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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

WRIT PETITION No. 27317 of 2023

BETWEEN:-

1. MAHESH RAJPUT S/O MR. S.N. RAJPUT, AGED ABOUT 61 YEARS, OCCUPATION: GOVT. SERVANT HN-199, PREMIUM PARK, IN FRONT OF ARVINDO HOSPITAL, INDORE AND SECOND ADDRESS - B-604, SHIVANSH ELEGANCE, HARI PATAK ROAD, UJJAIN (MADHYA PRADESH)
2. ANITA RAJPUT W/O MR MAHESH RAJPUT, AGED ABOUT 54 YEARS, OCCUPATION: HOUSEWIFE PERMANEND RESIDENT OF HN-199, PREMIUM PARK, IN FRONT OF ARVINDO HOSPITAL, INDORE (MADHYA PRADESH)
3. SHIKHA RAJPUT W/O MR AMIT RAJPUT, AGED ABOUT 32 YEARS, OCCUPATION: JOB PERMANEND RESIDENT OF HN-199, PREMIUM PARK, IN FRONT OF ARVINDO HOSPITAL, INDORE (MADHYA PRADESH)
4. AMIT RAJPUT S/O MR MAHESH RAJPUT, AGED ABOUT 34 YEARS, OCCUPATION: SERVICE PERMANEND RESIDENT OF HN-199, PREMIUM PARK, IN FRONT OF ARVINDO HOSPITAL, INDORE (MADHYA PRADESH)
5. MOHIT RAJPUT S/O MR MAHESH RAJPUT, AGED ABOUT 30 YEARS, OCCUPATION: SERVICE PERMANEND RESIDENT OF HN-199, PREMIUM PARK, IN FRONT OF ARVINDO HOSPITAL, INDORE SECOND ADD. OF MOHIT IS B-604, SHIVANSH ELEGANCE, HARI PATAK ROAD, UJJAIN (MADHYA PRADESH)

.....PETITIONER

(SHRI GAGAN BAJAD - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH HOME DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)

2. INSPECTOR GENERAL, INSPECTOR GENERAL OFFICE UJJAIN (MADHYA PRADESH)
3. DEPUTY INSPECTOR GENERAL DEPUTY INSPECTOR GENERAL OFFICE UJJAIN (MADHYA PRADESH)
4. SUPERINTENDENT OF POLICE, SUPERINTENDENT OF POLICE OFFICE (MADHYA PRADESH)
5. CITY SUPERINTENDENT OF POLICE (INVESTIGATING OFFICER) CITY SUPERINTENDENT OF POICE OFFICE MADAVNAGAR, UJJAIN (MADHYA PRADESH)
6. POLICE STATION IN CHARGE P.S. NEELGANGA, UJJAIN (MADHYA PRADESH)
7. COMMISSIONER OF POLICE COMMISSIONER OF POLICE OFFICE INDORE (MADHYA PRADESH)
8. DEPUTY COMMISSIONER OF POLICE DEPUTY COMMISSIONER OFFICE EAST, REGAL SQUARE INDORE (MADHYA PRADESH)
9. ADDITIONAL DEPUTY COMMISSIONER OF POLICE ADDITIONAL DEPUTY COMMISSIONER OF POLICE OFFICE ZONE 2, REGAL SQUARE, INDORE (MADHYA PRADESH)
10. POLICE STATION IN CHARGE P.S. BANGANGA, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(SHRI ANAND SONI - ADDITIONAL ADVOCATE GENERAL)

Reserved on: 30.04.2024

Pronounced on: 20.05.2024

This writ petition having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

This petition is filed under Article 226 of the Constitution of India. The

petitioner is seeking the following reliefs:-

- a. Issue a writ in the nature of mandamus and transfer the investigation of the crime no.394/2023 to any independent investigating agency for de-nevo investigation.
- b. Issue a writ in the nature of mandamus and direct the investigation officer to send the seized mobile to FSL immediately.
- c. Issue a writ in the nature of mandamus directing that the respondent no. 5 &6 are bound to take the Annexures 5, 6 & 7 into consideration of the investigation of the crime no.394 of 2023; registered before the respondent no.6 and getting investigated by respondent no.5.
- d. Issue a writ in the nature of mandamus to quash the subsequent FIR lodged by the respondent no.6 in false pretext while directing the senior officers to take action on **Annexure P/9**.
- e. Issue a writ in the nature of mandamus directing that the respondents are bound to investigate the matter in fair and impartial manner from all necessary and possible angles.
- f. Pass any other order via any other writ for any relief in the interest of justice.

02. Petitioners are challenging their false implication in crime nos.394/2023 and 1609/2023 registered at Police station Banganga on 09.10.2023 and the biased investigation conducted by prosecution agency. Allegedly, petitioners are mother, father, brother and sister-in-law of the deceased. Arranged marriage was solemnised between the petitioner no.5 and deceased without any demand of dowry. After passage of some time, the mental conditions of the deceased and her addiction to narcotic drugs were revealed one by one. It is alleged that the petitioner no.5 had made all attempts to get rid of this addiction and tried his level best to motivate the deceased. Counsel for the petitioner submitted that when the family members of the petitioners confronted about the deceased's mental conditions and her

consumption of narcotic drugs to her parents, they intervened and mishandled the deceased. On being frustrated with her parents, she jumped from 6th floor while she was talking to her father and simultaneously her husband was talking with his mother-in-law. After completion of 13 days rituals, the father of the deceased lodged report against the petitioners regarding dowry death of her daughter at crime No.394/2023.

3. All the petitioners except petitioner no.5 got the anticipatory bail. The petitioners filed an application for free and fair investigation but since the respondent no.5 &6 are not interested in performing fair investigation, they had not taken any action upon the petitioners' application. Petitioner No.5 preferred a special leave petition (criminal) before the Hon'ble Apex Court wherein the petitioner no.5 was granted interim protection from coercive actions. Even after providing a copy of the said order the respondent no.5 & 6 harassed the petitioners. Learned counsel further submitted that in order to harass the petitioners, the respondent no.6, on the directions of respondent no.5, went to the residence of the petitioners by abusing and assaulting them irrespective of their age and gender.

4 . Both the investigations are challenged on the ground that the investigating officers are neither acting fairly nor with honesty. It is submitted by Shri Gagan Bajad, learned counsel for the applicant that free and fair investigation is the fundamental right of the accused as guaranteed under Article 21 of the Constitution of India and therefore, it is obligatory on the part of the police to conduct the investigation from all necessary and possible angles. Prosecution declined to consider the medical documents filed by the petitioners and the statement of the Doctors, the CCTV recordings and call recordings were also not taken into record which puts a reasonable suspicion and

demonstrates objectionable features and infirmities, therefore, the investigation is required to be discarded. Learned counsel also submitted the prayer of the petitioner to take voice samples of Devendra and Satya and match them with the recordings however the same plea has not been taken heed with by the prosecution agency. Thus, counsel prayed that the respondents may be directed to conduct the investigation in free and fair manner.

5. Per contra, it is submitted by the learned Additional Advocate General for the State, Shri Anand Soni that the allegations made by the petitioners are false and baseless. Investigating authorities are diligently and impartially conducting the investigation with absolute conscientiousness. With regard to the first FIR, State has taken the demurrer that medical documents filed by the petitioner are subject to evidence before the Court in presence of medical expert and the C.D and call transcript cannot be taken into account because certificate under 65B is required, as held by Hon'ble Apex Court in the case of *Anwar P.V vs. P.K. Basheer* reported as (2014)10 SCC 473 so also in the case of *Narmada Bai vs. State of Gujarat & ORs.* reported as (2014) 10 SCC 473. The investigation agency is not bound to accept any document tendered by accused and entitled to conduct investigation without being influenced.

6. Heard learned counsel for the parties and perused the record.

7. This writ petition has been preferred by the petitioners for fair investigation on the substratum of some call details and voice recording in C.Ds. At the outset it emerged on the face of record that in this case investigation has been completed and final report under Section 173 of Cr.P.C has been filed. The petitioner has requested to issue writ in the nature of mandamus for *De-Novo* investigation by any other independent investigating

agency.

8. In this regard the pivotal question arises as to whether the mandamus for *De-Novo* investigation can be issued. Learned counsel for the petitioner placed reliance on *Babubhai vs. State of Gujarat & Ors.* reported as *2010 (12) SCC 254* so also in the case of *Vinay Tyagi vs. Irshad Ali @ Deepak & Ors.* reported in *(2013)5 SCC 762* wherein it has been held while considering about de-novo investigation and when it should be done:

"16. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency."

9. In para 34 of the aforesaid judgment it has been held as under:

"34..... It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of *Disha v. State of Gujarat & Ors.* [(2011) 13 SCC 337]. *Vineet Narain & Ors. v. Union of India & Anr.* [(1998) 1 SCC 226], *Union of India & Ors. v. Sushil Kumar Modi & Ors.* [1996 (6) SCC 500] and *Rubabbuddin Sheikh v. State of Gujarat & Ors.* [(2010) 2 SCC 200]."

10. Further also in the case of *Lalita Kumari vs. Govt. of Uttar Pradesh & Ors.* reported as *(2014)2 SCC 1*, Hon'ble Apex Court reiterated the necessity of FIR in cognizable offences and pointed out the abnormal delay and latches in initiating criminal prosecution. Further, while ensuring and protecting

the rights of the accused and complainant, a time bound preliminary enquiry was directed.

11. Now the question arises as to whether the investigation conducted by the Police Officials is prima facie unfair, tainted or malafide. The allegation of the petitioners is that the Police Officials have not taken the evidence placed by them for investigation. Now the question is as to whether only on the basis that police has not taken into account the evidence placed by the petitioners the whole proceedings of investigation would be treated as vitiated investigation or not?

12. Here it is worth noting that in this case two FIRs have been lodged against the petitioners. First FIR was lodged after enquiry on merg intimation No.19/2023 for offence under Section 304(b) of IPC, after the death of the deceased and the second FIR was lodged by Vivek Kannodiya Station In-charge, Police Station Banganga, Indore for offence under Sections 212, 353, 332, 225 294, 34 of IPC, 1860. Since the offences are cognizable hence prosecution agency is bound to lodge the FIR and investigate the matter. So far as the call recording and CDs are concerned the petitioners are at liberty to file all the evidence in their defence after complying with appropriate rules and regulations of Evidence Act.

13. In this regard whether the allegations made in the FIR and the statements under Section 161 of Cr.P.C recorded by Police are worth reliable or not, it is the domain of the investigating officer/agency to form it opinion and file charge sheet after concluding the investigation. In every case this court cannot supervise the investigation by issuing directions as to in what manner the investigation is required to be done, virtually, it is prerogative of the investigation

officer. It is well settled that until it is shown that the investigation officer is doing a partial investigation due to some extraneous considerations or *mala fides*, this Court cannot quash the investigation proceedings using its extraordinary jurisdiction under Article 226 of Constitution of India. As such since the petitioners are unable to point out any such laches or dereliction on the part of the prosecution agency in the proceedings conducted by prosecution agency which has already been completed, the same can neither be quashed nor the directions for re-investigation be issued.

14. On this aspect the law laid down by Hon'ble Apex Court in the case of *Niharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.* (AIR 2021 SC 1918):

23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with

circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

15. Having gone through the facts and circumstances of this case, this Court is of the considered opinion that the petitioners are not able to point out such things by which directions for De-Novo investigation can be issued. In view of the aforesaid proposition, actually the investigating agency cannot be compelled to accept any documents tendered by the accused persons who want to influence the investigation. So far as the CD and electronic documents are concerned they can be filed before the trial Court as and when required. In

view of Section 65 B of Evidence Act and the law laid down by Hon'ble Apex Court in the case of "*Anvar P.V vs P.K.Basheer & Ors* reported in *AIR 2015 SC 180*" the defence cannot be a ground to quash the FIR and the investigation proceedings which has already been completed. So far as the request for re-investigation by another agency is concerned, the law laid down in case of *Sakiri Vasu vs State Of U.P. And Others* reported in *AIR 2008 SC 907* wherein it has been held as under:

10..... An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

16. Again, on this aspect, the verdict of Hon'ble the Apex Court in a recent judgment of *Directorate of Enforcement Vs. Niraj Tyagi and Ors.* reported in *2024 LawSuit (SC) 112* decided on *13.02.2024*, is significant to quote here:

24. Without elaborating any further, suffice it to say that judicial comity and judicial discipline demands that higher courts should follow the **law**. The extraordinary and inherent powers of the court do not confer any arbitrary jurisdiction on the court to act according to its whims and caprice.

The word '**Law**' (stated in the aforesaid precedent) includes not only the provisions of constitution and other respective laws but also consists the Law of the Land laid down by the Hon'ble Apex Court. This aforesaid precedent has been endorsed by this Court in its recent judgment passed in the case of *Shubam & Anr vs. State of Madhya Pradesh and Anr.* reported as *2024 Law Suit (MP) 160*.

17. In the upshot of the aforesaid settled legal position it is well established principle of law that free and fair trial is the fundamental right of the accused as well as of the complainant. If the High Court supervises the

investigation by issuing directions to the investigating officer, and compels the investigating officer to form his opinion based on the directions of the Court, then nothing would be left for the investigating agency as well as the Trial Court. Use of extraordinary powers conferred under Article 226 of Cr.P.C for transferring the investigation and directing for *De Novo* investigation are not found in consonance of law. Such powers can only be exercised very sparingly and with circumspection and that to in a rarest of rare cases. This case is not coming under the purview of rarest of rare cases. In such circumstances, this Court is of the considered opinion that it is not a case where the interference of this Court, by invoking the extraordinary powers under Article 226 of the Constitution of India, is warranted for issuance of any direction to the investigating officer.

18. It is made clear that any view or observations made herein would not be binding in any manner on the merits of the case for the concerned trial Court while adjudicating the matter in accordance with law.

19. Accordingly W.P.No.27317/2023 is hereby dismissed.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE