

Sushila Devi vs State Of Rajasthan & Ors on 24 September, 2013

Author: Pinaki Chandra Ghose

Bench: Pinaki Chandra Ghose

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISCELLANEOUS PETITION NO.21811 OF 2010
WITH
CRIMINAL MISCELLANEOUS PETITION NO.17950 OF 2011
AND
CRIMINAL MISCELLANEOUS PETITION NO.15638 OF 2012
IN
CRIMINAL MISCELLANEOUS PETITION NO.21811 OF 2010
IN

SPECIAL LEAVE PETITION (CRIMINAL) NO. 3212 OF 2008

Sushila Devi

... Petitioner

Vs.

State of Rajasthan & Ors.

... Respondents

J U D G M E N T

Pinaki Chandra Ghose, J.

1. These applications have been filed by the parties praying for monitoring of the matter in question, on one hand and the other parties seek that since the charge-sheet has already been filed, it is not necessary to continue with the monitoring of the matter in question which is pending before the Criminal Court for adjudication

2. Therefore, the sole question as it appears to be germane at this stage in the matter is: whether this Court should continue to monitor the investigation, as directed earlier, even after filing of the charge- sheet.

3. The facts of the case briefly are as follows:

a) In January, 2006, the Rajasthan Police came up with a list of most-

wanted criminals of Rajasthan which included the name of Dara Singh, the deceased husband of the petitioner in Special Leave Petition (Criminal) No.3212/2008. An award of Rs.25,000/- was declared on his head and on October 23, 2006, it appears that he was killed in an encounter as would be evidenced from the subsequent FIR No. 396/2006 dated October 23, 2006 registered on the complaint of Mr. Rajesh Chaudhary, a member of the Special Operation Group (SOG).

b) In the FIR it was alleged that the deceased was equipped with sophisticated weapons and was killed in an encounter with the SOG after a gun-battle. In these circumstances, subsequently, Smt. Sushila Devi filed a complaint before the Judicial Magistrate under Section 190 of the Code of Criminal Procedure (hereinafter 'the Code') seeking directions under Section 156(3) of the Code for registration of an FIR against the member of the SOG and alleged that Dara Singh was killed by the SOG. The Judicial Magistrate by an order dated April 2, 2007, issues directions for investigation. These directions were in conflict with the investigation under FIR No.396/2006.

c) Thereafter, Smt. Sushila Devi, widow of Late Dara Singh, filed an application being Criminal Miscellaneous Petition No. 1015/2007 before the High Court of Rajasthan against the order passed by the learned Magistrate dated May 28, 2007, dismissing the application under Sections 157(1) and 210 of the Code recording that the encounter, as alleged by Sushila Devi, is the subject-matter of FIR No.396/2006 which is under the process of an investigation.

d) On August 2, 2007, the High Court issued notices to the respondents and by an order dated October 1, 2007, which is impugned in this petition, the High Court was pleased to recall its order dated August 2, 2007.

e) In the said Special Leave Petition (No.3212/2008), an allegation has been made by Sushila Devi that her husband was killed in the said encounter by the Police officials of Special Operation Group, Jaipur on October 23, 2006 and, hence, prayed for a direction to initiate a CBI inquiry in the matter. The State of Rajasthan filed an affidavit and submitted that the Government had decided to refer the matter to the Central Bureau of Investigation (CBI) vide their letter dated March 3, 2009. In these circumstances, the matter came up/disposed of by this Court on April 8, 2009.

f) Thereafter, Smt. Sushila Devi filed Criminal Misc. Petition No.13244/2009 along with Criminal Misc. Petition No.13246/2009. This Court disposed of the said petitions on the ground that since the CBI has been directed to hold an investigation in respect of an offence alleged, no order need be passed on the said petitions. After complying with the orders of this Court, the CBI registered Case No.RC.2(S)/2010-SCU.V/SC-II/CBI/New Delhi on April 23, 2010 and took up investigation.

g) During the investigation, another Criminal Miscellaneous Petition No.21811 of 2010 was filed in this Court by the petitioner, praying for monitoring of investigation of the case and to direct the CBI to place the findings of investigation before this Court ahead of filing the same in competent court at Jaipur. This Court vide its order dated January 1, 2011 issued the following directions in the matter :

“Heard learned counsel for the parties.

It is deeply disappointing that the CBI has not yet completed the investigation despite the order of this Court dated 9th April, 2010. On the request of the learned counsel for CBI, we grant two months’ further time to complete the investigation, failing which a serious view will be taken by this Court about the functioning of the CBI.

List on 8th March, 2011.”

h) From time to time, the matter appeared before this Court and two months’ time was granted on March 8, 2011 to complete the investigation by the CBI. The State of Rajasthan was directed to co-

operate with them. The CBI proceeded with the matter. In course of investigation, four of the accused persons were arrested on March 11, 2011 and remanded in Police custody till March 17, 2011. Subsequent thereto, two accused persons were arrested on May 15, 2011 and May 26, 2011.

i) The CBI on completion of their investigation filed a charge-sheet before the competent court on June 3, 2011, against 16 accused persons including the persons who were absconding at that point of time, namely, Arvind Kumar Jain, Arshad Ali, Rajesh Chaudhary, Zulfikar Ali, Arvind Bhardwaj and Vijay Kumar Chaudhary. Investigation under section 173(8) of the Code was pending against one of the prima facie suspects, Mr. Rajendra Rathore, who was then a Minister in the Government of Rajasthan.

j) In the meanwhile, one of the accused Satyanarayan Godara filed an application for impleadment in the matter which was granted by this Court on July 18, 2011. On August 25, 2011 charges against 10 accused persons, who were in jail custody, were framed by the District & Sessions Judge, Jaipur. This Court on October 31, 2011 issued directions to the six accused to surrender before the trial court, in order to be eligible for legal remedy. In spite of the same, only one of the accused being Arshad Ali surrendered before the Court on November 11, 2011.

k) Complying with the various orders of this Court from time to time, the CBI duly filed status report/s before this Court and on December 16, 2011, this Court directed that monitoring of the case will continue and further directed the CBI to file a status report by the end of January, 2011. Steps were also taken by the CBI as would be evident from the status reports filed before this Court.

l) In an attempt to arrest the remaining five fugitive accused, cash rewards of Rs.10 lakhs on A.K. Jain and Rs.5 lakhs on others were declared by the CBI to motivate the general public to give information leading to the arrest of the said accused persons at large. After the rewards were announced, A.K. Jain surrendered before the court on February 27, 2012 and he remained in police custody till March 10, 2012. Efforts to arrest the remaining absconding accused continued.

m) After completion of further investigation pending under section 173(8) of the Code, the CBI filed a supplementary charge-sheet under Section 120B read with Sections 302, 364, 346, 201, 218 and

193 of the IPC against Rajendra Rathore before the court on April 5, 2012. The C.J.M., Jaipur, took cognizance of the offence against the accused Rajendra Rathore and committed the case to the Court of Sessions, Jaipur, Rajasthan. On May 31, 2012, the Sessions Judge, Jaipur discharged the accused Rajendra Rathore from all allegations levelled against him. The CBI filed a revision petition before the High Court which was allowed on December 26, 2012 setting aside the order passed by the learned Sessions Judge, Jaipur. Rajendra Rathore was directed to surrender before the High Court and a charge was directed to be framed against him.

n) In the meanwhile, the accused A.K. Jain was committed to the Court of Sessions by the A.C.J.M. Jaipur and the Sessions Court on May 1, 2012 framed charges against him under the same provisions under which Rajendra Rathore was charge-sheeted and the trial remains pending. Two other absconding accused, namely, Rajesh Choudhary and Arvind Bhardwaj were committed to the Court of Sessions on August 13, 2012 and charged were framed against them on September 6, 2012.

o) Furthermore, on June 30, 2012, the CBI moved the court at Jaipur for registration of an FIR under section 174A IPC against the four absconding accused persons. It was further stated that one of the absconding accused Vijay Kumar Chaudhary was found murdered on November 15, 2012 in the area of Police Station Ratangarh, District Churu, Rajasthan. It is further stated that an important witness in the case, i.e., Mr. Vijay Shankar Singh, Additional Chief Secretary, the then Home Secretary, Government of Rajasthan died in a road accident on December 3, 2012 at Jaipur.

4. Mr. H.P. Raval, learned Additional Solicitor General submitted that in the facts and circumstances of this case, it is necessary for this Court to monitor the whole case which is pending before the Court. Mr. Raval further submitted that if the investigation of the CBI and further monitoring of the case pending before the court is done, it would ensure that the trial is conducted fairly. Mr. Raval also submitted that considering the peculiar nature and the facts of this case, it is necessary for the Court to monitor this case. He also relied upon the following judgments of this Court : National Human Rights Commission vs. State of Gujarat & Ors. [2009 (6) SCC 767], Centre for Public Interest Litigation & Ors. vs. Union of India & Ors. [2012 (3) SCC 104] and Jakia Nasim Ahesan v. State of Gujarat [2011 (12) SCC 302].

5. Mr. R.P. Bhatt, learned senior counsel appearing for Smt. Sushila Devi, adopted the arguments of Mr. Raval.

6. Dr. Manish Singhvi, learned Additional Advocate General appearing on behalf of the State of Rajasthan, supports the contention of Mr. Raval, learned A.S.G. Dr. Singhvi further pointed out that if the court monitors the case, the matter will be properly dealt with at every stage.

7. Per contra, Mr. P.S. Patwalia, learned senior counsel appearing in Criminal Misc. Petition No.17950/2011 and on behalf of one Satyanarayan Godara submitted that once a charge-sheet is filed, which is not denied before this Court, before a competent court after completion of the investigation, the process of such monitoring comes to an end. In the instant case, according to him, the CBI has already stated that they have completed the investigation and filed a charge-sheet before the competent court. So, there is no need to monitor the matter which is now pending before the

court and the competent court of law would deal with the matter relating to the trial of the accused including the matters filed under Section 173(8) of the Code. He further contended that after filing of the charge-sheet the matter should be left to the court which should proceed with the trial in accordance with the provisions of law. Mr. Patwalia further contended that the investigation in the case was over on April 5, 2012. Undisputedly, a supplementary charge-sheet has been filed. It cannot be disputed that no investigation is pending in the matter. Trial has been going on and as many as 15 witnesses have been examined so far. The application which is pending consideration of this Court is Crl. Misc. Petition No.21811 of 2010 wherein the complainant has made a prayer for monitoring. He contended that the said application has become infructuous because monitoring of the case comes to an end as soon as the investigation is over. In support of his contention, he strongly relied upon *Vineet Narain v. Union of India* [1998 (1) SCC 226], *Union of India v. Sushil Kumar Modi* [1998 (8) SCC 661], *Rajiv Lalan Singh "Lalan" (8) v. Union of India* [2006 (6) SCC 613], *M.C. Mehta (Taj Corridor Scam) v. Union of India* [2007 (1) SCC 110] and *Jakia Nasim Ahesan v. State of Gujarat* [2011 (12) SCC 302], and drew our attention specifically where the Court came to the conclusion that after the investigation is over, there is no need to monitor the case.

8. Mr. Ranjit Kumar, learned senior counsel, also appeared in this matter and contended that after the completion of the investigation and filing of the charge- sheet, nothing remains to be monitored by this Court since the matter is being proceeded before the trial court. He also relied upon the decisions cited before this Court by Mr. Patwalia and contended that the trial court should deal with the matter in accordance with the provisions of law.

9. We have heard learned counsel for the parties at length. We have also perused the facts of this case. We have noticed in *Vineet Narain's* case (supra) also known as the "Hawala Case" wherein a Bench of three learned Judges heard the various PILs regarding the investigations of the Hawala Scam run by the Jain Brothers implicating various politicians. This Court while deciding the procedure of investigation under the monitoring of the CBI, observed that:

"8. We would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of 'continuing mandamus'.

10. In *Union of India vs. Sushil Kumar Modi* (supra) which dealt with the investigation in the fodder scam, a three-Judge Bench of this Court observed thus :

“6. ... It was made clear by this Court in the very first case, namely Vineet Narain & Ors. vs. Union of India (W.P. (Crl.) Nos.340-343 of 1993), that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other concerned investigative agencies perform their function of investigating into the offences concerned comes to an end and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the CrPC. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive. It is, therefore, clear that the impugned order of the High Court dealing primarily with this aspect cannot be sustained.”

11. In *M.C. Mehta vs. Union of India* (supra) famously known as the “Taj Corridor Case”, two learned Judges of the three-Judge Bench wherein the third Judge gave a separate but concurring judgment, observed after referring to the judgment of this Court in *Union of India v. Sushil Kumar Modi* (supra) which upheld the *Vineet Narain Case* (supra) that the monitoring of the investigation by this Court is only to ensure the proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigations, which are to be determined at the trial as per the ordinary procedure prescribed by law.

12. In the case of *Jakia Nasim Ahesan* (supra) where the wife of a victim of the 2002 Gujarat riots sought additional investigation on the basis of additional material coming to light against the persons in power who were accused in the same, a three-Judge Bench of this Court, while coming to the conclusion that monitoring in the present case must come to an end, deferentially concurred with the aforementioned cases and observed thus :

“9. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173(2) of the Code to the court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in *M.C. Mehta (Taj Corridor Scam) v. Union of India* [2007 (1) SCC 110], in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law.”

13. In the said decision, it was also observed :

“13. In *M.C. Mehta v. Union of India* [2008 (1) SCC 407], a question arose as to whether after the submission of the final report by CBI in the Court of Special Judge, pursuant to this Court’s directions, this Court should examine the legality and validity of CBI’s action in seeking a sanction under Section 197 of the Code for the

prosecution of some of the persons named in the final report. Dismissing the application moved by the learned amicus curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus :

‘9. ... The jurisdiction of the court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in.’

14. Recently, similar views have been echoed by this Court in *Narmada Bai v. State of Gujarat* [2011 (5) SCC 79]. In that case, dealing with the question of further monitoring in a case upon submission of a report by CBI to this Court, on the conclusion of the investigation, referring to the earlier decisions in *Vineet Narain* (supra), *Sushil Kumar Modi* (supra) and *M.C. Mehta* (Taj Corridor Scam) (supra), speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under : (*Narmada Bai* case (supra), SCC p. 102, para 70) ‘70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173 (8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an application.’ ”

14. After analysing all these decisions, it appears to us that this Court has already in a catena of decisions held and pointed out that the monitoring of a case is continued till the investigation continues but when the investigating agency, which is appointed by the court, completes the investigation, files a charge-sheet and takes steps in the matter in accordance with the provisions of law before a competent court of law, it would not be proper for this Court to keep on monitoring the trial which is continuing before a competent court. Accordingly, we are of the opinion that since the investigation has already been completed, charge- sheet has been filed, trial has already commenced, it is not necessary for this Court to continue with the monitoring of the case in question.

15. In these circumstances, we have to answer the question in the negative. Accordingly, we direct that it is not necessary to monitor the matter in question any further since the matter is in the domain of the competent court. All the applications are accordingly disposed of.

.....J.
(Surinder Singh Nijjar)

New Delhi;
September 24, 2013.

.....J.
(Pinaki Chandra Ghose)