

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2998 OF 2023
(Arising out of SLP(Crl.) No. 6114/2023)

PARVEEN AZAD

Appellant(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION & ANR. Respondent(s)

ORDER

Leave granted.

The appellant before us is the widow of a Deputy Superintendent of Police, (who was circle officer of Kunda, district Pratapgarh). Her husband was killed in a violent incident on 2nd March, 2013. The deceased police officer had gone to village Balipur within the district Pratapgarh, Uttar Pradesh on receiving information about a shooting incident there. This appears from the complaint made by the appellant forming basis of the F.I.R. which was registered on 03.03.2013.

The appellant had named several persons for being involved or complicit in her husband's murder. It has also been submitted on her behalf before us that the police team had abandoned him at the time he was subjected to violence and ultimately murdered. The case was referred to the Central Bureau of Investigation ('C.B.I.') and

charge sheet has been submitted arraigning several persons as accused. The appellant's grievance is about letting off five persons who she had named in her complaint in the final report. These five persons are 'Gulshan Yadav', 'Hariom Srivastava', 'Rohit Singh', 'Guddu Singh' and 'Raghuraj Pratap Singh @ Raja Bhayia'.

A protest petition was filed by the appellant before the learned Special Magistrate and an order directing the C.B.I. to conduct further proper investigation was passed. The operative part of the order of the learned Special Magistrate dated 08.07.2014 is reproduced below:-

"I have read the FIR by the then S.O. Hathigawan the in which it is written that he met C.O. Ziaul Haq at Balipur Chowk for discussion on the case. It was found to be untrue in the investigation. Similarly, statements under section 161 of Cr.P.C. of Sarvesh Kumar Mishra, then SHO Kunda and Vinay Kumar Singh, the then Assistant Sub-Inspector Kunda who were with C.O., were also not recorded. It is also clear that when the assault on C.O. Ziaul Haq was done by the police team why not any proceeding was done. It is also clear that when Ziaul Haq was attacked there was no action from the police force despite the fact that the weapons were available. It is also difficult to believe that only C.O. Ziaul Haq was beaten up badly while other police persons did not incur more than a few injuries and scratches, as has been known from the perusal of the medical evidence. Why did any Police person at the time of the incident not try to save C.O.? It is also not clear that the family members of Nanhe Yadav Pradhan were contemplating to

burn the house of Guddu Singh but on the objection of C.O. and other Police person, why only C.O. was was beaten up not the other police members? Why there was no action against the family members of Guddu Singh for injuring the C.O.? It is also not clear that by only the polygraph test of Raja Bhaiya was conducted but why the polygraph test of other persons named by Smt. Praveen Azad was not conducted. It is also not clear that when the polygraph test of Raja Bhaiya was done and subsequently for the confirmation of its conclusion by CBI any other evidence was not gathered. This is unfortunate. It is also not clear that the then S.O. Manoj Kumar Shukla at the time of writing the FIR tampered with the sections. In my opinion, CBI just filled up the columns for the sake of formality while recording the statement of the people of the said village whereas, as Smt. Praveen Azad stated again and again, the people of the village are under influence of the named persons and therefore fearful feelings are involved. The CBI has not conducted a proper investigation with respect to the facts which were stated by Smt. Praveen Azad wife of the deceased C.O. Ziaul Haq. In gathering the evidence CBI just filled up the columns for the sake of formality. In such situation in the subject Case Crime No.21/13, R.C.No.4(S)/2013/CBI/S.C.1/ New Delhi, under section 120B, 147, 148, 149, 302, 332 and 353 of IPC, Police Station Hathigawan, District Pratapgarh by CBI the F.R. No.14/13 dated 31.07.2013 which has been filed may be dismissed/rejected in the interest of justice as I order that CBI must conduct a further proper investigation without filling up the columns just for formality on alleged facts, role of named persons and subsequently file its report in this Hon'ble Court within reasonable time."

The C.B.I. had invoked jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, 1973 for invalidating the

aforesaid order of the learned Special Magistrate. The High Court, in the order passed on 25.11.2022, which is assailed in this appeal, *inter alia*, observed and held:

"17. I have considered the submissions. From perusal of the order, it is evident that order impugned amounts to order for re-investigation of the offence, not further investigation of the offence. Looking at the fact that the local MLA was subjected to polygraph test who voluntarily underwent such test, and both the allegations were thoroughly investigated and no substance was found, this Court finds that impugned order is unsustainable in law as it is not based on facts and law but it is based on assumptions of learned Magistrate."

We have heard learned counsel appearing for the appellant and the C.B.I.

In our view, the High Court took a hyper technical approach in the matter, making superfine distinction between re-investigation and further investigation. There does not appear to be any error on the part of learned Special Magistrate in directing further investigation. We have gone through the order of the learned Special Magistrate and find that she had followed the proper course. Hence, we set aside the impugned judgment and confirm the order of the learned Special Magistrate directing further investigation.

Let further investigation as directed by the

learned Special Magistrate be completed within a period of three months.

The present appeal is allowed in the above terms.

Pending application(s), if any, shall also stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[BELA M. TRIVEDI]

NEW DELHI;
SEPTEMBER 26, 2023.

ITEM NO.17

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 6114/2023

(Arising out of impugned final judgment and order dated 25-11-2022 in Application No. 3966/2014 u/s 482 passed by the High Court Of Judicature At Allahabad)

PARVEEN AZAD

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION & ANR.

Respondent(s)

(IA No. 75780/2023 - EXEMPTION FROM FILING O.T.; IA No. 75779/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 168011/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(Crl) No. 11128/2023 (II)

(IA No. 179391/2023 - EXEMPTION FROM FILING O.T.
IA No. 179390/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 26-09-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Arunabh Chowdhury, Sr. Adv.
Mr. Anuroop Chakravarti, Adv.
Mr. Karma Dorjee, Adv.
Mr. Devendra Upadhyaya, Adv.
Mr. M.S. Vishnu Shankar, Adv.
Ms. Athira G. Nair, Adv.
M/S. Lawfic, AOR

Mr. Prashant Bhushan, AOR

For Respondent(s) Mr. K M Nataraj, A.S.G.
Mr. Kanu Agarwal, Adv.
Mr. Saurabh Mishra, Adv.
Mr. Shailesh Madiyal, Adv.
Mr. Pratyush Shrivastava, Adv.

Ms. Vishakha, Adv.
Mr. Purnendu Bajpai, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. Ravindra Raizada, Sr. Adv.(AAG)
Mr. Adarsh Upadhyay, AOR
Ms. Pallavi Kumari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP(CrI) No.6114/2023

Leave granted.

The impugned order is set aside and the present appeal is allowed in terms of the signed order which is placed on the file.

Pending application(s), if any, shall stand disposed of.

SLP(CrI) No. 11128/2023

Heard learned counsel for the petitioner and the C.B.I. The petitioner has been arraigned as accused in Crime No.19/2013 lodged in police station Hathigawan, district Pratapgarh. Criminal Appeal No.2998 of 2023 arising from SLP (CrI.) No.6114 of 2023, which has been allowed today itself, also arose out of the same incident resulting in death of one Ziaul Haq, Circle officer of Kunda, Pratapgarh. The petitioner had invoked the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure,

1973 assailing an order passed by the Special Judge, CBI on 26.06.2023. By that order, the Special Judge rejected the plea of the petitioner to stay the proceedings of S.T. No.239 of 2014. The High Court, in the order impugned, rejected the petitioner's plea.

We are not inclined to stall the trial. We have sustained the order of the learned Special Magistrate dated 08.07.2014 directing further investigation. The said case is related to the same incident. In such circumstances, Session Trial No. 239 of 2014 may go on but let no final order be passed until completion of further investigation and outcome thereof is brought before the Court.

After the final report is filed by the C.B.I. on completion of further investigation, the Trial Court may take steps in accordance with law.

The present special leave petition is disposed of in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(VIDYA NEGI)
ASSISTANT REGISTRAR