

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.1462 OF 2023

(Application under Section 482 of the Code of Criminal Procedure for fresh investigation or re-investigation by any independent agency)

Bandhna Toppo

... **Petitioner**

-versus-

**State of Orissa
and others**

... **Opposite Parties**

Advocates appeared in the case through hybrid mode:

For Petitioner: Mr.Shivsankar Mohanty,
Advocate

-versus-

For Opp.Parties: Mr.S.N. Das,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
05.7.2023.

Sashikanta Mishra,J. The present application filed under Section 482 of Cr.P.C. is for grant of the following prayer;

“It is therefore prayed that this Hon’ble Court may graciously be pleased to admit the application, call for records and be pleased to direct for fresh investigation or reinvestigation by any independent agency of the State Government or other agency including a Central Agency, which has acquired specialization in such matters by appointing a Superior Rank Officer than the accused in Infocity P.S. Case No.336 dated 24.11.2022 registered under Section 302 and 34 I.P.C. to secure the ends of justice.”

2. The facts of the case, briefly stated, are that on 28th February, 2022 at about 12 noon, the Petitioner received a call from one Birendra Lakra on his mobile phone that his son Anand Toppo (deceased) was unconscious and shifted to Capital Hospital, Bhubaneswar in an Ambulance by one Manjeet Tete. The doctor however, declared him brought dead. Suspecting foul play, the Petitioner attempted to lodge a complaint before the I.I.C. of Infocity P.S. but the same was not accepted on the ground that an F.I.R. had already been lodged being Infocity P.S. U.D. Case

No.14/2022 as a case of suicide. The Petitioner submitted a written complaint on 1st April, 2022 before the I.I.C. of Infocity P.S. by hand with request to register the same and convert the U.D. Case into a murder case. The I.I.C. received the same but did not give any acknowledgment. On repeated query by the Petitioner, it was given out that investigation is in progress. Being aggrieved by such inaction of the I.I.C, the Petitioner sent the substance of information along with his previous complaint in writing to the D.C.P. of Police, Bhubaneswar-Cuttack by registered post requesting to register the case under Section 302 of I.P.C. and to conduct proper investigation. No action being taken thereon the Petitioner sent another complaint on 17th May, 2022 by registered post to the Commissioner of Police, Bhubaneswar-Cuttack for redressal of his grievance. Since no action was taken despite such steps, the petitioner approached this Court in CRLMP Nos.2153 and 2154 of 2022.

3. During pendency of the aforementioned case, the Infocity Police acknowledged the written complaint of the Petitioner and registered the same as P.S. Case No. 3636 dated 24th November, 2022. Taking note of such facts, a coordinate Bench of this Court disposed of CRLMP No.2153/2022, inter alia, with the following observations;

“xxx xxx xxx xxx xxx xxx xxx

“7. The inaction shown by the police is deplored. If there is even a shred of truth in the allegations made herein, such infamy by the police deserves strong condemnation. The core mission of the police is to protect citizens from the undesirable elements of society. But if its actions were to leave the community more vulnerable to criminal victimization, it would undermine the popular confidence in law enforcement. Looking at the recent surge of cases pertaining to delay in registration of F.I.Rs, it seems institutional lethargy has crept into the system, which is unfortunate.

8. Ergo, the Commissioner of Police, Bhubaneswar is directed not to assign the concerned policeman to any field posting for one year. Also, appropriate steps shall be taken at the end of the Police Commissioner, Bhubaneswar to send the said officer for sensitization training at the Biju Pattanaik Police

Academy, Bhubaneswar for one month. The Deputy Commissioner of Police is directed to personally monitor the investigation of the concerned case while keeping all influences at bay and submit the Final Report within three months from today.”

xxx xxx xxx”.

4. On 15th December, 2022, the I.O. received viscera chemical report of the deceased, which revealed the presence of ethyl alcohol and drugs. The I.O. obtained opinion of a doctor of AIIMS, Bhubaneswar, who was of the view that the injury found on the neck of the deceased was ante mortem in nature. Ultimately on 7th February, 2023, final report was submitted stating that so far no prima facie evidence is made out to be a true case under Section 302 I.P.C. against the alleged accused persons beyond all reasonable doubts and accordingly, the report was submitted as mistake of fact.

Feeling aggrieved, the informant-Petitioner has filed the present application.

5. Heard Mr. S. Mohanty, learned counsel for the Petitioner and Mr. S.N.Das, learned Addl. Standing counsel for the State.

6. Mr. Mohanty argues that one of the accused persons namely, Birendra Lakra is a high ranking Police Officer being a DSP and therefore, despite clear evidence of foul play involved in the death of the deceased, final report was submitted as mistake of fact deliberately portraying the death as a case of suicide. According to Mr. Mohanty, there is ample evidence on record to suggest that the Petitioner was administered poison along with alcohol which caused his death and the accused persons attempted to cover up such fact by showing it as a case of suicidal hanging. Moreover, the I.I.C. of Infocity Police Station, Samita Mishra, against whom this Court had passed certain remarks touching upon her impartiality, deliberately tried to protect accused Birendra Lakra in connivance with the I.O. of the case Arpita Priyadarsini. Summing up his arguments Mr. Mohanty submits that a proper and fair

investigation being essential requirement of criminal justice system, this is a fit case where fresh investigation should be conducted by any specialized agency of the State or Central Governments.

7. Opposing the contentions of Mr. Mohanty as above, Mr. S.N.Das, learned Addl. Standing Counsel for the State would submit that the post mortem report clearly reveals the case to be one of suicidal hanging. The ligature mark present on the neck of the deceased is adequate proof of such fact. The chemical examination of the viscera revealed presence of alcohol and barbiturates, which is consistent with the version of the witnesses that the deceased had consumed alcohol prior to his death. The opinion of the doctor is also very clear that the injuries (ligature mark) could be suicidal in nature. Under such circumstances no foul play whatsoever can be said to have been involved. Mr. Das further argues that even otherwise if the Petitioner is aggrieved by submission of final report by the I.O., it is open to him to move the court below by

filing protest petition, which can be considered in accordance with law, but under the facts, a case for further investigation/reinvestigation is not made out at all.

8. Before proceeding to examine the merits of the rival submissions noted above, it would be apposite to keep in mind the settled position of law as regards the power of the High Court to direct further investigation/reinvestigation and/or investigation by a specialized agency. The case of **Devendra Nath Singh v. State of Bihar**; reported in (2022) 15 SCR 692: (2023) 1 SCC 48: (2023) 1 SCC (Cri) 270 can be referred to this in this regard. In the said case, under paragraph 12.1, reference was made to an earlier decision of the Apex Court i.e., the case of **Vinay Tyagi v. Irshad Ali**, (2013) 5 SCC 762; wherein it was observed as follows;

“43. At this stage, we may also state another well-settled canon of 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.

*44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in *Disha v. State of Gujarat* [*Disha v. State of Gujarat*, (2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628] , *Vineet Narain v. Union of India* [*Vineet Narain v. Union of India*, (1998) 1 SCC 226 : 1998 SCC (Cri) 307] , *Union of India v. Sushil Kumar Modi* [*Union of India v. Sushil Kumar Modi*, (1996) 6 SCC 500] and *Rubabbuddin Sheikh v. State of**

Gujarat [Rubabbuddin Sheikh v. State of Gujarat, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] .

45. The power to order/direct “reinvestigation” or “de novo” investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the court may, by declining to accept such a report, direct “further investigation”, or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

xxx xxx xxx.”

Again reference was made in Paragraph 12.2 to **State of Punjab v. C.B.I. State of Punjab v. CBI**, (2011) 9 SCC 182: (2011) 3 SCC (Cri) 666, wherein it was observed as follows;

“22. Section 482CrPC, however, states that nothing in Cr.P.C shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under CrPC or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Thus, the provisions of CrPC do not limit or affect the inherent powers of the High Court to make such orders as may be

necessary to give effect to any order of the court or to prevent the abuse of any process of the court or otherwise to secure the ends of justice. The language of subsection (8) of Section 173CrPC, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482CrPC for fresh investigation or reinvestigation if the High Court is satisfied that such fresh investigation or reinvestigation is necessary to secure the ends of justice.

23. We find support for this conclusion in the following observations of this Court in Mithabhai Pashabhai Patel v. State of Gujarat [Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332 : (2009) 2 SCC (Cri) 1047] cited by Mr Dhavan : (SCC p. 337, paras 13 & 15)

‘13. It is, however, beyond any cavil that “further investigation” and “reinvestigation” stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar [Ramachandran v. R. Udhayakumar, (2008) 5 SCC 413 : (2008) 2 SCC (Cri) 631] opined as under : (SCC p. 415, para 7)

“7. At this juncture it would be necessary to take note of Section 173 of

the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.”

A distinction, therefore, exists between a reinvestigation and further investigation.

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code.’

24. It is clear from the aforesaid observations of this Court that the investigating agency or the court subordinate to the High Court exercising powers under CrPC have to exercise the powers within the four corners of CrPC and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge-sheet has been filed under sub-section (2) of Section 173CrPC and such further investigation will not mean fresh investigation or reinvestigation. But these limitations in sub-section (8) of Section 173CrPC in a case where charge-sheet has been filed will not apply to the exercise of inherent

powers of the High Court under Section 482CrPC for securing the ends of justice.”

[Emphasis supplied]

After referring to several other decisions on the point, the following principles were culled out under Paragraph-13:

“(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High

Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

(d) Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

xxx xxx xxx xxx xxx.”

[Emphasis supplied]

The law being as referred to in the preceding paragraphs, the contentions urged by the parties shall now be considered.

9. From the case diary containing the statements of several persons including Birendra Lakra and Manjeet Tete, it appears that the deceased used to stay with Manjeet Tete in a Flat under Infocity Police Station, Bhubaneswar and Birendra Lakra used to visit them at

times. The Petitioner appears to have had a relationship with said Manjeet Tete, which he wanted to continue even after his marriage to another girl in Jharsuguda. The deceased appears to have arrived in Bhubaneswar in the morning of 28th February, 2022 at about 7.30.A.M. According to the statement of Manjeet Tete recorded under Section 164 of Cr.P.C., the deceased requested her to continue with the relationship despite his marriage to which she refused. He is also said to have forcibly pulled the hand of Manjeet and started drinking alcohol and kept on reiterating his request for continuance of the relationship. Manjeet was however, not agreeable and packed her suitcase with intent of leaving the flat. She went to the bathroom taking her ear phones with her but before that the deceased asked her for the saree that he had gifted her earlier. Manjeet is said to have asked him to search for the saree in the house. When Manjeet returned from the bathroom 10 to 15 minutes later, she found the deceased hanging from the ceiling fan by means of the gifted blue colour saree with his

knees being 2” to 3” above the floor. Manjeet brought the deceased down and opened the knot of the saree and checked his pulse. There being no response she attempted mouth to mouth respiration which did not yield any result. She then called Birendra Lakra, who was in the other room. Birendra Lakra also checked the deceased and thereafter both of them called the Ambulance and Manjeet took the deceased to Capital Hospital where he was declared brought dead.

10. Birendra Lakra, in his statement recorded under Section 161 of Cr.P.C. more or less stated the same thing and specifically stated that he was playing a game on his mobile phone being connected with ear phones. He however, states that Manjeet had taken the deceased to Capital Hospital on an ambulance and he reached there later by which time the deceased had already been declared dead. He also claims to have paid Rs.60,000/- to the father of the deceased (present Petitioner) to defray the expenses of carrying the dead body. Several other witnesses have been examined, but

all of them are post occurrence witnesses and have no direct knowledge about the incident. If the statements of Manjeet and Birendra Lakra are read objectively, it would show certain palpable incongruities and significant aspects that which have not been considered by the I.O. namely;

(i) The deceased was found hanging from the ceiling fan with his knees 2” to 3” above the floor which is strange since nothing has been said as to what was the position of his feet. This would obviously imply that the lower part of his leg (below the knees) must have been folded backwards with his feet touching the ground.

(ii) In such background, the statement of Manjeet that having seen the deceased hanging from the ceiling fan she herself brought him down and opened the noose of the saree seems difficult to believe.

(iii) The statement of Manjeet that she attempted mouth to mouth respiration and thereafter called Birendra Lakra militates against the natural reaction

expected of a young girl on witnessing such a sight. In ordinary course, she should have shouted for help or called Birendra Lakra, who was in the adjacent room.

(iv) The statements of both Manjeet and Birendra Lakra that they had used ear phones at the relevant time appear to have been made out of context. Moreover, while Birendra Lakra himself stated that he was playing a game on his mobile phone, the I.O. mentioned in the charge sheet that he was listening to music on his IPod.

(v) Birendra Lakra admits that due to family disturbances, he had stayed in the said Flat for 20 days with permission of Anand Toppo (deceased) and also used to visit the Flat even in the absence of Anand. Implication of such admission has not been considered.

(vi) The post mortem report clearly shows the presence of a ligature mark on the neck of the deceased. The chemical examination report of the viscera shows

the presence of alcohol and barbiturate. Implication of all these have not been properly considered.

(vii) The Additional Professor, Department of Forensic Medicine Toxicology, AIIMS, Bhubaneswar specifically opined as follows;

“Both alcohol and barbiturate are habit forming drugs. Very often these drugs are used for recreational liabilities. Combination of both is likely fatal to cause depression and death. Basing on the chemical analysis report, considering the post mortem findings and the subsequent answer to the queries, the cause of death was ante mortem hanging. I am of the opinion that the deceased had consumed intentionally both the compound prior to death”.

It is surprising as to how the doctor could positively opine that the deceased had intentionally consumed both the compounds.

Nevertheless, in his final opinion the doctor states as follows;

“After perusing all the documents mentioned above, I am of the considered opinion that the cause of death was ante mortem hanging and its complication. However, the victim consumed alcohol and barbiturate before his death.”

It is thus seen that the doctor has not given a conclusive opinion, rather his opinion suggests that the death could be either due to ante mortem hanging or the result of consumption of alcohol with barbiturate.

11. I have perused the case diary carefully. I do not find anything therein to even remotely suggest that investigation was directed to the aforementioned aspects. Of course, I would hasten to add that it is not the intention of this Court to impute any culpability to any person but only to highlight that investigation should have been directed towards the aspects referred above. It must be kept in mind that death of a human being has occurred. There is an allegation of foul play. The matter should therefore, have been investigated

thoroughly touching all possible angles keeping in view the allegations. In fact, even the evidence collected by the I.O. is not such as would completely rule out foul play. There are glaring gaps in the investigation as discussed hereinabove, for which, it cannot be so easily concluded that the death of the deceased was certainly due to suicidal hanging and nothing else.

12. Proper and fair investigation is sine qua non of criminal jurisprudence. The very purpose of investigation is to find out the truth. But if relevant aspects have been ignored/over looked by the investigating agency, it cannot be said that there was fair and proper investigation. As observed by the Apex Court in **Vinay Tyagi** (supra) is as follows;

“what ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are

satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.”

From the apparent gaps and incongruities as has been narrated earlier, this Court is left with little doubt that investigation in the present case cannot be said to have been conducted properly and that several areas still remain to be investigated.

13. Now whether direction should be for further investigation or fresh/reinvestigation is the question. As has already been referred to hereinbefore, this Court has power to direct both. In the instant case, the entire investigation has proceeded on the premise of suicide. All efforts of the investigating officer appear to have been made in this background. Under such circumstances, further investigation would be an

exercise to only take forward what has already been investigated. It would obviously not meet the requirement of justice that the case demands. On the contrary, if the matter is reinvestigated in all aspects, including those that have hitherto not been looked at can also be taken into consideration. Since the case involves death of a human being with the allegation of foul play, which this Court, prima facie finds acceptable, it is a fit case to direct reinvestigation.

14. The question that now arises is, by which agency should the reinvestigation be conducted. It is the settled position of law that the High Court in exercise of its power under Section 482 of Cr.P.C. can direct investigation to be conducted by an independent/specialized agency in appropriate cases. In the present case, there is allegation that the I.I.C. of Infocity P.S. collaborated with the I.O. to ensure submission of final report as mistake of fact. This Court would not like to comment on the above aspect except for noting the fact that the concerned I.I.C. has

already been hauled up by a coordinate bench of this Court for her gross inaction in acting upon the complaint submitted by the Petitioner for a long time. It is also borne out from the case record that Birendra Lakra is a high ranking Police Officer belonging to the grade of Deputy Superintendent (DSP). The Petitioner's allegation that the investigation was biased or in any case not impartial appears to be reasonable in the facts and circumstances of the case. Therefore, directing the same agency to reinvestigate would not be proper. Rather for the ends of justice, it would be proper for an independent agency like the C.I.D. (Crime Branch) to do so.

15. For the foregoing reasons therefore, the CRLMC is allowed. This Court directs that the case shall be reinvestigated by the C.I.D. (Crime Branch). Having regard to the fact that one of the accused persons is himself a Senior Police Officer in the rank of Deputy Superintendent of Police, it would be proper if the investigation is conducted by an Officer of the higher

grade. This Court therefore, directs the Addl. Director General (Crime Branch) to entrust the investigation to a Senior Officer not below the rank of Deputy Inspector General of Police who shall reinvestigate the matter from all angles and submit report to the concerned Court accordingly. The previous I.O. is directed to transmit the entire case diary and all other records/documents collected during investigation to the C.I.D. (Crime Branch) forthwith.

.....
(Sashikanta Mishra)
Judge

Ashok Kumar Behera