

HIGH COURT OF DELHI**Bench: HON'BLE MR. JUSTICE AMIT BANSAL****Date of Decision: January 4, 2024**

W.P.(CRL) 1796/2022

CRL.M.A. 22635/2022 (seeking appropriate orders)

MANISH CHADHA**..... Petitioner****Versus****STATE GOVT OF NCT AND ORS****..... Respondents****Legislation:**

Sections 201, 323, 452, 460, 302, 308, 34 Indian Penal Code, 1860 (IPC)
Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Subject: Transfer of Investigation in a case involving allegations of assault, gang rape, and the death of the petitioner's mother.

Headnotes:

Transfer of Investigation – Denial of Transfer to CBI – Petitioner's request for transfer of investigation to CBI in a case involving allegations of assault, gang rape, and death of petitioner's mother denied – Court found that the police and trial court had adequately addressed the concerns raised, with further investigation directed by the trial court where necessary. [Para 2, 10-31]

Trial Court's Role and Directions – The trial court's comprehensive review of the investigation, including allegations of gang rape, cause of death, and theft, led to additional directions for further investigation and filing of a supplementary chargesheet – Petitioner's dissatisfaction with the police investigation addressed by trial court's directions. [Para 11-23, 25]

Judicial Scrutiny of Investigation – High Court upholds the trial court's findings and directions, emphasizing that the investigation was conducted adequately with additional enquiries as needed – Court notes that further investigation is not warranted at this stage. [Para 16, 20, 24, 28]

Invocation of CBI Investigation – Supreme Court precedents cited to emphasize that directing CBI to investigate is an extraordinary measure, not to be used routinely but only in exceptional situations – Present case does not warrant such an intervention. [Para 27]

Role of Amicus Curiae – Appreciation expressed for the Amicus Curiae's assistance, with the Court noting unsubstantiated allegations made against them by the petitioner – Court emphasizes the Amicus Curiae's expertise and contribution to the case. [Para 32-33]

Decision – Petition for transfer of investigation to CBI or any other quasi-judicial body dismissed due to adequate investigation and intervention by the

trial court, and lack of evidence for police collusion with accused. [Para 31, 34]

Referred Cases:

- State of West Bengal And Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors.: (2010) 3 SCC 571
- Sakiri Vasu v. State of Uttar Pradesh And Ors.: (2008) 2 SCC 409
- Himanshu Kumar And Ors. v. State of Chhattisgarh And Ors.: 2022 SCC OnLine SC 884
- K.V. Rajendran v. Superintendent Of Police, CBCID South Zone, Chennai And Ors.: (2013) 12 SCC 480

Representing Advocates:

Petitioner: MANISH CHADHA (In Person)

Amicus Curiae: Mr. Vikas Pahwa, Senior Advocate

Respondents: Represented by Mr. Sanjeev Bhandari, ASC for State with Mr. Kunal Mittal, Mr. Arijit Sharma, and Ms. Rishika. Inspector Sandeep Yadav and ASI Naresh Kumar PS. DIU/West Distt. Also represented by Mr. Vineet Dhanda, CGSC with Mr. Durga Dass Vashisht, Advocate for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present writ petition has been filed on behalf of the petitioner, who is a qualified lawyer appearing in person, seeking the following reliefs:

- “i. Issue a writ of mandamus or any other appropriate writ to transfer the investigation of Case FIR No.440/2020 U/S. 308/34 of the Indian Penal Code, 1860 (IPC) to the Central Bureau of Investigation (CBI) or any other quasi-judicial body; ii. Issue a writ of mandamus or any other appropriate writ to initiate investigation vide CBI or any other quasi-judicial body against respondents no.3 to 7 for deliberately failing to discharge their duties which led to the incident dated 15.06.2020, deliberately trying to suppress the matter and further failing to conduct a fair, just & impartial investigation on the complaints of petitioner and his murdered mother, and...”*

2. Brief facts leading to the filing of the present petition are as follows-

- I. The petitioner and respondent no.9, Hanish Chadha, are brothers while respondent no.10, Pooja Chadha is the wife of the respondent no.9. All the parties reside in the same building i.e., H. No. 11/29B, Tilak Nagar, Delhi (hereinafter referred to as the 'house'). The said house is divided into two portions. The petitioner is the resident of one portion whereas the respondents no. 9 and 10 are residents of the other portion.
- II. On 17th June, 2020, the petitioner lodged an FIR No.440/2020 under Sections 308/34 of the Indian Penal Code, 1860 (IPC), alleging that on the intervening night of 15th June, 2023 and 16th June, 2023, the respondents no. 9 and 10, accompanied by one Pawan Rally, along with other accomplices, physically

and sexually assaulted his mother, assaulted the petitioner and looted valuables from the petitioner and his mother.

- III. The statement under Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) of the petitioner's mother was recorded on 23rd June, 2020.
- IV. On 01st August, 2020 the petitioner's mother passed away.
- V. The present petition was filed in August, 2022 to transfer the investigation in the aforementioned FIR from police to a specialised agency like the CBI.

3. Based on the Status Reports filed on behalf of the State, the following facts emerge:

- I. Respondents no. 9 and 10 were granted anticipatory bail on 2nd July, 2020.
- II. Initially, the petitioner's mother was admitted to DDU Hospital, New Delhi wherein an MLC dated 16th June 2020 was prepared. Thereafter, she was admitted to Kukreja Hospital, Tagore Garden and subsequently to Park Hospital, Meera Bagh, New Delhi, where she passed away on 01st August, 2020.
- III. As per the Death Summary Report of the Park Hospital, the cause of death was described due to infection in the lower respiratory tract, acute injury to the kidney and sepsis with shock.
- IV. On 24th November, 2021, the investigation in the present case was transferred from Police Station Tilak Nagar to the District Investigation Unit (DIU), West District, Delhi Police, for further investigation, as per the order of the DCP (West District).
- V. After the completion of the investigation, the Chargesheet was filed before the Trial Court on 25th August, 2022 for offence under Section 308 of the IPC.
- VI. After filing of the Chargesheet, the petitioner filed a Protest Petition before the Trial Court in September, 2022.
- VII. FSL result in relation to certain gynaecological exhibits is still awaited, which shall be filed through a Supplementary Chargesheet, as and when it is received from the FSL.

4. *Vide* order dated 24th August, 2023, this Court appointed Mr. Vikas Pahwa, Senior Advocate as an *Amicus Curiae* in the present case to assist the Court.

5. On 22nd November, certain additional documents were filed on behalf of the learned ASC, which included the following:

- i. The order dated 25th May, 2023, passed by the Trial Court, disposing of the Protest Petition filed by the petitioner.
- ii. Supplementary Chargesheet filed by the investigating agency with the Trial Court on 6th October, 2023.

6. The petitioner, appearing in person, has made the following submissions:

- (i) The facts of the present case emanate out of a civil property dispute, wherein the deceased mother had disinherited respondents no. 9 and 10 from her property, which led them to cause all the aforementioned atrocities on the deceased mother, eventually leading to her death.
 - (ii) Prior to the filing of the present FIR, the petitioner herein had made several complaints to the police against respondents no. 9 and 10, however, no action against them was taken.
 - (iii) The allegations of gang rape and outraging the modesty of the deceased mother have not been duly investigated by the police. Furthermore, allegations related to theft have also not been investigated by the Police.
 - (iv) The police have shown procedural lapses, right from the registration of FIR to the filing of the Chargesheet in the Trial Court.
 - (v) The present case is a fit case for a *de novo* investigation by the CBI as the police have proceeded with the investigation in the current FIR in a *malafide*, biased and faulty manner.
7. Learned ASC, appearing on behalf of the State, has made the following submissions:

- (i) A perusal of the statement of the deceased, made under Section 164 of the Cr.P.C., would show that the allegations of gang rape made by the petitioner are incorrect as they have not been mentioned at all, by the deceased mother in her statement.
- (ii) Investigation regarding the cause of death of the deceased has been conducted comprehensively, including investigation of the doctor who prepared the Death Summary Report. Furthermore, the investigation qua the allegation with respect to theft and house trespass has also been duly conducted.
- (iii) All of the remaining contentions of the petitioner herein with regard to discrepancy in the investigation, if any, has been dealt with in detail by the Trial Court in its order dated 25th May, 2023. It is pertinent to mention that the petitioner has not challenged the said order till date.
- (iv) Transfer of investigation to CBI or any specialised agency must not be done in a casual routine manner. Such transfer is warranted only in exceptional situations.

8. Learned *Amicus*, has made the following submissions:

- (i) The petitioner herein, had agitated all the issues raised in the present petition before the Learned Trial Court as well in his Protest Petition before the Trial Court.

- (ii) The Trial Court, taking cognizance of the apprehensions of the petitioner as raised in his Protest Petition, has in its order of 25th May, 2023 issued comprehensive directions to the investigating agency. The investigating agency, duly complying with the said order, has made further enquiries and filed a Supplementary Chargesheet, proving that there is no inherent lapse in the investigation.
 - (iii) Furthermore, the said order of the Trial Court has not been challenged by the petitioner and hence, has attained finality.
 - (iv) The power to transfer the investigation is an extraordinary power which is to be exercised only in exceptional circumstances, when the Court arrives at a conclusion that a fair trial cannot be secured without the intervention of a specialised investigating agency.
 - (v) Based on the facts and circumstances of the present case, such transfer of investigation or *de novo* investigation by CBI or any other quasi-judicial body is not made out as all aspects of the present case have been duly investigated by the current investigating agency and the trial court is well cognizant of the matter.
9. I have heard the parties and perused the material on record.
10. *Vide* order dated 12th October, 2023, I had framed the following issues which require deliberation to ascertain if the present FIR requires transfer to a specialised agency like the CBI or not:
- (i) Whether allegations relating to gang rape made in the FIR have been investigated or not.
 - (ii) Whether any investigation was conducted by the police after the mother of the petitioner expired with regard to the cause of death, including questioning the doctor who prepared the death summary.
 - (iii) Whether allegations relating to theft and house trespass made in the FIR have been investigated or not.
11. A perusal of the order passed by the Trial Court on 25th May, 2023, while disposing of the protest petition filed by the petitioner, would show that the Trial Court is fully seized of the aforesaid issues and has accordingly passed appropriate directions.
12. I will take each of the aforesaid issues one after another. **Issue no. 1-** Whether allegations relating to gang rape made in the FIR have been investigated or not.
13. Insofar as the said issue is concerned, the relevant findings of the Trial Court in the order dated 25th May, 2023 are set out below:

“4. The second point of contention in the protest petition is that there are allegations of gang rape and outraging the modesty of the mother of complainant in the complaint which have not been investigated by the IO. In this regard, it is pertinent to note that the statement of deceased Shukla Chaddha was recorded on 23.06.2020 u/s 164 Cr.PC. Persual of the said statement clearly reveals that there are no allegations of gang rape/rape in the said statement. Further, it is pertinent to note that the first statement of the complainant namely Manish Chaddha, based on which the present case was registered, makes it evident that he is not an eye-witness as far as any allegation of rape committed on his mother is concerned since, as per the statement of the complainant himself, the complainant and his mother were beaten up in separate rooms and he only heard the shouts of his mother from the other room. Even if his entire statement is admitted to be true, he cannot be considered to be an eye-witness to the incident of rape and hence, the only concerned eye-witness is the mother/victim/deceased herself, who has not levelled any allegation of rape in her statement u/s 164 Cr.PC. The allegation of the complainant that the statement of the deceased under section 164 CrPC was never recorded is contrary to the record and without any basis. At the same time, the charge-sheet itself mentions that certain exhibits are pending in FSL, and further supplementary chargesheet will be filed after report is received from FSL. Therefore, at this stage, there is no point on which further investigation is required to be ordered as far as allegation of rape is concerned.”

14. The Trial Court has noted above that the statement of the deceased mother under Section 164 of the CrPC, was recorded on 23rd June, 2020. In the said statement, no allegations of rape or gang rape have been made by the deceased mother and the only allegations made are in respect of the deceased mother being beaten up by respondents no. 9 and 10. The Trial Court also noted that the petitioner was not an eye-witness in respect of the allegations of rape/gang rape are concerned as he was, as per his statement, in another room at the time of the alleged incident.
15. In the main Chargesheet filed on 25th August 2022, it has been stated that the FSL result in relation to certain gynaecological exhibits is still awaited, which shall be filed through a Supplementary Chargesheet, when it is received from the FSL. Taking into account the aforesaid facts, the Trial Court held that no further investigation is required insofar as allegations of rape are concerned.
16. I am in complete agreement with the aforesaid finding of the Trial Court that allegations relating to rape/gang rape have been duly investigated by the investigating agency and require no further investigation at this stage.

Issue no. 2- Whether any investigation was conducted by the police after the mother of the petitioner expired with regard to the cause of death, including questioning the doctor who prepared the death summary.

17. Insofar as the said issue is concerned, the relevant findings of the Trial Court in the order dated 25th May, 2023 are set out below:

*“3. The first point which has been urged by the complainant is that the accused persons caused the death of his mother namely Shukla Chaddha and hence, the appropriate section which should have been invoked by the IO is section 302 IPC instead of section 308 IPC. Perusal of the death summary report given by Park Hospital includes “acute kidney injury and sepsis with shock” as one of the causes of death. At the same time, MLC of the deceased Shukla Chaddha mentions that the patient was kicked in her abdomen. Therefore, it has been argued that the accused persons caused the kidney injury which led to her death. As per the IO and charge-sheet, section 302 IPC was not added since the deceased had suffered a head injury on the date of incident i.e., 16.06.2020 and the report from Park hospital specifically mentions that her death had no relevance to the head injury. However, on oral enquiry, the IO has admitted that no investigation was done with respect to the kidney injury reflected in the death summary. Perusal of notice served upon the Park Hospital also makes it evident that the opinion was sought only qua the head injury and no query was made to the hospital as to whether the kidney injury could have been caused by a kick to the abdomen of the deceased. Therefore, it appears that sufficient investigation has not been done by the IO with respect to kidney injury being the cause of death. **I am of the opinion that further investigation is required to ascertain whether cause of death could have been due to the abdomen kick suffered by the deceased on the date of incident.**”*

18. Taking into account that as per the Death Summary Report, one of the reasons for the death of the deceased mother was acute kidney injury, the Trial Court noted that sufficient investigation had not been carried out by the Investigating Officer (IO) with respect to kidney injury being the cause of death. Accordingly, the Trial Court directed further investigation to ascertain whether the cause of death could have been due to the kick in the abdomen suffered by the deceased mother on the date of the incident.
19. The aforesaid aspect was duly investigated by the police and a Supplementary Chargesheet dated 6th October, 2023 was filed in this regard. As per the Supplementary Chargesheet, further investigation was carried out and further report was sought from the concerned hospital with regard to the cause of the death, if it could be attributable to any of the injuries mentioned in the deceased mother’s MLC Report. The hospital in its report has categorically stated that the death is not attributable to head injury or abdominal trauma.
20. Hence, in my considered view, sufficient investigation has been conducted with regard to the cause of the death of the deceased mother.
- Issue No. 3-** Whether allegations relating to theft and house trespass made in the FIR have been investigated or not.

21. Insofar as the aforesaid issue is concerned, the relevant observations made by the Trial Court in the order dated 25th May, 2023 are set out below:

*“11. Next, it has been argued that instead of section 452 IPC, section 460 IPC is made out and the IO has deliberately invoked a section which provides lesser punishment. In this regard, it is pertinent to note that the essential ingredient of lurking house trespass is that the offender must have taken some kind of precautions to conceal such house trespass from some person who has a right to exclude or eject the trespasser from the building which is the subject of such trespass. Therefore, in order to constitute lurking house trespass, the offenders must take some active means to conceal their presence and the mere fact that a house trespass was committed by night would not make it lurking house trespass. **In the present case, there are no allegations of concealment of presence by the accused persons at the time of house trespass. In fact, the complainant has stated in his complaint that the accused persons forcefully entered his house. In light of the same, allegations of lurking house trespass are not made out at this stage and there is no need to pass any direction in this regard.**”*

22. A reading of the aforesaid observations would show that the Trial Court was satisfied that a case under Section 460 of the IPC has not been made out and therefore, did not order any further investigation in that regard. I am in full agreement with the aforesaid finding of the trial court.

23. An overall analysis of the aforesaid order passed by the Trial Court would show that wherever the Trial Court was not satisfied with the investigation carried out, it has directed further investigation or sought an explanation from the investigating agency.

24. Pursuant to the aforesaid order, Sections 201 and 323 of the IPC have been added in the Supplementary Chargesheet filed on 5th October, 2023. Further, an explanation was sought from the concerned DCP as to whether the order dated 12th November, 2021 directing the investigation by an Inspector level officer has been complied with or not.

25. In light of the discussion above, in my considered view, the learned Trial Court is fully seized of the issues raised by the petitioner in the present petition and has passed appropriate directions taking into account issues raised in the Protest Petition filed by the petitioner. It is pertinent to note that the petitioner has not challenged the aforesaid order passed by the Trial Court.

26. Clearly, the petitioner cannot invoke two parallel remedies in respect of the same grievances. The various issues raised by the petitioner in the present petition have been dealt with by the Trial Court and the matter has been further investigated pursuant to the directions passed by the Trial Court.

27. The Supreme Court has repeatedly held in various judgments that directions cannot be issued to CBI to conduct investigation as a matter of routine. It is an extraordinary power that must be exercised sparingly, cautiously and in exceptional situations. Reference in this regard may be made to ***State of West Bengal And Orsv. Committee for Protection of Democratic Rights, West Bengal and Ors.*** (2010) 3 SCC 571; ***Sakiri Vasu v. State of Uttar Pradesh And Ors.*** (2008) 2 SCC 409 and ***Himanshu Kumar And Ors. v. State of Chhattisgarh And Ors.*** 2022 SCC OnLine SC 884.

28. It is also to be noted that the Supreme Court in ***K.V. Rajendran v. Superintendent Of Police, CBCID South Zone, Chennai And Ors.*** (2013) 12 SCC 480, has held that when an investigation has been completed and the chargesheet has been filed, it is for the Court where the chargesheet has been filed to proceed in accordance with the law. Needless to state if the petitioner is still dissatisfied with the further investigation carried out by the police, he would have his remedies before the trial court.

29. From the material on record and taking into account the aforesaid legal position, it cannot be said that the allegations of the petitioner in respect of police collusion with the accused persons have been made out. Merely because the investigating agency has come to a different conclusion than what is alleged by the petitioner, it cannot be said that the police are colluding with the accused persons.

30. Furthermore, *vide* order dated 7th October, 2023, the Trial Court has already taken cognizance for offences punishable under Sections 308/201/323/452/34 of the IPC and had issued summons to the accused persons.

31. In the totality of facts and circumstances and based on the discussion above, in my considered view, no case is made out for transfer of investigation to CBI or any other quasi-judicial body.

32. It is unfortunate that the petitioner has made unsubstantiated allegations against the *Amicus Curiae* appointed by this Court, who is a reputed senior advocate with an expertise in criminal law. The Court takes strong exception to the aforesaid conduct of the petitioner.

33. The court appreciates the assistance rendered by the Ld. *Amicus Curiae*.

34. Accordingly, there is no merit in the present petition and the same is, along with all pending applications, disposed of.

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