

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR.**

SINGLE BENCH: JUSTICE SUJOY PAUL

W. P. No. 14071/2015

Sunil Patel

Vs.

State of M.P. & others

Shri Yogesh Dhande, learned counsel for the petitioner.

Shri Santosh Yadav, learned Panel Lawyer for the respondent No.1
to 4 /State.

None for the respondent No.5.

**(Order)
05/12/2016**

In this petition filed under Article 226 of the Constitution, the petitioner has prayed for a direction to the Superintendent of Police/ respondent No.2 to re-investigate the matter on the basis of video footage so that it can be ascertained as to who was driving the vehicle Tata Safari MP49-C-3627. In addition, it is prayed that the respondents be directed to take departmental action against the owner of the vehicle because a blue flasher light and police logo was used in the said vehicle.

2. Briefly stated, facts are that a “Dehati Nalish” was submitted before Police Station Stationganj, Narsinghpur on 03-05-2015. The complainant Rajesh in the said Nalish, stated that he was standing with his brother Sunil Patel near a Beetle Shop at Narogaon at 4:40 pm at that time the petitioner's son Mohit Patel was coming from his agricultural field and was crossing the road. The said vehicle Tata Safari MP49-C-3627 dashed him and ran away. Because of rash and negligent driving of said vehicle and the accident arising

thereto, Mohit Patel sustained grievous injuries and died on the spot. He was only seven years of age.

3. The police registered F.I.R. No.0480/15 on the basis of said information against the driver of Vehicle No.MP49-C-3627 for the offences punishable under Section 279 and 304-A of the IPC.

4. Shri Yogesh Dhande, learned counsel for the petitioner submits that the police investigated the matter during which witnesses have deposed that Mohit was dashed by the said vehicle. In the said vehicle, a blue flasher light was installed. There was also a police mono on the said vehicle. The statement of Prahlad s/o Bhaiya Lal Patel is filed as Annexure P/2. Learned counsel further submits that the owner of said vehicle is Umesh Dubey, a Sub-Inspector in police department. The petitioner is impleaded him as respondent No.5 in this petition.

5. Learned counsel further submits that at the time of incident, the vehicle was being driven by the owner himself and just because he is a police officer, the police authorities are trying to save him. Accordingly, one Krishan Kumar was made accused in the case. It is further urged that on 03-05-2015, a Panchnama was prepared by the Investigating Officer in relation to video footage. This document is filed as Annexure P/3. It is submitted that this document is a written report, which shows that as per the video recording obtained from the control room of Toll Plaza of Bakori, it is clear that the vehicle in question has passed through the said Toll Plaza. The movement of said vehicle is recorded at 16:48 hours and the said vehicle was moving from Narsinghpur to Mungwani. The petitioner preferred representative to concerned S.P. alleging that the said vehicle was being driven by the respondent No.5, who is posted in Police Station, Mungwani. The same is followed by another representation dated 02-07-2015 (Annexure P/5). The said representations were followed by affidavits of Rajesh Patel and Sunil Patel (Annexure P/6). In the said affidavits, they have stated that the said vehicle at the time of incident was being driven by Umesh Dubey. There was a blue flasher light and police mono in the said vehicle. Shri Dhande argued

that the police gave an information under RTI Act, 2005 to the petitioner on 22-07-2015 (Annexure P/8) wherein it is stated that the vehicle in question is not taken on duty by police department and in the private vehicles, the police mono cannot be used.

6. The main contention of the petitioner is that, in all fairness, the respondents should have collected the entire video footage of the vehicle in question from Toll Plaza. They have artistically collected the written report from Toll Plaza (Annexure P/3) and limited particulars of the video footage of vehicle in question which does not show the entire vehicle. If the complete video footage of the vehicle in question would have been procured by the Investigating Officer, it would have been clear as to who was driving the vehicle and whether a flasher light and police mono was being installed in the said vehicle. Thus, it is submitted that the investigation is not conducted in a free, fair and impartial manner. It is tainted with malice in order to save the skin of the respondent No.5. By placing reliance on **(2015) 8 SCC 774 (Chandra Babu @ Moses vs. State though Inspector of Police & others)**, Shri Dhande submits that even if the final report under Section 173 of Cr.P.C. is filed before the court below, in the interest of justice, necessary directions can be issued to conduct the proper investigation.

7. Prayer is opposed by Shri Santosh Yadav, learned Panel Lawyer for the respondent No.1 to 4/State.

8. Nobody appeared for the respondent No.5 even in the pass over round. Nobody turned up for the said respondent despite the fact that the name of counsel was displayed in the digital display board of the High Court.

9. Shri Santosh Yadav submits that the investigation in the present matter is already over. During investigation, it was found that no such blue flasher light and police mono have been used in front or backside of the vehicle in question at the time of incident and at the time of seizure. Since, the investigation is over and Charge-sheet has already been filed, this petition is

not maintainable. It is submitted that the investigation was done in accordance with law.

10. Respondent No.5 has filed his reply and contended that he has been wrongly implicated in the present case. At the time of incident, the vehicle was being driven by one Krishna Kumar (driver of the vehicle). The respondent No.5 also denied that any blue light or police mono was used in the said vehicle. It is submitted that at the time of incident, the respondent No.5 was present at Police Station Mungwani, District Narsinghpur, which can be seen from his mobile location report (Annexure R-5/1). It is submitted that the respondent No.5 is a police officer and, therefore, anti social elements having ill will against him. With this ulterior motive, they want to harass the respondent No.5. It is therefore prayed that this petition be dismissed.

11. No other point is pressed by the parties.

12. I have heard the parties at length and perused the record.

13. In the aforesaid factual backdrop, it is clear that the only prayer of the petitioner is that the entire video footage of Toll Plaza in relation to vehicle in question must be made part of the investigation/trial in order to ensure as to who was driving the vehicle and whether blue flasher light and police mono were used in the said vehicle. For the reasons best known to the respondents, they have not chosen to deal with this aspect in their reply. It is averred in the return of respondent No.1 to 4 that “during the enquiry, the Enquiry Officer has found that no such blue light and police mono has been used in front and backside of the vehicle at the time of incident and at the time of seizure.” There is no specific rebuttal to the contention of the petitioner that complete video footage is not obtained by the respondents from Toll Plaza.

14. This is trite law that investigation is statutory right of police authorities as per Cr.P.C. In *Vinay Tyagi vs. Irshad Ali @ Deepak & others (2013) 5 SCC 762*, it was held that the power of further investigation is vested with the executive. Further investigation is where the Investigating Officer obtains

further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173 (8). It is held that in case of a “fresh investigation”, “re-investigation” or “*de novo* investigation” there has to be a definite order of the Court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded is incapable of being acted upon. In no uncertain terms, it was held in the case of *Vinay Tyagi (supra)* that neither the Investigating Agency nor the Magistrate has any power to order or conduct “fresh investigation”. This is primarily for the reason that it would be opposed to the scheme of the Cr.P.C. This order can be passed by the higher judiciary coupled with a specific direction as to the fate of the investigation already conducted. The Apex Court opined that the Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the Investigating Agency to conduct further investigation, which it could do on its own.

15. In the present case, the investigation is admittedly over and final report has been filed before the trial Court. The stand of the prosecution/respondents is that no further investigation is required in the present case. Hence, the pivotal question is whether in the factual matrix of this case, any such further/re-investigation is warranted and whether any such directions can be issued in this petition filed under Article 226 of the Constitution.

16. This point is no more *res-integra*. In *Vinay Tyagi (supra)*, the Apex Court held that 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, malafide 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. As already

noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly.

17. The Supreme Court again considered the judgment of *Chandra Babu (supra)*. Affirming the view about the powers of further investigation and fresh investigation/re-investigation taken in *Vinay Tyagi (supra)*, the Supreme Court held that the courts of higher jurisdiction can direct further investigation or even re-investigation *de novo* depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. The judgment of *Vinay Tyagi (supra)* was again considered in *(2016) 3 SCC 135 (Pooja Pal vs. Union of India & others)*. Pertinently, in this case, the SLP was filed by widow of slain Rajupal, who at the time of his death was a sitting MLA. The complaint of Pooja Pal was that the investigation was not done in a fair, free and transparent manner. Hence, it should be investigated by some other agency. The Apex Court after taking all relevant judgments on this point, opined in *Pooja Pal (supra)* that the extra-ordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to the CBI to conduct investigation must be exercised with great caution, as was underlined in the case of State of *West Bengal & others vs. Committee for Protection of Democratic Rights & others (2010) 3 SCC 571*. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. In the same judgment it was further held that It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the

courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.

18. In view of said judgments, it is clear that it is the judicially recognized that if it is established that the investigation *ex facie* is unfair or tainted with malafide and smacks of foul play, Courts can issue directions for fresh or *de novo* investigation. Since, the Investigating Agency is not empowered to conduct “fresh, “*de novo*” or “re-investigation” in relation to an offence for which it has already filed a report in terms of Section 173 (2) of Cr.P.C., it is only upon the orders of the higher courts, such investigation can be conducted.

19. In the present case, the complainant and the alleged eye-witnesses have filed affidavits contending that the vehicle in question at the time of incident was being driven by the respondent No.5 and a blue flasher light and police mono was installed on the vehicle. Hence, the complete video footage recorded at the time of passing of said vehicle from the Toll Plaza should be considered. The final report (Annexure P/9) shows that some video footage recorded in a CD became part of the final report. However, as noticed, there is no specific rebuttal to the contention of the petitioner that this video footage is artistically obtained and it is not complete footage of passing of the said vehicle. The pivotal question is whether in these circumstances, it can be held that the investigation was polluted and it requires re-investigation to the extent indicated above.

20. In the peculiar factual backdrop of this case, in my view, the investigation was not fair to the extent the entire video footage of passing of the vehicle in question was not obtained by the respondents. In this view of

the matter, it cannot be held that the entire investigation was polluted or vitiated. The interest of justice would be served if the respondent No.2 is directed to get the matter re-investigated under his strict supervision in order to ascertain as to who was driving the vehicle at the time of incident. The police authorities shall procure the entire video footage from the Toll Plaza relating to the vehicle in question of the date of incident. The respondent No.2 shall compare the said video footage with that of produced before the Court below alongwith final report. If new video footage procured after this order, throws more light about the incident, the said video footage shall be produced before the trial Court in the pending trial. The basic purpose of investigation or re-investigation is to discover the truth so as to prevent miscarriage of justice. In this view of the matter, I hereby direct the respondent No.2 to obtain the entire video footage mentioned hereinabove and examine it as per the directions contained hereinabove. After further investigation, if aforementioned condition is fulfilled, the report shall be submitted before the trial Court which shall deal with the same in accordance with law. This Court may hasten to add that no views are expressed in this order nor any opinion is formed regarding any of the factual aspect of the case. The respondent No.2 shall comply with this order within three weeks from the date of communication of this order.

21. The petition is allowed to the extent indicated above. No cost.

(Sujoy Paul)
Judge