

Personal Point Vs. State

Personal Point Vs. State

SooperKanoon Citation : sooperkanoon.com/697796

Court : Delhi

Decided On : Aug-01-1996

Reported in : 1996IIIAD(Delhi)971; 63(1996)DLT804; 1996(38)DRJ720

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous Appeal No. 1494 of 1996

Appellant : Personal Point

Respondent : State

Advocate for Pet/Ap. : K.K. Luthra,; Anu Peshwaria and; S.K. Agarwal, Advs

Judgement :

S.K. MahaJan, J.

(1) On 6th June, 1996 Dr.Sunil Kaul is alleged to have left his office in the evening for-a meeting with one Mr.Subhash Gupta in his office at Okhla. He was accompanied by Mrs. Deepa Gupta, Executive Manager (Finance) and Ms.Sujata Saha, Counsellor and together they went to the office of Mr.Subhash Gupta. None of the said three persons had .returned Co their houses till late in the night. At about 11.00 p.m. Mrs.Kaul, the wife of Dr.Sunil Kaul is alleged to have received a call from the husband of Deepa inquiring about his wife as she had not yet come

home by that time. Sujata's father had also called the petitioner around 11.30 p.m. to find out whereabouts of his daughter. The petitioner is alleged to have gone to the office of her husband where at about 12.00 midnight she received a call from the wife of Mr.Subhash Gupta informing her that the license of Dr.Sunil Kaul had been found at the office of Mr.Subhash Gupta. The petitioner is alleged to have gone to the house of Mrs.Gupta at about 12.45 a.m. from where she made a telephone call to the husband of Deepa to reach Police Station Chitranjan Park to lodge a report. At Ps Chitranjan Park they were alleged to have been informed that she should go to Police Station Okhia. When she reached Police Station Okhia at about 03.00 p.m. the son of Mr.Subhash Gupta was already there and she was informed that an Fir has already been registered at the instance of the son of Mr.Subhash Gupta about the missing persons. The grievance of the petitioner appears to be that no Fir was registered at her instance though her husband was also missing and that the police was not carrying out investigation properly in spite of the dead body of her husband having been recovered from Hotal on 7th June, 1996. On 9th June, 1996 a complaint was made by the petitioner to Mr. Dharmendra Kumar, Deputy-Commissioner of Police (South District) at his residence and according to her, it was after this complaint that the police took action and arrested Mr.Subhash Gupta who had by then fled to Bombay. It is alleged that the police was not taking any action and was not investigating the matter properly. She, therefore, wanted the investigation to be transferred to Central Bureau of Investigation.

(2) It has been contended by Mr. Luthra, Sr.Advocate appearing on behalf of the petitioner that the investigation being carried out by the police was not proper in as much as in the first instance when the petitioner had reached Police Station Chitranjan Park, the police should have registered her complaint there and should not have asked her to go to Police Station Okhla. It is contended that valuable time had been lost in the process of sending the petitioner from Police Station Chitranjan Park to Police Station Okhia and even then the Fir was registered on the basis of the statement of Mr.Nitin Gupta son of Mr.Subhash Gupta and no Fir has been registered on her complaint. According to her, at the time of filing of the original complaint, the entire family of Mr.Subhash Gupta was aware about the whereabouts of Dr.Sunil Kaul and the two girls. His contention, therefore, is that

the police is not properly investigating the matter and is trying to shield the family of Subhash Gupta.

(3) What should be the standard of investigation and who would judge the same? Can it be left to the petitioner to say that the investigation being carried out by the police is not proper? Is investigation to be judged from the view point of the petitioner and whether the Court should direct the investigation to be transferred merely because the complainant is not satisfied with the manner the investigation being carried out by the police? These are the questions I have been asked to decide in this case.

(4) From the record I find that immediately after the petitioner had received a telephone call from the wife of Mr.Subhash Gupta about the driving license of Dr.Sunil Kaul having been found on the table of the office of Mr.Subhash Gupta, the petitioner had gone to Police Station Chitranjan Park to lodge a report about her husband being missing. Before going to the Police Station Chitranjan Park, the petitioner had gone to the residence of Mrs.Subhash Gupta and it was only after her meeting with Mrs.Gupta. and after she had been informed that Dr.Sunil Kaul was not alone at the time when he visited the office of Mr.Subhash Gupta but was accompanied by two lady associates, that she decided to go to the Police Station for lodging a complaint. The statement of the petitioner was recorded at Police Station Okhla on 7th June, 1996 in the morning and she informed the police that when she reached Police Station Chitranjan Park, she was advised to go to Police Station Okhia as the incident had taken place within the jurisdiction of Police Station Okhia. The In-charge of the Police Station Chitranjan Park had sent a constable to accompany the petitioner to police post Okhla, Phase-1 where she met the In-charge outside the police post and after hearing the petitioner he allegedly told her that there was nothing to worry about as Dr.Sunil Kaul had allegedly sent a message that he will straight reach his office and that this information was given to him by Mrs.Subhash Gupta. She further states that the police officials at police post Okhla listened to her very attentively and she was informed that the family members of Mr.Subhash Gupta were already there and they had lodged an Fir about missing of all the persons and that inquiries have been made from all the hospitals but.no information had been received. In the

statement which was recorded by the police, there is no complaint made against any of the police officials and on the other hand it was mentioned that the police had listened to the petitioner very attentively and had assured all help to her.

(5) Though in the morning of 7th June, 1996 the petitioner had stated that the police officials had listened to her very attentively and had even sent a constable to accompany her to police post Okhia, however, in her subsequent letters she has made a complaint that she was made to wait for quite some time at Police Station Chitranjan. Park as well as Police Station Okhla and in the process valuable time is alleged to have been wasted.

(6) The Assistant Commissioner of Police, Kalkaji, in his affidavit has denied that Sho Okhla had at any time informed the petitioner that around one hour back he had received a call from the wife of Mr.Subhash Gupta informing him that Dr.Sunil Kaul would be reaching his office in one hour. It is stated that as Fir was registered on the basis of statement of Mr.Nitin Gupta s/o.Mr.Subhash Gupta wherein he had stated that his father along with Dr.Sunil Kaul had not reached home and they might have been kidnapped, there was no occasion for Sho Okhla to inform the petitioner that Dr.Sunil Kaul would be reaching his office in one hour.

(7) The Assistant Commissioner of police has stated,in the affidavit that after the dead body of Dr.Kaul was found in the fields near Hodal, post-mortem was conducted at Palwal which revealed that Dr.Kaul had died due to head injuries. A small hole about one centimeter deep was found in his back which appeared to be a bullet hole but the bullet could not be found in the body despite several X-rays and then the Doctors opined that the bullet (if it was a bullet) was not the cause of death as none of the organs had been damaged by it. The police, therefore, wanted the second opinion from experts at Aiims to clear up doubts to which the family members of Dr.Kaul were extremely reluctant. Keeping in view the sentiments of the family of the deceased and their extreme reluctance to allow second post-mortem a via-media was found by requesting forensic experts from Aiims to take a look at the wound. The family allowed the body to be taken to Aiims for only half an hour and number of relatives accompanied it to the hospital. Dr.Bhardwaj examined the body and confirmed verbally that death was due to

head injuries but could not opine anything about the bullet wound. During the course, of arguments, the petitioner has also made grievance of the body being taken to Aaims for second opinion about the cause of death of Dr.Kaul. My attention has been drawn by Mr.Luthra to a report in June 12th edition of The Hindustan Times wherein it has been stated that the Delhi Police was trying to prove that Dr.Kaul had been shot and that body was taken to Aaims for that purpose.

(8) After having heard counsel for th6 parties, I feel that apprehension of the petitioner that the police is not investigating the case properly, appears to be mis-conceived. To remove any doubts as to why there was a hole at the back of the body of the deceased, I feel it was the part of the duty of the police to take the body to the forensic expert at Aaims and no objection could be taken to the same by the petitioner or by anybody else. It is not that the police at any time was trying to make it a case of murder on account of bullet injuries, however, as neither any bullet had been found in X-rays nor the cause of death had been given as bullet injuries by the Doctor who had conducted the post-mortem, it was but natural that the police had to clear all doubts by having a second opinion about the hole which was noticed at the back of the deceased. I cannot give any credence to the newspaper reports at this stage as the same appear to be based upon surmises. Police is expected to investigate the matter from all angles and no motive can be imputed to the police for the body having been sent for second opinion to AIIMS.

(9) The petitioner herself had given in writing at the earliest opportunity on 7th June, 1996 that the police had carefully listened to what the petitioner had to say and that police had been making all efforts to trace Dr.Kaul. Fir having already been registered on the statement of Mr.Nitin Gupta, the police started investigation to trace the missing persons which at that time included not only Dr.Kaul, his two associates Ms.Deepa Gupta and Ms.Sujata Saha but also Mr.Subhash Gupta. Later on after the body had been recovered, the police on the basis of the same Fir started conducting further investigations and have arrested quite a few persons for their involvement in the murder of Dr.Kaul and two girls, namely, Ms.Sujata and Ms.Deepa. The police had kept the telephones of Mr.Subhash Gupta, his brother, Ms.Sujata Saha and Ms.Deepa Gupta under observation for tracing any ransom

call and on receipt of information that Mr.Subhash Gupta was at Bombay, the police party headed by Inspector Balwant Singh immediately flew to Bombay and located Mr.Subhash Gupta who was made to participate in investigation. The identity of the associates of Mr.Subhash Gupta has also been established on account of sustained interrogation and then known hideouts were raided by the police. Police parties had been dispatched to various places in the country including Bombay, Ahmedabad, Pune, Dehradun, Meerut, Agra, Baroda and Muzaffar Nagar.

(10) In my opinion, the standard of investigation has to be judged not from the view point of the petitioner but from the point as to whether the investigation is being carried out impartially and without any bias. It has not been pointed out to me as to how the investigation carried out by the police was partisan or how it was not proper. The only thing which is being insisted upon by the petitioner's counsel is that no Fir has been registered till date on the basis of the statement of the petitioner. Fir is only a piece of information which is given to the police on the basis of which the police starts investigation. This information can be received by the police from any person including the accused and it is not necessary that once the Fir has already been registered on the basis of the information received from any source that another Fir must be registered on the basis of the statement of the petitioner. In the first instance in the morning of 7th June, 1996 when the petitioner had gone to the Police. Station, she had gone there only to report about her husband being missing and the information about her husband being missing had already been given to the police by Mr.Nitin Gupta. In my opinion, therefore, no useful purpose would have been served by registering another Fir on the basis of the statement of the petitioner when an Fir had already been registered on the basis of the statement of Mr.Nitin Gupta and the police had started investigating the matter.

(11) It is only in very rare cases where the party is able to satisfy the Court that investigation carried out by the police is partisan or has not been carried out in a proper manner or any material witness or document has not been investigated upon by the investigating agency that a case may be made out for transfer of investigation from one agency to the other. There is a well defined hierarchical and

administrative set up of the police in Delhi and to direct any other agency to investigate the matter merely because the petitioner wants investigation to be undertaken in a particular manner, may create an impression that everything is not well with the Delhi Police and it is also likely to cast a stigma on the regular police hierarchy. Investigation is a matter for the police under the scheme-of the Code and the Courts will not interfere in the police investigation subject of course to the right of the Court to intervene in an appropriate case when either the police is not investigating the matter properly or it is being investigated in a partisan manner.

(12) In this case, nothing has been shown to me that the investigation being carried on by the police is not satisfactory or is partisan or is inadequate which could persuade me to direct the transfer of investigation from the agency which is carrying the same at the moment to any other agency. In my view, there are no merits in the petition and the same is, accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com