

DISHA

v.

STATE OF GUJARAT & ORS.

(Writ Petition (Criminal) No. 33 of 2011)

JULY 20, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

***Constitution of India, 1950:***

*Article 32 r/w s.173 CrPC – Writ petition seeking to transfer investigation to Central Bureau of Investigation – The Firms of petitioner and her husband and his associates said to have duped a large number of investors of crores of rupees – An FIR lodged against petitioner and other partners of her firm/agents/ franchises – Charge-sheet filed against 13 persons including the petitioner – Petitioner’s husband said to have committed suicide and investigation in the said suicide case pending — Writ petition by petitioner seeking directions to transfer the investigation into the financial transactions of her late husband and his associates through various firms and the cause of her husband’s death, to CBI and further to hand over all complaints made by various investors, to CBI for investigation – HELD: The petitioner herself is the accused – A huge amount has been collected from innocent persons giving them false assurances that their amount would have a high premium – No allegation of mala fide or bias has been alleged against any investigating authority nor had it been pleaded that charge sheet had been filed against the petitioner without investigating the case or having any vindictive attitude towards the petitioner – There is no cogent reason to interfere in the matter – Code of Criminal Procedure, 1973 – s.173.*

**The petitioner and her husband were engaged in commercial/business activities in share broking. The**

A petitioner's husband along with his maternal uncle and his sons started share broking business in Rajkot and subsequently at Ahmedabad also. In 2008, another firm was constituted of which the petitioner was the proprietor. During the period between 2008 and 2010, the petitioner's husband and his associates appointed several agents/franchises for their firms all over Gujarat and the said agents collected a huge amount from large number of persons/investors giving them assurance that their money would be multiplied within a short span of time.

C On 28.12.2010, petitioner's husband was said to have jumped from 22nd floor of a hotel and died spontaneously. The matter was being investigated by the police.

D On 12.1.2011, an FIR was lodged at Gandhigram Police Station in Rajkot for offences punishable u/ss 406, 420 and 120-B, IPC with the allegations that the partners/agents/franchises of the firm owned by the petitioner had given fake promises to the complainant and other investors that they would get a high return of their investments within a short stipulated period, but the investors could not get any amount; that the accused persons in conspiracy with each other made a fraudulent scheme duping the innocent investors. The police filed a charge sheet against 13 accused persons including the petitioner. According to investigation held, so far, the investors had been duped by petitioner's firms of a sum of Rs.60 crores. Seven accused were arrested and further investigation was in progress.

G The petitioner filed the instant writ petition seeking the directions that investigations into the financial transactions of her late husband and his associates through various firms and the mysterious cause of her husband's death be transferred to the Central Bureau of

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Investigation u/s 173 Cr.P.C. and further to handover all complaints made by various investors against the firms owned by her family members to the CBI for investigation.

Dismissing the petition, the Court

HELD: 1.1 So far as the case of suicide of petitioner's husband is concerned, respondent No.2, the Maharashtra police, is investigating the matter. During the investigation, three suicidal notes in the hand-writing of the deceased have been recovered. Father of the deceased identified the hand-writing of the deceased, and the investigation is going on. The petitioner did not render any assistance whatsoever to the Maharashtra Police in investigation of the said case. [para 4-5] [366-C-D; G]

1.2 As regards the investigation by the Gujarat Police, according to the counter affidavit filed by the State of Gujarat, only one FIR has been lodged, wherein the investigation has been concluded and a charge sheet has been filed against 13 accused persons including the petitioner. [para 6] [367-B]

*Kashmeri Devi v. Delhi Admn. & Anr.*, 1988 SCR 700 = AIR 1988 SC 1323; *Gudalure M.J. Cherian v. Union of India*, 1991 ( 3 ) Suppl. SCR 251 = (1992) 1 SCC 397; *Punjab & Haryana High Court Bar Assn., Chandigarh through its Secretary v. State of Punjab & Ors.* 1993 ( 3 ) Suppl. SCR 915 = AIR 1994 SC 1023; *Vineet Narain & Ors. v. Union of India & Anr.* 1996 ( 1 ) SCR 1053 = AIR 1996 SC 3386; *Union of India v. Sushil Kumar Modi*, 2006 ( 4 ) Suppl. SCR 742 = (1998) 8 SCC 661; and *Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India*, (2006) 6 SCC 613 – referred to.

1.3 This Court has transferred matters to CBI or any other special agency only when the Court was satisfied

A that the accused had been very powerful and influential  
 person or State authorities like high police officials were  
 involved and the investigation had not proceeded with in  
 proper direction or it had been biased. In such a case, in  
 order to do complete justice and having belief that it  
 B would lend the final outcome of the investigation  
 credibility, such directions have been issued. [para 16]  
 [369-F-G]

R.S. Sodhi v. State of U.P. & Ors., AIR 1994 SC 38;  
 Rubabbuddin Sheikh v. State of Gujarat & Ors., 2010 (1)  
 C SCR 991 AIR 2010 SC 3175; Ashok Kumar Todi v. Kishwar  
 Jahan & Ors., (2011) 3 SCC 758; Narmada Bai v. State of  
 Gujarat, JT 2011 (4) SC 279 – referred to.

1.4 In the instant case, the petitioner herself is the  
 D accused. A huge amount of Rs.60 crores has been  
 collected from innocent persons giving them false  
 assurances that their amount would have a high  
 premium. It has not been alleged in the petition that any  
 of the investor is very powerful or capable to manage the  
 E investigation against the petitioner or that the case of  
 suicide of her husband is not properly investigated. It is  
 nobody's case that the police has unnecessarily  
 harassed the petitioner; rather, the record of the case  
 reveals that it is only after completing the investigation,  
 F that the charge sheet has been filed against 13 persons  
 including the petitioner. No allegation of *mala fide* or bias  
 has been alleged against any investigating authority nor  
 has it been pleaded that charge sheet had been filed  
 against the petitioner without investigating the case or  
 G having any vindictive attitude towards the petitioner. In  
 fact, the petition is based purely on mere apprehension  
 by the petitioner. None of the grounds taken by the  
 petitioner for transfer is tenable. In such a fact-situation,  
 there is no cogent reason to interfere in the matter. [para  
 H 19] [370-C-F]

## Case Law Reference:

1988 SCR 700	referred to	para 8	A
1991 (3) Suppl. SCR 251	referred to	para 9	
1993 (3) Suppl. SCR 915	referred to	para 9	B
AIR 1994 SC 38	referred to	para 10	
1996 (1) SCR 1053	referred to	para 11	
2006 (4) Suppl. SCR 742	referred to	para 13	
2010 (1) SCR 991	referred to	para 14	C
2011 (3) SCC 758	referred to	para 15	
JT 2011 (4) SC 279	referred to	para 15	

CRIMINAL ORIGINAL JURISDICTION : Writ Petition (Crl.)  
No. 33 of 2011. D

Under Article 32 of the Constitution of India.

A.K. Sanghi, Sudheer Voditel, Rameshwar Prasad Goyal  
for the Petitioner. E

H.P. Rawal, P.P. Malhotra, ASG, Shweta Verma, T.A.  
Khan, Harsh N. Parekh, Arvind Kumar Sharma, N. Nanavati,  
Hemantika Wahi, S. Banerjee, Sanjay Kharde, Asha Gopalan,  
Nair for the Respondents. F

The Judgment of the Court was delivered by

**DR. B.S. CHAUHAN, J. 1.** This writ petition has been  
filed for seeking the directions that investigations into the  
financial transactions of the petitioner's late husband Shri  
Deven Malviya and his associates through various firms, and  
the mysterious cause of her husband's death in Hotel Marriott,  
Senapati Bapat Road, Pune be transferred to Central Bureau  
of Investigation (hereinafter called CBI) under Section 173 of  
the Code of Criminal Procedure, 1973 (hereinafter referred to H

A as Cr.P.C.); and further to hand over all complaints made by various investors against the firms owned by her family members to the CBI for investigation.

2. Facts and circumstances giving rise to this case are as under:

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A. Petitioner indulged herself in commercial/business activities alongwith her husband late Deven Malviya, particularly in share broking in the name and style of M/s Disha Credit and Marketing Services alongwith one another partner Mr. Ajay Gandeja in Nagpur from 1998 to 2004.

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B. Late Mr. Deven Malviya, for certain reasons, shifted from Nagpur to Pune and started his own share broking business in the year 2007. Petitioner's husband and his maternal uncle namely, Shri Narendra Dhruv and his sons started share broking business in Rajkot in the name of M/s Vision Equities and Commodities and subsequently at Ahmedabad also. In 2008, another firm was constituted in the name of Vibrant Equities and Commodities, of which the petitioner was the proprietor.

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C. During that period, i.e., between 2008 and 2010, petitioner's husband, his maternal uncle and his sons appointed a large number of agents/franchises for their firms all over Gujarat and the said agents collected a huge amount from large number of persons/investors giving them assurance that their money would be multiplied within a short span of time.

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D. On 28.12.2010, Late Deven Malviya, petitioner's husband checked in Hotel Marriott at Senapati Bapat Marg, Pune in a Room on 20th floor. He jumped from 22nd floor of Hotel Marriott at 11.30 a.m. on 30.12.2010 and died spontaneously. The matter of death of petitioner's husband is being investigated by Chhatushingi Police Station, Pune.

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E. An FIR No. CR No. 1-18/2011 was lodged on 12.1.2011 at Gandhigram Police Station in Rajkot under Sections 406,

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420 and 120-B of the Indian Penal Code, 1860 (hereinafter called IPC) by the complainant with the allegations that the partners/ agents/franchises of the firm owned by the petitioner herself had given fake promises to the complainant and other investors that they would get Rs.1,40,000/- in return of their investment of Rs.1,00,000/- within a short stipulated period. But the investors could not get any amount. The accused persons in conspiracy with each other made a fraudulent scheme duping the innocent investors.

F. The police filed a charge sheet against 13 accused persons including the petitioner after examining 23 witnesses. Seven accused have already been arrested and further investigation is in progress for obtaining the Forensic Science Laboratory report in connection with the seized Muddamaal (Crime property, e.g. Computer, CPU, Hard disk etc.). According to investigation held, so far, it is evident that the investors have been duped by petitioner's Firms for a sum of Rs.60 crores.

3. The grounds on which the transfer is sought are as follows:

(1) Petitioner will face acute harassment owing to the number of investors.

(2) Petitioner likely to be victimised, and all associates, agents, partners would suppress material information fastening all charges on her to save themselves.

(3) Number of scattered complaints would lead to uncoordinated investigation and not uncovering the truth.

(4) Death in most suspicious circumstances since the alleged scam involves politicians, bureaucrats and influential business men who could have abetted the suicide since they invested crores of rupees.

(5) Petitioner is interested in finding out the truth.

A (6) Interference needed for putting the investigations on proper track relating to the death of the husband/deceased and for enquiry into scam by CBI.

B (7) To avoid botch up in investigation due to prevailing corruption.

4. Heard Shri A.K. Sanghi, learned Senior counsel for the petitioner, Shri H.P. Rawal, learned ASG for CBI, Shri N. Nanavati, learned counsel for the State of Gujarat and Shri Sanjay Kharde, learned counsel for the State of Maharashtra.

C So far as the case of suicide of petitioner's husband is concerned, the respondent No.2, Maharashtra police, is investigating the matter. During the investigation, three suicidal notes in the hand-writing of the deceased have been recovered. Father of the deceased identified the hand-writing of Deven D Malviya, the deceased and investigation is going on. However, according to the investigation so far conducted it appears to be a plain and simple case of suicide, may be because of pressure of investors in his commercial activities.

E He was facing large number of demands from investors who could not even get back the principal amount, what to talk of multiplied amount or compounded interest etc. as assured by their agents and collectors/franchises. Therefore, he could not stand the pressure of his commitments, and as the angry investors were reported to have forcibly demanded their money F back and had seized the documents of sale of house and office properties from his maternal uncle at Rajkot.

G 5. The petitioner did not render any assistance whatsoever to the Maharashtra Police in investigation of the said case, nor has she raised any grievance before this court that the investigation conducted by the Maharashtra Police is not fair, though she is fully aware that the firms owned by the petitioner and her family members/relatives had collected huge amount from investors which had not been returned to them as promised H and they had been pressing hard for recovery of their amount.

In such circumstances, naturally a person will be under the pressure and may also commit suicide. However, in view of the fact that the matter is still being investigated by the Maharashtra Police, we do not think it proper to make any comment on it.

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6. So far as the Gujarat Police is concerned, according to the counter affidavit filed by the State of Gujarat, only one FIR has been lodged, wherein the investigation has been concluded and charge sheet has been filed against 13 accused persons including petitioner.

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7. In this background, the case is required to be examined as to whether in the facts and circumstances of the case, where in case of cheating, a charge sheet has been filed, the matter can, and is required to be transferred for investigation/further investigation to the CBI.

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8. In *Kashmeri Devi v. Delhi Admn. & Anr.*, AIR 1988 SC 1323, this Court held that the magistrate can direct CBI to investigate a case, after charge sheet has been filed, by exercising his powers under Section 173(8) Cr.PC. It was stated accordingly:-

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"Since according to the respondents charge-sheet has already been submitted to the Magistrate we direct the trial court before whom the charge-sheet has been submitted to exercise his powers under Section 173(8) CrPC to direct the Central Bureau of Investigation for proper and thorough investigation of the case. On issue of such direction the Central Bureau of Investigation will investigate the case in an independent and objective manner and it will further submit additional charge-sheet, if any, in accordance with law. The appeal stands disposed of accordingly."

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9. In *Gudalure M.J. Cherian v. Union of India*, (1992) 1 SCC 397, this Court however, held that the power of directing investigation by CBI after chargesheet was filed, should not ordinarily be used, but only when necessary. The investigation having been completed by the police and charge-sheet

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A submitted to the court, it is not for this Court, ordinarily, to reopen the investigation specially by entrusting the same to a specialised agency like CBI.

B Same view has been reiterated by this Court in Punjab & Haryana High Court Bar Assn., Chandigarh through its *Secretary v. State of Punjab & Ors.* AIR 1994 SC 1023.

C 10. In *R.S. Sodhi v. State of U.P. & Ors.*, AIR 1994 SC 38, this Court examined the case where the accusations were directed against the local police personnel. The Court held that it would be desirable to entrust the investigation to an independent agency like the CBI so that all concerned including the relatives of the deceased may feel assured that an independent agency was looking into the matter and that would lend the final outcome of the investigation credibility. However D faithfully the local police may carry out the investigation, the same would lack credibility since the allegations were against them.

E 11. This Court refused to direct the investigation by the CBI, after the charge sheet was filed in *Vineet Narain & Ors. v. Union of India & Anr.* AIR 1996 SC 3386.

F 12. In case of persons against whom a prima facie case is made out and a charge-sheet is filed in the competent court, it is that court which will then deal with that case on merits in accordance with law. (See : *Union of India v. Sushil Kumar Modi*, (1998) 8 SCC 661).

G 13. Relying on the observations in *Union of India v. Sushil Kumar Modi* (supra), this Court in *Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India*, (2006) 6 SCC 613, reiterated that the Court does not have the power to direct the CBI to investigate a matter after the chargesheet was filed.

H 14. The above three cases i.e. of *Vineet Narain*, *Sushil Kumar Modi* and *Rajiv Rajan Singh* were differentiated in a recent judgment by this Court in *Rubabuddin Sheikh v. State*

of Gujarat & Ors., AIR 2010 SC 3175, wherein this Court held:- A

"Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI." B

15. In *Ashok Kumar Todi v. Kishwar Jahan & Ors.*, (2011) 3 SCC 758, this Court dealt with a case in which Kishwar Jahan, mother of the deceased Rizwanur Rahman approached the High Court to transfer the investigation of his death from local police to CBI expressing her apprehension that State police would not conduct investigation fairly because her son had contracted inter-religion marriage with the daughter of a very affluent and influential businessman, who had very close relationship with high police officials. She produced sufficient material to establish the nexus between the main accused and top police officials. This court considering the reasonable apprehension in her mind about fair investigation by the State CID, directed CBI to investigate the cause of death of Rizwanur Rahman. C D E

(See also: and *Narmada Bai v. State of Gujarat*, JT 2011 (4) SC 279). F

16. Thus, it is evident that this Court has transferred the matter to CBI or any other special agency only when the Court was satisfied that the accused had been very powerful and influential person or State authorities like high police officials were involved and the investigation had not proceeded with in proper direction or it had been biased. In such a case, in order to do complete justice and having belief that it would lend the final outcome of the investigation credibility, such directions have been issued. G

17. The case requires to be examined in the light of the H

A aforesaid settled legal proposition.

B 18. Shri A.K. Sanghi, learned senior counsel appearing for the petitioner has tried to convince the court placing reliance on various newspaper cuttings filed as Annexures submitting that it could be a big scam of thousand of crores rupees, but we are not impressed by such submissions as the police could find out that the total investments by investors had been only about Rs.60 crores.

C 19. In the instant case, the petitioner herself is the accused. A huge amount of Rs.60 crores has been collected from innocent persons giving them false assurances that their amount would have a high premium. It has not been alleged in the petition that any of the investor is very powerful or capable to manage the investigation against the petitioner or that the case of suicide of her husband is not properly investigated. It is no body's case that the police has unnecessarily harassed the petitioner; rather, the record of the case reveals that it is only after completing the investigation, that the charge sheet has been filed against 13 persons including the petitioner. No allegation of mala fide or bias has been alleged against any investigating authority nor had it been pleaded that charge sheet had been filed against the petitioner without investigating the case or having any vindictive attitude towards the petitioner. In fact, the petition is based purely on mere apprehension by the petitioner. None of the grounds taken by the petitioner for transfer is tenable.

20. In such a fact-situation, we do not see any cogent reason to interfere in the matter. The petition lacks merit and is accordingly dismissed.

G However, in case any action is taken by the investigating agency against the petitioner, she would be at liberty to seek the appropriate remedy before the appropriate forum and any observation made herein, shall not be treated adverse to her.

H R.P.

Writ Petition dismissed.