



**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE G. S. AHLUWALIA  
ON THE 17<sup>th</sup> OF SEPTEMBER, 2024  
WRIT PETITION No. 8973 of 2017  
*SMT. SAKESH SINGH*  
*Versus*  
*THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

*Ms. Raksha Patel- Advocate for petitioner.*

*Shri V.S. Choudhary- Government Advocate for the respondent/State.*

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**ORDER**

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

- “(i) That the Hon’ble court may kindly be pleased to direct the Superintendent of Police Rewa to hand over investigation to CBI and CBI take over the investigation which is kept pending by the police of the police station Gurd, Distt. Rewa, in the ends of justice.  
(ii) Any other direction/orders, which deemed fit and proper Looking to the facts and circumstances of the case.”

2. It is submitted that husband of the petitioner was working as Constable in the Police Department. In the morning of 15.03.2017, the husband of the petitioner was found dead in hanging position. On the very same day, father of the deceased gave a representation to Dy. S.P. with regard to enquiry with some details but no response was received by the authority. A Marg No. 10/17 was registered at Police Station Gurh, District Rewa. Body was sent for Post-mortem and the cause of



death was found to be asphyxia on account of hanging. In fact there was no dispute in the family of the deceased and there was no occasion for her husband to commit suicide. Since the police authority did not pay any attention, therefore, the family members of the deceased made a prayer for investigation by CID by writing a letter to Home Minister on 14.04.2017. However, no response was received from the concerned Minister. Mr. Sanjay Satendra Pathak who was the State Minister also made a request for fair investigation but no heed has been paid. The husband of the petitioner cannot commit suicide. Accordingly, the petitioner pointed out certain suspicious circumstances to multiple authorities including Prime Minister of India, Home Minister of India, Chief Minister of State as well as DGP but since proper enquiry has not been done, therefore, the matter should be transferred to CBI. It is submitted that the door was broke open in absence of the landlord or the Executive Magistrate. Half of body of husband of petitioner was lying on the ground. It was not possible from outside to look inside the room. Post-mortem was got done in absence of the petitioner and her family members. The Post-mortem was done by a single doctor which also gives rise to suspicion. It is further submitted that from the photographs it is clear that husband of the petitioner was consuming liquor and was wearing Paint and Shirt whereas only *Baniyan* and Shorts were found on the body of the deceased. The photographs of the party in which the husband of petitioner was seen consuming liquor and photograph of the death body which was hanging have also been filed along with the petition.

3. The respondents have filed their return and have also filed their



additional return. Paragraphs 5, 6, 7, 8 and 10 of the additional return reads as under:-

“5. That, it is pertinent to mention here that the fair investigation was done by the authority. The petitioner had made application Annexure-P-7 before the higher authority, in this regard there are four points have raised by the petitioner regarding the death of her husband. In the 1<sup>st</sup> point she has contended that without presence of any person the door has been opened. The answering respondents submit that at the time of death of deceased, during investigation when it was found that the deceased had locked the room from inside then the “Panchnama“ was prepared regarding open the door and there was 3 witnesses present in the room. The Panchnama report Carpenter who has broken the door has also signed the Panchnama and found that the body was hanging in the Fan with Scarf. Thereafter Panchnama has also been prepared regarding the dead body where 5 witnesses has signed in the said Panchnama and opined that the body prima face likely to be hanging and looks committal of suicide. Copy of Panchnama report of opening the door as well as Nakaha Panchnama is filed herewith as **Annexure-R-3 & R-4**. Hence the 1<sup>st</sup> contention raised by the petitioner in the application that no person was present at the time of opening of door is baseless.

6. That, the 2nd contention in the application Annexure-P-7 is that the body of the deceased was lying in the floor. The answering respondents submit that the deceased himself hanged on the fan with Scarf/Muffler, therefore, it was very much possible to stretch from the fan. Therefore, due to weight of the body the scarf/muffler has stretched from the fan, then ½ of the body was lying from the floor.

7. That, the 3rd contention of the petitioner that nothing seen from inside of the door. The answering respondents submit that the door was closed from inside and in the Panchnama report it has been clearly



mentioned that firstly they had knocked the door and called deceased then there was no reply by the deceased then the door was opened by the Carpenter in the presence of witnesses. Hence the 3rd contention is also baseless, that nothing seen from inside of the room.

8. That, the 4th contention made by the petitioner that the Post Mortem was done without presence of their family. The answering respondents submit that at the time of post Mortem no one is allowed to enter in the Mortuary. The Post Mortem has been done by an independent Doctor namely Shri Chakresh Jain, Demonstrator and Specialist Forensic, Medicine, Medical College, Rewa. It has also submitted that at the time of Post Mortem as such no question has been raised by the petitioner and the same Post Mortem has been done by Forensic Specialist and he has opined that there is no injury found in the body except Ligature Mark in the Neck and the cause of death was Asphyxia as a result of hanging. Hence there is no question to murder the husband of the petitioner by anyone. Copy of Post Mortem report is filed herewith as **Annexure-R-5**.

10. That, it is pertinent to mention here that Senior Scientific Officer, namely Dr. R.P.Shukla has also inspected the spot on the same day and after investigation he opined that the deceased himself has committed suicide inside the room. therefore, the death was due to committal of suicide. Copy of report of Senior Scientific Officer is filed herewith as **Annexure-R-7**.

4. Now the only question for consideration is as to whether the petitioner has made out a case for transfer of investigation to CBI or not?
5. The Supreme Court in the case of **Nasima Vs. The State of Uttar Pradesh** by order dated **21-4-2022**, passed in **S.L.P. (Cri) No. 551/2022**



has held as under :

The term "investigation" as referred to under Section 2(h) of the Code includes collection of evidence conducted by the police officer or by any person who is authorized by the Magistrate on his behalf and that includes search for material evidence and facts to find out whether or not an offence has been committed by the accused or not?

The fair investigation is the backbone of criminal justice system and the object of the investigation is to search for the truth so that it would help in meeting the ends of justice by way of fair trial in Court. At the same time, the need to ensure fair investigation of crime is undoubtedly imperative because it protects at one level the rights of the victim and the fundamental rights of every citizen in ensuring that crime is investigated and dealt with in accordance with law.

6. The Supreme Court in the case of **State of Punjab Vs. CBI** reported in **(2011) 9 SCC 182** has held as under :

**30.** In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to CBI. The narration of the facts and circumstances in paras 2 to 9 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as CBI was absolutely necessary in the interests of justice.

**31.** Moreover, even though the High Court in the impugned order dated 11-12-2007 did make a mention that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12-12-2007, the High Court has stayed further proceedings before the trial court in the case arising out



of FIR No. 82 of PS City I, Moga, till further orders. Thus, the High Court was of the view that even though the investigation is complete in one case and charge-sheet has been filed by the police, it was necessary in the ends of justice that CBI should carry out an investigation into the case.

**32.** In the recent case of *State of W.B. v. Committee for Protection of Democratic Rights* a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extraordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 CrPC to direct investigation by CBI for securing the ends of justice.

**33.** In the facts and circumstances of this case, however, the High Court has held that the State local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to CBI. In other words, this was one of those extraordinary cases where the direction of the High Court for investigation by CBI was justified.

**7.** The Supreme Court in the case of **Vinay Tyagi Vs. Irshad Ali**, reported in **(2013) 5 SCC 762** has held as under :

**43.** At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the



Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

8. The Supreme Court in the case of **State of W.B. v. Committee for Protection of Democratic Rights** reported in **(2010) 3 SCC 571** has held as under :

### **Conclusions**

68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial



investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of “the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review”.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles





32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of



the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

9. The Supreme Court in the case of **Dharam Pal Vs. State of Haryana** reported in (2016) 4 SCC 160 has held as under :

2. Cry for fair trial by the accused as well as by the victim sometimes remains in the singular and individualistic realm, may be due to the perception gatherable from the facts that there is an attempt to contest on the plinth of fairness being provoked by some kind of vengeance or singularity of “affected purpose”; but, irrefutably a pronounced and pregnant one, there are occasions when the individual cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of



conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.

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**24.** Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

**25.** We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that



the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

**10.** If the facts and circumstances of the case are considered it appears that one day prior to the commission of suicide, deceased Jail Pal Singh had a liquor party with his friends. Thereafter on the next day, his death body was found hanging and liquor bottle, empty glasses were also seen on the table. So far as the fact that some part of the body of the deceased



was found lying on the ground is concerned, it is the stand of the State that because of stretching of material which was used for hanging, dead body sometimes comes down on the earth.

**11.** Furthermore, the incident took place in the year, 2017. Now more than 7 and  $\frac{1}{2}$  years have passed. Not only the petitioner has failed to make out a *prima facie* case for transfer of investigation to CBI but the reasons expressing suspicion as mentioned in letter addressed to Home Minister, Union of India which has been filed as Annexure-P/8 are also not so serious which may warrant transfer of investigation to the CBI.

**12.** Under these circumstances, this Court is of considered opinion that no case is made out warranting transfer of investigation to CBI.

**13.** Accordingly, the petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)  
JUDGE

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