

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.6951 OF 2018

AMAR NATH CHAUBEY ...PETITIONER (S)
VERSUS
UNION OF INDIA AND OTHERS ...RESPONDENT(S)

ORDER

One Shri Ram Bihari Chaubey, the father of the petitioner, was shot dead at his residence in Village Shrikanthpur, Chaubepur, Varanasi in the State of Uttar Pradesh, on 04.12.2015 at around 7.15 AM. An F.I.R. No. 378/2015 under Sections 302, 147, 148 and 149, I.P.C. was registered the same day at Chobepur Police Station at 11.15 AM. Four unknown assailants were stated to have come on a motor cycle. Two of them entered the residence and shot the deceased, while the two others waited outside, after which they all escaped. Signature Not Verified Digitally signed by Jayant Kumar Arora

The petitioner, son of the deceased, approached the Allahabad High Court complaining of the lackadaisical manner in which the police was investigating because some powerful political personalities were also involved. The investigating officers were also being changed with regularity seeking a mandamus for a proper inquiry into the murder of his father including by the C.B.I. The High Court called for a progress report and also required the Chief Secretary to file his affidavit in the matter. The petitioner is aggrieved by the impugned order of the High Court dated 17.05.2018 disposing the writ petition, accepting the contention of the police that the investigation would be concluded expeditiously and report will be submitted before the competent court within a period of eight weeks.

3. We have heard the learned counsel for the petitioner, for the State of Uttar Pradesh and for respondent no.5. On 29.06.2017 charge sheet was submitted against one Raju alias Nagender Singh son of late Ramji Singh, Ajay Singh and Shani Singh both sons of Narayan Singh, citing 21 witnesses. The charge sheet stated that the name of respondent no.5 had transpired during investigation as having conspired in the killing after which Section 120B I.P.C. was also added. The charge sheeted accused Raju alias Nagender Singh confessed that apart from the others named by him, respondent no.5 in conspiracy had the murder planned and executed. The investigation was thus kept pending against Manish Singh, Dabloo Singh and respondent no.5. The police in the case

diary noting dated 17.02.2017 recorded that on basis of confidential information from the police informer, that respondent no.5 had given a “supari” of Rs. Five lacs for murder of the deceased. Political rivalry existed between the deceased and respondent no.5 on account of assembly elections as also panchayat elections. It further contained noting that the real person behind the incident was respondent no.5 based on very confidential information, having serious ramifications. The case diary noting dated 06.04.2017 records that the police party went to landmark tower to arrest Ajay Singh and Shani Singh. Respondent no.5 was present there and questioned why the police had come. Respondent no.5 demanded the production of arrest warrant against the concerned persons and required the investigating officer to give in writing that the suspect was being taken for interrogation. Raju alias Nagender Singh after intensive interrogation disclosed that with coaccused Ajay Singh, he had gone to meet respondent no.5, disclosing the manner in which the murder was committed by him and his accomplices. The case diary noting dated 29.06.2017 records that investigation against Dabloo Singh and Manish Singh and respondent no.5 were in progress. Respondent no.5 vide Annexure P.5 letter no. 4/2017 wrote to the Principal Secretary that he was being falsely implicated and the matter be properly investigated, if required from the C.B.I.

4. The SubInspector of Police submitted a progress report before the High Court on 11.10.2017 that the investigation up to that date revealed the involvement of Ajay Singh, Raju alias Nagender Singh, Shani Singh, Manish Singh, Dabloo Singh and respondent no.5 as a conspirator. Charge sheet had been submitted against Ajay Singh, Raju alias Nagender Singh and Shani Singh and investigation with regard to Dabloo Singh, Manish Singh and respondent no.5 is still pending. It further stated that raids were conducted for arresting others including respondent no.5. From the material collected during investigation it was apparent that the murder was committed due to political rivalry by hatching a conspiracy effectively with the help of respondent no.5 and that the police were trying to collect more credible materials. Another affidavit was filed on 16.05.2018 before the High Court, by one Shri Devender Chaubey, the Incharge Chief Secretary, disclosing that respondent no.5 had 24 criminal cases against him including under Section 302 IPC. In five cases final report had been filed in absence of credible evidence. In nine cases respondent no.5 had been charge sheeted but was acquitted. Five criminal trials are still pending against respondent no.5. He had also been put behind bars under the provisions of National Security Act by order dated 11.11.1998. It concluded that the allegations against respondent no.5 were under investigation.

5. This Court issued notice in the present matter on 07.09.2018. On 20.01.2020, this Court directed the Director General of Police, U.P. to file an affidavit with regard to the status of the investigation visàvis respondent no.5. An affidavit was filed by the D.G.P. on 22.02.2020 stating that there was no cogent evidence against respondent no.5 despite discreet efforts. Investigation of the case was therefore closed on 30.01.2019 and report submitted in the concerned court along with other police papers on 04.06.2019 with regard to accused Ajay Singh, Shani Singh, Raju alias Nagender Singh only and no further investigation was pending against any person. The trial court summoned the complainant for evidence on several dates, but the complainant had not appeared.

6. We have considered the matter. The F.I.R. was registered on 04.12.2015. Eight investigating officers have been changed. Respondent no.5 suo moto sought impleadment in the writ petition filed in the High Court. An investigation which had been kept pending since 04.12.2015 was promptly closed on 30.01.2019 after this Court had issued notice on 07.09.2018. The affidavit of the Director General of Police, U.P. not being satisfactory, on 26.10.2020 this Court required the respondents to file copy of the closure report stated to have been filed before the court concerned. The affidavit filed by the Circle Officer, Pindara, Varanasi dated 31.10.2020, pursuant to our order dated 26.10.2020 encloses the closure report dated 02.09.2018, the supervision note of the Superintendent of Police, Rural dated 17.12.2018 and the closure report dated 30.01.2019 submitted in court. We have gone through the same. It simply states that there was no concrete evidence of conspiracy against respondent no.5 and that the informant had not placed any materials before the police direct or indirect with regard to the conspiracy. As and when materials will be found against respondent no.5 in future, action would be taken as per law. No credible evidence was found against Manish Singh and Dabloo Singh.

7. We are constrained to record that the investigation and the closure report are extremely casual and perfunctory in nature. The investigation and closure report do not contain any material with regard to the nature of investigation against the other accused including respondent no.5 for conspiracy to arrive at the conclusion for insufficiency of evidence against them. The closure report is based on the ipse dixit of the Investigating Officer. The supervision note of the Senior Superintendent of Police (Rural), in the circumstances leaves much to be desired. The investigation appears to be a sham, designed to conceal more than to investigate. The police has the primary duty to investigate on receiving report of the commission of a cognizable offence. This is a statutory duty under the Code of Criminal Procedure apart from being a constitutional obligation to ensure that peace is maintained in the society and the rule of law is upheld and applied. To say that further investigation was not possible as the informant had not supplied adequate materials to investigate, to our mind, is a preposterous statement, coming from the police.

8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.

9. In *Manohar Lal Sharma vs. Principal Secretary and ors.*, (2014) 2 SCC 532, this court observed as follows :

“24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

25. Lord Denning has described the role of the police thus:

“In safeguarding our freedoms, the police play a vital role. Society for its defence needs a wellled, welltrained and welldisciplined force of police whom it can trust: and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man’s house without authority. They must not use more force than the occasion warrants.”

26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.

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39. ...In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and timebound manner without any external interference.”

10. The trial is stated to have commenced against the charge sheeted accused, and the informant summoned to give evidence.

In the facts of the case, we direct that further trial shall remain stayed. The closure reports dated 02.09.2018, 17.12.2018 culminating in the report dated 30.01.2019 are partly set aside insofar as the noncharge sheeted accused are concerned only. Those already charge sheeted, calls for no interference.

11. We hereby appoint Shri Satyarth Anirudh Pankaj, I.P.S. as the senior officer, State of Uttar Pradesh to carry out further investigation in the matter through a team of competent officers to be selected by him of his own choice. The State shall ensure the availability of such officers. The investigation must be concluded within a period of two months from the date of receipt of a copy of this order, unless extension is required, and the final report

be placed before this Court. The Director General of Police, Uttar Pradesh shall do the needful.

12. List immediately after two months for further orders.

.....J.

[R.F. NARIMAN]J.

[NAVIN SINHA]J.

[KRISHNA MURARI] NEW DELHI DECEMBER 14, 2020.