

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**W.P. (C) No. 496 of 2019**

Shri Khumanthem Nagor Singh, aged about 76 years,  
S/o late Kh. Ibomcha Singh, a resident of Karong Mamang  
Leikai, P.O. - Langjing, P.S. Patsoi, Imphal West District,  
Manipur, PIN – 795113.

***Petitioner***

***-Versus-***

- 1.** State of Manipur, through the Chief Secretary,  
Government of Manipur, Manipur Secretariat,  
P.O. & P.S. Imphal, Imphal West District,  
Manipur, Pin-795001.
- 2.** The Director General of Police, Manipur,  
P.O. & P.S. Imphal, Imphal West District,  
Manipur, PIN- 795001.
- 3.** The Director, Central Bureau of Investigation (CBI),  
CGO Complex, Lodhi Road, New Delhi – 110001.

***Respondents***

**BEFORE**

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR  
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the petitioner : Mr. M. Rakesh, Advocate  
For respondents No. 1 & 2 : Mr. RK Umakanta, Government Advocate  
For respondent No. 3 : Mr. W. Darakishwor, Sr. PCCG  
**Date of Order : 21.07.2022**

## **ORDER (ORAL)**

***Sanjay Kumar (C.J.):***

**[1]** The petitioner is the father of Khundrakpam Ajitkumar Singh @ Naoba Singh, a young man of just 20 years of age, who met with an untimely death on the intervening night of 14<sup>th</sup> and 15<sup>th</sup> March, 2004. By way of this writ petition, he seeks a direction to the Central Bureau of Investigation (CBI) to investigate into the killing of his son by armed forces personnel. In furtherance thereof, he seeks a direction to the State authorities to hand over to the CBI the records pertaining to FIR No. 9(3)04 on the file of Patsoi Police Station, registered under Sections 302 and 34 IPC along with Section 25 (I-)C of the Arms Act, 1959.

**[2]** Heard Mr. M. Rakesh, learned counsel for the petitioner; Mr. RK Umakanta, learned Government Advocate, appearing for the State authorities; and Mr. W. Darakishwor, learned Sr. PCCG, appearing for the CBI.

**[3]** FIR No. 19(3)04 Sekmai P.S. was registered under Sections 121, 121-A and 307 IPC read with Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967, and Section 25 (1-B) of the Arms Act, 1959, against the petitioner's son upon the complaint made by the armed forces. However, a final/closure report was submitted leading to the closure of this case on 24.04.2006. Upon the complaint made by the petitioner to the Officer-in-Charge of Patsoi Police Station, FIR No. 9(3)2004 was registered under Sections 302 and 34 IPC read with Section 25 (1-C) of the Arms Act, 1959.

The complaint of the petitioner, presently, is that no action has been taken till date to arrest the culprits who were responsible for the wrongful death of his son and to hold them accountable.

**[4]** Significantly, the petitioner had earlier filed W.P. (Crl.) No. 31 of 2008 before the Imphal Bench of the Gauhati High Court seeking compensation for the wrongful death of his son at the hands of the personnel of 19<sup>th</sup> Rajput Rifles (Bikaner), stationed at Leimakhong. By order dated 13.01.2009 passed therein, the Court directed an enquiry to be made by the learned District Judge, Manipur East, to ascertain the circumstances of the petitioner's son's death. Upon completion of the enquiry, Report dated 28.06.2012 was submitted by the learned District Judge, Manipur East. Therein, he stated in no uncertain terms that the petitioner's son was picked up from the residence on the fateful night by the personnel of 19<sup>th</sup> Rajput Rifles and was killed by them at about 03:00 am on 15.03.2004 at Khurkhul-Sekmai Road, while in custody. The learned District Judge also found that there was no exchange of fire or an 'encounter' with the personnel of 19<sup>th</sup> Rajput Rifles, as claimed by them.

After establishment of the High Court of Manipur in the year 2013, the said writ petition was made over to this Court. A Division Bench of this Court disposed of the writ petition, vide judgment and order dated 07.09.2017. The Bench accepted the findings recorded in the Report dated 28.06.2012 and held that the personnel of 19<sup>th</sup> Rajput Rifles (Bikaner) were responsible for the death of the petitioner's son and that his fundamental right to life, guaranteed under Article 21 of the Constitution, had been violated as he died, while in their custody, without due process of law. The Union of India was accordingly directed to pay a sum of ₹. 5,00,000/- to the petitioner for the wrongful death of his son. The Division Bench observed that in so far as the prayer of the petitioner for an investigation by an independent agency against the erring personnel was concerned, he was at liberty to approach the competent forum.

This judgment attained finality and was also implemented without further ado by the Union of India, by paying compensation along with interest thereon, amounting to ₹. 5,63,750/-, in February, 2019.

**[5]** It is relevant to note that during the enquiry held by the learned District Judge, Manipur East, the names of some of the personnel who were actually involved in the incident that led to the death of the petitioner's son were duly identified. Three personnel of 19<sup>th</sup> Rajput Rifles, viz, Dalchand, Nabab Singh Bundela and Sunil Singh deposed before the learned District Judge that their team was led by Major AK Singh and that they killed the petitioner's son at about 3:00 am on 15.03.2004 at Khurkhul-Sekmai Road. Despite the same, it appears that no action was taken against any of those involved in this dastardly act. It is in these circumstances that the petitioner now seeks a direction to the State authorities to hand over the investigation of the case to the CBI with a further direction to the CBI to do the needful and bring the wrongdoers to book.

**[6]** At this stage, it may be noted that the Government of Manipur actually initiated steps to bring in the CBI to investigate this case in the year 2004 itself, shortly after this heinous incident. By Notification dated 18.03.2004, the Joint Secretary (Home), Government of Manipur, was pleased to accord consent to extension of powers and jurisdiction to the members of the Delhi Special Police Establishment in the whole of the State of Manipur to carry out investigation in FIR No. 9(3)2004 Patsoi PS, relating to the killing of the petitioner's son. However, by letter dated 15.06.2004, the CBI declined to do so.

**[7]** The CBI filed an affidavit-in-opposition in August, 2019. Therein, the Superintendent of Police, In-Charge and Head of Branch, CBI, ACB, Imphal,

stated that the Investigating Officers of the two FIRs that had been registered in connection with this incident had miserably failed to take the matter forward to its logical conclusion for initiation of criminal proceedings against the personnel of 19<sup>th</sup> Rajput Rifles. He referred to the Notification dated 18.03.2004 of the Joint Secretary (Home), Government of Manipur, and stated that the CBI had declined to take over the investigation of the case, vide letter dated 15.06.2004, as the case was local in nature, having no interstate or international ramifications, warranting a CBI investigation. He reiterated this stand and asserted that no cause was made out for the CBI to come into the picture.

**[8]** The State authorities filed a reply through the Inspector General of Police (Admn.), Manipur. Therein, he stated that the Superintendent of Police, Imphal West District, Manipur, had addressed letter dated 05.11.2021 to the Director General of Police, Manipur, informing him that Requisition dated 19.05.2021 had been sent to the General Officer Commanding (GOC), 57 Mountain Division, Leimakhong, Manipur, requesting for details of the present posting of Major AK Singh of 19<sup>th</sup> Rajput Rifles, Leimakhong, and the other personnel who were involved in the incident in the year 2004. However, it appears that there was no response thereto and the Superintendent of Police stated that the investigation could not be brought to a conclusion and the case was kept pending for want of examination of Major AK Singh and the other personnel of 19<sup>th</sup> Rajput Rifles. The Inspector General stated that the case was still pending for want of examination of Major AK Singh and other personnel of 19<sup>th</sup> Rajput Rifles who were involved in the killing of the petitioner's son.

**[9]** In his rejoinder to this reply of the State authorities, the petitioner stated that the Investigating Officers of the State police had failed miserably in carrying out investigation despite lapse of more than 17 years since the incident, as they did not take recourse to all the means legally available to them to secure the presence of the armed forces personnel who were responsible. He further pointed out that, till date, the Investigating Officers had not even clearly identified the persons involved in the crime. He reiterated that, to have an effective investigation, it would be necessary to involve the CBI, the premier investigating agency in the country, as the State police had limited powers and jurisdiction in relation to armed forces personnel.

**[10]** In his separate rejoinder to the reply filed by the CBI, the petitioner stated that the refusal by the CBI to take on this case on the ground that it did not involve interstate or international ramifications was not a valid reason. He pointed out that the Allahabad High Court had held that the CBI could be entrusted with investigation of a crime even if the case did not have interstate or international ramifications. He asserted that the decision for an investigation by the CBI has to be taken depending on the attending facts and circumstances and to eliminate possibility of bias or influence. He reiterated that transferring the investigation from the Manipur police to the CBI would be the only viable means for him to secure justice for his son at least at this late stage.

**[11]** It would be apposite at this stage to take note of precedential law on the subject. In **R.S. Sodhi, Advocate Vs. State of U.P. and others [1994 Supp (1) SCC 143]**, the Supreme Court was dealing with 'encounters' between local police and militants and observed that whether the loss of life was on

account of a genuine or a fake encounter is a matter which has to be enquired into and investigated closely. As accusations were directed against the local police personnel, the Supreme Court held that it would be desirable to entrust the investigation to an independent agency like the CBI so that all concerned may be assured that an independent agency is looking into the matter and the same would lend credibility to the final outcome of the investigation.

Again, in **State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal, and others [(2010) 3 SCC 571]**, the Supreme Court held that a direction by the High Court, in exercise of writ jurisdiction, to the CBI to investigate a cognizable offence committed within the territory of a State, even without the consent of that State, would neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of powers and would, therefore, be valid in law. The Supreme Court further observed that being the protector of civil liberties of the citizens, the High Court would not only have power and jurisdiction but also an obligation to protect fundamental rights, guaranteed by Part III, in general, and under Article 21 of the Constitution, in particular, zealously and vigilantly.

In **Rubabbudalin Sheikh vs. State of Gujarat and others [(2010) 2 SCC 200]**, the Supreme Court was dealing with a case where the involvement of State police personnel in the crime was clearly made out. Therefore, the Supreme Court observed that directing the State police authorities to continue with the investigation would not yield any result and directed that CBI should be asked to take up the investigation. A similar direction was issued again in **Narmada Bai Vs. State of Gujarat and others [(2011) 5 SCC 79]**.

In **Extra Judicial Execution Victim Families Association and another vs. Union of India and others [(2017) 8 SCC 417]**, the Supreme Court was dealing with 'encounter deaths' in the State of Manipur and opined that it would be inappropriate to depend upon the Manipur police to carry out an impartial investigation when some of its own personnel were involved. The Supreme Court accordingly directed the CBI to look into the fake encounters/use of excessive or retaliatory force and complete the investigation.

More recently, in **Rhea Chakraborty Vs. State of Bihar and others [(2020) 20 SCC 184]**, the Supreme Court noted that legitimacy of the investigation in that case had come under a cloud owing to the acrimonious allegations of political interference made by both States against each other. Opining that a fair, competent and impartial investigation was the need of the hour, the Supreme Court directed the CBI to undertake the investigation.

Closer home, in **Ch. Taratombi Devi Vs. The State of Manipur and others [PIL No. 1 of 2010 decided on 23.12.2009]**, a Division Bench of the Imphal Bench of the Gauhati High Court was dealing with an alleged fake encounter involving personnel of the Manipur Police Commandos. The Division Bench was of the opinion that if credibility of the investigation was at the risk of doubt, it would be contrary to public interest as well as the interest of justice and directed the CBI to undertake and complete the investigation.

In **Arti Gujjar Vs. State of U.P. and another [Misc. Bench No. 22997 of 2016 decided on 23.05.2018]**, a Division Bench of the Allahabad High Court was dealing with refusal by the CBI to undertake investigation on the ground that the case was a 'chance killing' and did not have any interstate or

international ramifications. The Division Bench opined that possibility of the death being premeditated could not be ruled out. As to the case not having any interstate or international ramifications, the Bench observed that it would depend on the attending facts and circumstances and to eliminate the element of bias or influence and, therefore, such investigation can be undertaken by the CBI even if a case did not have interstate or international ramifications.

Earlier, in **Ningthoujam Tomchou Vs. Union of India and others [Crl. Petn. No. 51 of 2019 decided on 06.11.2019]**, this Court directed a CBI investigation, observing that, in order to do justice to the victim's family and instill confidence in the public mind, it was necessary to entrust the investigation of the case to the CBI. A similar order was passed by a Division Bench of the Kolkata High Court in **Shaista Afreen and others vs. State of West Bengal and others [WPA (P) 157 of 2022 decided on 12.04.2022]**.

**[12]** In the light of this settled legal position, it is indeed incomprehensible as to why the CBI, despite a specific request from the State to undertake investigation in the case on hand, declined to do so on extraneous grounds. Had it undertaken the investigation at that time, the case would have probably reached its logical conclusion by now. It is a matter of public knowledge that the CBI takes up investigation in cases which have no interstate or international ramifications, be it upon the direction of Courts or at the behest of the State Governments, usually without protest. But, unfortunately, in the case on hand, despite a notification being issued in the name of the Governor of Manipur as long back as on 18.03.2004, just after the incident, requesting the CBI to undertake the investigation, in its wisdom, the CBI chose to say no.

**[13]** The pleadings on record have brought it to the fore that the armed forces of the Central Government are not co-operating with the State police in the investigation of the subject FIR. Despite a requisition being put in by the State police on 19.05.2021, it appears that there was not even a reply thereto. Therefore, the State police are clearly not in a position to ascertain the whereabouts of Major AK Singh of 19<sup>th</sup> Rajput Rifles, who is stated to have led the operation on the fateful day resulting in the killing of the petitioner's son, or the other personnel involved. It seems to be a classic case of the armed forces taking care of their own.

**[14]** Given the irrefutable fact that the Central Government has mutely accepted the findings of this Court with regard to the petitioner's son being done to death wrongfully by its armed forces and having already paid the compensation therefor, as directed by this Court, it is too late in the day for the Central Government or its armed forces to attempt a denial or seek to protect those who are guilty of this barbaric offence.

**[15]** In a democratic society governed by the rule of law, there can be nothing more despicable than 'uniformed armed personnel' resorting to brutal extra-judicial killings to assert their might and power. In most such cases, the wrongdoers go scot-free, be it for one reason or the other. However, in the case on hand, acceptance by the Central Government of the findings rendered by this Court, holding that the petitioner's son was killed in a fake encounter by the personnel of 19<sup>th</sup> Rajput Rifles, mandates that the wrongdoers, four of whom are already known, be brought to book by proper investigation into their criminal acts.

**[16]** As noted hereinabove, the refusal by the CBI at the relevant point of time has led to an unnecessary delay of 18 long years since that ill-fated young man of just 20 years was done to death brutally. As the CBI has none to blame but itself for this delay, it is incumbent upon it to use all the resources available to it and undertake investigation forthwith by ascertaining the whereabouts of all the personnel of 19<sup>th</sup> Rajput Rifles, who were involved in the incident, and take appropriate action against them in accordance with law. The State police are directed to hand over all the records to the CBI.

**[17]** The CBI shall commence investigation upon receipt of the records pertaining to FIR No. 9(3)2004 Patsoi Police Station, from the State police and complete the investigation within six months from the date of receipt of such records. All measures shall be taken by the CBI to ascertain the whereabouts of the persons concerned and the Union of India, though not a party, is directed to extend full cooperation to the CBI in this regard.

The writ petition is allowed with the above directions.

Though highly deserving, we do not mulct the CBI with costs.

**JUDGE**

**CHIEF JUSTICE**

*Sandeep*

**FR**