

(2006) 05 P&H CK 0236

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No's. 34638-39, 47540, 50118-20, 47979, 69661 and etc.
of 2005

Court on its own
motion and etc.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 18, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 173(8)

Citation: (2006) CriLJ 3472

Hon'ble Judges: Amar Dutt, J; A.N. Jindal, J

Bench: Division Bench

Advocate: Ranjan Gupta, S.C. for C.B.I. in Cri. M. Nos. 69441 to 69664 of 2005; R.S. Ghai with Vinod Ghai in Cri. M. Nos. 34638-39 and 47979/05, D.S. Pheruman in Cri. M. Nos. 47540, 50118- 20, 70941-43/05, Surjit Singh with Ashwani Bakshi in Cri. M. No. 3888/05, for the Appellant; B.S. Rana, D.A.G., for the Respondent

Judgement

Amar Dutt, J.

Criminal Mics Nos. 26994-M of 2002, 7931-M of 2003 and 24874-M of 2003 were disposed of by this Court on November, 10, 2003 with the following directions :-

a) That investigation of all the FIRs Numbers 312 of 2002 of Police Station, Sadar, Thanesar : 685 of 2002 of Police Station, Sirsa and 395 of 2003 of Police Station, City, Thanesar, is hereby ordered to be transferred to the C.B.I.;

b) The C.B.I. would continue to conduct investigation in Case No. RC-5(S)/2002/SIU-XV/CHG, dated 12-12-2002, registered by it and complete its investigation as expeditiously as possible and not later than the time granted by the Court hereinafter.

c) The C.B.I. shall file its reports in all the above FIRs including supplementary challans wherever necessary before the Courts of competent jurisdiction within a

period of six months from the date of pronouncement of this order.

d) The Courts, where the charge-sheets have already been filed and by interim order recording of evidence was stayed, shall not proceed with recording of evidence till the filing of reports by the C.B.I. as afore- indicated.

e) The Superintendents of Police of Districts Kurukshetra and Sirsa, including the investigating officers of Crime Branch, would hand over complete records to (sic) and fully co-operate in expeditious conclusion of investigation, by the C.B.I.

f) The Court is conscious of the fact that the investigating officer of C.B.I. might be burdened as stated by their counsel because of pendency of number of cases with them. But, the present case is of the kind which requires immediate attention of all concerned from all quarters. The allegations made are of very serious kind and relate to large number of Sadhvis who have allegedly left the Dera or are still working as part of Dera.

g) Both incidents of murder are daring examples of their kind and allegations have been made that they are at the behest of the Dera. It is equally important in the interest of the accused persons as well as the Dera that the allegations and insinuations, if not true, must be put to an end by a specialist investigating agency i.e. C.B.I., at the earliest. In these circumstances it is essential for the Court to issue a direction to the C.B.I. for a time bound investigation, which must be taken up with utmost priority.

2. On 18-5-2004, the Central Bureau of Investigation (hereinafter referred to as "the C.B.I."), which was investigating into the case bearing No. RC- 5(S)/2002/SCB/CHG, dated 12-12-2002 moved Criminal Misc. Application No. 23967 of 2004 in Criminal Misc. No. 26994-M of 2002 for extension of a period of six month" to complete the investigation in case RC Nos. 8, 9 and 10(S)/2003/SCB/CHG. The reason for the extension was that against the order dated 10-11-2003 passed by this Court in Criminal Misc. Nos. 26994-M of 2002, 7931-M of 2003 and 24874-M of 2003, SLP (Crl.) No. 144 of 2004 had been filed in the Supreme Court and the operation of order dated 10- 11-2003 had been stayed. Since none of the counsel appearing for the parties was certain about the status of SLP (Crl.) No. 144 of 2004, the Court had passed the following order on 28-5-2004 :-

Both the learned counsel are not sure about the correct state of affairs emerging out of certain orders passed by their Lordships of the Supreme Court. Accordingly, we do not want to pass any order at this state.

Both the learned counsel would place on record a copy of the order, if any, passed by the Hon"ble Supreme Court for our perusal.

3. The SLP was ultimately decided on 29-10-2004 and thereafter on the applications moved by the C.B.I. for extension of time to complete the investigation, this Court had on March 1, 2005 passed the following order :-

On Mr. Rajan Gupta's request, we give a period of six months from today to complete the investigation. Applications allowed in the above terms.

Thereafter, the C.B.I. had moved Criminal Misc. Application Nos. 47619 of 2005 in Criminal Misc. No. 24874-M of 2003, 47647 of 2005 in Criminal Misc. No. 7931-M of 2003 and 47654 of 2005 in Criminal Misc. No. 26994-M of 2002 seeking extension of time for completion of investigations in FIR Nos. RC- 5(S)/2002/SIV-XV/Chandigarh registered on 12-12-2002, RC-8(S)/2003/SCB/CHG and RC-10(S)/2003/SCB/CHG, which were disposed of by this Court on 16-9-2005 with the following observations :-

. Taking into consideration that highly committed professionals are spearheading the investigation, one would normally have expected the same to be finalised by now, however, without dwelling any further on this aspect, we hope that the Central Bureau of Investigation would endeavour to complete the same within three months.

It is possible that the investigation into the matter may only be delayed due to inadequate staff. In view of this, the Director, Central Bureau of Investigation, is requested to make available the necessary implement of manpower so as to ensure that the investigation is completed within the stipulated time frame without any delay.

from which it can be inferred that the absolute terms in which the directions were given by this Court in order dated 10-11-2003 in relation to filing of the reports within a period of six months were modified and this Court took upon itself the task of monitoring the progress of the investigation. The C.B.I. has, probably as a matter of abundant caution, been moving Criminal Misc. Application No. 69661 of 2005 in Criminal Misc. No. 26994-M of 2002, 69662 of 2005 in Criminal Misc. No. 7931-M of 2003 and 69663 of 2005 in Criminal Misc. No. 24874-M of 2003 from time to time for extension of the period given to it for completion of the investigation, which were being adjourned along with Criminal Misc. No. 34638 of 2005 for issuance of a direction to the C.B.I. to submit report u/s 173, Cr.P.C., Criminal Misc. Nos. 47540 and 50120 of 2005 with a prayer not to grant extension of more time for investigation to the C.B.I. in FIR No. 312, dated 10-7-2002, Police Station Sadar, Thanesar, Criminal Misc. No. 47979 of 2005 for placing on record the affidavit of Miss Sheela Punia d/o Raghbir Singh, resident of Ambala now Sadhvi in Dera Sacha Sauda, Sirsa, Criminal Misc. No. 70941 of 2005 for seeking directions to the C.B.I. to submit the investigation report u/s 173(8), Cr.P.C. without any further delay filed by Inder Sain son of Tek Chand, Manager, Dera Sacha Sauda, Sirsa, Shabdal Singh son of Ajaib Singh, Krishan Lal alias Kishan Lal son of Shri Bhagwan Dass, resident of Colony Dera Sacha Sauda, Begu Road, Sirsa, Miss Sheela Punia d/o Raghbir Singh, r/o Ambala now Sadhvi in Dera Sacha Sauda and Inder Sain son of Shri Tek Chand, Manager, Dera Sacha Sauda, Sirsa respectively-the interveners in Criminal Misc. No. 26994-M of 2002 and Criminal Misc. No. 3888 of 2006 in Criminal Misc. No. 7931-M of 2003 has been filed by the applicant-petitioner Anshul Chhatarpati for taking

action against the interference by the management of Dera Sacha Sauda, Sirsa (hereinafter referred to as "Dera") in the administration of justice and for necessary direction to the respondent-State to stop such interference and to highlight the difficulty which is being faced by the Sevadars/Worshippers/residents of the Dera on account of delay in the completion of investigation by the C.B.I. Through the present order, we propose to dispose of all the aforesaid applications.

4. We have heard Mr. Rajan Gupta, learned Standing Counsel for the C.B.I. for the applicants in Criminal Misc. Nos. 69661 to 69664 of 2005, Mr. B. S. Rana, learned Senior Deputy Advocate General, Haryana, Mr. R. S. Ghai, learned Senior Counsel assisted by Mr. Vinod Ghai, learned counsel for the applicants in Criminal Misc. Nos. 34638-39 and 47979 of 2005, Mr. D. S. Pheruman, learned counsel for the applicants in Criminal Misc. Nos. 47540 and 50118-20 of 2005 and 70941-43 of 2005 and Mr. Sarjit Singh, learned Senior Counsel assisted by Mr. Ashwani Bakshi, learned counsel for the applicant in Criminal Misc. No. 3888 of 2006.

5. It is not disputed before us by any one that the principle laid down in AIR 1945 18 (Privy Council) which reads as under :-

Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Ss. 154 and 156, to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under S. 561A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P.C., to give directions in the nature of habeas corpus. In the case of a cognizable offence, the Court's functions begin when a charge is preferred before it and not until then and, therefore, the High Court can interfere under S. 561A only when a charge has been preferred and not before. As the police have under Ss. 154 and 156, a statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds.

No doubt if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed the police would have no authority to undertake an investigation and if they do so the High Court may interfere under S. 561A.

delineating the right of the Police to investigate and power of the High Court to control the same still holds the field.

6. In [S.N. Sharma Vs. Bipen Kumar Tiwari and Others](#), the legal position has been commented upon as under :-

6. The High Court of Lahore in AIR 1949 Lahore 204 and the High Court of Patna in [Pancham Singh Vs. The State](#), interpreted Section 159 to the same effect as held by us above. The reasons given were different. Both the Courts based their decisions primarily on the view expressed by the Privy Council in AIR 1945 18 (Privy Council). That case, however, was not quite to the point that has come up for decision before us. The Privy Council was concerned with the question whether the High Court had power u/s 561A of the Code of Criminal Procedure to quash proceedings being taken by the police in pursuance of first information reports made to the police. However, the Privy Council made some remarks which have been relied upon by the High Courts and are to the following effect :-

In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code, to give directions in the nature of habeas corpus."

This interpretation to some extent, supports the view that the scheme of the Criminal Procedure Code is that the power of the police to investigate a cognizable offence is not to be interfered with by the judiciary. Their Lordships of the Privy Council were, of course, concerned only with the powers of the High Court u/s 561A, Cr.P.C. while we have to interpret Section 159 of the Code which defines the power of a Magistrate which he can exercise on receiving a report from the police of the cognizable offence u/s 157 of the Code. In our opinion, Section 159 was really intended to give a limited power to the Magistrate to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence.

7. Counsel appearing on behalf of the appellant urged that such an interpretation is likely to be very prejudicial particularly to Officers of the judiciary who have to deal with cases brought up by the police and frequently give decisions which the police dislike. In such cases, the police may engineer a false report of a cognizable offence against the Judicial Officer and may then harass him by carrying on a prolonged

investigation of the offence made out by the report. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code.

7. This Court had, vide orders dated 1-3-2005 and 16-9-2005, modified the direction contained in the initial order passed by it on 10-11-2003 requiring the C.B.I. to submit final Reports within six months and modified it in such a manner which brought the direction of this Court in conformity with the view propounded in *Emperor v. Khawaja Nazir Ahmad* (1945 (46) Cri LJ 413) and [S.N. Sharma Vs. Bipen Kumar Tiwari and Others](#), inasmuch as the time limit specified for submitting final Reports had been removed though the Court impliedly had decided to monitor the progress of the investigation, so as to ensure that no undue hardship is caused to any one. After 16-9-2005, the C.B.I. had submitted a progress report on one occasion i.e. on 20-1-2006 in a sealed cover and the same has been perused by us. We had also asked for the ziminis to satisfy ourselves that the investigation is not being delayed unnecessarily. After perusing the same, it becomes evident that though the Investigating Agency has made efforts to resolve the mystery about the killing of Ram Chander Chhatarpati and the allegations contained in the anonymous letter on the basis of which directions were issued in Criminal Misc. No. 26994-M of 2002 yet much ground still remains to be covered. From the applications, it is evident that the slow progress of the investigation may be attributable to :-

- i) the shortage of man power, which the premier agency is able to place at the disposal of the Investigating Officer; and
- ii) the fact that the agency has to work in a hostile atmosphere as the followers of the Dera consider the investigation to be an unwarranted intrusion into the privacy of the religious institution.

paraas a consequence whereof, ardent followers have at times resorted to staging of protest marches all over the States of Punjab, Haryana and Union Territory, Chandigarh. It is this hostility and non-cooperation to which the Investigating Agency attributes the delay in the completion of the investigation. While show of indignation by the followers of a religious sect to possible insinuations against their leader are not unexpected, we are dismayed by the fact that the functioning of the Investigative machinery of the C.B.I. is hampered on account of such protests. The powers that be in the Agency, it is hoped, would be able to sort out the problems

satisfactorily at their own level without embarrassing this Court with any further requests. It is also hoped that Responsible Persons of the Dera would make concerted efforts to ensure that the process of law which includes investigation into cognizable offences is not stalled by any act of their followers. It is only through such efforts by both the parties that the cloud that has been cast over the functioning of the Dera can be removed and we hope and trust that no effort would be spared by any one involved in the investigation to remove all hurdles that may be created by undesirable elements in furthering the process of law and ensuring that justice is not denied to any one.

8. Needless to say that if any one tries to stall the process no effort would be spared by the Governments be it the Centre or the State, to ensure that the stumbling blocks that are raised in the process of investigation are removed forthwith.

9. Having so penned down this pious desire of Court, we deem it appropriate to monitor more often than we have hitherto been doing the progress of the investigation even of the Premier Agency, which will submit a monthly report regarding the investigation.

10. Adjourned to 3-7-2006 on which date the C.B.I. will submit progress report in a sealed cover.

11. The progress report submitted by the C.B.I. on 20-1-2006 be sealed and handed back to the C.B.I. against receipt.

12. Let a copy of this order be handed over to Mr. Rajan Gupta, learned Standing Counsel for the C.B.I. for its intimation to and follow up action by the authorities concerned.