

Mandakini Diwan and Anr.
v.
The High Court of Chhattisgarh & Ors.
(Criminal Appeal No. 3738 of 2024)
06 September, 2024
[Vikram Nath* and Prasanna Bhalachandra Varale, JJ.]

Issue for Consideration

Matter pertains to investigation as regards the suspicious death of the wife of senior judicial officer.

Headnotes[†]

Constitution of India – Arts. 226, 136 – Investigation by independent agency – Death of the wife of senior judicial officer – Case of the appellants-mother and the brother of the deceased that the death was suspicious and was not a case of simple suicide, and apprehended that the husband being a senior judicial officer had managed the post mortem in which the cause of death was shown to be suicide by hanging – Several complaints by appellants – Neither FIR registered nor fair investigation carried out – Writ petition by the appellants, remained pending for seven years, and thereafter, dismissed holding that the appellants had adequate statutory remedy available u/s. 156(3) CrPC – Challenge to:

Held: Power to direct CBI to conduct investigation is to be exercised sparingly and such orders should not be passed in routine manner – On facts, the aggrieved party raised allegations of bias and undue influence on the police machinery of the State – Considering the fact that the husband is a senior judicial officer any doubt or apprehension in the minds of the appellants who have lost their family member may be dispelled by the investigation being carried out by CBI – This may result into doing complete justice and enforcing the fundamental right of getting a fair investigation – Thus, the impugned order passed by the High Court is set aside – CBI directed to carry out complete and fair investigation and proceed in accordance with law into the incident and that too expeditiously considering the fact that the incident is of 2016 and submit a report to this Court – If CBI finds that FIR needs to be registered, it may

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itself do so and proceed accordingly and bring such complaint to a logical conclusion – However, if the CBI comes to the conclusion that there is no material which it could collect which is not sufficient in ordinary course to submit a chargesheet, it would close the proceedings. [Paras 12, 14, 15]

Case Law Cited

Awungshi Chirmayo vs. Government of NCT of Delhi (2022) SCC Online SC 1452 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Constitution of India.

List of Keywords

Investigation by independent agency; Suicide; Post mortem; Fair investigation; Statutory remedy; Direct CBI to conduct investigation.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3738 of 2024

From the Judgment and Order dated 10.05.2023 of the High Court of Chhattisgarh at Bilaspur in WPCR No. 197 of 2016

Appearances for Parties

Dinesh Jotwani, Dhawesh Pahuja, Bhargava Baisoya, Ms. Ekta Gambhir, Ms. Shruti Singh, Ms. Shivalika Midha, Narendra Bahadur Tiwari, Nilesh Sharma, Saket Gogia, Advs. for the Appellants.

Tushar Mehta, Solicitor General, Mrs. Aishwarya Bhati, A.S.G., Avdhesh Kumar Singh, A.A.G., Ms. Anjana Prakash, Mrs. Swarupama Chaturvedi, Sr. Advs., Prashant Singh, Rajat Nair, Mrs. Prerna Dhall, Piyush Yadav, Ms. Akanksha Singh, Alok Sahay, Himanshu Shekhar, Parth Shekhar, Ms. Ambali Vedasen, Shubham Singh, Ms. Rachna Ranjan, Ms. Sarita Kumari, Ritesh Kumar Gupta, T.V. Surendranath, Atul Arvind, Sudip Patra, Ms. Kamlika Samadder, Arvind Kumar Tomar, Mukesh Kumar Maroria, Ms. Ruchi Kohli, Ms. Shagun Thakur, Ms. Ruchi Gaur Narula, Santosh Kumar, Navanjay Mahapatra, Apoorv Kurup, Ms. Nidhi Mittal, Ms. Gauri Goburdhun, Ms. Aanchal, Akhil Hasija, Gurjas Singh Narula, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Vikram Nath, J.**

1. Leave granted.
2. This appeal assails the correctness of the order dated 10.05.2023 passed by the Division Bench of High Court of Chhattisgarh in W.P.Cr. No.197 of 2016 titled as Mandakini Diwan & Anr. vs. High Court of Chhattisgarh and seven others whereby the writ petition was dismissed with liberty to the petitioners therein (appellants herein) to avail the appropriate remedy before the appropriate forum.
3. Before referring to the facts we wish to make it clear that we are not entering into the detailed facts and submissions as advanced by the parties because any observation made by us on such submissions and detailed facts may result into influencing a fair investigation which we are inclined to direct in the present case by an independent agency.
4. The facts giving rise to the present appeal are:
 - 4.1. The respondent no. 7 had applied in the Higher Judicial Services of the State of Chhattisgarh against the advertisement issued in the year 2012. Pursuant to which he was selected and appointed in June 2013 as Addl.District Judge, Geedam at Dantewada. Respondent no. 7 got married to the deceased on 15.02.2014. However, they had known each other since 2010. The deceased was working as Asstt. District Prosecution Officer. At the relevant time they were posted at Dantewada.
 - 4.2. On 12.05.2016, in the evening at about 10:30 PM the appellants who are mother and the brother of the deceased received a phone call that Ms. Ranjana Diwan had committed suicide. Immediately they rushed from Bilaspur to Dantewada and tried to figure out as to what had happened. According to the appellants they were not provided with the post mortem report.
 - 4.3. It is the case of the appellants that there was something fishy in the death of Ms. Ranjana Diwan and it was not a case of simple suicide. It was also their apprehension that respondent no. 7 having sufficient influence being a senior judicial officer had managed the post mortem in which the cause of death was shown to be suicide by hanging.

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4.4. The post-mortem report further indicated that the deceased had six ante-mortem injuries on her body. The information of suicide was given to the Dantewada Police Station, a Merg was registered under section 174 of Code of Criminal Procedure, 1973.¹ On 13.05.2016, the police made recoveries, the copy of which is filed as Annexure -P/2. The post-mortem was conducted on 13.05.2016 at 06:30 PM. The cause of death was reported to be asphyxia due to hanging. Further, six ante-mortem injuries were reported which are as follows:

“Injuries:

- 1) A contusion present over back of right hand ~ 3.5 cm x 3 cm bluish.
- 2) A contusion present over left ring finger over proximal phalanx palmer aspect, ~ 1.5 cm x 1 cm, bluish.
- 3) A contusion present over right leg~ 3 cm below knee~ 4 cm x 3.5 cm, bluish.
- 4) A contusion present over the left foot dorsal aspect ~ 1.5 cm x 1.5 cm bluish.
- 5) A contusion present over left thigh ~ 17 cm below groin, ~ 4 cm x 4.3 cm bluish.
- 6) Ligature mark: A brown parchment like hard ligature mark present over neck above the level of thyroid cartilage, obliquely extending upward toward chin, from behind, grooved at places. Maximum breadth ~ 4.5 cm on the backside. Peeling of skin evident in marks at places. Mark is situated 1.5 cm below tip of chin, 5.5 cm below tip of left mastoid, & 4 cm below tip of right mastoid, 10 cm below occiput. Mark is faint for ~3 cm on the right side. On dissection corresponding under the surface of skin is glistening white. Hyoid bone and thyroid cartilage intact.

All the injuries are ante mortem and are of within 06 hours of death. Injury no. 6 is sufficient to cause instantaneous death in the ordinary course of nature.

Metallic rings in each 2nd toe.”

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- 4.5. According to the appellants, the Police filed the closure report treating it to be a case of suicide. The appellants repeatedly continued to represent to the authorities for a fair investigation after registering First Information Report. All the complaints made by the appellants to the authorities did not result in the registering of FIR against respondent no. 7. All the complaints though were inquired into but were ultimately closed as a result of the influence exerted by the respondent no. 7. Till date, neither FIR has been registered on the several complaints made by the appellants nor a fair investigation has been carried out in order to find out the truth.
- 4.6. Left with no alternative, the appellants filed writ petition under Article 226 of the Constitution of India registered as W.P. Crl. No. 197 of 2016 praying for the following reliefs:
 - "10.1 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ commanding and directing the respondents to produce all the records related with the case of the petitioners for just and proper decision of this case.
 - 10.2 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing the respondent No. 8 to lodge a separate FIR or to take investigation of merg No. 24/16 of the Police Station, Geedam, District Dantewada and after due investigation the report may kindly be submitted before the Hon'ble Court.
 - 10.3 That, this' Hon'ble Court may be kind enough to issuing a writ in the nature of mandamus, certiorari or likewise any other appropriate writ, commanding and directing respondents No. 2 to 6 to hand over all the records related with the case of death of deceased Ranjana Diwan, wife of Manvendra Singh, the respondent No. 7 for just and proper investigation, enquiry into the matter.
 - 10.4 That, this Hon'ble Court may be kind enough in issuing a writ in the nature of mandamus, certiorari

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or likewise any other appropriate writ, commanding and directing the respondent No. 1 to keep the respondent No. 7 out of the job till the final decision of the case so that there may be no influence in the investigation by the respondent No. 7.

- 10.5 Any other relief, which the Hon'ble Court deems fit and proper looking to the facts and circumstances of the case, may also be granted."
- 4.7. In the petition before the High Court, respondent no. 1 is the High Court of Chhattisgarh, respondent no. 2 is State of Chhattisgarh through Secretary, Department of Home, respondent no. 3 is the Director General of Police, respondent no. 4 is Inspector General of Police Headquarters, respondent no. 5 is Superintendent of Police, Dantewada, respondent no. 6 is Station House Officer, Police Station Geedam, District Dantewada, respondent no. 7 is the husband of the deceased and respondent no. 8 is the Central Bureau of Investigation.
- 4.8. The said petition remained pending for about seven years. By the impugned order the High Court has dismissed the said petition. According to the High Court the appellants had adequate statutory remedy available under section 156(3) of the Cr.P.C. by approaching the Magistrate concerned.
5. The submissions advanced by the counsel for the appellants is that it is true that appellant had a remedy of filing a complaint under section 156(3) Cr.P.C. but considering the fact that the respondent no. 7 is senior judicial officer and had already exercised his influence on the administration in ensuring that FIR is not registered and no free and fair investigation be carried out, they had little hope rather no hope of getting any justice from the Court of a Magistrate who would be an officer subordinate to respondent no. 7. It is for this reason that they had approached the High Court under Article 226 of the Constitution of India.
6. Before us, detailed arguments have been advanced by the appellants to show the high handedness of the respondent no. 7 in influencing the administration in not registering the FIR despite there being suspicious circumstances resulting in the death of daughter of the appellant no. 1 and sister of appellant no. 2, more particularly there

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being no explanation for the six ante mortem injuries. It was therefore submitted that this Court may direct for an independent agency to investigate into the matter.

7. On the other hand, learned counsel appearing for State of Chhattisgarh submitted that detailed inquiry was carried out and statements of more than 50 witnesses were recorded; that every complaint filed by the appellant was enquired into at the highest level but when no evidence could be found against respondent no. 7, the complaints were closed. It is also his submission that the appellants are unnecessarily doubting the credibility of the investigating agency of the State of Chhattisgarh and it also amounts to putting a blame not only on the respondent no. 7 but also on the entire police machinery of the State of Chhattisgarh.
8. Learned counsel also referred to the details as to how the complaints have been dealt with. It was thus submitted that the appeal be dismissed and the appellants be left at liberty to approach the Magistrate under section 156(3) Cr.P.C.
9. Learned senior counsel appearing for the respondent no. 7 also had similar submissions as were made on behalf of the State of Chhattisgarh. In addition, it was submitted that respondent no. 7 being a judicial officer having a good reputation is being unnecessarily targeted by the appellants for ulterior motives. A very thorough and fair inquiry was carried out in which no complicity of the respondent no. 7 could be found.
10. It was further submitted that in all the enquiries made, no incriminating material could be collected against the respondent no. 7 and as such the complaints were rightly closed. By filing the writ petition and the present appeal the only attempt of the appellants is to somehow or the other not only tarnish the image of the respondent no. 7 but also cause unnecessary harassment and jeopardize his service. Further, a direction to appoint CBI to investigate is also not warranted in the present case and the appeal deserves to be dismissed.
11. Shri Tushar Mehta, learned Solicitor General appearing for the CBI submitted that whatever order the Court passes the same would be complied with. He also suggested that the Court may consider appointing a high-level Special Investigation Team or in the alternative may direct the CBI to investigate the matter as this will provide

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credibility and instill confidence not only in the aggrieved party but also in the society at large.

12. Considering the fact that the respondent no. 7 is a senior judicial officer any doubt or apprehension in the minds of the appellants who have lost their family member may be dispelled by the investigation being carried out by CBI. This may result into doing complete justice and enforcing the fundamental right of getting a fair investigation.
13. In the case of **Awungshi Chirmayo vs. Government of NCT of Delhi**² this Court directed CBI to hold enquiry in the criminal matter related to murder of two cousins due to certain puzzling facts including inconclusive post mortem report. It held as follows:

"13. In a seminal judgment reported as State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal (2010) 3 SCC 571, this Court has discussed in detail inter alia the circumstances under which the Constitutional Courts would be empowered to issue directions for CBI enquiry to be made. This Court noted that the power to transfer investigation should be used sparingly, however, it could be used for doing complete justice and ensuring there is no violation of fundamental rights. This is what the Court said in Para 70:

"Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing

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complete justice and enforcing the fundamental rights..."

14. The powers of this Court for directing further investigation regardless of the stage of investigation are extremely wide. This can be done even if the chargesheet has been submitted by the prosecuting agency. In the case of Bharati Tamang v. Union of India (2013) 15 SCC 578, this Court allowed the Writ Petition filed by the widow of late Madan Tamang who was killed during a political clash and directed investigation by the CBI which would be monitored by the Joint Director, CBI. The following observations were made in Para 44:

"44. Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate court of law."
15. This Court has expressed its strong views about the need of Courts to be alive to genuine grievances brought before it by ordinary citizens as has been held in Zahira Habibulla H. Sheikh v. State of Gujarat (2004) 4 SCC 158.
16. It is to observe that unresolved crimes tend to erode public trust in institutions which have been established for maintaining law and order. Criminal investigation must be both fair and effective. We say nothing on the

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fairness of the investigation appears to us, but the fact that it has been ineffective is self evident. The kith and kin of the deceased who live far away in Manipur have a real logistical problem while approaching authorities in Delhi, yet they have their hope alive, and have shown trust and confidence in this system. We are therefore of the considered view that this case needs to be handed over to CBI, for a proper investigation and also to remove any doubts in the minds of the appellants, and to bring the real culprits to justice.

17. In view of the discussion made above, the order of the Delhi High Court dated 18.05.2018, dismissing the prayer of the present appellants to transfer the investigation to CBI is hereby set aside. The appeal is hereby allowed and we direct that CBI to hold enquiry in the matter. The case shall be transferred from SIT to the CBI. The SIT, which has so far conducted the investigation in the matter, will hand over all the relevant papers and documents to CBI for investigation. After a thorough investigation, CBI will submit its complete investigation report or charge sheet before the concerned court as expeditiously as possible.””
14. It is true that power to direct CBI to conduct investigation is to be exercised sparingly and such orders should not be passed in routine manner. In the present case, the aggrieved party has raised allegations of bias and undue influence on the police machinery of the State of Chhattisgarh. Coupled with the fact that the thorough, fair and independent investigation needs to be carried out to find out the truth about the whole incident and in particular about the ante mortem injuries. We are of the view that such a direction needs to be issued in the present case.
15. We accordingly allow this appeal, set aside the impugned order passed by the High Court and further direct the CBI-respondent no. 8 to carry out complete and fair investigation and proceed in accordance to law into the incident and that too expeditiously considering the fact that the incident is of 2016 and submit a report to this Court. If the CBI finds that an FIR needs to be registered, it may itself do so and proceed accordingly and bring such complaint to a logical conclusion. However, if the CBI comes to the conclusion that there

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is no material which it could collect which is not sufficient in ordinary course to submit a chargesheet, it would close the proceedings. The State of Chhattisgarh is directed to extend all cooperation to the CBI in conducting the investigation and provide all necessary papers and other strategic support to the CBI as may be required.

16. We make it clear that we have not made any observation on merit. However, still we clarify that any observation made in this judgment will not influence the investigation by the CBI. The appeal is accordingly allowed.

Result of the case: Appeal Allowed.

[†]*Headnotes prepared by:* Nidhi Jain