HARI SINGH

v.

THE STATE OF U.P.

JUNE 16, 2006

[ARIJIT PASAYAT AND ALTAMAS KABIR, JJ.]

Constitution of India, 1950—Article 32 —Action not taken by police on FIR—Writ petition by complainant seeking direction to conduct enquiry by CBI—Maintainability of—Held : Not maintainable—Code of Criminal Procedure, 1973—ss.190, 200, 203.

The petitioner filed Writ petition under Article 32 before this Court seeking direction to conduct enquiry by CBI into murder of his son on the ground that police had taken no action on FIR lodged by him because of pressure of some influential people.

Dismissing the Writ Petition, the Court

HELD: 1.1. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code of Criminal Procedure, 1973 lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in chapter XV of the Code. In case the Magistrate after recording evidence finds a *prima facie* case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded *prima facie* discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. That being so, this petition is not to be entertained. [61-H; 62-A-C]

All India Institute of Medical Sciences Employees' Union (Reg) through its President **v.** *Union of India and Ors.*, **[1996] 11 SCC 582;** *Gangadhar Janardan Mhatre* **v.** *State of Maharashtra,* **[2004] 7 SCC 768 and** *Minu*

A *Kumari and Anr.* **v.** *State of Bihar and Ors.*, **[2006] 4 SCC 359, relied on.**

1.2. It is case of the petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the concerned police officials to provide such security as are warranted in the circumstances in accordance with law.
B **[62-E]**

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Criminal) No. 140 of 2006.

(Under Article 32 of the Constitution of India.)

C

Parmanand Katara, Manjeet Chawla, Kusum Lata Sharma and Albel Bhati for the Appellant.

The Judgment of the Court was delivered by

D **ARIJIT PASAYAT, J.** This petition was filed under Article 32 of the Constitution of India, 1950 (in short the 'Constitution') is for a direction to conduct enquiry by the Central Bureau of Investigation (in short the 'CBI') into the murder of one Yashvir Singh, son of the petitioner. The allegation is that though First Information Report (in short the 'FIR') has been lodged with the police to the effect that said Yashvir Singh has been murdered and
E has not committed suicide, because of the pressure of some influencial people, police has not taken any positive steps, and on the contrary the petitioner is being harassed and threatened by certain persons. As culled out from the petition, said Yashvir Singh was posted as Additional Commissioner of Gorakhpur, Uttar Pradesh and was found dead in his official residence on
F 19th January, 2006. Petitioner made a grievance that the police officials in collusion with some relatives - more particularly in-laws of the deceased-Yashvir Singh are projecting it as a case of suicide. It is stated that the petitioner has made several representations to various authorities, but without any avail. It is pointed out that the Superintendent of Police had directed the officer in charge of the concerned police station to enquire into the matter in
G view of the allegations made by the petitioner. But it is the grievance of the petitioner that no action has been taken purportedly on the basis of the pressure exercised by some influential people who were inimical to the deceased though they are related to him. In essence grievance is that no action is being taken on the First Information Report lodged by the petitioner.

H

Chapter XII of the Code of Criminal Procedure, 1973 (in short the 'Code') relates to "Information to the Police and their Powers to Investigate". Section 154 reads as follows :

> *Information in cognizable cases.*(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
>
> (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.
>
> (3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Section 156 deals with "Police officer's power to investigate cognizable cases" and the same reads as follows:

> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

A When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a *prima facie* case, instead of issuing process B to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded *prima facie* discloses an offence, C he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg) through its President* v. *Union of India and Ors.*, [1996] 11 SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.

D The above position was again highlighted recently in *Gangadhar Janardan Mhatre* v. *State of Maharashtra,* [2004] 7 SCC 768 and in *Minu Kumari and Anr.* v. *State of Bihar and Ors.*, [2006] 4 SCC 359.

That being so. this petition is not to be entertained. It is case of the E petitioner that he is under constant threat by some persons and his life and property are in danger. If he seeks any protection, it is the duty of the concerned police officials to provide such security as are warranted in the circumstances in accordance with law.

The writ petition is accordingly dismissed.

F

D.G. Writ Petition dismissed.