

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 9th OF JULY, 2024

WRIT APPEAL NO. 87 OF 2011

***(SMT. JANKA KEWAT (DELETED) THROUGH LR SHRI BALKISHAN
VS.
UNION OF INDIA AND OTHERS)***

Appearance:

***(SHRI JITENDRA SHARMA AND SHRI SUSHIL GOSWAMI ADVOCATE
GENERAL FOR THE APPELLANTS)***

***(SHRI ANKUR MODY, ADDITIONAL ADVOCATE GENERAL FOR
RESPONDENT NOS.1 TO 4/STATE)***

JUDGEMENT

Per: VIVEK RUSIA, J

The appellant (now dead) represented through her legal heirs, had filed this appeal against the order dated 16/11/2010 passed in W.P. No.2874/2009, whereby the investigation has been handed over to the Crime Investigation Wing of the State Police not to the CBI as demanded by her.

2. The facts of the case, in short, are as under:-

(i) The Appellant filed a writ petition (from now on referred to as the petitioner) seeking an investigation in respect of the death of her son in a fake encounter by the Police Officers namely M.K.Mudgal, the then Superintendent of Police, Datia and other

police personnel. According to the petitioner, she is an illiterate lady, aged about 56 years, residing along with her three sons namely Balkishan, Kalli alias Kalicharan and Kushaliram in Laxmi Colony, Dabra. On 22/4/2005, they all were sleeping in the night when suddenly, SHO Police Station Dabra R.S.Bhadauriya, Head Constable Shiv Kumar, Sub-Inspector Baidraj, Policemen Kedar, Harisingh, Ramsingh and other police officials came at her house and took all her three sons with them to the Police Station. According to the petitioner, no criminal case was registered against any of her sons, and they had no criminal history. The petitioner immediately contacted various higher police officials and requested them to release all three sons. Because of her efforts, on 27/4/2005, Balkishan and Kalli alias Kalicharan were released, but her third son **Khushali Ram** was not released and continued in wrongful confinement at the police station.

(iii) On 5/2/2007, in Dainik Bhaskar newspaper, a news was published with a photograph that two rewarded dacoits had been killed in an encounter by the police namely **Kalia alias Braj Kishore and Amar Singh Jat**. According to the petitioner, a photograph of her son Khushalil Ram was shown as Kalia alias Brijkishore in the newspaper. Therefore, the petitioner apprehended that the Police had killed her son and claimed that dacoit Kalia alias Brijkishore was killed in the encounter. The police personnel were awarded by the Government of M.P. for this encounter of two dacoits. The petitioner made representation

to the higher police officers to conduct a fair investigation in respect of the forged encounter. After some time, the petitioner came to know that the said dacoit Kalia alias Brijkishore is alive and lodged in Jail in connection with Crime Nos.654/09 and 655/09 for the offences under sections 307, IPC, 12/14 of CrPC and 25 of Arms Act. In such premise, the petitioner filed a writ petition seeking an investigation by an independent agency like CBI.

(iv) Respondents filed the reply in the writ petition and denied the allegations, stating that discreet information was received about the presence of two dacoits, on which the police party reached the spot and cross-firing took place in which two dacoits were killed by the police. In the aforesaid encounter, dacoit Kaliya alias Brijkishore and Amar Singh Jat were shot dead. Thereafter, a Magisterial enquiry was ordered. The learned Magistrate submitted the enquiry report on 13/8/2007. Another report was also submitted by the Additional Superintendent of Police, Datia on 2/2/2010 to SP, Datia. However, the report submitted by Addl. S.P. confirmed that Kalia alias Brijkishore is alive and lodged at District Jail, Jhansi.

(v) After considering all the documents filed along with the writ petition, as well as, the reply, the writ Court did not find it a fit case for handing over the investigation to the CBI. However, the writ Court directed to hand over the investigation to the Crime Investigation Wing of the Police headed by an officer holding the rank of Superintendent of Police. The Court has also

expressed hope that the investigation shall be conducted impartially and with responsibility and if the petitioner is not satisfied with the investigation, he shall be at liberty to challenge the investigation in appropriate proceedings. The State was also directed to pay a cost of Rs.20,000/- because no action had been taken by the Police Authorities in respect of the death of the petitioner's son in the year 2007.

(vi) Now, the petitioner has filed this writ appeal challenging the order of the writ Court on the ground that allegations are made against State Police Officers and Police personnel, therefore, the writ Court ought to have directed for investigation by the CBI. It is further submitted that the Police have not conducted any investigation in respect of the missing and death of the petitioner's son to date.

3. Learned counsel for the petitioner has vehemently argued that the petitioner had reason to believe that her son was tortured in police custody and when he died, he was shown as killed in a fake encounter by the Police as dacoit Kalia. He was never known as Kalia alias Brijkishore. After the order passed by the writ Court, the said Wing conducted an investigation only in respect of criminal case registered as Crime No. 19/07 for the offences under sections 307, 400, 402 of the IPC, 25,27 of the Arms Act and 11,13 of the MPDVPK Act and not in respect of illegal arrest and death of son of the petitioner. It is very unfortunate that the Police filed a closure report on 24/3/2012 and now more than 12 years have passed, but Sessions Court, Datia

has not examined the same. Meanwhile, the appellant expired awaiting justice from this Court.

4. Shri Mody, learned Additional Advocate General appearing for the respondents/State refuted that in compliance of the High Court's order, the investigation of Crime No.19/07 vide order dated 26/11/2010 was transferred to the CID, Bhopal. The Investigating Officers of the rank of Superintendent of Police/DIG were changed from time to time upon change of their place postings. Statements of witnesses were recorded, and the final closure report was prepared. It is further submitted by the learned Additional Advocate General that initially, the investigation was started in respect of two persons who were shot dead in the encounter. Therefore, the CID was enquired as to who was shot dead and what was his identity. Since the witnesses were not turning up, therefore, the criminal history of all three sons of the petitioner was collected. For the first time, Smt. Vimla Devi W/o Balkishan Kewat (Bhabhi of the deceased) identified Khushaliram s/o of the petitioner as the deceased dacoit from the photograph who was shot dead along with Amar Singh Jat. The investigation further revealed that the deceased person namely Khushaliram alias Kaliya was also involved in two criminal cases registered at Police Station Tharet i.e. Crime No.81/2006 for the offence punishable under section 364 IPC and Crime No. 92/2006 for the offence punishable under sections 394 IPC and 11/13 of the MPDVPK Act. A Nokia phone was also recovered from his body by the Police. Therefore, the entire contention of the

petitioner is incorrect. Finally, it has been found that Khushaliram alias Kalia i.e. one of the petitioner's son was named, as he was a member of the gang of dacoit Amar Singh Jat. Accordingly, the Police prepared a *closure* report and submitted it before the Special Court notified under the MPDVPK Act.

5. We have heard learned counsel for the parties and perused the record and closure report.

6. The entire case of the petitioner is based on the photograph published in Dainik Bhaskar newspaper. According to the petitioner, her son was taken by the Police and thereafter he did not come back. The Police killed him and showed it as a death in the encounter in the name of dacoit Brijkishore alias Kalia. In the CID investigation, police found that Khushaliram alias Kalia was also a member of a dacoit Amar Singh Jat gang, who died in the said encounter. The writ Court has rightly observed that it is not a case which deserves to be transferred to the CBI. Now after the lapse of so many years, it would not be fit to consider the matter for reinvestigation by the CBI.

7. Now, the final closure report has been filed by the Police and the same is required to be examined by the Special Court. It is unfortunate that the same has been pending since the last 12 years awaiting the presence of the Investigation Officer in the court. The order sheets reveal that there is a delay in considering the closure report as Investigating Officer Mr Virendra Kumar Mishra has not appeared before the Special Court since 2012. As per the latest status report submitted by the Government, he was

posted as AIG, CID, PHC, Bhopal from 22/7/2013 to September 2012. Thereafter, from 2014 to 2022, he was on deputation and posted in Delhi. Thereafter, he came back as AIG SISF, Bhopal in 2022 and now, he is posted as SP, Datia. Surprisingly, he could not get one or two days time to appear before the Court since 2012. Most of the time, he remained on deputation but did not care to appear before the Special Court so that the learned session Court could examine the closure report. The petitioner expired awaiting justice from the Court. It is said that even, the cost of Rs.20,000/- has not been paid to the petitioner to date. Therefore, it is nothing but insensitivity on the part of the Police department. There is no explanation given by the Police before the writ Court, as well as before this Court as to why no action was taken on the complaint made by the petitioner about the missing of her son. Therefore, the cost of Rs,20,000/- deserves to be increased to Rs.1,00,000/- (Rupees one lac only). The Director General of Police M.P. is also directed to look into the matter as to why there has been so much delay of 12 years in the appearance by the Investigating Officer before the Special Court. The order sheets right from 10/8/2012 reveal that Shri Virendra Mishra has not been appearing to date before the Special Court since 2012 hence the learned trial Court could not decide as to whether the closure report is liable to be accepted or rejected. Therefore, action is recommended against Shri Virendra Mishra for not appearing before the Special Court since 10/8/2012. A copy of this order be sent to DGP M.P. Police for necessary compliance.

With the aforesaid, the appeal stands disposed of.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE

(and)