

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**WRIT PETITION No.4995 of 2022****ORDER:**

This Writ Petition is filed for a Mandamus against respondent Nos.3 and 4, who according to the petitioner have not conducted a free and fair investigation into Crime No.266 of 2021 of Tallapudi Police Station, and to handover the case to an independent agency i.e., the CBCID for investigation into the matter.

This Court has heard Sri Jada Sravan Kumar, learned counsel for the petitioner, the learned Government Pleader for Home appears for respondent Nos.1 to 4 and the learned standing counsel for the 5th respondent-CID department.

The petitioner, who is the father of the deceased and is aggrieved by the investigation conducted in Crime No.266 of 2021 by the 4th respondent, has filed the present Writ Petition. The petitioner's son was found dead in a field. Initially an FIR was registered under Section 174 of Cr.P.C., on 06.10.2021. The contention of the learned counsel for the petitioner is that the death of the petitioner's son is mysterious. He was found dead in a banana plantation without any clothes on his body in the land belonging to one Kommaraju Muthyalarao, who has taken the land on lease. There were some issues between the deceased and the accused and the deceased was working as a farm labour. The grievance of the petitioner is that the deceased has number of injury marks on his dead body and yet

the police were satisfied with the classification of death as 'suicide' with the consumption of a poison lethal substance called "permethrin". Learned counsel for the petitioner argues that if a poisonous substance like "permethrin" is consumed it will leave marks all over the mouth, throat, intestine etc., and without checking the same, the death was classified only as suicide. He also points out that in view of the slow phase of investigation and the failure of the respondents to properly conduct investigation they had filed W.P.No.285925 of 2021 wherein a learned single Judge by an order dated 10.12.2020 directing the police to complete the investigation within one month. It is also stated in the said order that if the investigation could not be completed within the time, the petitioner is free to take action as required under law. Learned counsel for the petitioner submits that since the progress was slow and not proper he filed a private complaint under Section 200 Cr.P.C., before the designated Court i.e., VIII Additional District & Sessions Judge-cum-special Court for Trial of Cases under SC's & ST's (POA) Act 1989 at Eluru, which after considering the evidence and documents, passed an order directing the SHO, Tallapudi Police Station to register the FIR under appropriate provisions and for investigation of the case.

Learned counsel submits that thereafter the sections in the FIR were altered from Section 174 Cr.P.C., into a case under Sections 302, 201 r/w 34 IPC and Section 3(2)(v) of SCs, STs POA Act (Amended Act 2015) (in short "SCs & STs (POA)

Act”). Even thereafter, it is submitted that there is no clear progress in the investigation of the crime. Learned counsel for the petitioner argues vehemently that since political big wigs are involved in the crime the police are slowing down the investigation and have not actually zeroed in on the accused or nor have taken any concrete steps so far. Learned counsel also filed additional material papers which include some close up photographs of the dead body to argue that the doctors did not conduct a proper postmortem etc. It is submitted that even after the case is registered under Sections 302, 201 r/w 34 IPC and Section 3(2)(v) of SCs & STs (POA) Act the respondent police have not taken the action that is necessary nor discharged their duties for a fair investigation particularly under Section 302 IPC. Therefore, he submits that this is a fit case in which the investigation should be handed over to CBCID. He relies upon the case law that is filed along with Writ Petition to argue that this is a fit case in which the Court should follow the earlier judgments and direct the investigation by the third party and not by the local police.

Learned standing counsel for the 5th respondent-CBCID states that they were only added as proforma party and no specific allegations are made against them and that, therefore, it is for the learned Government Pleader for Home, who represents the respondents 1 to 4 to make his submissions.

Sri Maheswar Reddy, Learned Government Pleader for Home argued the matter at length. According to him the

petitioner only wants another department of the State viz., CBCID to investigate the matter. He submits that no clear ground or specific ground is made out to question the fairness of the investigation. It is his contention that except for making general allegations no material is placed before this Court to claim the relief. He also submits that the learned VIII Additional District & Sessions Judge-cum-Special Court for Trial of Cases under SC's & ST's (POA) Act, 1989 (Amended Act, 2015), Eluru, before whom the private complaint was filed under the provisions of SCs & STs (POA) Act, is already monitoring the investigation and that no further orders *per se* are required. He also submits that as per Police Standing Orders the case is entrusted for the investigation by the Director General of Police and that the petitioner cannot, therefore, claim as a matter of right that his case shall be investigated by the CBCID only. He also points out that the petitioner could have approached the Director General of Police and ask him to refer the matter to CBCID, instead of doing so the Writ is directly filed before this Court. Relying upon the land mark decision of the Hon'ble Supreme Court of India in the case of **Sakiri Vasu v State of Uttar Pradesh and Others**¹ learned Government Pleader for Home argues that the case is already being monitored by the concerned court and that there is no need for a further order to be passed. It is his contention that it is the District Judge, who is seized of the

¹ (2008) 2 SCC 409

matter under the provisions of the SCs & STs (POA) Act, who has the necessary power and authority to monitor the investigation. It is submitted that if the petitioner feels that the investigation is not proper he can approach the said Court for the appropriate reliefs. Even after the police filed a final report the learned Government Pleader points out that the power is given to the concerned Court to reopen the matter. He ultimately argues that this is an “extraordinary” remedy that the petitioner is claiming and that an order of investigation by a third party can only be given in a rare or exceptional cases. He submits that this is not a rare / exceptional case. He also submits that as requested by the Court the Case Diary is being filed before this Court in a cover. This according to him will enable this Court to appreciate the progress made in the investigation so far and would reveal that the police are proceeding in a methodical and correct manner; and that they have enlarged the scope of the investigation after the Hon’ble VIII Additional District & Sessions Judge-cum-Special Court for Trial of Cases under SC’s & ST’s (POA) Act, 1989 (Amended Act, 2015), Eluru, directed the inclusion of a Charge under Sections 302, 201 r/w 34 IPC and Section 3(2)(v) of SCs & STs (POA) Act.

COURT:

This Court after hearing the submissions of the learned counsels notices that this case relates to the anguish of a father who lost a grown up son under mysterious circumstances.

This is the anguish that is driving him pillar to post seeking relief. This Court is also conscious of the fact that it should be very cautious in ordering the investigation by a third party after taking it away from the police, who are generally entrusted with these duties. The law is also very well settled on these aspects and it need not be reproduced again. This Court is called upon to maintain a delicate balance between reputation and integrity of the police and also anguish of a father, who has lost his grown up son.

The following facts in the opinion of this Court are important. Crime No.266 of 2021 of Tallapudi Police Station was registered on 06.10.2021 under section 174 of Cr.P.C. The investigation was carried out by the local Sub-Inspector of Police, as the Investigating Officer. Thereafter the Writ Petition No.28925 of 2021 was filed. This writ was disposed of by directions on 10.12.2021, whereby the police were directed to complete the investigation within one month from the date of receipt of a copy of this order. It was mentioned clearly if the investigation would not be completed within the said time the petitioner could take action as required under law. On 30.02.2021 the petitioner filed a complaint under section 200 Cr.P.C. before the VIII Additional District & Sessions Judge-cum-Special Court for Trial of Cases under SC's & ST's (POA) Act, Eluru, who passed the order on 18.01.2022, which is as follows:

“It is true that FIR u/s. 174 Cr.P.C. was registered by the police concerned, but the enquiry was still on. The body was allegedly found at the fields of A1 and A2 with injuries. The dead body was marked and by his side, several articles were found. It is now essential to find out as to how the Srinivasarao died and whether it is as a result of the injuries which appear on his body suffered by him or not. To ascertain all these factors, a thorough investigation has to be conducted by the police concerned. There is *prima facie* material for investigation by the police.

Therefore, this complaint is forwarded to the SHO, Tallapudi P.S., u/s. 156(3) Cr.P.C., for registration of the FIR under appropriate provisions for investigation and to file a report thereon by 18.02.2022.”

The learned Judge noted the injuries on the body, that the dead body was not clothed and there are several articles found on the area. Therefore, the court opined that it is essential to find out how Srinivasa Rao died and whether it is of result of injuries appears on the body or not. The Court came to the conclusion that there is *prima facie* material available for investigation. Accordingly, the charge sheet was altered on 18.01.2022 and Section 302 IPC read with other sections was also added the necessary alteration was carried out to the FIR. Now the charges under Sections 302, 201 r/w 34 IPC and Section 3(2)(v) of SCs & STs (POA) Act.

The initial investigation was carried out by the S.I. of Police of Tallapudi. Thereafter, on 29.10.2021 the SDPO Narasapuram was appointed as Investigating Officer in place of

the earlier Sub-Inspector of Police. He carried on the further investigation. Later after the alteration of the FIR the Deputy Superintendent of Police was appointed as the Investigating Officer and he continued the investigation.

This matter was heard on 28.02.2022, wherein the counsel for the petitioner reiterated his request for fresh postmortem to be conducted on the body of the deceased after exhuming the same. Learned Government Pleader sought time to get his instructions. Ultimately, the arguments were heard on 14.03.2022 and concluded.

The Case Diary was brought to the notice of the Court in a cover. The Case Diary reveals that the investigation is still being continued. There are entries in the CD are dated 30.01.2022 and 01.02.2022. The statement of a witness i.e., LW 26 was recorded on 01.02.2022. Thereafter on 16.02.2022 further investigation was carried on and the 1st accused was examined. Therefore, it is clear that the investigation is not yet concluded.

Apart from this the “medical evidence” on which the petitioner counsel laid heavy emphasis is also looked into by the Court. The 1st postmortem report is dated 07.10.2021. It is inconclusive. The approximate time of death is noted as 24 – 36 wks (must be hours) prior to the postmortem. The doctors could not conclude about the cause of death and the report sent to the Regional Forensic Laboratory is stated to be awaited. It is also seen from the record that the Investigating

Officer concerned had also prepared a questionnaire basing on the instructions of his superior officers and requested the doctors to give a reply to the three questions posed by him about the cause of the death. However, the Civil Assistant Surgeon clearly opined that he can give an opinion only after seeing the RFSL report. This RFSL report was obtained later. The forensic science laboratory did notice the presence of the poisonous chemical 'Permethrin' in the vital organs of the deceased. Later, on 02.11.2021 the doctors who conducted initial postmortem came to the conclusion that the cause of death is due to permethrin poisoning. It appears from the case diary that the police gave four specific questions to the doctors, who conducted the postmortem for the purpose of further investigation. The answers to these queries in this Court's opinion are also not very clear, particularly with regard to the homicide / suicide issue.

Therefore, it is clear that from a perusal of the Case Dairy that as on date the doctors are not very sure if the death is due to homicide or suicide. Apart from this a reading of the Case Diary also reveals that there are communal rivalries in the Malakapalli village, which are leading to law and order problems. This is apparent from the requests of the Investigating Officer to secure the FSL analysis report. In fact, he addressed letters to his superiors requesting them to use their good offices to secure the report at an early date, in view of the communal rivalries between the villagers. These are the

relevant facts, which are visible from a reading of the record that is disclosed so far.

Therefore, in these circumstances, this Court is of the opinion that there is a need to exhume the body and conduct a *denovo* postmortem to the extent possible by a fresh team of qualified doctors. It is a fact that some time has passed since the deceased was buried and there would definitely be some changes but the fact remains that this not a case where petitioner simply complained that the investigation is not proper. He has been running from pillar to post. His anguish and torment are clear. He has approached this Court earlier and filed a Writ Petition. He had approached the national SC ST commission on atrocities also for redressal. He has also filed a private complaint before the VIII Additional District & Sessions Judge-cum-Special Court for Trial of Cases under SC's & ST's (POA) Act, Eluru, which also directed the police to alter the charge. The existence of some communal rivalries is also borne out by the record. The only issue in this case is how did Srinivasa Rao die? Did he commit suicide or was he murdered? In this Court's opinion Medical evidence may help the police in coming to a firm conclusion. The ultimate aim of the Courts; the police, the prosecutors etc., is to find the "truth". No stone should be left unturned in this quest for truth.

This Court *per se* does not find that the investigation carried on by the police is biased etc. A reading of the Case

Diary shows that the police have carried out the investigation *albeit* at a slow pace. The medical evidence at this stage is however inconclusive. Therefore, in the circumstances, this Court is of the opinion that in line with the additional prayer made by the petitioner and to hopefully ensure that the truth will come out the body of the deceased Srinivasa Rao should be exhumed and a further postmortem should be conducted at the spot or otherwise. For this purpose, the respondent police are directed to approach the Superintendent of the Guntur Medical College to immediately nominate two doctors well-versed in this field for the purpose of the fresh postmortem. In addition, they should approach the Director, AIIMS, Mangalagiri to nominate a doctor from All India Medical Sciences, Mangalagiri, to conduct the postmortem along with the other two doctors. The postmortem being conducted by the three doctors should be carefully videographed and preserved for the sake of the trial. The doctors are directed to give a written report with reasons for their conclusions. The entire exercise should be completed within a period of 15 days from the date of receipt of a copy of this order. The police / revenue officials should make all the arrangements for this postmortem. It is also directed that since the present Investigating Officer is an officer of the rank of Deputy Superintendent of Police, he should quickly conclude his investigation and file the final report before the concerned Court within a further period of two months from the date of receipt of a final postmortem report. The provisions of Rule 7

of the SC & ST (POA) Rules, 1995 should be strictly adhered to by the new Investigating Officer. In addition, Rule 7 (3) of the Rules should also be adhered to by his superiors. Since no allegation *per se* made against the present Investigating Officer no order is being passed to change him or to handover the investigation to the CBCID. The Investigating Officer is, however, directed to devote time and specially focus on this case to complete the investigation at the earliest point of time. This order, however, will not preclude the petitioner from further proceedings as per law.

With these observations, the Writ Petition is partly allowed. There shall be no order as to costs.

Consequently, the Miscellaneous Applications pending, if any, shall also stand closed.

Date:23.03.2022
Ssv

D.V.S.S.SOMAYAJULU, J