

**'Abject Failure' : Kerala High Court Criticises CBI Probe Of Death Of Malabar Cements Whistleblower; Asks Director To Form New Team For Further Investigation**

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**P. SOMARAJAN; J.**

30 November 2022

CRL.MC NO. 929 OF 2015;

**NANDAKUMAR T.P. versus CENTRAL BUREAU OF INVESTIGATION (CBI)**

*Petitioner by Advs. Grashious Kuriakose (Sr.), C.R. Sanish*

*Respondents and State by advs. Sasthamangalam S. Ajithkumar, SC, Central Bureau of Investigation, Manu S., ASG of India, S. Unnikrishnan, Public Prosecutor*

CRL.REV.PET NO. 1502 OF 2015

**SANAL KUMAR versus STATE**

*Revision Petitioner / Complainant - Witness No.3 by Adv. John K. George*

*Respondent by Adv Manu S. ASG of India*

**ORDER**

Two different orders were passed in C.P.No.4/2014 by the Chief Judicial Magistrate, Ernakulam i.e. on 24/12/2014 and 6/7/2015. It is against the order dated 06/7/2015 in C.M.P.No.2637/2015, the brother of deceased V. Saseendran, the defacto complainant came up in CrI.R.P.No.1502/2015 and against the order in CrI.M.P.No.4364/2014 dated 24/12/2014, the petitioner therein one Nandakumar, a journalist and a public activist came up in CrI.M.C.No.929/2015. The application- CrI.M.P.2637/2015 is against the final report submitted and for conducting further investigation. This was dismissed by the Chief Judicial Magistrate without assigning any valid reason. In fact, there is a failure on the part of the learned Chief Judicial Magistrate to go into the various glaring improbabilities especially when the matter concerns the death of three persons. They were found hanging in the same room in a structure attached to the roof. The final report earlier submitted was rejected by order dated 26/10/2013 by raising the following grounds :

1. There is no proper explanation with regard to the 9 fresh ante mortem injuries found on the body of Saseendran.
2. The possibility of murder of Saseendran is not properly ruled out.
3. There was no proper explanation for the blood like stain found on the side of the door of the room in which hanging bodies were found and blood stains detected on the clothes of the children.
4. There is no proper explanation for locking the door from outside and Teena finding a key outside, to open it.
5. There are only circumstantial evidence against the accused. CBI is trying to water down the offences appear to have been committed by the accused.

2. But in the supplementary report submitted, the deficiencies noticed above were neither properly investigated nor were satisfactorily explained by the investigating agency. The supplementary report was filed by concocting up certain hypotheses, that too, without any legal or factual basis.

3. During the course of investigation, evidence was collected with respect to the alleged harassment and insults faced by one of the victims, Saseendran as a result of a feud with the private contractor Sri.V.M.Radhakrishnan, the then Managing Director Sri.Sundaramoorthy and the then Executive Secretary Sri.Sooriyanarayanan of M/s Malabar Cement. The case set up by the investigation is that as a result of the feud and harassment, one of the victims, Saseendran had submitted his resignation and decided to kill his two minor sons and to commit suicide. Their dead bodies were found hanging within the room tied up with a structure attached to the roof. His wife Teena after work came to the house and had seen the bodies of the deceased hanging over the roof. Thereupon, his brother gave FI Statement to the police and caused to register FIR arraying the deceased Saseendran as the prime accused alleging offence under Section 302 IPC r/w Section 174 Cr.P.C. It was thereafter that another FIR was also registered based on the statement given by the wife of the deceased Saseendran instead of conducting investigation on the basis of the earlier FIR. It is indeed deplorable that it was under the second FIR, additional accused No.2 to 4 were incorporated. But the offence alleged was restricted only to Section 306 & 506(1) r/w Section 34 IPC excluding the alleged offence of commission of murder under Section 302 IPC included in the first FIR. The very registration of the second FIR selectively excluding some of the offences mentioned in the first FIR would speak volumes of what transpired and was actually perpetrated by the officers who had registered the respective FIRs. This shows the decadence and the loss of moral values prevalent in our society. Subsequently, this Court had directed to consolidate the investigation instead of proceeding separately with two FIRs. Accordingly, a final report was at first submitted and it was rejected for the abovesaid reason ordering further investigation. It was thereafter that a supplementary report under Section 173(8) Cr.P.C. was submitted, that too, without properly addressing the grounds raised, five in number. Now almost ten years have elapsed and the investigation is now in a stasis and crawling on the ground without going into the material aspects involved in the crime. A considerable portion of the investigation was conducted by one Sri.Nandakumar Nair, Additional Superintendent of Police, CBI/SCB, Thiruvananthapuram. A conscious attempt to defeat the administration of justice is conspicuous from the fact that a trumped up supplementary report was submitted without referring to the relevant questions involved. In fact, this has resulted in a flagrant and brazen miscarriage of justice.

4. A very strange hypothesis was supplied by the investigating officer regarding the nine fresh antemortem injuries found on the body of Saseendran, for which, reliance was placed on the statement given by Dr.Gujaral, who conducted the postmortem examination on the body of the deceased. In fact, no specific opinion was given by Dr.Gujaral regarding the real cause for the abovesaid injuries except a probability by the hit of a ladder either during the course of climbing or a fall from the ladder. In fact, Dr.Gujaral had cautioned the investigators to look out other reasons for causing such injuries, for which no attempt was made by the investigating agency solely on the reason that none of the near residents heard any unusual sound from the house of the deceased. The fact that the house was found locked outside at the time when Teena, the wife of deceased Saseendran came to the house was also overlooked by the investigating agency and ruled out the chances of a murder or a homicide simply on the reason that there is no eye witness to the alleged incident and the neighbours did not hear any unusual sound from the house of the victim. The sheer absurdity of a father hanging two children aged 11 and 8 and killing them one after another in cold blood, that too, on the very same roof structure was not either appreciated or addressed properly and this lends credence to the sheer negligence and shoddy attempt to cover up the real cause of the crime. It has also not been explained

whether Saseendran would be able to hang both the children one after another without having help from others in the light of body weight of both the children and the nature of the ligature used. They are aged 11 and 8 respectively. If that be so, it is humanly impossible to hang these two children one after another unless they were brought under any intoxication to the extent of making them unaware of what was actually going on there. Necessarily, if it is one after another, the second one on seeing the commission of offence as against the first one would offer resistance and raise a furore and would run away from the scene of crime. But, quite unusually and intriguingly, none of the neighbours heard any unusual sounds from the house of Saseendran. No investigation worth the name was conducted on the abovesaid crucial aspect. In the postmortem examination, no extraordinary substance like drugs, sedatives or substance of intoxication was detected on the blood test of the two children. Necessarily, there is no material suggesting that the children were unconscious at the time of commission of the alleged offence. It is totally against the normal conduct of a human being and is almost farcical. Necessarily, the investigating agency should explain as to why these two children had not properly responded or defended the alleged act of Saseendran to kill them. The case advanced by the investigating agency that they have volunteered and consented to their homicide seems to be so fallacious and is hilarious like a sheep being willingly led to a slaughter house.

5. Further, the wilful attempt from the investigating agency to exclude the allegation of major offence of murder under Section 302 IPC and alleged involvement of accused persons is explicit from the fact that they did not even take cognizance of the opinion given by Dr.K.Sreekumari, Professor and Head of Department of Forensic Medicine, Government Medical College, Thiruvananthapuram. She was one of the members of the Committee of Medico-legal Forensic Experts formed on 12/1/2012. The opinion given by her that the fresh antemortem injuries found on the body of Saseendran were simple, but from the nature of distribution on the body, may give an immediate impression that they are the result of restraint, had been given away by the investigating agency on a flimsy reason that none of the nearby residents heard any unusual sound from the said house. Hence, the apprehension in the mind of the defacto complainant and the petitioner is well placed especially when the supplementary report suffers from very big drawbacks and deficiencies in the investigation.

6. Yet another discrepancy was also brought to the notice of this court regarding the blood stains found on the walls of the room, for which, an implausible and ludicrous story was adopted by the investigating agency that it may be due to two different and separate falls from the ladder. I am at a loss to understand from where the investigating officer had borrowed such a version without any factual support. Further, the investigating officer is not expected to render any judgment by imposing his own reasons as to the various aspects of the alleged crime and the relevancy of evidence collected to exclude any particular offence or an accused person. The supplementary report submitted is illustrative of what was actually done by the officer and instead of placing the evidence collected, he had gone into the extent of making a judgment of his own, that too, for the purpose of introducing a cooked up supplementary report. Necessarily, the Central Bureau of Investigation has to take up the issue with due seriousness and I hope that there will be some positive steps from the agency against the delinquent officers, who have done the mischief.

7. It is also not satisfactorily explained why the abovesaid Saseendran had opted to kill his two children leaving his wife alone, a lady well employed and getting a handsome

income. The strained relationship between the husband and wife under the given circumstances may not suggest such an extreme conclusion as to the alleged homicide of two minor children by their father. It is indeed unfortunate that still the investigation is lingering on the last more than ten years without yielding anything worth the name. On the other hand, a half baked supplementary report was submitted by way of an eye wash without addressing the relevant issues involved in the crime. Hence, in the given circumstances, I am of the view that one of the most reputed investigating agencies in India - CBI, should be more vigilant while acting on investigation pertaining to the very serious offences and it shall not be an eye wash. The entire investigation taints and tarnishes the well deserved reputation of the CBI as a premier investigating agency. Necessarily, the Director of Central Bureau of Investigation shall take up the matter with due alacrity to the gravity and seriousness so as to constitute a new investigation team under the supervision of a senior and competent officer, who has necessary expertise in the field and is not gullible.

8. The offences of murder, culpable homicide and such other serious offences being offences against the society especially when they involve multiple murder, each and every member of the society and the society at large shall remain interested (persons) when the investigation is found to be defective and one sided or even lopsided and skewed. Hence, there cannot be any denial that there has been an abject failure on the part of the machinery empowered in the administration of justice resulting in a flagrant travesty. It is relevant to consider the legal position laid down by this Court in **Nandakumar v. State (2008 (2) KLT 913)**. The dismissal of the applications submitted by the public activist T.P.Nandakumar and the brother of the deceased Saseendran on some extraneous grounds by the learned Chief Judicial Magistrate cannot be sustained and the same will stand set aside. The investigating agency shall conduct further thorough investigation touching on all these points, for which, the Director of Central Bureau of Investigation shall constitute a team of officers headed by a senior officer, who have the expertise in the field. Endeavour shall be made to complete the investigation within a time schedule of four months from today since the incident is of the year 2011.

Both the Crl.M.C. and Crl.R.P. are allowed accordingly.

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