

Sushila Devi Vs. State

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Court : Delhi

Decided On : Jun-01-2012

Judge : M.L. Mehta

Appeal No. : W.P.(CRL.)NO. 1096 OF 2011

Appellant : Sushila Devi

Respondent : State

Judgement :

M.L. MEHTA, J.

1. This is a petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for issuance of writ of Mandamus directing the CBI to conduct proper investigation in FIR No. 179/04 registered at P.S. Usman Pur.

2. The learned counsel for the petitioner has urged that the police have not conducted a free and fair investigation in the case and it is imperative in the interest of justice that the matter should be investigated by CBI. Reliance has been placed on **J. Prabhavathiamma vs. State of Kerala andOrs.** 2008 CrI.455.

3. On the contrary, the learned counsel for CBI has submitted that the charge sheet has already been filed in the matter and investigation of the case was transferred to DIU at the instance of the complainant and now there is no reason for the CBI investigation in the matter. It has been submitted that as the

complainant was not satisfied by the investigation conducted by the police and DIU, she approached the Magistrate who has taken cognizance of her complaint and issued summons to the accused persons under Section 302/34 IPC and thus now the complainant cannot ask for investigation by CBI or any other agency in the same matter. Reliance has been placed on **Sakiri Vasu vs. State of U.P. and Ors.** (2008) 2 SCC 409.

4. I have heard the rival submissions and perused the record.

5. The facts leading to the present writ petition in brief are that on 20.06.2004, the above mentioned FIR was registered under Section 337/ 34 IPC against one Joga Ram Sharma and Suresh Chand upon receiving information at about 6 p.m. that a person named Ramesh alias Omvir Singh had sustained injuries after falling down from a ladder while doing white wash at the house of Joga Ram Sharma and was admitted in Aruna Asif Ali Hospital. Later that night, Omvir Singh (herein after referred to as deceased) succumbed to his injuries and consequently the Section in the FIR was changed to 304-A IPC.

6. However, the wife of the deceased (present petitioner) filed a Writ Petition No. 685/05 in this Court praying for registration of FIR under Section 302/34 IPC against the accused persons alleging that the deceased painted the house of Joga Ram Sharma from 11.06.2004 to 19.06.2004 and when he went to the house of Joga Ram to collect his wages on 20.06.2004, the accused persons had mercilessly beaten up her husband, due to which he had died. It was submitted that when the deceased had not returned back to his house till 1.00 P.M. on 20.06.2004, his son Manoj went to Joga Ram's house to find him, but upon reaching there, he heard the shrieks of his father coming from a room and came to know that the accused persons were beating the deceased. It was submitted that Manoj raised an alarm for saving his father, but no one came to help him and he returned to his house and became unconscious due to fear and informed the petitioner about the incident on the next day. The said writ petition was dismissed vide order dated 21.10.2005, noting that a challan had already been filed in the case and hence the writ petition had become infructuous.

7. Not satisfied, the petitioner filed a Complaint Case no. 2525/06 against the accused persons under Section 302/34 IPC alleging that the accused persons had murdered the deceased, but the police had wrongly filed the FIR under Section 304–A, in conspiracy with the accused persons. On perusal of the allegations in the complaint and the statement of Cw-2 Manoj, the Id. M.M. summoned the accused persons and issued NBWs against them, vide order dated 05.03.2010. The petitioner again filed an application on 16.02.2011 for CBI investigation in the case before the Court of Ld.M.M. which was dismissed on 16.03.2011 and the case was put up for pre-charge evidence. Hence, the present petition.

8. It is a matter of record that in the instant case, cognizance has already been taken by the Id.M.M. under Section 302/34 IPC against the accused persons vide order dated 16.03.2011 as prayed by the accused. There can be no grievance on the part of the petitioner on this aspect. The summoning order has been passed by the Id. M.M. after taking into account the allegations made by the petitioner in the complaint and statement of Manoj (CW-2).

9. Although there is no bar in ordering further investigation in the case even after the stage of taking cognizance, as held by the Apex Court in **H.N. Rishbud vs. State** (AIR 1955 SC196), but it is done only if the invalidity of the investigation comes to the knowledge of the Court. In the present case, nothing was brought on record before the Magistrate to show the infirmity in the investigation carried out by the DIU which would warrant CBI investigation. On the same grounds which were urged before the Id. M.M., the petitioner has prayed for CBI investigation into the case, without pointing out any illegality in the investigation conducted by DIU.

10. Coming to the issue of ordering investigation by CBI, it would suffice to say that if the petitioner is not satisfied by the conduct of investigation by DIU, then it can always approach the Magistrate under Section 156 (3) Cr.P.C. Deliberating on the issue of further investigation, the Apex Court in **Sakiri Vasu (Supra)** observed as under:

“We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the

Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order/orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.”

11. It is observed that this remedy has been availed by the petitioner by filing a complaint with application before Magistrate, who instead of ordering investigation and registration of FIR has taken upon himself to conduct enquiry by taking cognizance of the offences under Sections 302/34 IPC. Still not satisfied, the petitioner has approached this Court under Article 226 of the Constitution of India. Although this Court has power to order for investigation to be done by CBI, but that power can be used only judiciously. Again, it would be relevant to note the findings in **Sakiri Vasu (supra)** on this aspect, wherein it was held that:

“31. No doubt the Magistrate cannot order investigation by the CBI vide **CBI v. State of Rajasthan and Anr.** 2001 CriLJ968, but this Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.”

33. In **Secretary, Minor Irrigation and Rural Engineering Services U.P. and Ors. v. Sahngoo Ram Arya and Anr.** : 2002 CriLJ2942 , this Court observed that although the High Court has power to order a CBI inquiry, that power should only be exercised if the High Court after considering the material on record comes to a conclusion that such material discloses prima facie a case calling for investigation by the CBI or by any other similar agency. A CBI inquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.”

12. In the case of **J. Prabhavathiamma (supra)**, CBI investigation was ordered by the Kerala High Court as in that case the police officials were the accused persons and from the material on record it was prima facie opined that the colleagues of the accused were trying to shield them instead of conducting a fair investigation. Needless to say, the facts of this case are clearly distinguishable from **J. Prabhavathiamma** as there is not an iota of evidence against the DIU officials

who have conducted the investigation which would merit CBI investigation. Hence the case law relied upon is of no help to the petitioner.

13. In the absence of any incriminating factor which would point out any deficiency in the investigation that has been carried out, I am of the view that this is not a fit case for ordering CBI investigation. However, in the interest of justice, it is ordered that both the cases viz the FIR 179/04, as also the complaint case 2525/06 under Section 302/34 IPC be tried together by one Court. The Ld. District Judge shall pass appropriate orders in this regards. The writ petition is disposed accordingly.

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