

(2021) 01 P&H CK 0316

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous Petition (M) No. 3144 Of 2018(O&M)

Balwiinder Singh @
Kukku

APPELLANT

Vs

State Of Punjab And
Others

RESPONDENT

Date of Decision: Jan. 15, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 â€” Section 482#Narcotic Drugs And Psychotroic Substantes Act, 1985 â€” Section 21, 25, 58, 61, 85#Arms Act, 1959 â€” Section 25, 54, 59#Indian Penal Code, 1860 â€” Section 211#Constitution Of India, 1950 â€” Article 21

Citation: (2021) 01 P&H CK 0316

Hon'ble Judges: Anil Kshetarpal, J

Bench: Single Bench

Advocate: C.S.Bakshi , Ankur Jain, Gaurav Garg Dhuriwala

Final Decision: Allowed

Judgement

Anil Kshetarpal, J

The petitioner has invoked the inherent jurisdiction of this Court, under Section 482 Cr.P.C, to transfer the investigation of a criminal case to the

Central Bureau of Investigation or to any other fair or impartial and independent investigating agency. The petitioner alleges that he is being

prosecuted by the State machinery, at the behest of his political opponents, who are governing the State. He alleges that he has been victimized and

haunted by involving him in a large number of criminal cases, after his political opponents have taken over the governance in the State.

Once the executive, at the highest level, fails to take an action, although, certain glaring facts have come on record, the Constitutional Court is left with

no other choice but to intervene and make attempt to redress the grievances. Fair investigation is a constitutional right of the accused/victim, fairness

being a facet of Article 21 of the Constitution of India. In Babu Bhai Jamuna Dass Patel vs. State of Gujarat 2010 (4) RCR (CrI) 311, the Supreme

Court held that not only fair trial but fair investigation is also a part of the constitutional rights guaranteed by the Constitution of India. The

Investigating Agency cannot be permitted to conduct the investigation in a tainted and biased manner. In State of Bihar vs. P.P.Sharma AIR 1991 SC

1260, the Supreme Court held that the investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal

liberty arbitrarily. In Navinchandra N Majithia vs. State of Meghalaya and others AIR 2000 SC 3275, held that the investigating agencies are

guardians of the liberty of the innocent citizens and therefore, a heavy responsibility devolves upon them that the innocent persons are not charged and

they do not suffer false implication.

Some facts are required to be noticed. The petitioner is being tried in FIR no.16, dated 04.08.2017, registered under Section 21, 25, 29 61, 85 of the

Narcotics Drugs and Psychotropic Substances Act, 1985 and Section 25, 54, 59 of the Arms Act, at Police Station SSOC, Amritsar. At present, the

case is pending in the court.

As per the case of the prosecution, a secret information was received by the members of Special Task Force, that the petitioner along-with certain

other are illegally peddling Heroin (contraband), after receiving it from a neighbouring country Pakistan. It is alleged that the petitioner -Balwinder

Singh @ Kukku was intercepted on 04.08.2017, when he was travelling in a car. During his personal search, in the presence of a Deputy

Superintendent of Police, 1 kg Heroin was recovered. On the disclosure statement of the petitioner, made during his interrogation, a raid was

conducted at a room built for tubewell, in the agricultural land of Major Singh. Bohar Singh & Major Singh, were apprehended. On being intensively

questioned, they are alleged to have confessed their connection with Pakistani smuggler Aarif and have disclosed that they have been receiving

consignments of Heroin (contraband), out of which three packets of 500 grams each, were sold to Balwinder Singh @ Kukku for a sum of Rs.3 lacs.

They are also alleged to have disclosed that Heroin has been kept concealed in the land of Bohar Singh, which is beyond the barbed wires, near

Batalion no.2, BSF Lakhasinghwala Tent Post Gate no. 205 at India-Pakistan Border. The petitioner, Major Singh & Bohar Singh were taken to the

aforesaid place, in the presence of another official of the BSF and from the agricultural land of Bohar Singh, who, with his own hand, dug the earth

and got recovered 4 kg 530 grams Heroin (contraband), packed in 8 packets, along-with one pistol 9 mm and 3 magazines 9 mm and 52 live rounds

with 9 mm. On conclusion of the investigation, the police report was prepared on 07.01.2018 and presented in the Court.

The petitioner as noticed above filed this petition. On 07.02.2018, notice was issued to the respondents and the Senior Superintendent of Police was

directed to file a reply on or before the next date of hearing. Thereafter, Additional Inspector General, Border Range, was added as a party

respondent. Since, the reply filed was found to be lacking in material information, therefore, Assistant Director General of Police was directed to file a

specific reply to the averments made in para 9, of the petition, which was, subsequently, filed. The Central Bureau of Investigation is, also, a party

respondent in this petition and the reply on its behalf has been filed.

After hearing the arguments at some length, the Director General of Police on 12.9.2019, was requested to examine the facts of the case in proper

prospective and thereafter, file his own affidavit. Pursuant thereto, Additional Director General of Police, In-charge of the Special Task Force, did file

his affidavit.

On 07.11.2019, after noticing that the reply affidavit, filed by the Director General of Police, Special Task Force, had left many questions unanswered,

Sh. Parmod Kumar, Director General of Police, posted as the Director Bureau of Investigation, Punjab, who has also worked with the Central Bureau

of Investigation, was directed to examine and analyze the police diaries, CCTV footage, document Annexure P-1, call details, tower locations of the

mobile phones of the petitioner as well as the concerned police officials and submit a report. The relevant part of order passed on 07.11.2019, is

extracted as under:-

“Keeping in view the aforesaid facts before deciding the petitions, it is considered appropriate to request Sh. Parmod Kumar, DGP, presently

posted as Director, Bureau of Investigation, Punjab, who has also remained with Central Bureau of Investigation for quite some time, to examine the

police diaries, CCTV footage and document Annexure P-1 and call details and tower locations of the petitioner and police officials in the context of

allegations made in the petitions and submit status report. Officer is requested to submit the report positively within four weeks.”

The report, as requested, had been submitted. The concluding part of the report of the Special Director General of Police, Punjab (hereinafter referred

to as the Special DGP), dated 07.12.2020, reads as under:-

“13. From the analysis of the evidence available in present proceedings, it is evident that Balwinder Singh @ Kukku was apprehended by the police

officials in civil clothes from Civil Hospital, Patti on 3.8.2017 and was taken to his village, where search of his house was conducted by the police. The

statements given by witnesses Chand Singh and Balraj Singh corroborate the version of Balwinder Singh @ Kukku that police had searched his house

on 3.8.2017, but nothing incriminating was recovered from his house. Even the statement of Harvinder Singh corroborates the fact. This witness

stated that when they returned from Civil Hospital, Patti, police was present outside the house of Balwinder Singh @ Kukku, but he was allowed to

enter the house by the police. The Call detail records and tower locations show the route taken by Balwinder Singh @ Kukku on 3.8.2017, when he

accompanied Jasbir Singh to Civil Hospital, Patti from his village Bhura Karimpura. The CCTV footage of Civil Hospital, Patti also corroborates the

version of Balwinder Singh @ Kukku that he was picked up from Civil Hospital, Patti. There is no evidence, except the oral statement of Harjinder

Sinigh @ Sukhjinder Singh (unsupported by any contemporaneous document in police record) to corroborate the version of police officials that the

petitioner was let off at the gate of Civil Hospital, Patti. Aforementioned Harjinder Singh @ Sukhjinder Singh could not produce any evidence in the

form of any Out Patient Card or prescription slip or any bill for purchase of medicine on the said date, which could corroborate his presence at Civil

Hospital, Patti on the relevant date and time. Except for the statements of police officials, which appear to be self serving, there is no other evidence

to corroborate the version of mistaken identity as claimed by the police officials. Further, even the coverage of CCTV cameras does not contain

anything to show that Balwinder Singh @ Kukku was let off once he was apprehended from Civil Hospital, Patti on 3.8.2017, as claimed by police

officials. Another fact, which is apparent from the coverage of CCTV cameras, is that a car, (apparently Swift), is seen reversing from the parking

side and moves out towards main gate of the Hospital. In fact, three officials are seen moving towards the parking area and out of three, only two

officials, ASI Tejinder Singh and ASI Surjit Singh are seen emerging from parking side and walking towards the main gate after the abovesaid car is

taken away. These facts corroborate the stance of the petitioner that he was apprehended at Civil Hospital, Patti, since there is a distinct possibility

that this Swift car actually belonged to Balwinder Singh @ Kukku (PB-18M 0036) which was later shown as having been used by him, when he was

purportedly intercepted by the police team on 4.8.2017 leading to the registration of FIR No.16 dated 4.8.2016, Police Station SSOC, Amritsar. These

facts are further corroborated by the evidence in form of representations made by Gurdev Singh on 3.8.2017 and 4.8.2017 through email and Speed

Post respectively mentioning the incident at Civil Hospital, Patti from where the petitioner was apprehended on 3.8.2017 by the STF officials.

The call detail records of Balwinder Singh @ Kukku show that a large number of calls were exchanged by him when his phone remained operational

on or before 3.8.2017. However, the same became abruptly silent after 18:29:53 hours on 3.8.2017. Had Balwinder Singh @ Kukku been arrested on

4.8.2017, as alleged in FIR No. 16/2017, the mobile phone would obviously have logged in more calls on 3.8.2017 (evening) and 4.8.2017 also. As per

the statement of Harjinder Singh @ Sukhjinder Singh, the police had let off Balwinder Singh @ Kukku outside City Hospital, Patti, itself, but the

analysis of CDR and tower locations of the mobile phone of Balwinder Singh @ Kukku at 18:29:53 hours on 3.8.2017 shows his location at Tarn

Taran which supports the version of Balwinder Singh @ Kukku that he was taken to STF office Tarn Taran and kept there during the night

intervening 3 & 4.8.2017. In view of these pieces of evidence, and the expert opinion regarding "show of similarities" between the standard

signatures of Inspector Sukhwinder Singh and the signature appended on the document Annexure P-1 corroborate the version of Balwinder Singh @

Kukku and cast a serious doubt about the initial version recorded in FIR no.16/2017.

Keeping in view the aforesaid report, the case was taken up on 11.12.2020 and while adjourning the case to 17.12.2020, the office was directed to

supply a copy of the report to the counsel representing the petitioner. After having heard learned counsel for the parties at some length, it was

considered appropriate to request the learned Home Secretary, Punjab, to examine the report and attend the hearing of the case through video

conferencing on the date fixed.

On 21.12.2020, Additional Chief Secretary, Department of Home Affairs and Justice, Govt. of Punjab, attended the hearing and assured the Court

that he will bring this fact to the notice of the Minister Incharge and take an appropriate action, in accordance with law. The officer was apprised of

the seriousness of the matter and was requested to ensure that the competent authority passes appropriate orders before the next date of hearing.

Thereafter, the case was taken up on 05.01.2021. In compliance with the oral observations, two affidavits, one by Assistant Inspector General of

Police and second by Secretary Home, Department of Home Affairs and Justice, have been filed. A copy of the file noting, of the Department of

Home Affairs & Justice, has, also, been submitted in a sealed cover.

It may be noted here that in both the affidavits, the State of Punjab has made no attempt to draw the attention of the Court to any error in the report

submitted by Special DGP except that he has failed to inquire into the source of 1 kg heroin, which is alleged to have been wrongly planted/shown to

have been recovered from the petitioner.

The executive authority, at the highest level, had passed an order directing that disciplinary proceedings be initiated against the erring police officials.

In other words, it is safe to conclude that the report submitted by the Special Director General of Police, had been accepted.

Now, in these circumstances, the question which arises is what should be the next course of action. On the one hand, learned counsel, for the

petitioner, has submitted that the entire case be handed over to the Central Bureau of Investigation, for further investigation whereas per contra,

learned Senior Deputy Advocate General, Punjab, has submitted that since the remedial steps are being taken, therefore, the petition should be

disposed of as such, without passing any further orders.

On perusal of the noting of the Department of Home Affairs & Justice, it is apparent that the executive authority, at the highest level, ,was apprised of

the fact that the police officials are alleged to have committed a crime, in terms of Section 58 of Narcotic Drugs and Psychotropic Substances Act,

1985, which provides punishment for vexatious entry, search, seizure or arrest. It reads as under:-

58. Punishment for vexatious entry, search, seizure or arrest. (1) Any person empowered under Section 42 or Section 43 or Section 44 who

(A) without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place;

(B) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic

substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized under Section 42,

Section 43 or Section 44; or

(C) vexatiously and unnecessarily detains, searches or arrests any person, shall be punishable with imprisonment for a term which may extend to six

months or with fine which may extend to one thousand rupees, or with both.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search being made under this Act shall be punishable

with imprisonment for a term which may extend to two years or with fine or with both.

Further, reference can also be made to Section 211 of the IPC which is extracted as under:-

211. False charge of offence made with intent to injure. "Whoever, with intent to cause injury to any person, institutes or causes to be instituted

any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful

ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to

two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment

for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to

seven years, and shall also be liable to fine.

However, the competent authority has only ordered initiation of disciplinary proceedings against the erring police official, without giving any relief to

the petitioner. It is further reported that erring police officials have been placed under suspension pending disciplinary proceedings. Keeping in view,

the totality of facts, which have come on record and more particularly, the report submitted by Special Director General of Police, this Court is of the

view that this matter cannot be closed, at this stage, without passing effective orders.

First of all, the petitioner, who is facing criminal prosecution/trial under Narcotic Drugs and Psychotropic Substances Act, 1985, which provides for a

very severe punishment, needs to be granted an appropriate relief. Further, the erring police officials are required to be prosecuted, in accordance with

the law.

Keeping in view the aforesaid facts, the petition is allowed. FIR no.16, dated 04.08.2017, registered under Section 21, 25, 29 61, 85 of the Narcotics

Drugs and Psychotropic Substances Act, 1985 and Section 25, 54, 59 of the Arms Act, is directed to be transferred to the Central Bureau of

Investigation "respondent no.6. It is expected that the Central Bureau of Investigation would carry out further investigation in these circumstances

and thereafter, take appropriate steps. The Punjab Police is directed to hand over the complete file alongwith CCTV footage and original document

Annexure P-1 to the Central Bureau of Investigation forthwith against receipt. The Central Bureau of Investigation is, also, directed to register an FIR

against the erring officials, noticed in the report submitted by Special DGP, Punjab. It is expected that the Central Bureau of Investigation would carry

out free, fair and impartial investigation, in the matter.

In the meantime, till the Central Bureau of Investigation completes its investigation in FIR no.16, dated 04.08.2017, learned trial court is directed to

keep on hold further proceedings in the case qua the petitioner.

With these observations, the petition is allowed.