2024 INSC 930

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY ORIGINAL JURISDICTION
WRIT PETITION (Crl.) No. 416 OF 2020

KABIR SHANKAR BOSE ...PETITIONER (S)

VERSUS

STATE OF WEST BENGAL & ORS. ...RESPONDENT (S)

J U D G M E N T

PANKAJ MITHAL, J.

1. We have heard Shri Mahesh Jethmalani, learned Senior Counsel for the petitioner, Shri Tushar Mehta, learned Solicitor General of India for the CBI, Shri Vikramjeet Banerjee, learned Additional Solicitor General of India, for the CISF, Ms. Astha Sharma, learned Standing Counsel for the State of West Bengal and Shri Zoheb Hossain, learned counsel for respondent No. 7.

2. The petitioner who is an advocate by profession as also being in politics contends that he has a fundamental right to have a fair investigation in connection with FIR No.400 of 2020 dated 07.12.2020 lodged against him with Police Station Serampore, West Bengal under

Sections 341, 323, 325, 326, 307, 354, 504, 506, 34 of Indian Penal Code[1] and FIR No. 401 of 2020 dated 07.12.2020 again with Police Station Serampore, West Bengal under Section 341, 325, 354A, 34 IPC. He therefore, has invoked the jurisdiction of this Court under Article 32 of the Constitution of India seeking a writ in the nature of mandamus commanding the respondent authorities to transfer the investigation in pursuance of the above FIRs to any independent agency other than the local police, namely, the Central Bureau of Investigation[2] or Special Investigation Team[3].

3. The Writ Petition was entertained by the three Judge Bench of this Court. On 13.01.2021 while issuing notice to the State-respondents, proceedings in pursuance to the aforesaid FIRs were stayed. Thereafter, the respondents i.e. State of West Bengal, Central Industrial Security Force[4] and the CBI have filed separate replies to the writ petition. Another counter-affidavit has been filed by the private respondent No.7 opposing the writ petition.

[1] In short 'IPC'
[2] In short 'CBI'
[3] In short 'SIT'
[4] In short 'CISF'

4. Ordinarily we would have relegated the petitioner to the High Court to seek appropriate remedy in connection with the reliefs claimed here in this petition but we refrain from doing so after the petition had been entertained and the parties have exchanged the necessary pleadings which are sufficient to adjudicate the matter on merits.

5. It may be pertinent to mention here that on account of the interim order passed in this petition on 13.01.2021, the local police had not proceeded in this matter and as such no investigation has been done pursuant to the above FIRs.

6. The petitioner alleges that he was married on 18.11.2010 to the daughter of Mr. Kalyan Banerjee, respondent No.7, a sitting Member of Parliament[5] from Serampore Lok Sabha constituency but the said marriage could not last long and was dissolved in terms of the settlement between the parties vide order dated 06.03.2018 passed by this Court in Transfer Petition (C) No. 1988 of 2015 wherein apart from dissolving the marriage, it was

[5] In short 'MP'

ordered that all pending litigations between the parties would stand quashed. However, the father of the petitioner's ex-wife continued to harass the petitioner and pressurized the state administration to victimise and torture him.

7. Accordingly, on the request of the petitioner on 11.01.2019, he was granted CISF security owing to political vendetta and threats extended to him allegedly by the State Government and his ex-father-in-law.

8. The petitioner alleges that on 06.12.2020 his house and car were surrounded by 200 Trinamool Congress[6] goons when he was about to leave his house at Serampore along with CISF security guards. His life was saved by his guards who also suffered injuries in the melee to protect him. The local police failed to take any action, rather, under political pressure, FIR No.400 of 2020 was registered against the petitioner at the behest of one Santosh Kumar Singh @ Pappu Singh on 07.12.2020 with Police Station Serampore, West Bengal under Sections 341, 323, 325, 326, 307, 354, 504, 506, 34 IPC.

[6] In short 'TMC'

9. It was followed by another FIR No.401 of 2020 on 07.12.2020 with Police Station Serampore, West Bengal under Sections 341, 325, 354A, 34 IPC which was lodged by one Tanushree Singh.

10. In connection with aforesaid FIRs, at around 1 O'clock in the afternoon of 07.12.2020, the petitioner was arrested by the local police but was ordered to be released on bail by the Court of Additional Chief Judicial Magistrate, Serampore vide order dated 07.12.2020 in case No. 400 of 2020.

11. The petitioner contends that on account of the fact that the petitioner is actively involved in politics as a BJP[7] worker/spokesperson; that respondent No.7, sitting MP wants to settle scores with him; and as the atmosphere in the State is politically charged, the petitioner apprehends that the local police would not carry out a fair investigation in the matter, thus, infringing upon his fundamental right to have a fair investigation and trial.

12. The petitioner, at the very outset, has detailed as to how he had been victimized and subjected to extreme torture

[7] Bharatiya Janta Party

by the administrative authorities of the State of West Bengal. He has tried to emphasize the complete misuse of power and use of the State machinery as a "private army" against him. He has further asserted that the State machinery is acting at the behest of the political masters as he happened to be the prominent spokesperson of a party in opposition in the State of West Bengal.

13. The petitioner also alleges that he has actively worked and canvassed on behalf of the BJP in Serampore, West Bengal, during the Lok Sabha election from where respondent No.7 was the TMC candidate. He has also highlighted that the member of *Ramesh Mahato gang* had threatened him with dire consequences.

14. He has been continuously receiving threats from the family members of respondent No.7, the sitting MP of TMC party.

15. It is the result of the above oppressive acts of the State and respondent No.7 that the aforesaid FIRs have been *mala fidely* lodged and registered against the petitioner and even the security personnel belonging to CISF.

16. The respondent No.8-CISF has filed a counter affidavit of its Deputy Inspector General, Greater Noida, Uttar Pradesh. The said affidavit states that the court vide order dated 18.12.2020 had required the CISF to file Special Incident Report as the petitioner was under its protection. Accordingly, a report was filed on 06.01.2021. The report submitted pursuant to the order of the court reveals that the vehicle of the petitioner (Mahindra Scorpio bearing Registration No.WB 74 AD 9822) was severely damaged in the alleged incident. Thereafter, notice was issued to the CISF to file counter affidavit.

17. The CISF in the counter affidavit accepts that the petitioner is a practicing advocate and is on the panel of the Central Government. He is an active spokesperson for BJP whereas respondent No.7 is a sitting MP of the TMC party from Serampore, West Bengal.

18. Petitioner's marriage was solemnized with the daughter of respondent No.7 in the year 2010 but eventually on a divorce petition, the marriage was dissolved in the year 2018. The petitioner is being provided with 'X' category security since 10.04.2019 because of the perception of

threat, both on account of his enmity with the sitting MP due to matrimonial feud as well as his alliance with the party at the Centre.

19. The counter affidavit of the CISF further states that on the date of incident i.e. 06.12.2020 at about 08:15 pm, an unruly crowd led by respondent No.7 gathered in front of the house of the petitioner and tried to manhandle him and the accompanying CISF personnel. The crowd resorted to use of blunt objects in which one of the CISF personnel Mahesh Singh sustained minor injuries. The CISF personnel took the petitioner to a shelter of the premises on the second floor. The petitioner was kept in a separate flat above his own flat under CISF security. The local police, present at the scene, did not permit the CISF reinforcement team which had arrived from Kolkata led by two officers namely Vikas Chaudhary and Yadram Yadav to enter the premises. The next day, two FIRs came to be lodged. The local police insisted on the arrest of the petitioner. The CISF personnel deployed with the petitioner were substantially withdrawn and sent to the CISF headquarters at Greater Noida.

20. On behalf of the State administration-respondent Nos.1, 3, 4 and 5, a separate counter affidavit has been filed by the Inspector of Police, Government of West Bengal denying all the allegations made by the petitioner in the writ petition. In the preliminary submissions, it has been stated that the FIRs against the petitioner are in relation to cognizable offences which involve the CISF officials as well. The allegations against the petitioner are serious, *inter alia*, causing grievous hurt to the complainants and others and relating to outraging the modesty of a woman. The petitioner is refusing to co-operate with the investigation and is an absconder. The petitioner in the writ petition has narrated a fabricated version to give a political colour to the said incident.

21. The State administration further submitted that since the FIRs disclosed the commission of cognizable offences, the police was bound to register the FIRs. It has enclosed the injury reports of some persons who were grievously hurt in relation to the above incident and submits that due to the stay order dated 13.01.2021, no further investigation could be conducted in pursuance of the aforesaid FIRs

and that the investigation is still at a nascent stage. Therefore, under the facts and circumstances and in view of the law laid down by the Apex Court, there is no necessity for transferring the investigation from the local police to any independent agency.

22. Respondent No. 7 has filed his independent counter affidavit denying the averments made in the writ petition and has submitted that the petition is liable to be dismissed on the ground of non-joinder of necessary parties as the complainants of the FIRs have not been arrayed as the respondents and that the petitioner has no right to intervene in the matter of investigation and the mode of prosecution. The investigations are not supposed to be transferred to CBI in a routine manner. The petitioner cannot bypass the alternative remedies available to him and cannot directly invoke the writ jurisdiction of this Court under Article 32 of the Constitution.

23. Respondent No.7 further submits that he is also a practicing lawyer of the Calcutta High Court who has been designated as a senior counsel. He was elected as

an MLA in 2001 and then as an MP. He was also member of various committees of the Parliament.

24. It is further averred that on account of the marital discord and as the answering respondent stood by his daughter, the petitioner is having a strong grudge against him and is unnecessarily trying to malign the answering respondent No.7. The respondent No.7 came to know that in the said incident, five CISF personnel entered into an argument with the complainants and later took out rods and sticks and assaulted them. He was also informed that the lady worker of the party was also molested. The entire story, as narrated by the petitioner in the writ petition, is all concocted and fabricated. The petition is misconceived and is liable to be dismissed.

25. The undisputed facts as revealed from the pleadings of the parties are as under: -

(i) The petitioner and respondent No. 7 are both practicing advocates as well as politicians of some repute belonging to the State of West Bengal;

(ii) The petitioner was married to the daughter of respondent No. 7 but the said marriage ended in a

decree of divorce, as such, there is bitter enmity between the two;

(iii) To add fuel to the fire, the petitioner belongs to BJP party whereas respondent No. 7 belongs to the ruling party in the State of West Bengal. The petitioner has canvassed against respondent No. 7 during the election campaign when he was contesting as an MP from Serampore constituency;

(iv) The political scenario in the State of West Bengal is apparently opposed to the party in power at the Centre; and

(v) There is no denial to the alleged incident involving CISF officials attached to the petitioner.

26. In the above admitted position, the possibility that the petitioner may not get a fair investigation at the hands of the local police or that the local police may not behave cordially with him in the course of investigation may not be baseless and cannot be brushed aside outrightly or lightly.

27. Now, the sole question which falls for our consideration, in the aforesaid admitted facts and circumstances, is

whether the investigation pursuant to the two FIRs against the petitioner are necessary to be transferred to some independent agency like CBI or Special Investigation Team.

28. We are conscious of the legal position that no party, either the accused or the complainant/informant, is entitled to choose the investigating agency or to insist for investigation of a crime by a particular agency.

29. The power to transfer an inquiry or a trial is exercised through the intervention of the constitutional courts in exceptional circumstances and the constitutional courts are expected to use the said extraordinary power sparingly, cautiously and in exceptional situation where it becomes necessary to provide credibility and instil confidence in the investigation or where the incident may have national or international ramifications or where it is necessary for doing complete justice and enforcing fundamental rights as is explained in ***State of West Bengal vs. Committee for Protection of Democratic Rights***[8]. In other words, transfer of any investigation may

[8] (2010) 3 SCC 571

not be ordered by the court in a routine/perfunctory manner or merely for the reason that one party makes allegations against the other.

30. In ***Rubabbuddin Sheikh vs. State of Gujarat***[9], it has been concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction, and in order to do complete justice in the case when the high profile officials are involved in the crime, it is always open to the court to handover the investigation to an independent agency like CBI. It may be noted that constitutional courts can even direct for further investigation by some other investigating agency to ensure completion of fair investigation and fair trial.

31. In ***K.V. Rajendran vs. CBCID***[10], it has been observed that where high officials of the State authorities are involved or the accusation itself is against the top officials of the investigating agency who may probably influence the investigation, and where the investigation is bound to be tainted, to instil confidence in the investigation, the

[9] (2010) 2 SCC 200
[10] (2013) 12 SCC 480

constitutional courts ought not to be shy in exercising power of transferring an investigation from the State agency to any other independent agency like CBI.

32. It is well recognised that investigation should not only be credible but also appear to be credible *vide* ***R.S. Sodhi vs. State of U.P.***[11]. Even otherwise, the law requires that justice may not only be done but it must appear to have been done. Thus, following the above dictum, to ensure a fair investigation in the matter, there appears to be weight in the argument of the learned counsel for the petitioner to transfer the investigation in relation to the two FIRs to an independent agency, more particularly keeping in mind the factual background and circumstances of the case.

33. It is admitted on record that the investigation in pursuance of the two FIRs is at a nascent stage and that it had not proceeded any further, due to the interim order dated 13.01.2021, till date. Therefore, it is but natural to get the investigation completed at the earliest. The

[11] 1994 Supp (1) SCC 143

primary object is to ensure fair completion of the investigation so that, if necessary, the trial may proceed.

34. The matter of entrusting investigation to a particular agency is basically at the discretion of the court which has to be exercised on sound legal principles. Therefore, the presence of complainant/informants are not very necessary before the Court. We do not feel that any prejudice would be caused to either of the parties if the investigation is conducted by an independent agency other than the State police. Thus, looking to the facts of this case particularly, that respondent No. 7 is a parliamentarian from the ruling party in the State of West Bengal and that the petitioner belongs to the ruling party at the Centre, the politically charged atmosphere in the State of West Bengal may not be very conducive to a fair investigation being conducted in the instant case. It is, hence, considered appropriate that instead of keeping the investigation pending for an indefinite period, the investigation be transferred to the CBI.

35. The case involves the investigation of the role of CISF or its personnel which cannot be left in the hands of the

local police also for reasons of conflicting interests. Thus, in our view, it is not appropriate to permit the local police to examine the conduct of CISF personnel in the instant case.

36. Accordingly, for all the above reasons and in the peculiar facts of this case, a writ of mandamus is issued to the State-respondents to handover the investigation pursuant to the two FIRs aforesaid to the CBI along with all records, for its completion so that, if necessary, the trial may commence and justice is done to the parties.

37. The writ petition is allowed accordingly.

..... J.
(B. V. NAGARATHNA)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
DECEMBER 04, 2024.