

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMP No.789 of 2020**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950)

*Chhabirani Panda* .... *Petitioner*

*-versus-*

*State of Odisha and Ors.* .... *Opp. Parties*

*Advocates appeared in the case:*

*For Petitioner* : *Ms. Sujata Jena, Adv.*

*-versus-*

*For Opp. Parties* : *Mr. H. K. Panigrahi, ASC*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-02.12.2022**

**DATE OF JUDGMENT:-05.05.2023**

**Dr. S.K. Panigrahi, J.**

1. The Petitioner has filed this Petition seeking a direction for investigation of Baliguda P.S. Case No.188 of 2019 by an independent agency since the State investigating agency has miserably failed to investigate the case in its proper perspective, specifically when the deceased was put to death in front of his house by the miscreants at the behest of some

local people who have given threat to the deceased before the incident.

**I. FACTUAL MATRIX OF THE CASE:**

2. The brief facts of the case are that the Petitioner is the wife of late Abhimanyu Panda (hereinafter “the deceased”) who was put to death by some unknown persons by gun in front of his house in her presence. She has filed this Petition for proper investigation of the case by an independent investigating agency since the local police has failed to do it and has filed the charge sheet against some persons although many other persons are involved in the crime. Thus, it smacks a shoddy investigation.
3. On 10<sup>th</sup> May 2019 at about 7.30 A.M. when the deceased was in his residence, two unknown persons came to his house and called him to come to the gate. At that point in time, the Petitioner was very much present near the gate. Those unknown persons started arguing with the deceased about Jagannath Temple issue and also told him that since he is taking steps against the big sorts they will kill him and immediately fired at him and accordingly fled from the spot. Consequently, the deceased fell on the spot with bullet injury. There was a hue and cry in the locality and he was shifted to the nearby hospital by the locals in an Auto-rickshaw. However, the doctors declared him dead.

4. The F.I.R. was lodged by the cousin brother of the deceased namely Nirmal Kumar Sahu who came to the spot soon after the occurrence on being informed by his domestic help. On the basis of the F.I.R., Baliguda P.S. Case No.188 of 2019 was registered under Sections 302/120B/109/34 of the I.P.C. read with Sections 25 and 27 of Indian Arms Act as against Biswanath Patra, Gopal Krushna Patra, Rama Chandra Patra and Shyamsundar Patra who are four brothers along with two unknown persons. In the F.I.R., it was specifically alleged that the deceased was a non-hereditary member of Shri Jagannath Mandir Trust of Baliguda. After he became the member, there was dispute as against Shyamsundar Patra, the Ex-Secretary of the temple and his brothers with respect to the shop rooms of the temple. Moreover, the deceased was threatened by Shyamsundar Patra due to his proactive role relating to temple administration, eviction from shop rooms of Shri Jagannath Complex, as Shyamsundar Patra was the secretary before the temple was indexed and he refused to hand over the detail charges of the properties of the temple in spite of specific direction of the Endowment Commissioner. All these facts were mentioned by the informant in the F.I.R. That apart, it has also been mentioned about the involvement of the Patra brothers in the crime as they have given the threat to the deceased.

## II. PETITIONER'S SUBMISSIONS:

5. Learned counsel for the Petitioner earnestly made the following submissions in support of her contentions:

During investigation, on verification of CCTV footage and mobile data, shooters namely Golaka @ Ramnarayan Nahaka and rider of the motorcycle Kanhu Charan Sahu as well as conspirator K. Biswajit Patra, S. Balaji Achary were forwarded to the Court. Another conspirator namely Babuli Muni was absconding from his village and ultimately charge sheet was submitted as against them under Sections 302/34 of the I.P.C. read with Sections 25 and 27 of the Indian Arms Act. In the charge sheet, the investigating officer has specifically mentioned that the informant mentioned about the involvement of the four brothers of the said Patra family. However, he was not the eye witnesses to the occurrence. Thus, the investigating agency has concluded that Patra brothers are not the perpetrators of the crime.

6. While investigating the matter, the investigating agency has lost sight of the material facts which are also relevant to unearth the crime. As a matter of fact, Shyamsundar Patra was the Secretary of Shri Jagannath Temple of Baligada and misappropriated the funds and also sold away the properties

of the deity. His three brothers have taken the shop rooms in the temple campus and were not paying the rent.

7. The deceased was put to death at the instance of Shyamsundar Patra, Gopal Kurshna Patra, Biswanath Patra, Ramchandra Patra who are four brothers and K. Biswajit Patra, Ananda Acharya and others due to his proactive action as against them. In this regard, it is mentioned that the whole issue revolves around the formation of non-hereditary Trust Board of Shri Shri Jagannath Temple, Baliguda. The general public of Baliguda moved the Commissioner Endowment to declare that the Shri Shri Jagannath Temple, Baliguda as public deity as aforementioned Patra brothers i.e. Shyamsundar Patra being the Secretary of the Temple has misappropriated the properties of the deity. Considering the demand of the people at large, the temple was indexed and non-hereditary Trust Board was formed on 26.07.2016 by the State Government. In the said Trust Board, one Madhusuan Dash has been made as Managing Trustee and deceased Abhimanyu Panda as the member of the Trust Board. In spite of the formation of the non-hereditary Trust Board, as Shyamsundar Patra, the Ex-Secretary of the temple did not handover the charges and records of the temple. Consequently, W.P.(C) No.13847 of 2017 was filed and by virtue of the order dated 20.07.2017 of this Court in the said

Writ Petition, the non-hereditary Trust Board could enter into the premises of the temple and started looking after the Seva Puja (worshipping) of the deity. However, as on date, the detailed charges have not been handed over by Shyamsundar Patra for which W.P.(C) No.12691 of 2018 has been filed before this Court which is pending for disposal. It may be pointed out here that the Commissioner of Endowments, Odisha has not taken any step in the matter although it has been brought to his notice several times.

8. Shyamsundar Patra, K. Biswajit Patra and others have protested about the formation of the non-hereditary Trust Board and they also did not allow the Trust Board to celebrate the Rathayatra in the year 2017 and with their help the then Sub-Collector, Baliguda, who is one of the member of the Trust Board, forcibly conducted the Rathayatra. Consequently, the matter was brought to the notice of the Additional Assistant Commissioner of Endowment, Berhampur. The matter was inquired into and found to be true and the then Sub-Collector was directed not to interfere with in the day to day management of the temple.
9. Being the member of the non-hereditary Trust Board, deceased Abhimanyu Panda and the Managing Trustee Madhusudan Dash took step for collection of rent from 43 shops of Shri Jagannath Temple Complex. Out of it, about 18

numbers are adjacent to N.H. Prior to the formation of non-hereditary Trust Board the shop room owners were paying rent to Shyamsundar Patra. Even his brothers namely Gopal Krushna Patra was in occupation of shop room No-9. When the shop owners did not pay rent to the Trust Board, cases were filed before the Additional Assistant Endowment Commissioner for their eviction under Section 68 of OHRE Act and eviction order has been passed, brother of Shyamsundar Patra namely Gopal Krushna Patra was evicted from shop room on 23.10.2019 and K.Biswajit Patra and Ananda Acharya have sublet their shop rooms and are not paying anything to the Trust Board. Against them also cases are pending and both of them have approached this Court challenging the steps taken by the Trust Board for their eviction.

10. In this case, being dissatisfied with the manner in which investigation has been done, some local inhabitants have approached the Governor of Odisha by filing a petition dated 22.06.2020 requesting His Excellency to intervene in the matter and to direct for investigation of the case by Special Investigating Team or by Crime Branch of Odisha. Besides, they have also approached the Hon'ble Chief Justice of this Court to look into the matter and on receipt of the said request, Assistant Secretary, Odisha State Legal Service

Authority, Cuttack sent a copy of the grievance petition to the Superintendent of Police, Kandhamal to take step in the matter.

11. Shri Jagannath Temple Complex is situated on the side of National Highway No-59. After extension of N.H No-59, Temple Trust Board was informed by the Sub-Collector and the I.I.C., Baliguda Police Station not to keep the Chariot outside the Temple Complex as it will create problem in smooth movement of the vehicles. Thus, the Managing Trustee and the Trust Board Member Late Abhimanyu Panda along with other Trust Board Member have decided to demolish shop room Nos.6 and 7 of the Market Complex by which there will be enough space to take the Chariot inside the Temple premises. This was intimated to the Additional Assistant Endowment Commissioner, Berhampur by Letter No.65 dated 29.08.2019, Letter No-84 dated 15.11.2019. As per the decision of the Managing Committee, the deceased had also sought for information from the Executive Engineer (R & B Division), Baliguda to provide him the inspection report of the existing structural condition of the surrounding building of the Jagannath Market of the Jagannath Temple from Trivedi Park to N.H.-59. Only after 15 days, the Petitioner's husband Abhimanyu Panda was murdered in front of his house on 10.12.2019.



12. Non-submission of record of the deity and detailed accounts of the money collected from different sources of the temple by Shyamsundar Patra was reported to the Baliguda Police Station on 20.04.2018. However, no steps were taken by the police, as they are hand in glove with him. The said action of Shyamsundar Patra and his fellowmen and the conduct of the police in not taking any step against him and others in-spite of specific allegations made in the F.I.R. dated 10.12.2019 does not create a reasonable doubt in the mind about the manner in which the investigation has been done and charge sheet has been submitted.
13. It is revealed from the F.I.R. that being the member of the Trust Board of Shri Jagannath Temple, Baliguda, the deceased was targeted as he has taken steps for eviction of the shop owners from the temple market complex. But the investigating agency has not examined Madhusudan Dash, the Managing Trustee of the Temple who is a key witness in the matter although he was ready and willing for examination.
14. In the F.I.R itself it has been specifically mentioned that the Ex-Secretary of the previous Managing Committee namely Shyamsundar Patra has taken the shops on rent in his brother's name and relating to the eviction from rented shop rooms the deceased was threatened by the Shyamsundar

Patra and his brothers which was also informed to the Police. This has not been taken care of by the investigating officer. While submitting charge sheet, the investigating officer has stated that the F.I.R. was lodged by the brother of the deceased who has no direct or indirect knowledge about the accused person and the F.I.R. was lodged by naming the Patra brothers as there was bitter family rivalry between the Patra brothers and the deceased. In this regard, it is submitted that the conclusion drawn by the investigating agency is a cooked up story, just to shield the Patra brothers who are moneyed and influential people of Baliguda. This fact can be verified from the conduct of the Patra brothers who have forcibly conducted Rathayatra in the year 2017, although by that time the deceased and Shri Mdhusudan Dash have been notified by the State Government/Endowment Department as the Trust Board members. Even at the instance of Shyamsundar Patra and his followers, the effigy of the deceased was burnt at Baliguda, after he became the member of the Trust Board. The C.D. of it is also available and if necessary it will be produced at the time of hearing.

15. Moreover, the statement made in the F.I.R. by the cousin brother of the deceased has not been accepted by the investigating agency as truth because he is not an eye witness to the said occurrence, which is revealed from the narratives

of the charge sheet of the investigating agency. While taking up investigation, the investigating officer has not made proper investigation of the case as facts have not been reflected correctly in the charge sheet. In fact, K.Biswajit Patra who has been made as one of the main accused has taken a shop room on rent in Jagannath Market Complex and other accused namely Ananda Prasad Acharya @ Chintu has also taken a shop room on rent in the Jagannath Market Complex. K. Biswajit Patra has been made as the prime accused whereas Chintu @ Ananda Prasad Acharya who has given shelter to the suparee killer in his house has been made an accompish. This creates a doubt about the proper investigation of the case.

16. In fact, ten days prior to the incident, the deceased was threatened by Patra brothers, K. Biswajit Ananda Acharya and Debendra Panda to kill him. The investigating agency has not done the investigation from all angles and diverted it and confined it to only one angle and very cunningly submitted the charge sheet without involving the Patra brothers and many other who are the master mind of the crime. The fact speaks for itself, because they are the persons who are being affected due to the proactive action of the deceased who was energetic honest and took active role in managing the affairs of the temple.

17. The Petitioner, thus, getting no other alternative remedy has filed this petition for redressal of her grievances and justice.

**III. COURT'S REASONING AND ANALYSIS:**

18. The conduct of the police in the investigative process has not been so satisfactory as prima facie appear in the present case. The Supreme Court in *Rubabbuddin Sheikh v. State of Gujarat & Ors.*<sup>1</sup>, dealt with a case where the accusation had been against high officials of the Police Department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat Police after the conclusion of the investigation, submitted charge sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instill confidence in the minds of the victims as well as of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a charge-sheet has been filed by the State investigating agency,

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<sup>1</sup>(2010) 2 SCC 200

there is no prohibition for transferring the investigation to any other independent investigating agency.

19. However, in *State of West Bengal v. Committee for Protection of Democratic Rights*<sup>2</sup>, a Constitution Bench of Supreme Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.
20. In *K.V. Rajendran v. Superintendent of Police, CBCID, Chennai & Ors*<sup>3</sup> wherein it was held that transfer of an investigation must be in rare and exceptional cases to do complete justice between the parties and to instill confidence in the public mind. The following may be extracted:

*“This Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it*

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<sup>2</sup>AIR 2010 SC 1476

<sup>3</sup>(2013) 12 SCC 480,

*impossible to properly investigate all of them.”*  
(Emphasis added)

21. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CB/CID or CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased.
22. In the present case, the Petitioner has not been able to prove that the State investigating agency has derailed the course of investigation or if there is a conflict of interest. Moreover, the investigation is currently at an early stage and transferring such cases would lead to opening of floodgate of cases before this Court.
23. In assessing the contention for the transfer of the investigation to CBI, it has been factored into the decision-making system, the averments on the record and submissions urged on behalf of the Petitioner. However, there is no such reason that warrants a transfer of the investigation to CBI. In holding thus, this Court has applied the tests spelt out in the

consistent line of precedent of the apex Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of the Petitioner about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power to be used sparingly" and "in exceptional circumstances" comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments and submissions urged by the Petitioner, this Court finds that no case of such nature which falls within the ambit of the tests

enunciated in the precedents of this Court has been established for the transfer of the investigation.

24. In the light of the aforesaid discussion and having regard to the present position of law, this Court has no hesitation in coming to the conclusion that the Petitioner cannot be granted any relief by way of this petition.
25. Accordingly, the CRLMP is dismissed.

*Orissa High Court, Cuttack,  
Dated the 5<sup>th</sup> May, 2023/ B. Jhankar*

