

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.107 OF 2012

Smt. Shukla Saha,
 W/o Late Palash Saha,
 resident of Amiya Sagar Par,
 Hari Ganga Basak Road,
 near Mitterson Lane,
 P.O. Agartala, P.S. West Agartala,
 District - West Tripura.

..... Petitioner

- Vs -

1. The State of Tripura,
 represented by the Chief Secretary,
 Department of Home, Govt. of Tripura,
 having its office at New Secretariat Complex,
 Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
 District -West Tripura.

2. The Secretary,
 Department of Home, Govt. of Tripura,
 having its office at New Secretariat Complex,
 Gorkhabasti, P.O. Kunjaban, P.S. East Agartala,
 District: West Tripura.

3. The Director General of Police,
 Govt. of Tripura, having its office at Police Head Quarters,
 P.O. Agartala, P.S. West Agartala, District: West Tripura.

4. The Superintendent of Police, West Tripura,
 having its office at Police Head Quarters, Agartala,
 P.O. Agartala, P.S. West Agartala, District: West Tripura.

5. The Superintendent of Police (CID),
 having its office at Bidur Karta Chowhumani, Agartala,
 P.O. Agartala, P.S. West Agartala: District West Tripura.

6. The Union of India,
represented by the Secretary,
Ministry of Home Affairs, North Block,
Govt. of India, New Delhi – 110001
7. Central Bureau of Investigation,
represented by the Director,
Department of Home, Govt. of Tripura,
having its office at Lodhi Road,
New Delhi -110004.
8. The Officer In-charge,
West Agartala Police Station,
Govt. of Tripura, having his office at Agartala,
P.O. Agartala, P.S. West Agartala, District: West Tripura.
9. Tripura State Rifles,
represented by the Director General of Police,
having its office at Police Head Quarters,
Agartala, P.O. Agartala, P.S. West Agartala,
District: West Tripura.
10. The Commandant,
1st Bn. Tripura State Rifles,
having its office at Agartala,
P.O. Agartala, P.S. West Agartala,
District: West Tripura.
11. Sri Ratan Kumar Sarkar,
Investigating Officer of West Agartala
P.S. Case No.235/2011, holding the post of
Inspector of Police (CID), having its office at
Bidur Karta Chowhumani, Agartala,
P.O. Agartala, P.S. West Agartala,
District: West Tripura.
12. Sri Amarjit Debbarma,
S/o Not known, holding the post of Assistant Commandant,
11th Bn, TSR, resident of Abhoynagar,
P.O. Abhoynagar, P.S. East Agartala,
District West Tripura.
13. Umar Sharif,
S/o Anu Miah,
resident of Masjit Patty, Santipara,
P.O. Agartala, P.S. East Agartala,
District West Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. Somik Deb, Advocate

For the respondent : Mr. D.P. Kundu, Advocate General
 Ms. R. Guha, Advocate
 Mr. P.K. Biswas, Asstt. S.G.

Date of hearing : 19.04.2013

Date of judgment & order : 23.12.2013

Whether fit for reporting : YES

JUDGMENT & ORDER

The petitioner is the bereaved mother of Papai Saha who lost his life succumbing to the bullet injuries received on 11.07.2011. Her other son, namely Pinaki Saha had lodged a written ejahar to the Officer-in-charge, West Agartala Police Station, Agartala on 16.07.2011 at about 1125 hours and it has been disclosed in the written ejahar/ FIR (*Annexure-P/3 to the writ petition*) that when after closing down their shop the informant and his brother Papai were on the way to their residence entered in the Mitterson Lane at about 1710 hours on 11.07.2011, some TSR personnel had appeared at that place with fire arms and frightened the people around. Out of scare the people started running here and there. Suddenly one of those TSR personnel had started firing and one bullet hit his brother Papai Saha. He fell down on the

ground. Soon after, the TSR personnel fled away from the scene by the vehicle, boarding which they came in that place. There was no provocation at all. The informant has further stated that he came to learn from the other persons that moments before the said incident, one TSR personnel had visited the place to drop a lady there and he is that person who had fired from the fire arms.

2. There is no dispute that the said written ejahar was filed five days after the fateful occurrence. However, an explanation has been attached in the said ejahar that for the pain that they had suffered for death of the informant's brother, the delay took place. On the basis of the said ejahar, West Agartala P.S. Case No. 235/2011, under Sections 302/34 of the IPC was registered and taken up for investigation. It is not in dispute that the investigation has been completed and the police had filed the final form vide the charge - sheet No.15/2012, dated 30.01.2012 against one Umar Sharif, S/o Anu Miah, resident of Masjid Patty, Santipara, P.S. East Agartala, West Tripura, under Sections 302/326 of the IPC read with Section 27 of the Arms Act.

3. Being aggrieved by the outcome of the investigation as reflected in the police report as filed under Section 173(2) of the Cr.P.C., the writ petition has been filed for quashing the said chargesheet (*Annexure-P/4 to the writ petition*) and for directing a fresh investigation or re-investigation by an independent Investigating Agency (the Central Bureau of Investigation).

4. The apex court in **Disha Vs. State of Gujarat & Ors.**, reported in **(2011) 13 SCC 337** has succinctly laid down as under:

“In Gudalure M.J. Cherian v. Union of India [(1992) 1 SCC 397], this Court however, held that the power of directing investigation by CBI after charge-sheet was filed, should not ordinarily be used, but only when necessary. The investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, ordinarily, to reopen the investigation specially by entrusting the same to a specialised agency like CBI. The same view has been reiterated by this Court in Punjab & Haryana High Court Bar Assn. v. State of Punjab [(1994) 1 SCC 616].

5. Now, this court has to examine whether an exceptional circumstance as distinguished by the apex court in **Disha (supra)** has been made.

6. Mr. Somik Deb, learned counsel appearing for the petitioner has submitted that there is no dispute as regards the death of Papai Saha from the bullet injury as received at the place of occurrence, the space where the Mitterson Lane connects the Hari Ganga Basak Road, from firing while the agitating mobs were running amok. Then the question that imminently rises is who had fired the bullets which caused the death of Papai Saha. According to the informant, it is the respondent No.12 who had opened the fire to frighten the people so as to rescue her wife who was in the jewellery shop, namely 'Shyam Sundar Co. & Jewellery' in the close vicinity of the place of occurrence.

7. But, from the police investigation it has surfaced that it was the charge - sheeted accused Umar Sharif @ Shoaib Malik who had opened fire from the fire arms like pistol, covering with a piece of black cloth aiming at the Maruti Gypsy vehicle parked in front of the said Shyam Sundar Co. Jewellery and thereafter the assailant by the said running motor cycle had escaped through Surya Chowmuhani towards Lalmaitya. The eye witnesses could see vividly the firing incident.

8. It appears from the CFSL Report that, "usually bullets wherefrom regular rifles including the service rifles and high powered hand guns including the high powered pistols/revolvers used by both service personnel and civilians have muzzle velocity beyond subsonic range".

9. Mr. Somik Deb, learned counsel appearing for the petitioner, having reference to paragraph 2.12, has reiterated that the respondent No.11, the Investigating Officer, with an oblique motive has observed that he has recorded the statements of the witnesses including the petitioner and her elder son, but actually neither the private respondent No.11 has made any visit whatsoever to the residence of the petitioner nor has recorded the statements of the petitioner or any of her relations.

10. A reference in the writ petition has been made to an inquiry made by the Police Accountability Commission. It has been also contended that the said Police Accountability Commission, in

their order dated 08.08.2011 has held that "According to the report there are prima facie evidence to take a view that Papai Saha sustained fatal bullet injuries from a gunshot by a member of the police force". However, even though that has not been referred to by Mr. Deb, learned counsel for the petitioner, in the said order it has been also observed that "Without troubling ourselves more with the question who is guilty for opening fire, which part will be definitely looked into by police investigating into the occurrence, we would like to know from police whether our provisional view from the short inquiry that the death of Papai had occurred from the police firing is the most possible and acceptable factual position or it is in dispute. If disputed, we call upon the police authority to produce before us evidence to dispel our view. If not disputed, we propose to proceed with the question of suitable compensation".

11. According to Mr. Deb, learned counsel for the petitioner, the police report has observed that the said CFSL report corroborates the eye witness account that the charge-sheeted accused used the fire arms like pistol for commission of the crime. Mr. Deb, learned counsel has submitted that the Investigating Agency did not examine the informant, an eye witness to the occurrence and the writ petitioner before submission of the impugned charge-sheet (*Annexure-P/4 to the writ petition*). Such non-examination reflects the ulterior motive of the investigating machinery of the Government. He has further contended that from the written ejahar it has surfaced that Papai Saha died "due to

illegal and unlawful firing by the private respondent No.12 and other unidentified armed TSR personnel". According to Mr. Deb, learned counsel, the respondents No. to 5 and 8, from the very inception of the investigation, were desperate to shield the private respondent No.12 and other unidentified armed personnel. He has further submitted that even the Chief Minister of Tripura has made his statement on the floor of the Assembly that the Government of Tripura had been positively considering to have the matter investigated by the Central Bureau of Investigation and his government was ready to take a favourable decision if there was no legal impediment. Mr. Deb, learned counsel has stressed on the said statement itself for demonstrating that "the Government of Tripura is trying to weaken and subvert the genuine issue of re-investigation inasmuch as under no circumstances there cannot be any justifiable/reasonable legal impediment, for transferring the investigation of the case, and/or directing re-investigation to the above named independent Investigating Agency". He has further submitted that, "in law, there cannot be any conceivable legal impediment, for such transfer of investigation of the case and/or directing re-investigation". According to the writ petitioner, the trial on the basis of the impugned charge - sheet would turn out a mockery of justice and it would result in travesty of justice. As such, for ensuring the ends of justice, a fresh or re-investigation is required for all purposes. It has been further urged that this court

should monitor the investigation that may be carried out by the respondent No.7.

12. The State-respondents No. 1, 2, 3, 4, 5, 8, 9 and 10 have filed a joint affidavit-in-opposition and seriously resisted the writ petition on completely denying the allegations made therein and on questioning the maintainability of the writ petition.

13. The sum and substance of their affidavit-in-opposition is in the line of the charge - sheet, but in the affidavit-in-opposition an elaborate details of the occurrence and its background have been placed. Even though the charge - sheet has been challenged in the writ petition, it appears from the affidavit-in-opposition that the respondents were not so certain and averred that, "From the above, it may kindly be noted that West Agartala P.S. case No.235/11, U/s 302/34 IPC is still under investigation. The cause of death of Papai Saha could only be established on conclusion of the investigation of the case". Such statement has been made in the context of the Police Accountability Commission's Report and it has been clarified that the affidavit-in-opposition was filed earlier to submission of the charge-sheet. The State-respondents has categorically submitted that, "the view taken by the Commission that the death of Papai Saha has occurred due to police firing or due to bullet injuries from a gunshot by a member of the police force is grossly erroneous. It is also to be noted that the PAC is not vested with powers of a criminal court to arrive at such a

conclusion. The statements of witnesses on the basis of which the Commission had arrived at the above view may kindly be forwarded to the IO of the above case which could be incorporated into the investigation of the case". Such statement would definitely annoy this court. It is the duty of the Investigating Officer to find out the fact. If any relevant information or fact is in possession of some agency or person, the Investigating Officer shall reach there. The court cannot be asked to direct the said person to impart such information to the police officer.

14. The Inspector General of Police (Law & Order), Tripura, by his letter dated 23.08.2011 has questioned the domain of the Police Accountability Commission over making a parallel inquiry when a statutory investigation was being carried out by the competent authority. It has been asserted stoutly that the investigation into the occurrence of death of Papai Saha has been carried out with all fairness and taking the opinion of the experts where ever so was necessary.

15. By filing a separate affidavit-in-opposition, the respondent No.12 has denied the allegation made against him or his wife and he has given the details of his presence in para 'C' of his affidavit-in-opposition. He has submitted that neither he nor his Personal Guards after coming out from the shop treaded the said road or the said lane. They took a safe passage through the adjacent lane and no bullet was fired from the fire arms carried by

him or his protectors. He has categorically stated that his service arms as well as the service arms of the PGs had been seized on 18.08.2011. He has further submitted that on that day he was carrying AK-47 rifle alongwith 1 magazine and 30 rounds of bullet. His PG, namely Sujit Das was also carrying AK-47 rifle alongwith 3 magazine with 90 rounds of bullet and accessories. His other PG, namely Nirmal Debnath was carrying INSAS (5.56) rifle alongwith 3 magazine with 60 rounds of bullet and other accessories. He has further submitted that the bullets and the guns issued from the 'Kote NCO' of the Company were not used on 11.07.2011, the day of occurrence and they had returned those bullets in due course of time.

16. Two aspects as succinctly laid down in the writ petition require a brief response from this court. (1) Whether the provisional finding of the Police Accountability Commission has anything to do with the investigation. The answer must be in the negative. The power of inquiry as granted by the Tripura Police Act, 2007 is not to be exercised in the domain of the criminal investigation. As such, their report would have been considered by the Investigating Officer if he would have considered it relevant. Such consideration remains in the discretion of the Investigating Officer. Another aspect that (2) the statement made by the Chief Minister that if there were no legal impediment, the CBI investigation might be directed. Apart from the veracity of such statement, whether such statement would be acted upon or not, it

remains within the political ethics of the person who made such statement on the floor of the Assembly. This Court refrains from making any further observation over that aspect of the matter in as much as such statement cannot be enforced through the process of the court.

17. Mr D.P. Kundu, learned Advocate General appearing for the state-respondents has submitted that the allegation of non-examination of the writ petitioner and her son Pinaki Saha is absolutely incorrect and contrary to what has been borne in the record. It would be apparent from the affidavit in opposition filed by the respondent No.11, the Investigating Officer that Sri Ranjit Debnath, the previous Investigating Officer, immediately after receipt of the complaint on 16.07.2011, had recorded the statement of the petitioner as well as of the complainant, Pinaki Saha and the wife of the complainant, Smt. Rupayel Saha under Section 161 of the Cr.P.C. He has further given details in para 'J' of his affidavit in regard to the date of recording the statements of the complainant and the writ petitioner. It appears there from that the complainant was examined on 16.07.2011, 11.08.2011 and 24.08.2011 whereas the writ petitioner was examined on 16.07.2011 and 11.08.2011. According to Mr. Kundu, learned Advocate General, this is a perjury on the face of record. He has stated that such incorrect statement was deliberately made in para 2.12 of the writ petition, where the petitioner has deliberately averred that neither the private respondent No.11 has made no

visit whatsoever to the residence of the petitioner nor has recorded the statement of the petitioner or any of her relation. Mr. Kundu, learned Advocate General, having referred to the various documents as made part of the police report papers, has submitted that the investigation has been carried out fairly and dispassionately to unearth the truth, but the attempt surfaced in the writ petition is a conduit in defence of the charge - sheeted accused person.

18. Even though there is no record that the Investigating Officer has examined the kote records regarding handing over of arms, ammunition etc. and their receipt, but the respondents have annexed with their joint affidavit-in-opposition some pages of the kote Register to show that the arms were received and returned in due time. For further clarification, this court had summoned the Officer-in-charge of the Kote NCO of the Company and he has explained that the arms were duly received from the respondent No.12 and his two body-guards and no bullet as received by them was found fired at the time of return. However, he has categorically submitted that on every Thursday the arms of the Kote NCO are serviced. The relevant Thursday, after return of the arms was 14.07.2011, whereas the complaint was filed on 16.07.2011 and the service arms from the respondent No.12 and his two body-guards were seized on 18.08.2011. Therefore, the result from the ballistic experts was to follow what had followed. For this the petitioner, however, cannot blame the Investigating Agency, as the

complaint (the written ejahar) was filed after five days from the occurrence.

19. Mr. Kundu, learned Advocate General has severely criticised the so called inquiry and order of the Police Accountability Commission. He has submitted that the Police Accountability Commission has travelled beyond their domain to make a taken up investigation before completion of the statutory investigation. He has lambasted the role of the Police Accountability Commission, stating that Section 67(1) of the Tripura Police Act, 2007 provides that, in the cases directly enquired by it, the Commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and the other powers have been catalogued below the said provision. The Police Accountability Commission has no business to investigate an offence to find out the offender or the related materials, that too, by waiving the propriety of fair inquiry. Mr. Kundu, learned Advocate General has seriously expressed his reservation on verification. In para 2.2.1 of the writ petition it has been averred that "because of brutal firing by the private respondent No.12 and other unidentified armed TSR personnel" the deceased died on 11.07.2011 and the said averments have been verified as true to her knowledge, when it is an undisputed fact that only Pinaki Saha from their family witnessed the occurrence and the writ petitioner was not at the relevant point of time nearby the place of occurrence to witness. Such incorrect statements has been verified to be within the personal knowledge and according to

Mr. Kundu that makes the writ petition untenable in law and it has to be dismissed on that point alone.

20. In this regard, Mr. Kundu, learned Advocate General has referred to a decision of the apex court in **State of Bombay Vs. Purushottam Jog Naik**, reported in **AIR 1952 SC 317**, where the apex court has held as under:

"We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verifications should invariably be modelled in the lines of Order 19 Rule 3 of the Civil Procedure Code. Whether the Code applies in terms or not and when the matter deposed to is not based on personal knowledge, the source of information should be clearly disclosed. We draw our attention to the remarks of Jenkins, C.J. and Woodroffe, J. in Padmabati Dasi vs. Rasik Lal Dhar and endorse the learned Judges' observations."

21. Mr. Kundu, learned Advocate General has referred another decision in the same line of the apex court in **Gazi Khan Vs. State of Rajasthan**, reported in **(1990) 3 SCC 459**. According to Mr. Kundu, learned Advocate General, this is nothing but the gross abuse of the process of the court.

22. In **Kishore Samrite vs. State of U.P.**, reported in **(2013) 2 SCC 398**, the apex court has held that the courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of fact and came to the courts with unclean hands. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief. In **Kishore**

Samrite (supra) it has been further observed that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

23. In the last lap of his submission, Mr. Kundu, learned Advocate General has submitted that the court is not short of power if it is found at the time of trial that some material witnesses were not examined, the court can exercise its powers under Section 311 of the Cr.P.C. as it is held by the apex court in **Zahira Habibulla H. Sheikh v. State of Gujarat**, reported in **(2004) 4 SCC 158**. He has continued to submit that Section 319 of the Cr.P.C. has further empowered the court to proceed against such person if it appears from the evidence that any person not being the accused has committed any offence in the same transaction.

24. Apart that, this court cannot be oblivious what the apex court has observed in **State of West Bengal & Ors. Vs. Committee for Protection of Democratic Rights, West Bengal & Ors.**, reported in **(2010) 3 SCC 571** as under:

"Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. 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 complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

25. We have carefully gone through every aspect of the aspects of the allegations. There cannot be any amount of doubt that the investigation could have been much better if the complaint (the written ejahar) was filed in time. The writ petitioner has failed to demonstrate any *mala fide* in the investigation. Some unspecified statements cannot be made basis of interference. This court on investing enough time for scrutinising the records including the police report papers and interacting with the police officers at various point of time, and on hearing the learned counsel appearing for the parties for hours together has not found such circumstances which would persuade this court to make exception from the ratio laid down by the apex court in **Disha (supra)**.

26. No doubt, directing investigation by the CBI cannot be a solace to a bereaved mother and that would not wipe out the tears rolling down from her eyes. Nothing can compensate loss of a son. Having the windows all open when the grievance as laid down

in the writ petition has been assessed, this court could not gather itself to provide the relief for the sweeping nature of the allegations and for non-availability of the materials to demonstrate *mala fide* of the Investigating Agency. Unless the extraneous influence on the investigation looms large on the face of the records to shatter confidence of the court as the apex court has held in **Committee for Protection of Democratic Rights, West Bengal (supra)** in a routine matter, the court, in exercise of its power under Article 226 of the Constitution of India shall not ordinarily direct investigation by the Central Bureau of Investigation (CBI). No such exceptional situation, as stated, which would persuade this Court to intervene or direct re-investigation by the CBI or any other agency, has been made out in the writ petition. However, even though some technical defects in the writ petition have been outlined by Mr. Kundu, learned Advocate General, this court has considered the writ petition on the touchstone of its merit so as to, if possible, grant the deserving relief.

27. Having held so, this writ petition stands dismissed, being devoid of merit. However, in the circumstances of the case, there shall not be any order as to costs.

JUDGE

ROY