

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 110 of 2022

Urmila Devi, wife of Sikandar Pandey, aged about 46 years, resident of village Kariyatpur, P.O. Barsot, P.S. Barhi, District-Hazaribg Petitioner

Versus

1. The State of Jharkhand
 2. The Central Bureau of Investigation
- Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. A.K. Kashyap, Sr. Advocate, Mr. Diwakar Jha, Advocate
For the State	: Mr. Ashutosh Anand, A.A.G.-III M/s Ashish Thakur, Sharad Kaushal, Binit Chandra, Rishi Bharati, A.C. to A.A.G.-III
For the C.B.I.	: Mr. Prashant Pallav, A.S.G.I. Mr. Parth Jalan, A.C. to A.S.G.I.

05/Dated: 02/09/2022

Heard Mr. A.K. Kashyap, learned senior counsel for the petitioner, Mr. Ashish Thakur, learned counsel for the State and Mr. Prashant Pallav, learned counsel for the C.B.I.

2. This petition has been filed for direction for transferring Barhi P.S. Case No. 59 of 2022 registered for the offences under sections 147/148/149/341/323/302/109/120B of the Indian Penal Code to C.B.I. for investigation.

3. Mr. A.K. Kashyap, learned senior counsel appearing on behalf of the petitioner submits that on 06.02.2022 that was Sunday about 5.00 P.M. deceased Rupesh Pandey was called by his friends Diwakar Kumar Choudhary and Himanshu Kumar on phone to see Saraswati Puja in village Dulmaha. Thereafter, the nephew of the informant proceeded for village Dulmaha. He reached the place of Sarswati Puja then a mob of ladies and gents assembled near the puja place of particular community which was being laid by Md. Aslam Ansari @ Pappu Khan, took deceased inside the mob and lynched him. The informant was given names of as many as 27 persons who were part of mob and who murdered the son of the petitioner.

4. Learned senior counsel for the petitioner further submits that this act was done by a particular community and seeing the sensitivity the district administration came into action and not only in Barhi but in four districts also curfew was imposed. He further submits that till date only five persons have been arrested and rest accused persons have not been arrested. By way of pointing out several paragraphs of the counter-affidavit filed by the respondent-State, he submits that the Investigating Officer has only stated about the paragraphs of the case diary and has not disclosed the reasons why the investigation is being delayed. He further submits that eye witnesses are not being examined by the Investigating Officer and subsequently, on 08.02.2022 on the basis of typed report of Md. Gayur another F.I.R. bearing Barhi P.S. Case No. 63 of 2022 was lodged against other community wherein 87 persons were made accused for damaging of property for a particular community. He further submits that although the occurrence took place on 06.02.2022 however the said F.I.R. has been lodged on 08.02.2022 which was afterthought. He further submits that police was there but the F.I.R. was not lodged on 06.02.2022. He further submits that only to favour the accused second F.I.R. has been registered by the police. He further submits that from the newspaper report the petitioner came to know that F.I.R. being Chatra Sadar P.S. Case No. 45/2022 has been lodged in the district of Chatra against the persons who were making protest against Barhi incidence. He further submits that seeing the nature of crime, the members of the different political parties have visited the house of the deceased and met with the mother of the deceased and from the very beginning demand was being made by the family members as well as other members that this case should be investigated by the C.B.I. By way of referring Annexure-4 series to this petition which are paper report, learned senior counsel for the petitioner submits that even cognizance has been taken by the National Commission for Children and the Chief Minister

has also met with family of deceased and on the demand of family members for investigating the case by C.B.I., he assured that decision will be taken after discussing the matter. He substantiated this submission by way of referring page 40 of the petition which is paper report. He further submits that Human Right Commission has also taken cognizance. He further submits that entire district was disturbed and even internet connectivity was withdrawn for certain period. He further submits that for proper investigation this case be conducted by the other investigating agency, if serious doubt is there, the court is also competent to transfer the case to C.B.I. as has been held by the Hon'ble Supreme Court in the case of **"Common Cause and Others Vs. Union of India and Others"** reported in (2015) 6 SCC 332 wherein the Hon'ble Supreme Court in paras 11, 15, 32, 33 has held as under:-

"11. Apart from stating a few relevant facts in the application, what is of immediate concern is the averment made in Para 9 of the application that Common Cause has come to know that Mr Ranjit Sinha, Director, CBI had met several persons at his residence who are accused in prominent cases including the Coal Block Allocation scam without any of the investigating officers being present. (emphasis supplied). It is then stated in Para 10 of the application as follows:

"It is of particular significance that Mr Ranjit Sinha had several meetings with Mr Vijay Darda, and his son Mr Devendra Darda, who are being investigated in the case of illegal allocation of coal blocks. Mr. Sinha also met with Mr Subodh Kant Sahay, former Union Minister, whose brother's company is one of the beneficiaries of the allocation of coal blocks and is being investigated by CBI."

15. An additional affidavit dated 5-9-2014 was also filed in support of IA No. 73 of 2014 in which it was prayed that this Court should "order an SIT investigation into the gross abuse of authority committed by CBI Director in trying to scuttle investigations and prosecutions being carried out by CBI in 2G Scam cases and other prominent cases..."

32. In Manu Sharma v. State (NCT of Delhi)⁹ this Court made the following observations with regard to the entitlement of an accused to a fair investigation:

"197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India."

33. Similarly, in Manohar Lal Sharma this Court observed that investigations have to be fair, impartial and uninfluenced by external influences. It is stated as follows:

"33. A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by CBI under the DSPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences."

5. He further submits that it is not only the responsibility of the investigating agency but as well as that of the Courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. To buttress his argument, learned senior counsel for the petitioner relied on judgment in the case of "**Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)**" reported in **(2010) 6 SCC 1** wherein the Hon'ble Supreme Court in para 199, 202 and 201 has held as under:-

"199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society.

200. In Kashmeri Devi v. Delhi Admn.³³ it has been held that the record of investigation should not show that efforts are being made to protect and shield the guilty even where they are police officers and are alleged to have committed a barbaric offence/crime. The courts have even declined to accept the report submitted by the investigating officer where it is glaringly unfair and offends basic canons of the criminal investigation and jurisprudence. Contra veritatem lex nunquam aliquid permittit : implies a duty on the court to accept and accord its approval only to a report which is the result of faithful and fruitful investigation. The Court is not to accept the report which is contra legem but (sic) to conduct judicious and fair investigation and submit a report in accordance with Section 173 of the Code which places a burden and obligation on the State Administration. The aim of criminal justice is two-fold. Severely punishing and really or sufficiently preventing the crime. Both these objects can be achieved only by fair investigation into the commission of crime, sincerely proving the case of the prosecution before the court and the guilty is punished in accordance with law.

201. Historically but consistently the view of this Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation. These well-established principles have been stated by this Court in Sasi Thomas v. State, State (Inspector of Police) v. Surya

Sankaram Karri and T.T. Antony v. State of Kerala."

6. Relying on the aforesaid judgment, he submits that investigation is required to be conducted in manner so as to draw a just balance between citizen's right under Articles 19 and 21 of the Constitution of India.

7. He further submits that when higher of the State are involved to make confidence of public at large in investigation agency, it is necessary to hand over the charge of the case to the specialized agency. To buttress his argument, he relied on judgment in the case of **"State of West Bengal & Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others"** reported in **(2010) 3 SCC 571**.

8. On these grounds, learned senior counsel for the petitioner submits that this matter may be transferred to the C.B.I. as the progress has not taken place and only delaying tactics has been adopted by the Investigating Officer. He further submits that this is very alarming situation in the society which is required to be investigated by any independent agency who can act fairly and without being influenced by local administration.

9. Per contra, Mr. Ashish Tahkur, learned counsel appearing on behalf of the respondent-State submits that counter-affidavit has been filed on behalf of respondent-State. He further submits that as per instruction 11 persons have been arrested and investigation is going on. So far as rest of the accused persons are concerned, he submits that steps have been taken for apprehension of the rest of the accused persons who have not been arrested as yet. He submits that process of 82 Cr.P.C. has been issued against remaining accused persons. He submits that all efforts are being taken up which has been disclosed in the counter-affidavit. He submits that occurrence is of 06.02.2022 and on the very next date four persons have been arrested and on 11.02.2022 5th arrest has taken place. He further submits that this is not a case that this Court may interfere for transferring the matter to the C.B.I.

10. Mr. Prashant Pallav, learned counsel for the C.B.I. fairly submits that it is for the Court to decide and if court comes to the conclusion that this matter be handed over to the C.B.I., then C.B.I. will take over the matter.

11. In the light of above facts and submissions of the learned counsel for the parties and the judgment referred by the learned counsel for the petitioner, this Court is required to consider whether prima facie case on the basis of record to hand over the investigation to C.B.I. is made out or not. The Investigating Officer has filed chargesheet against only five persons wherein there are 27 named accused persons. In such case which has taken place by way of mob lynching what step his senior police officers have taken to conclude the investigation at the earliest, has not been disclosed in the counter-affidavit. When the incidence took place on 06.02.2022 and the entire police administration as well as district administration swung into action why the case for arson has been made by the another community, has not been registered on 06.02.2022 raising eye brow on the police and on the complaint by another community another F.I.R. was registered on 08.02.2022. Prima facie it appears that police is not investigating the matter independently and is being influenced on the behest of some persons. Incident was so alarming that Human Right Commission and Commission for Children have also taken cognizance and they sent their representative to Hazaribagh district of that area. The Chief Minister of the State has also met with the family members of the victim. This petitioner has demanded C.B.I enquiry. The Chief Minister stated that after discussion, a decision will be taken in this regard as disclosed at page 40 of the petition which is paper report. If the chargesheet is not submitted within 90 days the committee of higher officials of the police have not reviewing the matter that is questionable.

12. Looking into the several paragraphs of the counter-affidavit filed by the respondent-State it appears that only paragraph of the case diary has been

disclosed and it has been tried to justify that investigating is going on in right direction. Paragraph 59 of the counter-affidavit, who has swear the affidavit has stated therein that investigating agency to proceed in its own manner in interrogation of the accused and that in course of investigation to be adopted in a particular case should be left to the discretion and wisdom of the investigating agency. Question remains that if such statement is being made on affidavit by the Investigating Officer before the Court which suggest that the Investigating Officer has to say that enquiry should be left to the discretion of the said I.O. which is negated by the Court in view judgment of the Hon'ble Supreme Court in the case of ***Sidhartha Vashisht @ Manu Sharma (supra)***.

13. In view of above, prima facie from the record it appears that something is being hidden by the police. Sections 4 and 6 of Delhi Special Police Establishment Act has been considered by the Hon'ble Supreme Court in so many cases and it has been held that if the constitutional courts come to a conclusion that a particular case is required to be handed over to specialized agency, has got power to do so. Thus so far handing over the case to the C.B.I. is well settled, the court can pass appropriate order in facts and circumstances of each case is not in dispute. However, it is well known that C.B.I. is over burden, C.B.I. is not required to hand over the case by the court frequently and it must be in exercise of exceptional circumstances whereas it becomes necessary to provide credibility and instill confidence in investigations or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights and only in this circumstances Constitutional court are directing to take over the investigation by the specialized agency. Almost identical situation were there in West Bengal when worker of a political party was murdered there was hue and cry in the State and even ruling party was raising that matter, was subject matter before the Hon'ble Supreme Court in

the case of "***State of West Bengal & Others Vs. Committee for Protection of Democratic Rights, West Bengal and Others***" reported in **(2010) 3 SCC 571** where wherein the Hon'ble Supreme Court has held that the political party and higher of the State are involved to make confidence of public at large in investigation agency it is necessary to hand over the charge of the case to the specialized agency.

14. For mob violence and crime by self appointed keepers of public morality terrorizing common man without legal sanction and causing loss of life and destruction of property, the Hon'ble Supreme Court in the case of "***Kodungallur Film Society and others Vs. Union of India & Others***" reported in **(2018) 10 SCC 713** issued certain guidelines of extensive guidelines in the nature of preventive remedial and punitive measures to curb incidents of mob lynching and vigilantism as set out in the case of "***Tehseen S. Poonawalla Vs. Union of India***" reported in **(2018) 9 SCC 501** wherein para **40 and 41**, the following guidelines were issued.

40. In view of the aforesaid, we proceed to issue the following guidelines:

A. Preventive Measures

40.1. The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching. They shall constitute a special task force so as to procure intelligence reports about the people who are likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.

40.2. The State Governments shall forthwith identify districts, sub-divisions and/or villages where instances of lynching and mob violence have been reported in the recent past, say, in the last five years. The process of identification should be done within a period of three weeks from the date of this judgment, as such time period is sufficient to get the task done in today's fast world of data collection.

40.3. The Secretary, Home Department of the States concerned shall issue directives/advisories to the Nodal Officers of the districts concerned for ensuring that the officers in-charge of the police stations of the identified areas are extra cautious if any instance of mob violence within their jurisdiction comes to their notice.

40.4. The Nodal Officer, so designated, shall hold regular meetings (at least once a month) with the local intelligence units in the district along with all Station House Officers of the

district so as to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies. The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents.

40.5. *The Director General of Police/the Secretary, Home Department of the States concerned shall take regular review meetings (at least once a quarter) with all the Nodal Officers and State Police Intelligence heads. The Nodal Officers shall bring to the notice of the DGP any inter-district coordination issues for devising a strategy to tackle lynching and mob violence related issues at the State level.*

40.6. *It shall be the duty of every police officer to cause a mob to disperse, by exercising his power under Section 129 CrPC, which, in his opinion, has a tendency to cause violence or wreak the havoc of lynching in the disguise of vigilantism or otherwise.*

40.7. *The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law-enforcement agencies and by involving all the stakeholders to identify the measures for prevention of mob violence and lynching against any caste or community and to implement the constitutional goal of social justice and the Rule of Law.*

40.8. *The Director General of Police shall issue a circular to the Superintendents of Police with regard to police patrolling in the sensitive areas keeping in view the incidents of the past and the intelligence obtained by the office of the Director General. It singularly means that there should be seriousness in patrolling so that the anti-social elements involved in such crimes are discouraged and remain within the boundaries of law thus fearing to even think of taking the law into their own hands.*

40.9. *The Central and the State Governments should broadcast on radio and television and other media platforms including the official websites of the Home Department and Police Department of the States that lynching and mob violence of any kind shall invite serious consequence under the law.*

40.10. *It shall be the duty of the Central Government as well as the State Governments to take steps to curb and stop dissemination of irresponsible and explosive messages, videos and other material on various social media platforms which have a tendency to incite mob violence and lynching of any kind.*

40.11. *The police shall cause to register FIR under Section 153-A IPC and/or other relevant provisions of law against persons who disseminate irresponsible and explosive messages and videos having content which is likely to incite mob violence and lynching of any kind.*

40.12. *The Central Government shall also issue appropriate directions/advisories to the State Governments which would reflect the gravity and seriousness of the situation and the measures to be taken.*

B. Remedial Measures

40.13. *Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that an incident of lynching or mob violence has taken place, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of*

IPC and/or other provisions of law.

40.14. *It shall be the duty of the Station House Officer, in whose police station such FIR is registered, to forthwith intimate the Nodal Officer in the district who shall, in turn, ensure that there is no further harassment of the family members of the victim(s).*

40.15. *Investigation in such offences shall be personally monitored by the Nodal Officer who shall be duty-bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be.*

40.16. *The State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357-A CrPC within one month from the date of this judgment. In the said scheme for computation of compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses. The said compensation scheme must also have a provision for interim relief to be paid to the victim(s) or to the next of kin of the deceased within a period of thirty days of the incident of mob violence/lynching.*

40.17. *The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day-to-day basis. The trial shall preferably be concluded within six months from the date of taking cognizance. We may hasten to add that this direction shall apply to even pending cases. The District Judge shall assign those cases as far as possible to one jurisdictional court so as to ensure expeditious disposal thereof. It shall be the duty of the State Governments and the Nodal Officers in particular to see that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial.*

40.18. *To set a stern example in cases of mob violence and lynching, upon conviction of the accused person(s), the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.*

40.19. *The courts trying the cases of mob violence and lynching may, on application by a witness or by the Public Prosecutor in relation to such witness or on its own motion, take such measures, as it deems fit, for protection and for concealing the identity and address of the witness.*

40.20. *The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall be given timely notice of any court proceedings and he/she shall be entitled to be heard at the trial in respect of applications such as bail, discharge, release and parole filed by the accused persons. They shall also have the right to file written submissions on conviction, acquittal or sentencing.*

40.21. *The victim(s) or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.*

C. Punitive Measures

40.22. *Wherever it is found that a police officer or an officer of the district administration has failed to comply with the*

aforesaid directions in order to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence and/or misconduct for which appropriate action must be taken against him/her and not limited to departmental action under the service rules. The departmental action shall be taken to its logical conclusion preferably within six months by the authority of the first instance.

40.23. *In terms of the ruling of this Court in Arumugam Servai v. State of T.N.²⁵, the States are directed to take disciplinary action against the officials concerned if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.*

41. *The measures that are directed to be taken have to be carried out within four weeks by the Central and the State Governments. Reports of compliance be filed within the said period before the Registry of this Court."*

15. Mob lynching or mob violence is one of the worst forms of crime committed by a group of people in a locality without any botheration of its consequence. According to them there must be various causes or reasons which may not be just or legal, on the basis of which such said crime is committed by them, out of which one is commonly or generally said to be due to the delay in delivery of justice or the administration of justice. This is serious concern for the entire society.

16. In view of above facts, reasons analysis and considering the laws described in this regard, no document annexed or statement made in the counter affidavit with regard to supervision of the higher official to the crime, second F.I.R. not registered on 06.02.2022 when the police was present which has been registered on 08.02.2022, considering the nature of crime the Court comes to the conclusion that this case is required to be investigated by the Central Bureau of Investigation. This Central Bureau of Investigation is directed to take charge of Barhi P.S. Case No. 59 of 2022, immediately. The superintendent of Police, Hazaribagh shall hand over the same to the C.B.I. Since Barhi P.S. Case No. 59 of 2022 is being directed to take over by the Central Bureau of Investigation, Barhi P.S. Case No. 63 of 2022 which is subsequent F.I.R. and considering that it is well settled that if there are case

and counter case, both the cases are required to be investigated by the same agency. The Central Bureau of Investigation shall take investigation of Barhi P.S. Case No. 63 of 2022 forthwith. The Superintendent of Police, Hazarbagh shall ensure that entire document shall be handed over to the Central Bureau of Investigation forthwith with regard to both cases.

17. Mr. Pallav, learned counsel for the C.B.I. shall intimate the competent authority about this order for taking over both the cases by the C.B.I.

18. This criminal writ petition stands disposed of. Pending I.A, if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Satyarthi/