, the case under Section 279, IPC was registered because the said Prakash Chand had died, an offence under Section 304A, IPC was also added. It appears that when the case was pending investigation, some allegations were levelled against the investigating agency and therefore the case was transferred to CID. When the investigation was pending before the CID it appears that serious doubts were expressed so far as version contained in the FIR is concerned and it was alleged that on the death of Prakash Chand wide publicity was given in news papers that Prakash Chand Garg had not died in accident as alleged but he used to play cards on stake with some police officers including Sube Singh Chaudhary, Dy. S.P. (ACD) and on that day he actually had won a sum of Rs. 1000/- and wanted to leave as he had to proceed for Delhi, but Sube Singh and other players compelled him not to leave and therefore some scuffle took place and Sube Singh and others gave beating to Prakash Chand as a result of which he died. After investigation a report was registered and Prakash Chand died during the investigation of the case. The post-mortem was conducted on the dead body of Prakash Chand and a perusal of the post-mortem report which is available in the file of S.B. Civil Writ Petition No.

2386/86 will show that the cause of death was described as syncope and shock as a result of haemorrhage (internal). As many as two external injuries were found- namely,

'(i) There is a bruise of inverted U shape over D side of chest in parasternal region at the level of 3rd, 4th, 5th ICS and junction of size shown in diagram with width 05 cm to 1 cm. It is 4 cm below d clavicle and 4 cm media to nipple.

(ii) There are two bruise each size 2cm x 2cm over about 2 cm of injury No. 1'

The injuries were described antemortem in nature.

3. We will now revert to the powers of the Court so far as transfer of investigation from local police to CBI is concerned. Under Section 2 of the [Delhi Special Police Establishment Act, 1946](#), (for short, the Act) the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation in any Union territory of offences notified under Section 3 of the Act. Power is vested under Section 3 of the Act to notify the offences or class of offences which are to be investigated by the Delhi Special Police Establishment. Under Section 5 of the Act the Central Government may by order extend to any area including railway areas in a State, not being a Union Territory the powers and jurisdiction of Members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under Section 3. But no member of Delhi Special Police Establishment can exercise powers and jurisdiction in any area in a State not being a Union territory or railway area without the consent of the Government of that State by virtue of Section 6 of the Act. There is no dispute that from time to time notifications have been issued under Section 3 of the Act specifying the offences or class of offences which are to be investigated by the Delhi Police Establishment and on being asked Mr. S.P. Tyagi who is counsel for CBI for this Court brought to our notice a notification containing the list of offences which have been authorised to be investigated by the Delhi Police Establishment. It will appear from the aforesaid list that it also contains the offences under Sections 279, 338 and 304A, IPC. Therefore, there can be no dispute that the officers of the Delhi Police Establishment have power to investigate the offences under the aforesaid

Sections of the Indian Penal Code also. No material has been placed before us whether there has been any consent under Section 6 of the Act of the State Government, but it can hardly be disputed that in case this court orders that the case should be investigated by the CBI, no consent of the State Government is necessary. The Supreme Court in the case of *State of West Bengal v. Sampat Lal*, AIR 1985 SC 195 at page 200, para 13 (1985 Cri LJ 516 at page 521), has said that consent under Section 6 of the Act would not be a condition precedent to compliance with the Court's direction and Section 6 of the Act does not apply when the court gives a direction to the CBI to conduct an investigation. Therefore, it may be that a mandamus under Article 226 of the Constitution may be issued directing the State Government to transfer the investigation or to direct the CBI to make the investigation in a case registered with any local police station, but the powers under Article 226 of the Constitution are wide enough and this court in a proper case, if satisfied that the investigation is not proceeding in a right manner, can order the transfer of investigation from local police to CBI. It can hardly be disputed that residuary powers vest in this court and for public interest and the court may give direction that the case pending investigation with the local police may be transferred to CBI even if the offence is one in respect of which the notification under Section 3 of the Act has not been issued, this court will have still power to order that the investigation of a case will be transferred to CBI for investigation and the CBI will investigate the case and proceed thereafter in accordance with law. But the question is as to what should be the guidelines for exercise of the aforesaid residuary powers of the court, whether for mere asking by a party this court should order the transfer of the investigation from the local police to CBI, or the court will have to peruse the case diary and other material in order to see whether the investigating agency is proceeding impartially and is not acting in a partisan manner. The Supreme Court had the occasion to examine the question in the aforesaid case of *Sampatlal* (supra) and said that unless there is some material on record for the court to be satisfied that the investigation is not being conducted properly, it should not order the transfer of it. We may state that the crime detection has been under the provisions of the Code of Criminal Procedure and generally, the SHO, of the police Station where the case has been registered should be allowed to continue and complete the investigation, but if in a

given case, a case is made out before the court that the investigation is not proceeding properly or is being influenced by out-side authority and even otherwise there is material that it is proceeding in partisan manner, the court has power to transfer the investigation from the local police to CBI, but in such a case the State should be given an opportunity to explain the course of investigation and satisfy that the allegations made that it was proceeding in a partisan manner were not prima facie correct. Mr. Goyal, learned counsel for the non-petitioner has brought to our notice few decisions whether the cognizance has been taken or not, whether there is any ground or not, the court can order the transfer of investigation from local police to CBI. He has referred to the case of Manoharlal v. Vijailal, 1986 RLW 127, wherein the learned Judge observed that--

'I have perused the record and also heard learned counsel for the parties. The petitioner has complained in his petition that the investigation done by the police was not proper and fair and prompt. I do not think it proper to make any comment regarding the investigation by the police in this case. A final report was submitted to the Magistrate on 31-3-83 but it was not accepted by the Magistrate and the Magistrate asked certain queries from the police and the queries were also replied by the police and according to the reply of the State the case is still pending before the Magistrate for accepting the final report or for taking cognizance. These days the incidents, of dowry deaths are painful. In order to induce confidence in the Public and in the interest of justice, I think it proper to allow the petition and direct the Central Bureau of Investigation to investigate the matter afresh.'

We may state that though the learned Judge refrained from making any comments regarding the investigation done by the police and without holding that the investigation was not on proper lines, ordered the transfer of the investigation to the CBI. With due respect to the learned single Judge emotions and surmises can hardly form the proper material to come to the conclusion and there must be specific allegations and material that the investigation is not proceeding on proper lines and that the Investigating Officer is acting in a partisan manner, ignoring the important facts and evidence and only then the court should order the transfer of investigation from the local police to the CBI. In the case of Earnest Beri v. State of

Rajasthan, 1987 (1) RLR page 259, the court was satisfied on perusal of papers that it does not appear to be proper that investigation in that case should be done by the local police. Thus, in that case on being satisfied that the police of the district was actively interested in the case, it was ordered that the investigation should be done by the CBI. In the case of Atibal Singh v. State of Rajasthan, 1987 (II) RLR page 611, the allegation was that the son of the petitioner was mercilessly murdered by the SHO Shri Umesh alongwith his brother-in-law Suresh Saxena and other accused, and then a fake incident was sought to be created by putting the dead body near the railway line. When the investigation was proceeding on the right lines the Crime Assistant of the railway shri G.S. Vyas tried to collect the real evidence but on account of pressure of the accused-police officials he requested for handing it over to the CID. No real investigation was made. There was material before the Court on the basis of which it was satisfied that the real evidence was not being collected to oblige the accused and the investigation was changed one after the other at least half a dozen times and the crime could not be detected, though the father of the deceased submitted foolproof grounds for involvement of the accused. The court ordered the transfer of the investigation to CBI.

4. After hearing learned counsel for the petitioner and Mr. J.P. Goyal for the non-petitioner. We have already said that because the investigation was transferred long back to CBI, and it is almost at the final stage, we will not interfere but we will frame the following guidelines:

(i) If an application for transfer of investigation from local police to CBI is given in this Court, notice must be given to the State, the investigation file must be called for perusal and it is not necessary to give any notice to the accused person because the object of investigation is to collect evidence.

(ii) Generally, the starting investigating agency i.e. the officer of the police where the FIR is lodged should be allowed to continue the investigation and on being satisfied on material on record that the investigating officer is not conducting the investigation on proper lines and is trying to save the real accused, this court should transfer the investigation from the local police to CBI.

(iii) The transfer of the investigation from local police to the CBI should not be made merely on asking.

(iv) In case the charge-sheet is filed and cognizance is taken by the Magistrate, then proper course for the Court will be to direct the concerned Magistrate, if necessary to proceed under Section 173(8), Cr.P.C. but in case the court is satisfied that there is prima facie proof against the person against whom neither charge sheet has been filed nor cognizance has been taken, the case is of serious nature, the court after giving notice to the aforesaid person may make the appropriate order, and any order in respect of further investigation shall be considered to be an order made under Section 173(8), Cr.P.C.

With the above observations, we hereby dismiss the special appeal.

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