

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 9932 of 2024

Petitioner :- Smt. Kalpana Maheshwari

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Jitendra Kumar

Counsel for Respondent :- G.A.,Manu Vardhana,Sanjay Kumar Yadav

Hon'ble Vivek Kumar Birla,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Short counter affidavit filed today by the Union of India is taken on record.
2. Heard Sri Anoop Trivedi, learned Senior Counsel assisted by Sri J.K. Pandey and Ms. Nimisha Jain, learned counsel for the petitioner, Sri Ratan Singh, learned A.G.A. appearing for the State respondents, Sri Gyan Prakash, learned Senior Counsel assisted by Sri Sanjay Kumar Yadav, learned counsel appearing for the Central Bureau of Investigation (C.B.I.) and Sri Manu Vardhana, learned counsel appearing for the Union of India.
3. Fact giving rise to the present petition is that the daughter of the petitioner Anshu Maheshwari had married to Sumit Binani on 27.11.2020. Thereafter, both of them shifted to United States of America (U.S.A.), where the daughter of the petitioner died in a blast in the house at Seattle U.S. and when the petitioner came to know about the same she lodged a first information report dated 28.9.2023 at Police Station Medical College, District Meerut, U.P. making allegations of dowry death against the accused-Sumit Binani and copy of this first information report was sent to Ministry of Home Affairs, Government of India, New Delhi. The petitioner also made a complaint to C.B.I. on 2.6.2022 about the aforesaid incident. Thereafter, on 15.10.2023 office of Senior Superintendent of Police, Meerut has submitted a report to Inspector General of Police, Meerut Zone, Meerut recommending the case to be investigated by the C.B.I. as the offence has been committed

outside India and finally matter was referred to C.B.I. by the police authorities of U.P. When no action was taken by the C.B.I. to conduct investigation under Section 188 Cr.P.C. regarding death of daughter of the petitioner, the petitioner has approached this Court by filing present petition with the following prayers:-

“a) Issue appropriate direction to transfer investigation of the FIR no. 0383/2023 dated 28.09.2023 U/S 304-B IPC at P.S. Medical College to CBI;

b) Issue any other orders or directions as this Hon’ble Court may deem fit, just and proper in the facts and circumstances of the case.”

4. On 21.8.2024 following order was passed:-

"1. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri A.K. Pandey and Ms. Namisha Jain, learned counsel for the petitioner, Sri Kuldeep Singh Chauhan, learned A.G.A. appearing for the State of U.P./respondent no.1, Sri Gyan Prakash, learned Senior Advocate along with Sri Sanjay Kumar Yadav, learned counsel appearing for Central Bureau of Investigation/respondent no.2.

2. The present petition has been filed with the prayer to transfer investigation of FIR No. 0383/2023 dated 28.9.2023 under section 304-B IPC registered at Police Station Medical College to Central Bureau of Investigation (hereinafter referred to as 'CBI').

3. We have heard learned counsel for the parties at length.

4. It is an admitted fact that death of Anshu, daughter of the petitioner has taken place in United States of America (U.S.A.) within 15 months of her marriage. It is pointed out that in view of the provisions of section 188 Cr.P.C., the investigation has to be conducted by CBI.

5. Attention was drawn towards Annexure 16 to the petition to submit that vide notification dated 27.5.2016 issued by Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), New Delhi to the effect that investigation and prosecution of offence committed outside territorial jurisdiction of India be investigated by CBI being the nodal agency for the purposes of sanction for prosecution under section 188 Cr.P.C. Attention was further drawn towards Annexure 10 to the petition which is a letter written by Senior Superintendent of Police, Meerut to the Inspector General, Meerut recommending the case to be investigated by the CBI.

6. Attention was also drawn to Annexure 12 to the petition which is a letter dated 05.9.2023 written by Special Secretary, Govt. of Uttar Pradesh to Deputy Secretary, CPB Division, Ministry of Foreign Affairs, Government of India to the effect that recommendation has been made that as the death has taken place in U.S.A., therefore, the matter may be investigated by CBI and it was requested that necessary action be taken as per rules.

7. Attention was further drawn to Annexure 13 to the petition which is a letter dated 08.11.2023 written by CBI to the petitioner to the effect that until and unless notification u/s 6 of DSPE Act, 1946 for transfer of the said FIR to CBI is issued by State Govt. of Uttar Pradesh followed by a notification u/s 5 of DSPE Act issued in that regard by Govt. of India / DoPT., the matter cannot be investigated by CBI and,

therefore, she was advised to pursue the matter with the Govt. of U.P. u/s 6 of DSPE Act, 1946 for transfer of investigation of Meerut Police case to CBI.

8. By drawing attention to para 5 of the letter dated 01.2.2024 (annexed at page 183 of the paper book) which states "As such you are advised to either file a writ under Article 226 of Indian Constitution in the Hon'ble Allahabad High Court or under Article 32 of Indian Constitution to Hon'ble Supreme Court of India praying for direction to CBI for taking up investigation of Meerut Police case by CBI or request the Chief Secretary/Principal Secretary, Home of the Govt. of U.P. to issue notification u/s 6 of DSPE Act, 1946 for transfer of Meerut Police case to CBI and send the same to the Secretary, DoPT. Based on that, notification u/s 5 of DSPE Act, 1946 can be issued by DoPT and thereafter CBI can take over the case of Meerut Police" , it is pointed out that the petitioner has been advised either to file a petition under Article 226 before this Court or under Article 32 of Constitution of India before Hon'ble the Supreme Court of India praying for a direction to CBI for taking up the investigation of Meerut Police case by CBI or request the Chief Secretary / Principal Secretary, Home of the Govt. of U.P. to issue notification u/s 6 of DSPE Act, 1946 for transfer of the case and send the same to DoPT so that based on that, notification u/s 5 of DSPE Act, 1946 can be issued by DoPT and thereafter CBI can take over the case of Meerut Police. Submission, therefore, is that vide notification dated 27.5.2016 (Annexure 16 to the petition), CBI itself has been designated as the nodal agency to deal with and obtain sanction for prosecution from Ministry of Home Affairs (MHA) under section 188 Cr.P.C.

9. Per contra, Sri Gyan Prakash, learned Senior Counsel appearing for CBI submits that formalities have to be completed before the CBI takes over the matter for investigation or direction can be issued by this Court in the light of the documents herein. He further submits that for the purpose of doing the needful, the Union of India through Ministry of Home Affairs and Department of Personnel & Training (DoPT) would be the necessary parties so that their stand may also come on record.

10. Prima facie, it appears that CBI alone being the nodal authority is saddled with the liability of obtaining sanction for prosecution from the MHA u/s 188 Cr.P.C. as per notification dated 27.5.2016 (Annexure 16 to the petition), however, no final observation is being made in this regard.

11. However, in view of the assertion made by the learned A.G.A. to avoid any further complication or legal impediment, learned counsel for the petitioner is directed to implead Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi as well as the Department of Personnel & Training (DoPT). Sri Gyan Prakash, learned Senior Counsel also represents Union of India and, therefore, the petitioner counsel is permitted to serve copy in respect of the newly impleaded respondents to Sri Gyan Prakash or in the office of the Additional Solicitor General of India at the earliest.

12. In the facts and circumstance of the case, it is provided that all the respondents shall bring on record their stand on the issue by filing short counter affidavit within a period of two weeks.

13. Put up this case as fresh on 12.9.2024.

14. It is expected that in the short counter affidavit, all the respondents shall clarify their stand on the issue involve herein."

5. Subsequently, on 12.9.2014 following order was passed:-

"Re: Impleadment Application

1. Heard counsel for the parties.
2. This impleadment application is allowed.
3. Formal impleadment may be carried out in the array of parties during the course of the day.

Re: Writ Petition

1. Short counter affidavit filed by the State is taken on record.
 2. On the request of Sri Manu Vardhan, learned counsel appearing for Union of India, put up this case as fresh on 21.9.2024 on the assurance given by him on behalf of Union of India as well as Sri Gyan Prakash, learned Senior Counsel assisted by Sri Sanjay Kumar Yadav appearing for C.B.I. that the matter will be sorted out between them by the next date fixed and appropriate action will be taken.
 3. It is made clear in case no satisfactory response is received from Union of India and C.B.I., this Court will consider summoning the highest officer concerned in person.
 4. Secretary, Department of Personnel and Training is directed to file personal affidavit mentioning therein the action taken by the Department pursuant to the letter issued by the Ministry of Home Affairs dated 28.2.2024 regarding permission to investigate the matter under section 188 Cr.P.C. He shall also apprise the Court about the procedure for handing over the investigation to C.B.I. under section 188 Cr.P.C."
6. Pursuant to the aforesaid orders short counter affidavit has been filed by the Union of India.
7. Before proceeding further it would be relevant to take note of Section 188 Cr.P.C., which is quoted as under:-

"188. Offence committed outside India. When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

8. Relevant paragraphs 7 (d), 7 (f), 7 (g), 10, 11 and 12 of the short counter affidavit are also quoted as under:-

"7.

(d) That, various grievances of Smt. Kalpana Maheshwari have been received in this Department seeking for transferring the investigation from Uttar Pradesh to CBI and also complaining against CBI for not lodging any FIR in this regard. The grievances had been forwarded to the Ministry of External Affairs and Government of Uttar Pradesh vide letters No. 245/228/2023-AVD-II dated 18.01.2024, 27.12.2023 and vide OM of even number dated 14.11.2023 on following grounds:

(i) As per the provisions of the Delhi Special Police Establishment (DSPE) Act, 1946, prior consent of the State Government concerned under Section 6 of the DSPE Act through a Notification is pre-requisite for consideration for entrusting any case to CBI for investigation and the same is being annexed herewith and marked as Annexure No. C.A.1 to this counter affidavit.

(ii) That, the State Government of Uttar Pradesh vide their letter dated 23.02.2024 has forwarded a reply to this Department that in the questioned matter, the State Government has taken action on the various grievance petitions. The State Government has enclosed a copy of letter dated 12.02.2024, whereby they have disposed of the grievance and the same is being annexed herewith and marked as Annexure No. C.A.2 to this counter affidavit.

(f) That, no such consent under section 6 of DSPE Act, 1946 for transfer of FIR No. 0383/2023 dated 28.09.2023 registered u/s. 304B of I.P.C., Police Station Medical College, District-Meerut to CBI has been received from the State Government in this Department.

(g) That, at present, consideration/pending no such proposal is under in this Department for transferring of investigation of FIR No. 0383/2023 dated 28.09.2023 registered u/s. 304B of I.P.C., Police Station Medical College, District-Meerut to CBI.

10. That, CBI in its letter dated 01.02.2024 (signed on 31.01.2024) has inter-alia apprised the applicant about the procedure for handing over the investigation of a case of offences taken abroad u/s. 188 Cr.P.C. as under:

"3. As per the provisions u/s 188 Cr.P.C. and section 4 of I.P.C. "if an offence is committed outside India by a citizen of India or by any person on any ship or aircraft registered in India, the said offence can be investigation/inquired into or tried in India with the sanction of the Central Government. CBI has been notified by MHA, Government of India as the nodal authority under these sections. As such, had no F.I.R. been registered at Meerut Police, CBI could have investigated/inquired into the matter of the unnatural death of your daughter in USA."

11. That, CBI has been designated as nodal authority to deal with and obtain sanction for prosecution from Ministry of Home Affairs under section 188 of Cr.P.C.

12. That, in the absence of consent under section 6 of DSPE Act, 1946 for transfer of FIR No. 0383/2023 dated 28.09.2023 registered u/s 304B of I.P.C., Police Station Medical College, District-Meerut to CBI this Department has no role in the instant matter at this stage."

9. We have gone through the affidavit carefully.

10. From perusal of the affidavit filed by the Secretary, Department of Personnel and Training, Government of India, New Delhi it appears that the guideline for conducting investigation under Section 188 Cr.P.C. has been mentioned. For initiating investigation under Section 188 Cr.P.C. consent of State Government is pre-requisite for consideration to entrust any case to C.B.I. for investigation. It is further mentioned that after receiving of consent of the State Government as required under Section 6 of Delhi Special Police

Establishment Act, 1946 (hereinafter referred to as DSPE Act) C.B.I. being the Nodal Agency will get sanction from the Department of Personnel and Training, Government of India (hereinafter referred to as DoPT) only then C.B.I. can conduct investigation.

11. However, from perusal of Section 188 Cr.P.C. it is clear that if any offence is committed by the citizen of India outside India then investigation can be inquired or tried in India after getting previous sanction of the Central Government.

12. From perusal of the Government notification dated 27.5.2016 issued by the Ministry of Personnel and Public Grievance and Pensions (Department of Personnel and Training), New Delhi, it is explicit that C.B.I. was designated as Nodal Agency to deal with and obtain sanction for prosecution from the Ministry of Home Affairs, therefore, it is clear that in case any offence is committed outside India then only C.B.I. can investigate and the State Government has no role in such cases.

13. As per Section 6 of DSPE Act consent of State Government is required for investigation in any area of the State Government but if the investigation is to be conducted for the offence committed outside India by the Indian citizen then there is no requirement of seeking consent of State Government. The Central Government may by order under Section 5 of DSPE Act extend the jurisdiction of C.B.I. to any area in a State but in the case of investigation outside the country, Central Government does not pass any order under Section 5 of DSPE Act to extend the jurisdiction of C.B.I. to any area in a State. Section 5 and 6 of DSPE Act are quoted as under:-

“5. Extension of powers and jurisdiction of special police establishment to other areas.—

(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification

under section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction.—

Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in 3[a State, not being a Union territory or railway area], without the consent of the Government of that State."

14. A circular dated 11.5.2017 issued by the C.B.I., which was produced by learned counsel for the petitioner before this Court, itself shows that C.B.I. in pursuance of the notification dated 27.5.2016 of the Central Government has issued the circular and this circular specifically mentioned that the C.B.I. has been designated as Nodal Agency to deal with and obtain sanction for prosecution from Ministry of Home Affairs under Section 188 Cr.P.C., therefore, it is the C.B.I., which has to initiate the proceeding for obtaining sanction for the prosecution from Ministry of Home Affairs for conducting investigation regarding offence mentioned under Section 188 Cr.P.C. The circular no. 03 of 2017 dated 11.5.2017 is reproduced as under:-

“No. 21/47/2016-PD//28

CENTRAL BUREAU OF INVESTIGATION
POLICY DIVISION, ROOM NO. 27, NORTH BLOCK,
NEW DELHI.

Dated 11 May, 2017

CIRCULAR NO. 03 2017

Sub: Guidelines for Investigation and Prosecution of fugitives (Indian Nationals) by CBI for the offences committed outside India, referred by Central Government from time to time.

In exercise of the powers conferred by Section 3 of DSPE Act, the Central Government has issued a Notification dated 27.05.2016 empowering and extending the jurisdiction of members of Delhi Special Police Establishment U/s 5 of DSPE Act to investigate and prosecute the offences as described U/s 4 of the IPC, i.e. the offences committed outside territorial jurisdiction of India, as referred by Central Government from time to time, CBI has also been designated as Nodal authority to deal with and obtain sanction for prosecution from MHA U/s 188 of the Cr.P.C.

2. in order to effectively deal with these referred cases from Ministry of External Affairs, the following SOP has been drawn for compliance by the IPCC and concerned Zones/Branches of CBI.

(i) On receipt of case file at IPCC Branch, the case file would be scrutinized by the Nodal Officer, not below the rank of Inspector of Police, to the effect that the file is complete in all respects, especially the documents mentioned in the covering letter received from MEA. If the file is incomplete he will get the same completed from the concerned Branch of MEA.

(ii) After completion of Initial scrutiny of the case file and documents, the concerned Nodal Officer shall prepare his comments mentioning the category or class of offence it belongs. The purpose would be to ascertain the Branch or Zone the file should be marked for further proceedings.

(iii) The concerned Nodal Officer will then put up the file alongwith his comments to the AD/PCU who shall put up detailed comments including the proposal relating to the Zone/Branch to which the case may be referred to according to the classification as mentioned in Para 4 of the present Guidelines.

(iv) On receipt of the file, the DD(CO) may obtain the legal opinion, if it is expedient in the interest of the case, from Additional Legal Advisor or any other Law Officer, and after preparing his comments, DD(CO) may submit his recommendation for perusal/approval of JD(TFC) and DCBI.

(v) After approval, the case shall either be referred to the Zone as approved by the DCBI or it shall be sent back to the MEA, clearly mentioning the non-cognizable nature of the offence and/or any other relevant reason.

(vi) The Head of Zone (HoZ) to whom the case has been referred shall transmit the same to their Branches with appropriate directions.

3. In addition to the established monitoring mechanism within the Zone as,

envisaged in the Crime Manual, the concerned branch shall submit an issue-based and quarterly progress report to the DD(CO), JD(TFC) and the DCBI. The progress may also be communicated to the MEA, on quarterly basis or at the frequency as decided by JD(TFC).

4. Classification of cases to be referred to concerned Zone:-

a)	Cases pertaining to large scale banking frauds	BSF Zone
b)	Cases pertaining to Cheating, Criminal misappropriation, Breach of Trust, Embezzlement of gold, Cybercrime and any other frauds involving Economic offences	EO Zone
c)	Cases pertaining to murder, rape, kidnapping etc. affecting the human body.	Special Crime Zone

5. Cases not belonging to any of the above category, may be referred to JD(TFC). who will then decide the Zone wherein the case may be sent.

6. In view of the above, It is requested that all HOBs should sensitize all the Investigating Officers of the Branch about these instructions for strict compliance.

This issues with the approval of DCBI.

(S.Balasubramony)
Asst. Insp. General of Police (P)
CBI/New Delhi,

Copy to-

1. The Additional Director (RA) & the Additional Director (YCM), CBI, New Delhi
2. Director of Prosecution, CBI
3. All Heads of Zones, CBI
4. All DisG Range, CBI
5. All Heads of Branches Including DIG(Trg.) & DD(IPCU), CBI
6. OSD to DCBI
7. Sr. PS to DCBI
8. Guard file of Policy Division.”

15. In view of above analysis this Court holds that for conducting investigation for the offence committed outside the India by Indian citizen under Section 188 Cr.P.C. there is no requirement to seek consent of State Government under Section 6 of DSPE Act and only sanction of Central Government is required.

16. Reverting back to the present case, though it is clear from above

analysis that there is no requirement for seeking consent of the State Government to conduct investigation under Section 188 Cr.P.C. but the affidavit filed by the Secretary, Department of Personnel and Training, Government of India specifically mentioned that the consent of the State Government is required and on the other hand it was also mentioned in the aforesaid affidavit that the State Government has also conveyed its consent for conducting investigation in the present case to Ministry of External Affairs, Government of India by letter dated 5.9.2023, therefore, in substance State of U.P. already conveyed its consent to Government of India for conducting the investigation by C.B.I. about the death of daughter of the petitioner but the C.B.I. as well as DoPT unnecessarily raising technical issue and shifting burden on each other instead of taking any fruitful action to conduct the investigation for the death of daughter of the petitioner in United States of America.

17. By our earlier order dated 12.9.2024 statement made by learned counsel for the Union of India and C.B.I. was noted and in paragraph 2 of the order it was observed that the matter will be sorted out between them by the next date and appropriate action will be taken.

18. We find that by filing short counter affidavit again Union of India and other respondents are shirking their responsibilities and are doing nothing.

19. In view of the peculiar circumstances, this Court direct the respondent no. 2-Central Bureau of Investigation, New Delhi and respondent no. 3-Secretary, Ministry of Home Affairs, North Block, New Delhi to conduct the investigation regarding death of daughter of the petitioner (first informant) by completing necessary formalities within a period of 15 days from the date of production of a certified copy of this order before them.

20. With the aforesaid observations, present petition stands allowed.

Order Date :- 21.9.2024

Lalit Shukla