

**(2013) 07 AHC CK 0221****Allahabad High Court****Case No:** Criminal Misc. Writ Petition No. 16773 of 2012

Jeet Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** July 12, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 14
- Criminal Law (Amendment) Act, 1932 - Section 7
- Criminal Procedure Code, 1973 (CrPC) - Section 173(2), 173(8), 82, 83
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 504

**Citation:** (2013) 3 ACR 2424 : (2013) 7 ADJ 269 : (2013) 83 ALLCC 15**Hon'ble Judges:** Ravindra Singh, J; Anil Kumar Agarwal, J**Bench:** Division Bench**Advocate:** G.S. Chaturvedi and Prashant Vyas, for the Appellant; Manish Tiwary, Sikandar B. Kochhar, V.P. Srivastava, Amit Kumar Srivastava, Lav Srivastava and Ashwani Kr. Awasthi, for the Respondent**Final Decision:** Allowed**Judgement**

1. Heard Sri G.S. Chaturvedi, Senior Advocate assisted by Sri Prashant Vyas, learned counsel for the petitioner, learned A.G.A. for the State of U.P., Sri Manish Tiwary and Sri Sikandar B. Kochhar, learned counsel for the Respondent No. 6, Sri V.P. Srivastava, Senior Advocate assisted by Sri Amit Kumar Srivastava, Sri Lav Srivastava appearing on behalf of Respondent No. 7.

This writ petition has been filed by the petitioners Jeet Singh with a prayer to:

1. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 30.10.2012 bearing No. 28 CID/6-Pu-11-2012-624 M/2012 passed by the Respondent No. 2 Vijay Kumar Singh, Deputy Secretary, U.P. Government Lucknow in Case Crime No. 601 of 2012, State v. Sanjeev Rai and others, under Sections 147,

148, 149, 302, 504, 506 IPC and Section 7 of Criminal Law Amendment Act, Police Station Cantt, district Varanasi.

2. Issue a writ, order or direction in the nature of mandamus directing the civil police to arrest the respondent No. 6 Pankaj Singh and produce him before the competent Court in Case Crime No. 601 of 2012, State v. Sanjeev Rai and others, under Sections 147, 148, 149, 302, 504, 506 IPC and Section 7 of Criminal Law Amendment Act, Police Station Cantt, District Varanasi.

3. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

This writ petition has been moved by the petitioner Jeet Singh who is the first informant of Case Crime No. 601 of 2012 under Sections 147, 148, 149, 302, 504, 506 IPC and Section 7 Criminal Law Amendment Act, P.S. Cantt Varanasi, District Varanasi, he has lodged the FIR of above mentioned case on 22.9.2012 at 3.40 p.m. in respect of the incident allegedly occurred on 22.9.2012 at about 2.15 p.m., in the FIR Sanjeev Rai, Rohit Rai, Pankaj Singh have been named as accused and two unknown persons were also shown as accused. It is briefly alleged that on account of a land dispute the deceased Jujhar Singh Yadav @ Kallu has been shot dead. Its investigation has been entrusted to the police of P.S. Cantt, District Varanasi. Sri Anirudh Kumar Singh, SHO, P.S. Cantt. Varanasi, District Varanasi submitted the charge-sheet dated 1.11.2012 against Sanjeev Rai, Rohit Rai and Monu @ Anupam Rai in the Court of C.J.M. Varanasi but the investigation was pending against Pankaj Singh, Rinku @ Vinod Pandey and one unknown miscreant. On the charge-sheet dated 1.11.2012 learned C.J.M. Varanasi has taken the cognizance, registered the case, summoned the accused persons from district jail, Varanasi and for preparing the copies of the documents of the prosecution the order has been passed on 5.11.2012 in Criminal case No. 18724 of 2012. In the present writ petition the order dated 30.10.2012 bearing No. 28 CID/6-Pu-11-2012-624 M/2012 passed by the respondent No. 2 Vijay Kumar Singh, Deputy Secretary, Government of U.P., Lucknow in Case Crime No. 601 of 2012, State v. Sanjeev Rai and others, under Sections 147, 148, 149, 302, 504, 506 IPC and Section 7 of Criminal Law Amendment Act, P.S. Cantt, District Varanasi has been challenged. On this order the investigation of the above mentioned case has been transferred to C.B.C.I.D. with immediate effect.

2. It is submitted by learned counsel for the petitioner that in the present case the investigation has been completed against the accused Sanjeev Rai, Rohit Rai and Monu @ Anupam Rai and charge-sheet dated 1.11.2012 has been submitted in the Court of learned C.J.M. Varanasi who has taken the cognizance on 5.11.2012. The investigation was pending only against Pankaj Singh, Rinku @ Vinod Pandey and one unknown miscreant. The investigation of above mentioned Case Crime No. 601 of 2012, P.S. Cantt, District Varanasi may not be transferred as a whole to the other investigating agency. But according to the impugned order investigation as a whole

of Case Crime No. 601 of 2012 has been transferred to C.B.C.I.D. of the State of U.P. whereas in respect of the accused Sanjeev Rai, Rohit Rai and Monu @ Anupam Rai has been completed and cognizance has been taken by learned C.J.M. Varanasi. After submitting the charge-sheet the order of further investigation may be passed, if some other material comes forward which requires the investigation, the further investigation may be done.

3. It is submitted by counsel for the petitioner that Fax Message has been communicated to Additional Director of Police C.B.C.I.D., U.P. Lucknow on 31.10.2012 at 9.33 p.m. through Fax, the copy of the order has been faxed on 31.10.2012, the same was not communicated to the I.O. before filing the charge-sheet in the Court concerned on 1.11.2012. Even this fact has not been disclosed by learned Public Prosecutor at the time of taking cognizance by learned C.J.M. on 5.11.2012.

4. In the present case, charge-sheet has been submitted, thereafter the order for transferring the investigation from civil police to C.B.C.I.D. has been passed by the State Government. The impugned dated 30.10.2012 is not reasoned order, even no proper reason has been shown to transfer the investigation to C.B.C.I.D. for the purpose of ensuring the fair investigation. The impugned order itself reveals that it has been passed on the application dated 24.9.2012 submitted by Sri Pankaj Kumar Singh, Advocate, respondent No. 6. Sri Pankaj Kumar Singh Advocate is an accused in the present case. No authority, judicial, political or administrative can act on pure whims and fancy and there is nothing like absolute discretion in our democratic political system. In the present case, the State Government passed the impugned order by exercising absolute discretion which is not permissible under the law.

5. The Chief Secretary of the U.P. Government has already circulated guidelines vide letter dated 5.9.1995 in which four conditions have been mentioned for transferring the investigation from local police to C.B.C.I.D. In the present case, none of the four conditions is applicable.

6. It is submitted by learned counsel for the petitioner that impugned order itself is speaking that it has been passed on the application moved by the accused Pankaj Kumar Singh who is accused in the present case. The investigation of any criminal case may not be done at the choice of the accused. In the present case the investigation has been transferred to C.B.C.I.D. on the application moved by the accused Pankaj Kumar Singh, Advocate dated 24.9.2012. In the application dated 24.9.2012 the only allegation is made against the police of P.S. Cantt., Varanasi that it was in collusion with the first informant and the accused Pankaj Kumar Singh was not having any confidence upon the police of P.S. Cantt of District Varanasi. No specific allegation has been made against the the I.O. of this case. It appears that the impugned order has been passed in a routine manner without applying the judicial mind and without ascertaining the stage of the investigation and under some political pressure. The impugned order is illegal, the same may be set aside.

7. In reply of the above contention, it is submitted by Sri Manish Tiwary and Sri Sikandar B. Kochhar appearing on behalf of respondent No. 6 Pankaj Kumar Singh that the impugned order has been passed on 30.10.2012, on that date the investigation was pending but in hurry the charge-sheet has been submitted on 1.11.2012. It also shows that the I.O. was not doing the fair investigation. To have a fair investigation of any alleged charge is fundamental right of a person. If the State Government is satisfied even on the basis of application given by the accused for ensuring a fair investigation, the investigation requires its transfer to some other investigating agency, the State Government may pass such order. In the present case also, the State Government has passed the order of transfer of investigation on the application moved by respondent No. 6 which has been made the accused, even according to the FIR, no specific allegation of committing the alleged offence has been made against the respondent No. 6, respondent No. 6 is a practising lawyer, at the time of alleged incident, he was present in the Court, when the I.O. came to know that respondent No. 6 was present in the Court at the time of alleged incident, the allegation of hatching the conspiracy has been made against respondent No. 6. The deceased was a criminal, he was killed by his enemies but the respondent No. 6 has been falsely implicated. The Hon'ble Supreme Court of India has transferred the investigation from one investigating agency to another investigating agency on the appeal filed by Smt Azija Begum, the matter of accused persons as reported in case of [Azija Begum Vs. State of Maharashtra and Another](#), by holding that every citizen of this country has a right to get his or her complaint properly investigated. The legal frame work of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic set up which must be taken care of by the Courts.

8. It is further submitted by learned counsel for respondent Nos. 6 and 7 that the investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government, the power of police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary. The State Government is also under obligation to ensure the fair investigation. For ensuring the fair investigation the State Government has passed the impugned order transferring the investigation to other investigating agency, both the investigation agencies are working under the State Government. The State Government may not be precluded from directing further investigation in the case in which one Investigating Officer has submitted a police report u/s 173(2) Cr.P.C. against some accused persons and no against all accused persons.

9. The State Government has passed the impugned order, which has been communicated by Deputy Secretary to Additional Director of Police C.B.C.I.D., U.P. Lucknow through Faxon 31.10.2012. The impugned order is not suffering from any illegality or irregularity, the present petition is devoid of the merits, the same may be dismissed.

10. After perusing the record and considering the submission made by counsel for the petitioner and learned A.G.A. and counsel appearing on behalf of respondent No. 6 and 7, it appears that in the present case, FIR in case crime No. 601 of 2012 under Sections 147, 148, 149, 302, 504, 506 I.P.C. and 7 C.L.A., Police Station Cantt. Varanasi has been registered on 22.9.2012 at 3.40 p.m., it has been lodged by petitioner Jeet Singh Yadav against the accused Sanjiv Rai, Rohit Rai, Pankaj Singh and two other unknown miscreants, its investigation was entrusted to the local police who submitted the police report u/s 173(2) Cr.P.C. (Charge-sheet dated 1.11.2012) against accused Sanjeev Rai, Rohit Rai, Monu alias Anupam Rai. The charge against accused persons is that on 22.9.2012 after doing pairvi of the case, the deceased Jujhar Singh Yadav @ Kallu, Dev Raj Pasi, Manish Dubey alias Dablu and the petitioner Jeet Singh Yadav were returning from Kutchery to their residence, they were riding on two motor cycles in which one was driven by Dev Raj Rai on which the deceased Jujhar Singh Yadav @ Kallu was pillion rider, when they reached in the Cantt. Area in front of the Bungalow No. 10-A, the accused persons namely Sanjeev Rai, Rohit Rai, Pankaj Singh and two unknown miscreants came there by riding on two motor cycles, they hurled abuses and at the exhortation of Sanjeev Rai, Rohit Rai, Pankaj Singh with their two unknown associates discharged the shots indiscriminately and thereafter they fled away towards Phulbaria by brandishing fire arms. Due to their firing, the panic was created, any how the deceased was taken to the hospital in a tempo where he was declared dead. During investigation the evidence of hatching the conspiracy has also been collected by the I.O. The persons who have charge-sheeted have been arrested and they have been sent to the jail but the respondent No. 6 Pankaj Singh did not surrender before the competent Court. Even after issuing the NBW and initiating the proceedings under Sections 82 and 83 Cr.P.C. The respondent No. 6 moved an application dated 24.9.2012 before the State Government on which the investigation of the above mentioned case has been transferred to the CB CID with immediate effect, its communication was made to Additional Director of Police C.B.C.I.D. U.P. Lucknow through a FAX dated 31.10.2012. According to the FAX message it was communicated on 31.10.2012 at 9.33 p.m. to the Additional Director of Police, CBCID, Lucknow. There is no record to show that its information was given to S.S.P. Varanasi or its Investigating Officer on 31.10.2012. The Investigating Officer after completing the investigation submitted the police report dated 1.11.2012 in the Court concerned on which the learned C.J.M. Varanasi has taken the cognizance on 5.11.2012, even at the time of taking the cognizance it was not brought to the notice of the Court that in the present case on 30.10.2012 the investigation has been transferred to C.B.C.I.D. It is a case in which

the order u/s 173(8) Cr.P.C. has not been passed. This case is having no issue of further investigation. It is a case in which issue of transferring the investigation from Civil Police to C.B.C.I.D. is involved. The impugned order dated 30.10.2012 shows that it is a case in which the investigation has been transferred from Civil Police to C.B.C.I.D. on the application given by the accused Pankaj Kumar Singh. No reason of transferring the investigation from Civil Police to C.B.C.I.D. has been shown therein whereas the State Government has issued a circular mentioning therein the grounds for transferring the investigation from Civil Police to C.B.C.I.D. Any of the grounds mentioned in the circular dated 15.9.1995 is not applicable in the present case. The hidden object of transferring the investigation to C.B.C.I.D. is to stall the action by the local police or to make the arrest of the offender. We agreed that State is under obligation to ensure the fair investigation but without any proper reason the investigation of the present case has been transferred from Civil Police to C.B.C.I.D., which indicates that impugned order has been passed with intention to ensure the fair investigation. The impugned order has been passed in an arbitrary manner. It is also well-settled position that any investigation may not be done at the choice of the accused. In such circumstances, the order passed by the State Government transferring the investigation from Civil Police to C.B.C.I.D. which has been communicated through the letter dated 30.10.2012 sent by Vijay Kumar Singh, Up Sachiv, U.P. Shasan is illegal, the same is hereby set aside. In case the relevant documents are in the hands of C.B.C.I.D., the same shall be returned to the Civil Police for completing the investigation at the earliest.

Accordingly this writ petition is allowed.