

Surendra Vyas Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-24-1992

Reported in : 1992WLN(UC)155

Judge : M.B. Sharma, J.

Appeal No. : S.B. Civil Writ Petition No. 4722 of 1991

Appellant : Surendra Vyas

Respondent : The State of Rajasthan and ors.

Judgement :

M.B. Sharma, J.

1. The petitioner Shri Surendra Vyas is a practicing layer as well as Member of the Rajasthan Legislative Assembly elected from Malpura-District Tonk constituency and also resides in Jaipur city. He has filed present writ petition allegedly in public interest on the ground that one Sant Bahadur S/o Ram Bhadur was domestic servant with Shri Mal Mohan Agarwal, respondent No. 2 who has his house at D-179, Kapoor Bhawan, Kanti Chandra Road, Jaipur and said Agrawal has caused his death. The said Shri Agrawal made efforts all through to see that he is not apprehended for the death of Sant Bahadur and the investigation is not fair and proper. There is interference by the politicians at highest level including Shil Kali Charan Sarraf, M.L.A. from Johari Bazar Constituency as well as by Lalit Kishore

Chaturvedi Health Minister.

2. Before I proceed to deal with the merits of the writ petition, it will be proper to deal with the preliminary objection raised on behalf of the respondents in respect of locus standi of the present writ petition in public interest. If cognizable offence takes place any body can inform the police which is bound to investigate it in accordance with law and to take the investigation to the logical end. The relation of a man of the status of domestic servant have no means to agitate the case in a court of law or to prosecute it with the investigating agency. Therefore, any representative of public or any private individual can bring to the notice of the court and if the court is satisfied that the investigation of the case needs to be transferred for fair investigation, so that the confidence of the public remains in the investigating agency, the court has powers to order transfer of a case from the local police to the C.B.I. Therefore, notwithstanding the fact that the present writ petition has been filed by Shri Surendra Vyas, a Advocate and a Member of Legislative Assembly, who as said earlier is also resident of Jaipur city where death of Sant Bahadur took place, this Court can entertain the same.

3. Before I proceed in the matter, I will like to observe that it is really surprising that only so called FIR No. 16/1990 under Section 174 IPC has been registered not as an FIR under Section 154 Cr.P.C., but only an entry in the general diary of the police station Bani Park, at No. 1369 at 6.30 a.m. A bare reading of Section 174 Cr.P.C. will show that the limited purpose of Inquest report is to know the apparent cause of death. As shall be presently shown there are very suspicious circumstances available on record and therefore, instead of continuing the investigation for the purpose as stated above under Section 174 Cr.P.C. a FIR must have been registered and thereafter the investigation must have been taken in hand in accordance with law, but still no FIR as required under Section 154 Cr.P.C. has yet been registered and as said earlier the investigation of the alleged sudden death under Section 174 Cr.P.C. is continuing. This can hardly be an object of Section 174 Cr.P.C. Be that as it may, I am of the opinion that it is a case where on the material available on record. A FIR should have been registered and investigation should have been started. This itself in my opinion is a ground to direct not only for registration of a case under Section 154 Cr.P.C. but also to

order transfer of investigation from police station Bani Park, Jaipur to CBI for the further reasons to be recorded here-in-after.

4. Sant Bahadur a boy aged 21 years was a domestic servant with the respondent No. 2 Shri Man Mohan Agrawal. It is not dispute that in the morning of 21.12.1990 in the garage of House No. D-179, Kapoor Bhawan, Kanti Chandra Road, Jaipur of which Shri Man Mohan Kapoor was the occupant and Sant Bahadur was his domestic servant, Sant Bahadur was found hanging. Shri Man Mohan Agrawal went to the police station Bani Park, Jaipur and informed the persons available in the police station at 6,30 a.m. that at about 6.00 a.m. Sant Bahadur had committed suicide by hanging. As said earlier his report was entered in the general diary at No. 1369 and a proceeding under Section 174 Cr.P.C. were started and investigation is still continuing without registration of a case.

5. After the aforesaid entry in the general diary the police reached the spot, took the dead-body of Sant Bahadur into custody, inquest report was prepared which revealed various symptome. There were double ligature marks present around the neck. There was blood from nose and care, the blood was sticking at the check, tongue was protuding out, neck was elongated. Post mortem staining was presnt on back and dependant parts. Petechial hamorrhage was present around eye lise, no evidence of Saliva around mouth, chin or chest was found, left cornv of hyoid bone showed fracture with ante-mortem haomotome. There were two abrasions on left Tibial skin and there was bruise on upper part of left shoulder. The dead-body was taken to the S.M.S. Hospital where some notes were prepared by Dr. Shiv Ratan Kochar and Dr. L.C. Gupta. But they did not then prepare any post mortem report. Shri Man Mohan Agrawal contected Shri Kali Charan (sic) Shri Vyas, the petitioner, he has his business premises and through him approached also the Health Minister, who is said to have visited the S.M.S. Hospital and it is alleged that the doctors wanted to contact Shri Agrawal for the purpose of extracting some money for preparation of the post-mortem report showing it a case of suicide, were not allowed to prepare the postmortem report, a Medical Board was constituted by the Health Minister and the Medical Board in its report opined on the basis of rough postmortem notes prepared by the above named two doctors as under:

On the rough post mortem notes prepared by Dr. S.R. Kochar (Appendice No. 15), Four photographs taken by Dr. S.R. Kochar during the post mortem examination (Appendice No. 25/1 to 25/41 and panchname prepared by the police (Annendice No. 19) and studying the important pigns such as bleeding from Nostrila, bleeding from ears, two ligature marks, one being continuous around the neck at lower level, the second mark above the first mark which is known non-continuous and high up in the neck, fracture of the hyoid bone and absence of typical post-mortem statining as seen in cases of hanging and placing reliance on the Modi's Medical Jurisprudence and Toxicology, Twenty first Edition Editted by C.A. Franklin page No. 199 & 202, death of the deceased Sant Bahadur S/o Ram Bahadur age 21 years, Male due to Stangulation by Ligature cannot be excluded.

6. The said report was submitted on 28th December, 1990. It will be seen from the opinion of the Medical Board that the death of Sant Bahadur has taken place in highly suspicious circumstances and it could not be excluded that he had died as a result of strangulation. It may also be stated here that when the police had reached the garage immediately on receiving the information which as said earlier was furnished by none also but by Shri Man Mohan Agrawal, it was noticed that some drops of blood were present on the thumb of the left hand of the deceased. There was fresh semen sticking on the under wear which the deceased was wearing. There was also blood in the shirt and Payjama which the deceased was wearing. The above circumstances and opinion as said earlier may go to show that there possibility that death was as a result of homicide cannot be excluded. Therefore, it is really surprising that no FIR has been registered though the occurance took place as for back as on 21st December, 1990.

7. The case of the petitioner is that the FIR has not been registered becuse of Shri Man Mohan Agrawal and of Shri Kali Charan Sarraf as well as of the Health Minister and according to the petitioner it is the Health Minister was had actually visite the S.M.S. Hospital and interferred in the investigation of the case, and did not allow the two doctores to prepare the post mortem report on the basis of notes which were prepared by them and on the basis of which they were to prepare the post-mortem report in the next morning.

8. I am of the opinion that merely because the Health Minister had reached the S.M.S. Hospital on receiving some complaint and the record of two doctors who were in the medical jurist branch was seized, does not go to show that he prima facie interfered in the investigation of the case. He appointed a Medical Board consisting of as many as four doctors who went through the rough notes of examination of the dead-body prepared by the two doctors and then prepared their report. Had he been interested as alleged by the petitioner, in my opinion it was not necessary that the Medical Board by which it is said that the possibility of death by strangulation cannot be excluded might not have been in a position or might not have given the report which it has given. It would have been better and proper, no doubt that the doctors who prepared the rough notes of post mortem, on the basis of rough notes should have been allowed to prepare the report. Thereafter, the Medical Board might have been appointed who after going through the rough notes and post-mortem report prepared as aforesaid could have given their separate report. So far as dead-body is concerned, it was cremated in the evening of 21st December, 1990 and the dead-body could not be available to the Medical Board for further examination. But If a constituent or the resident of city approaches an M.L.A. and makes a complaint that medical jurist wants to extract money from him in order to give a report and if the MLA does something and brings the complaint to the notice of the concerned Minister who appoints a Medical Board, no objection can be and should be taken. At any rate, as I presently intend to transfer the investigation to CBI, it will be for the investigating officer to go through all the matters as the powers of the investigating officer cannot be fettered by giving any direction to him as to in what direction the investigation should proceed, it must proceed in accordance with law.

9. I have already said earlier that only one ground that proceedings under Section 174 Cr.P.C. are still continuing and no case has been registered under Section 154 Cr.P.C. in the police station Bani Park, Jaipur goes to show that the case is not going in the right directions may be for any reasons whatsoever, the case deserves to be transferred to the CBI. It may also be stated that it appears to me that relations of deceased Sant Bahadur had also addressed various letters to Director General of Police and others bringing to their knowledge that it is a case of homicidal death, it should be registered and investigation should start, but still

no case was registered. I am of the opinion that the report which was registered in general diary on 21st December, 1990 in the police station Bani Park, Jaipur can be taken as FIR and the matter can be investigated further.

10. I, therefore, direct the S.H.O. Police Station Bani Park, Jaipur to treat the RAPAT No. 1369 at 6.30 a.m. dated 21st December, 1990 as FIR along with Annexure-1 dated 27th December, 1990 and send the case file to the Director CBI, Jaipur to whom I transfer the case and direct the Director, CBI to entrust the case for investigation to a senior officer not below the rank of Superintendent of Police who shall thereafter proceed with the Investigation in the case in accordance with law. The petitioner can secure a certified copy of this from the registry and hand over it to the S.H.O. Police Station Bani Park, Jaipur for compliance.

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