

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION****WRIT PETITION (CRIMINAL) NO. 188 OF 2015****SMT. SUNITA DEVI AND ANR.****..... PETITIONERS****VERSUS****UNION OF INDIA AND ORS.****..... RESPONDENTS****J U D G M E N T****S.ABDUL NAZEER, J.**

1. Smt. Seema Garg, daughter-in-law of petitioner No.1, and her two children were murdered on 24.07.2001. FIR No.221 of 2001 to this effect was lodged in Police Station Pilakhwa, District Ghaziabad, U.P. under Sections 302/394 of the Indian Penal Code, 1860 (for short 'the IPC'). After investigation, the police filed a final report on 17.08.2001 against Nitin Garg, husband of Seema Garg, Manveer @ Mintoo and Mukesh for the offences punishable under Sections 302, 109, read with Section 34 IPC. During the course of trial, accused Nitin Garg was also murdered.

2. The Trial Court by its judgment dated 16.10.2004 acquitted the accused persons, namely, Manveer @ Minto and Mukesh. In the course of judgment the Trial Court observed that the investigation has not been carried on properly.

3. The case of murder of Nitin Garg was also investigated by the State Police and a chargesheet was filed against certain persons. Those persons were acquitted by the Sessions Court. The High Court confirmed the said judgment. Special Leave Petition filed challenging the said judgment of the High Court was dismissed by this Court.

4. Several other proceedings were initiated by the petitioners herein before the High Court and before this Court in relation to the aforesaid cases and it is not necessary at this stage to refer to all those proceeding.

5. The petitioners filed the above writ petition for constitution of a Court-monitored investigation/SIT to re-investigate the aforesaid cases pertaining to FIR Nos. 221 of 2001 and 228 of 2002 registered at Police Station Pilakhwa, Uttar Pradesh. This Court by Order dated 8.2.2018 rejected the prayer for re-investigation of the case pertaining to FIR No. 228 of 2002. This Court directed constitution of a SIT for

re-investigation of FIR No.221 of 2001. The relevant portion of the order is as under:

"9. As noted above, in the judgment passed by the sessions court in Criminal Case No.221 of 2001, the court has categorically observed that the investigation has not been conducted fairly. It is evident that the real culprits responsible for murder for petitioners' family have not been subjected to trial. It is clear that the investigating agency showed lackadaisical approach in carrying/proceeding with the investigation. We are of the view that it is necessary to have a fair, honest and complete investigation.

10. Having examined the entire materials placed on record, we deem it proper to constitute a Special Investigating Team (SIT) to re-investigate FIR No.221 of 2001 titled "**State v. Manvir Singh and Anr.**" registered at Police Station Pilakhua, District Ghaziabad, U.P. Shri M.L. Sharma, IPS (retired), former Special Director, CBI, is appointed as the Chairman of the SIT. Shri M.L. Sharma is permitted to take assistance of two officers of his choice of the CBI as its members. We direct the SIT to proceed as regards further investigation in respect of FIR No.221 of 2001 and to submit its report within a period of three months from today. Needless to say that appropriate secretarial assistance and logistic support shall be made available to the SIT by the Government of Uttar Pradesh. The Government of Uttar Pradesh is also directed to provide to the Chairman and the members of the SIT all travelling, boarding and lodging expenses while discharging their responsibility entrusted to them. "

6. Accordingly, SIT was constituted to re-investigate FIR No.221 of

2001. The SIT filed its report dated 8th February, 2018 before this Court. The findings and recommendations of the SIT are at para 11 which are as under:

"FINDINGS AND RECOMMENDATIONS"

11.1 On a thorough re-investigation in the case and taking into consideration the evidence on record, the SIT is of the opinion that accused Manveer and Mukesh were involved in the murder of Seema and her two children Bhavya and Pratyaksh at the behest of Nitin Garg in pursuance of a criminal conspiracy hatched between them. It bears repetition that as per statements of Sanjay Sharma and Sonu Tomar (who is no more), recorded by IO Mehra, CBI and SIT, Manveer was last seen at the house of deceased Seema by him and his employee Sonu Tomar between 4:30 to 5:00 p.m. on 24.07.2001, just before these gruesome murders. Further, Manveer's post-crime conduct by way of disappearing from Pilkhua from 24th to 30th July, 2001, before his arrest by the police also points towards his involvement in the crime. Co-accused Mukesh left village Shyamli and was not seen at Pilkhua after the incident and was picked up from village Pachak, Moradabad, by the police on the night intervening 29th, 30th July, 2001. More importantly, the disclosure statements made by Manveer and Mukesh before the police leading to the recovery of weapons of offence and their blood stained clothes link them with the crime. All these recoveries were admitted by them during the trial. These articles were found to have human blood on them by FSL, Agra. In addition to the above, as per the Report of CFSL, New Delhi, accused Manveer gave deceptive responses in the Polygraph Test on all critical questions/issues relating to this incident. The expert has further opined that in Forensic

Psychological Assessment and Forensic Statement Analysis, he had been found to be deceptive in his statements about his knowledge and involvement in this gruesome crime. As regards accused Mukesh, he could not be subjected to Polygraph Test because of his medical condition but he was subjected to Forensic Psychological Assessment and Forensic Statement Analysis and as per the expert opinion, he was found to be deceptive in his statements about his knowledge and involvement in these murders. It is pertinent to mention here that Manveer was a long time employee of Nitin Garg and he had no personal enmity with deceased Seema Garg and her two children. Manveer's disclosure to the police that Nitin had tasked him to eliminate Seema as he suspected her fidelity finds resonance in the letter dated 08.07.2001 of Sunil Bansal to Seema's father-in-law Rajendra Prasad, wherein he (Sunil Bansal) mentioned that Nitin and his family were suspecting Seema's character, while Seema suspected Nitin's involvement with a girl of Delhi and Seema's apprehension of danger to her life for these reasons. This letter was delivered by Irshad Malik to Rajendra Prasad personally at the behest of Sunil Bansal.

11.2 All these facts and circumstances establish that Nitin had reasons to perpetuate the crime in question and he hatched a criminal conspiracy with his confidante Manveer, who, in turn, tied up with Mukesh, for the aforesaid purpose. The theory propounded by the petitioner's side is not supported by evidence on record.

11.3 It is most respectfully submitted that the findings of the SIT are consistent with the charge sheet filed by the local police for the reasons discussed in the preceding paras of this report. A young lady and her two innocent children were brutally murdered in cold blood but nobody has been held accountable for this diabolical crime. This report is being most

respectfully submitted before this Hon'ble Court for such directions as deemed fit in the interest of justice.

11.4 As regards the professional mis-conduct of IO Puran Singh Mehra (since retired from service), it is most respectfully submitted that even though he filed the charge sheet against the actual culprits, he did not carry out investigation with professional rigour, as brought out in para 9 supra. In view of the above, this Hon'ble Court may be pleased to issue directions to the Govt. of Uttar Pradesh/Director General of Police, (U.P.) to initiate departmental action against him.

11.5 Further, as regards the allegations against the CBI investigation team briefly discussed in para 10 above, this Hon'ble Court may be pleased to direct Director, CBI, to cause an enquiry into the matter at his end for appropriate action."

7. Ms. Kamini Jaiswal, learned counsel appearing for the petitioners, in the course of her arguments and in the written submissions, mainly raised the following contentions:

- "i. The SIT strangely has not investigated the truth and falsity of the statement made by Head Constable, Chander Pal;
- ii. Not even an endeavor to investigate the facts mentioned by the Petitioner himself was ever undertaken by the SIT. The SIT report discloses a pre-disposed state of mind and complete negation of the confidence reposed in them by this Hon'ble Court;
- iii. The SIT however at page 61 of its report refers to murder of Nitin Garg which seems to be a case of contract killing and killers have gone unpunished. The SIT, therefore suggests investigation of the FIR No.228 of

2002 and same needs to be followed up."

8. Having heard the learned counsel for the petitioners and having perused the report of the SIT and the objections filed by the petitioners to the said report, we are of the view that the CBI has to look into the report of the SIT and take a decision in the matter. We order accordingly.

9. The writ petition is disposed of in the aforesaid terms.

.....**J.**
(A.K. SIKRI)

.....**J.**
(S. ABDUL NAZEER)

New Delhi;
February 20, 2019.