

# **SUPREME COURT OF INDIA**

Zorawar Singh

Vs.

Gurbax Singh Bains

CrI.A.No.2530 of 2014

(Anil R. Dave and Uday Umesh Lalit JJ.)

04.12.2014

## **JUDGMENT**

### **UDAY UMESH LALIT, J.**

1. This petition for special leave to appeal challenges the judgment and order dated 21.02.2013 passed by the High Court of Punjab and Haryana in Criminal Miscellaneous No.M-6656 of 2011. Leave granted.
2. On 28.09.2010, a complaint was given by one Karnail Singh alleging that on the intervening night of 27th and 28th of September 2010 in a road accident between a Ford Endeavour Car having registration No. PCP 17 driven by Zorawar Singh i.e. the present Appellant No.1 and a truck bearing Registration No. HR 58- 3264 at Liberty Chowk, Rajpura, District Patiala, two students namely Gagandeep Singh Bains (son of the present respondent no.1) and Gaurav Verma died and the other two occupants of the car namely Appellant No.1 and one Jaskaran Singh got badly injured and were moved to the hospital . On these allegations FIR No.219 was registered under section 304A, 279, 337, 427 IPC at Police Station, Rajpura against the driver of the truck.
3. Respondent No.1 however submitted representation to the Director General of Police, Punjab alleging that his son had not died in that accident but was murdered in a pre-planned manner. Similar such representation in the form of an application dated 21.02.2011 was sent by Respondent No.1 to the High Court of Punjab and Haryana

which was registered as Diary No.350 dated 23.02.2011 and was placed before a learned Single Judge who directed that the application be placed on the judicial side of the High Court. Accordingly a note was prepared by the office of the High Court on 26.02.2011 requesting the learned Chief Justice whether the petition could be registered under Section 482 of Cr.P.C. for transferring the case to CBI for investigation into the matter. The learned Chief Justice having given his approval, the matter was registered as Criminal Miscellaneous No.6656 of 2011 and was placed before a learned single Judge who by her order dated 03.03.2011 issued notice to the State of Punjab.

4. In the meantime the Principal Secretary, Home, Punjab vide his letter dated 27.02.2011 entrusted the matter to Shri Kunwar Vijay Pratap Singh IPS, DIG (Crime) to conduct independent investigation and submit his report. The matter before the High Court stood adjourned from time to time and on 18.11.2011 the High Court was told that the enquiry was nearing completion. On the next date i.e., on 21.12.2011 the High Court was informed that the DIG (Crime) had concluded his enquiry and had recommended addition of offence under Section 302 IPC. The order passed by the High Court on 21.12.2011 was to the following effect:

"State Counsel on instructions says that inquiry in this case has been concluded and the DIG (Crime) has recommended addition of offence under Section 302 IPC. Let the report in this regard be placed on record.

Adjourned to 16.01.2012."

5. On 27.12.2011 said DIG (Crime) submitted his enquiry report in which he concluded as under:

"As per the enquiry conducted by me that keeping in view the facts and circumstances mentioned above, the case FIR No.219 dated 28.09.2010 registered under section 279, 304-A, 427 IPC police station city Rajpura has not been found on the basis of true and material facts and the investigation also seems to be done by concealing the true and real facts especially as per the statement given by the eye witness Jatinder Singh (truck conductor) that fight took place at the spot between the two parties came in two different cars and the case is not found of road accident. So custodial interrogation of the concerned

persons is necessary as the matter is of serious nature. So after registering the case under section 302 IPC, it is recommended to investigate the matter from some independent and impartial Agency for bringing the truth into light."

Sd/-

6. Though the report had stated that a case be registered under Section 302 IPC and that the investigation be thereafter handed over to some independent and impartial agency, a Special Investigation Team ('SIT' for short) was constituted by the Director General of Police, Punjab, who did not agree with the findings in the aforesaid report. On 24.01.2012 State of Punjab issued a letter that the SIT constituted by the police department was directed to be disbanded and that the matter be pursued in the Court as already submitted. Said letter was to the following effect:-

"GOVERNMENT OF PUNJAB DEPARTMENT OF HOME AFFAIRS & JUSTICE (HOME VII BRANCH) To The Director General of Police, Punjab, Chandigarh, Memo.No.4/14/12-2-g-7/234 dated 24.01.2012 Sir, Kindly refer to the subject cited above.

In this context it is stated that a SIT (Special Investigation Team) comprising of Sh. B.K. Garg I.G. (Crime) Sh. R.K. Sharda, SP Crime and Gurbir Singh SP has been constituted by the Police deptt. without the directions of the Court. It is pertinent to point out here, that matter is already sub-judice in the court of law as per the investigations completed by Sh. Kanwar Vijay Partap Singh IPS, DIG Crime, Mohali.

To reinvestigate the case without the directions of the court by the SIT will lead to tempering the evidence and record as the inferences drawn by the SIT may be different from Kanwar Vijay Partap Singh IPS DIG Crime, on account of which the case under Section 302 has been filed in the Court of law.

As such, constitution of SIT by Police deptt. without any rhyme or reason is of no avail and unless Hon'ble court orders in this context.

Keeping in view the facts stated above the SIT constituted by Police Deptt. is directed to be disbanded. The matter be pursued in the court of law as already

submitted.

SD/-O.P. Bhatia Deputy Secretary, Home and Justice Endsst No.11/14/12-2g7/239 dated Chandigarh 25.1.2012 A copy of above is forwarded to Sh. Gurbax Singh Bains H.No.206 Phase 6 Mohali for information with reference to his application dated 17.01.2012.

Sd/- Superintendent"

7. In spite of the aforesaid directions, the SIT went ahead and submitted its report on 01.03.2012, the conclusions wherein were to the effect that whatever happened was road accident and that the allegations levelled by Respondent No. 1 that it was an act of murder, were absolutely baseless. The matter appeared before the High Court on 24.04.2012 and the following order was passed:-

"Applicant -Sardar Gurbax Singh Bains submits that the respondents police authorities are intending to present the report under Section 173 Cr.PC, on the basis of investigation conducted by the Special Investigation Team (S.I.T) constituted vide order dated 4.1.2012, which came to be disbanded by the State of Punjab, vide order dated 24.1.2012. He further submits that once the SIT has been disbanded vide order dated 24.1.2012, the S.I.T has no jurisdiction to proceed further to prepare the conclusion report. Notice of the application to the non-applicants for 23.07.2012. In the meantime, the report under Section 173 Cr.PC (Challan) shall not be presented before the court concerned , on the basis of the report dated 1.3.2012 submitted by the S.I.T. constituted vide order dated 4.1.2012, which had been disbanded vide order dated 24.1.2012. However, the investigating agency would be at liberty to proceed further on the basis of the report dated 27.12.2011 submitted by the Deputy Inspector General of Police (Crime), Punjab, recommending addition of the offence under Section 302 IPC to FIR No. 219 dated 28.09.2010 under Sections 304-A, 279, 337,427 IPC registered at Police Station Rajpura, Distt. Patiala. A copy of this order be given dasti to the learned State Counsel as well as to the Petitioner, who is appearing in person, under signatures of the Court Secretary attached to this Bench, for onward submission to the authorities concerned for compliance thereof.

To be listed for further consideration on 23.07.2012."

The High Court thus clearly directed that the investigating agency could proceed on the basis of the report submitted by the DIG (Crime), recommending addition of offence under Section 302 of IPC and that its order be placed before the concerned authority for due compliance.

8. The record further indicates that the Inspector General of Police (Crime), however, submitted a report on 17.07.2012. The concluding part of the report was to the following effect:-

".....So, after perusal and examining all documents, witnesses and reports of both the enquiry reports I am of the considered view that it is clearly an accidental case and no doubt can be raised regarding the death of two boys in this road accident. The investigation conducted by SIT is a through enquiry which has to be appreciated as the members of the SIT have gone down to the depth of the case and has examined this case at every point. As the DIG crime Sh. Kunwar Vijay Partap Singh, has himself recommended in his report that the matter needs to be investigated from some independent and impartial agency for bringing the truth in to light, so, taking into consideration the recommendations of the DIG Crime, the then DGP Punjab constituted a SIT who submitted its report to the DGP, Punjab who after agreeing with the report of the SIT directed to present the report in the Hon'ble Punjab & Haryana High Court. The same was presented in the Hon'ble High Court on 01.03.2012. As it is purely an accidental case and we should stick to the report of the SIT and I am of the opinion that report of the SIT should be accepted. However we should inform the Principal Secretary Home, to review his orders dated 24.01.2012 and 22.02.2012 regarding disbanding of the SIT by sending him a report of special investigation team alongwith the comments of the Crime Branch. Hon'ble Punjab & Haryana High Court may also be apprised of the matter accordingly as the case is fixed for hearing on 28.07.2012."

9. Immediately after the aforesaid report dated 17.07.2012, another SIT was constituted vide order dated 18.07.2012 and the said order reads as under:-

"PUNJAB GOVERNMENT HOME AFFAIRS AND JUSTICE DEPARTMENT (HOME -4 BRANCH) I Order With a view to conduct

investigation concerning FIR No. 219 dated 28.09.2010, Police Station Rajpura city District Patiala, a team, under the supervision of Shri Kanwar Vijay Partap Singh, IPS, is constituted in which two officers not below the rank of DSP can be included by him. In addition to it, he will have full authority to get cooperation & services of any officer/official.

Dated: Chandigarh

D.S. Bains  
Principal Secretary,  
Punjab Government,  
Home Affairs & Law Department

Endst. No. 7/4/12-5H/1424-26 dated Chandigarh 20.07.2012. A copy of above is sent to the following for information & necessary action:-

1. Director General of Police, Punjab, Chandigarh
2. Shri Kanwar Vijay Partap Singh, IPS ,Deputy Inspector General of Police, Punjab, Armed Police, Chandigarh.
3. Shri Gurbax Singh Bains, House No. 206, Phase 6, Mohali 160055 Sd/-  
Under Secretary, Home"

10. When the matter appeared before the High Court on 23.07.2012 constitution of fresh SIT was brought to the notice of the High Court and at the request of the counsel for the State the matter stood adjourned. Following was the text of the order passed by the High Court on 23.07.2012:-

"Affidavit of Vibhu Raj, Deputy Inspector General of Police, Crime, Punjab filed in the Court today is taken on record and copy thereof has been supplied to the petitioner, who is appearing in person. Learned counsel for the State, on instructions from Inspector Manjit Singh, Crime Branch, Punjab, submits that the newly constituted Special Investigating Team (S.I.T) headed by Kunwar Vijay Partap Singh, is already seized of the matter. However, he submits that the newly S.I.T. would require reasonable time to investigate the matter.

On his request, adjourned to 31.10.2012.

In the meantime, fresh status report be filed by way of affidavit of the concerned officer."

11. On 27.09.2012, the SIT was however reconstituted and the relevant portion of the order dated 27.09.2012 is to the following effect:- "...The Principal Secy. Home, Punjab vide order No. 7/4/12-3H4/1753 dated 12.09.12, directed the office of DGP, Punjab to the effect as that in this matter the Govt. decided that keeping in view the natural justice, the investigation of this case may be conducted by constituting a Special Investigation Team at his level (office of DGP/Punjab). In compliance with the order dated 12.09.2012 of Home Deptt., Punjab, a Special Investigation Team to investigate the above said case FIR No. 219 dated 28.09.2010 u/s 304-A, 279,337,427 IPC P.S. Rajpura is hereby constituted under the Chairmanship of IGP /Zonal , Patiala, who may select two SP rank officers of his Zone (except that of Distt. Patiala) alongwith requisite supporting staff/police personnel, to conduct the investigation expeditiously and submit its status report at the earliest. The said SIT may specifically and discreetly examine the two earlier Report (i.e. dated 27.12.2011 submitted by Sh. Kunwar Vijay Partap Singh, IPS, and, another Report dated 31.1.2012 submitted based on its investigations. Any other records in any office, if the said SIT so considers appropriate, may also be examined by it accordingly.

Sd/-

AIG /Crime For Addl. Director General of Police, Crime, Punjab, Chandigarh.

No. 21960-64/CR-LA dated:27/9/12"

12. The SIT so reconstituted, submitted its report on 29.01.2013 and the concluding part was as under :-

"In this case as per evidence on file no such facts that attract offence under section 302 IPC is proved. It is only a case of an accident. In this case Pardeep Kumar and endavour car driver Zorawar were found guilty and therefore, offences under section 283, 337, 338, 304 A IPC was proved against Pardeep Kumar Driver, and offences under section 279,337,338,304 IPC was proved against endavour car driver Zorawar Singh is made out. The proceedings are

required to be initiated against Pardeep Kumar driver and Zorawar Singh under above said offences. The departmental action may be taken against ASI Hari Singh due to non-conduction of investigation in proper manner. During investigation, the case has also been found of an accident.

The report is submitted."

13. It appears that on 14.02.2013 without any express permission from the High Court a challan under Section 173 was filed in the concerned Court with following averments:-

".... From the investigation/enquiry conducted Special Investigation Team, in this case no such facts/evidences were noticed from which offence punishable under section 302 IPC is going to be confirmed. From the upto dated enquiry/investigation this is made out a case of accident in which Pardeep Kumar Truck Driver and Endeavour Car Driver Jorawar Singh have been found accused. Therefore, offence punishable under section 283, 337, 338, 304-IPC against Pardeep Kumar Truck Drier and offence punishable under section 279,337,338 304-A IPC against endeavour car driver Jorawar Singh are proved. From the upto date investigation, statements of witnesses, record, post mortem report etc. offence punishable under section 283, 279, 337, 338, 304-IPC is made out against the accused Truck Driver Pardeep Kumar and Endeavour car driver Jorawar Singh. So, from Challan under Section 173 Cr. PC is prepared and submitted your goodself for trial. Accused entered in column No. 4 be called by issuing summons and given appropriate punishment, after trial. During trial, witnesses as per list will give witness who may be called and trial conducted.

Sd/-

Superintendent of Police(D) Distt. SAS Nagar 14.02.2013"

14. The matter came up before the High Court for final hearing on 21.02.2013 and it was of the view that the SIT was constituted to nullify the enquiry and report of DIG (Crime). It observed that it was mandatory duty of the State to implement the report submitted by DIG (Crime) and it therefore directed the State to act in terms of said

report within three months. The High Court was also pleased to direct that Respondent no.1 be paid an amount of Rs.50,000/- by way of compensation, initially by the State which could then be recovered from the erring officers after fixing the responsibility. With these directions the High Court disposed of the petition. The Appellants being aggrieved filed the instant petition for Special Leave to Appeal. While issuing notice this Court was pleased to direct that pending consideration of the matter, the judgment and order passed by the High Court shall remain stayed. It was submitted in support of the petition that the order of the High Court was based on the report of the DIG, which report itself had recommended further investigation and thus the SIT was rightly constituted and that once final report under section 173 of Cr.P.C. was filed, the court could only have directed further investigation in terms of Section 173 (8) of Criminal Procedure Code and could not have passed the instant directions. On behalf of Respondent no.1 it was submitted that the State was not justified in constituting the SIT, more particularly after the first one was disbanded and that in the face of the order dated 24.04.2012 challan under section 173 could and ought not to have been filed.

15. Though rival contentions have been raised in pleadings in support of the respective theories, one suggesting that the incident in question was an accident while the other projecting it to be a murder, we refrain from entering into such factual arena, lest it may prejudice the interest of any of the parties. We are however deeply distressed by the manner in which the SITs were constituted in the present case and the way the matter has progressed. The following aspects need a specific mention:- (A) When the application of Respondent no.1 was being processed by the office of the High Court and being placed on the judicial side, the State Government on its own, entrusted the matter to DIG to conduct independent investigation. With such independent investigation being undertaken, the High Court was naturally persuaded to wait for its outcome and not to go ahead with the issue whether the investigation be entrusted to CBI or not. (B) Once that independent investigation had culminated in the report, the record does not indicate in what circumstances and under what authority SIT was constituted. It was complete misreading of the report of the DIG. The DIG had clearly said that after registering the case under Section 302, investigation be handed over to independent and impartial agency. However, no such case was registered. (C) The State had rightly disbanded the SIT observing that constituting such SIT without any rhyme or reason was of no avail and ought not to be undertaken unless the High Court had directed so. It is not clear why and how despite such clear direction to disband, the

SIT could go ahead and finalize its report. (D) The subsequent order dated 24.04.2012 of the High Court clearly settled the position by directing the State not to file the challan on the basis of the report submitted by the SIT and in clear terms stated that the investigating agency could proceed on the basis of the report dated 27.12.2011 of the DIG. It further directed the authorities to act in compliance of its order. Record again does not indicate what steps were taken by the authorities from 24.04.2012 and why investigation was not conducted on the basis of the report submitted by the Deputy Inspector General. (E) In spite of the disbanding of the earlier SIT and the order of the High Court dated 24.04.2012, the matter was again considered on the basis of the report of the SIT itself, leading to the constitution of second SIT under the supervision of same Shri Kunwar Vijay Partap Singh. Such constitution of the SIT under his supervision was promptly brought to the notice of the High Court. (F) However soon thereafter, the SIT was reconstituted leaving out said Shri Kunwar Vijay Partap Singh. While reconstituting such SIT, copy of the order was not marked to Respondent no.1 nor was this development brought to the notice of the High Court. (G) Finally, in the face of clear directions in the order dated 24.04.2012, challan under section 173 on the basis of the report of such reconstituted SIT was filed on 14.02.2013. No permission of the High Court was taken nor was it so intimated.

16. In the circumstances, in our considered view the High Court was completely justified in leaving out the reports of the SIT from its consideration and directing the State Government to act in terms of the report dated 27.12.2011 of Shri Kunwar Vijay Partap Singh, DIG. Constituting the SIT on the premise that the DGP did not agree with the report of the DIG or that the DIG himself had recommended further investigation, was completely incorrect. Once the matter was in seisin of the High Court, nothing could and ought to have been undertaken without its express leave. The State therefore had rightly disbanded such SIT. It is inexplicable how the SIT could go ahead and submit the report, which then led to constitution of fresh SIT. Here also there was no fairness in action. Initial constitution of the fresh SIT was with same DIG in command but was reconstituted without bringing such fact to the notice of the High Court. And the last straw was filing of the challan under Section 173 Cr.P.C. It was incumbent for the authorities concerned, to act in terms of the report of the DIG as directed by the High Court in its order dated 24.04.2012 rather than seek to nullify the effect of that order. Affirming the view taken by the High Court, we dismiss the present appeal and while doing so, deem it appropriate to pass the following directions:

(A) The challan dated 14.02.2013 filed by the Superintendent of Police, District SAS Nagar is held illegal and improper and stands withdrawn from the record of the concerned case.

(B) The crime shall be registered under section 302 IPC in keeping with the report dated 27.12.2011 of Shri Kunwar Vijay Pratap Singh, DIG (Crimes) and further investigation shall be undertaken in terms thereof.

(C) The SITs as constituted are held invalidly constituted and the reports dated 01.03.2012 and 29.01.2013 stand set aside.

(D) We direct the concerned Superintendent of Police to conduct thorough investigation into the matter. Such investigation must be completely fair and transparent and shall be free from any interference. We expect the concerned officer to rise to the occasion and do his job well.

(E) It is left to the concerned Magistrate to consider whether any further investigation is called for, and if so, in which direction, as and when the occasion so demands.

(F) Respondent no.1 shall be paid Rs.2,50,000/- by way of compensation instead of Rs.50,000/- as directed by the High Court. Such compensation shall first be paid by the State and after fixing the responsibility regarding officials who were responsible for delaying the process, recover the same from such officials.

(G) We request the Chief Secretary of the State to inquire into the matter, the way and the manner in which it was dealt with at various stages and more particularly with regard to items A to G mentioned in para 15 hereinabove and submit a report to this Court in a sealed cover within two months from today.

17. Before we part, we must record that we shall not be taken to have expressed any opinion as regards merits of the matter. We have dealt with the propriety of constitution of SITs and having set aside the reports thereof, tried to implement the logical consequence and the order of the High Court dated 24.04.2012. The matter

shall and must be considered on its own merits at every stage.

18. We thus dismiss the present appeal in the aforesaid terms. The matter shall however be listed after three months or soon after the receipt of the Report of the Chief Secretary as stated above for further directions, if any.