

Si. B.D. Sharma Vs. Jagmohan

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Court : Delhi

Decided On : May-03-2012

Judge : The Honourable Ms. Justice Pratibha Rani

Appeal No. : CRL. REV. P. 725 OF 2006

Appellant : Si. B.D. Sharma

Respondent : Jagmohan

Judgement :

PRATIBHA RANI, J.

(ORAL)

1. This criminal revision petition has been preferred by SI B.D.Sharma, impugning the directions given by learned ASJ to SHO P.S. New Ashok Nagar vide order dated 16th September, 2006, to register a case against the petitioner and with further directions to get the investigation conducted by an Officer not below the rank of Assistant Commissioner of Police.

2. Succinctly stated the facts leading to registration of FIR No.161/2005 under Section 302 IPC P.S. New Ashok Nagar, are that one Nazira @ Munni, after divorce from her first husband married the accused Jagmohan and started living with him. She also had a son, namely, Gulab from her previous husband. On 18th August, 2004, when she returned from her work, she found her husband

Jagmohan present at home but Gulab was lying unconscious. She took her son to LBS Hospital, Khichiripur, Delhi, where he was declared brought dead.

3. The post mortem conducted on the body of Gulab by Dr.Vinay Kumar Singh revealed that the child expired on account of haemorrhagic shock due to blunt force impact to his abdomen. The reason for giving the direction to SHO to register a FIR against SI B.D.Sharma is due to an inaction on the part of SI B.D.Sharma, despite the post mortem report indicating the cause of death to be unnatural.

4. A perusal of the impugned judgment reveals that despite the occurrence taking place on 18th August, 2004, there was no complaint by the mother of the child. However, after a long gap on 12th April, 2005, she reported the matter to the police, pointing out the accusing finger towards her husband Jagmohan for the death of her son Gulab. The investigation was carried out and charge sheet was filed.

5. After examining some material witnesses, the learned ASJ acquitted the accused for the reason that the heel imprint noticed on the body of Gulab was of smaller size. Even in the Court, Dr.Vinay Kumar Singh, who conducted the post mortem, was asked to take the measurement of heel imprint of accused Jagmohan and compare it with the imprint found on the body of Gulab. On getting the opinion of Dr.Vinay Kumar Singh that heel imprint on the dead body was not that of the accused, assault by the accused on Gulab was ruled out. While observing that Munni, mother of the child victim had also been murdered, a vacuum had come in the evidence, learned ASJ acquitted the accused but at the same time in para 11 of the judgment issued the following direction:

“B.D. Sharma SI entered the witness box to project as to how callous he was, when he handled the case. He admits that autopsy on dead body of Gulab was got conducted. According to him, since parents of Gulab did not lodge any complaint, no legal action was initiated. As detailed above, death of Gulab occurred on account of homicidal or accidental act. In such situation, it was bounded duty of B.D.Sharma SI to initiate a legal action, for a cognizable offence was committed. B.D.Sharma SI opted not to obey commands of law. He slept over the matter and went to slumbers. Valuable evidence was lost on account of omission on the part of

this officer. His act and conduct are not in conformity with responsibility, which lies on his shoulders. Considering all these facts, SHO PS New Ashok Nagar, Delhi is commanded to register a case against B.D.Sharma SI, investigation of which would be taken up by an officer not below the rank of Assistant Commissioner of Police, under intimation to this Court.”

6. The grievance of the petitioner is that no opportunity of being heard was given to him before condemning him for inaction. Learned ASJ fell in grave error in law by not complying the provisions contained in Chapter XXVI of Code of Criminal Procedure, 1973 which defines the offences affecting the administration of justice. The learned ASJ has no power to direct the police to register FIR against police officials without complying the provisions of Section 344(1)(2)(4) of Cr.P.C. It is submitted that SI B.D.Sharma was not the Investigating Officer of the case No.161/2005 under Section 302 IPC, P.S. New Ashok Nagar. He only conducted the inquest proceedings.

7. I have heard learned counsel for the petitioner and learned APP for the State.

Learned counsel for the petitioner has referred to the judgment of this Court in Crl.Rev.P.No.12/2009, titled Ashok Kumar Vs. CBI, decided on 16th September, 2011. In the above said judgment, Crl.Rev.P.No.10/2008 titled Manmohan Sharma Vs. State was referred, wherein it was observed as under:

“Learned counsel for the petitioner further emphasized that in the present case officers have not even been given an opportunity to explain their stand before passing strictures and the Supreme Court in State of West Bengal and Ors. Vs. Babu Chakraborty 2004 CrI.L.J. 4858 had observed the strictures passed against the police officers are liable to be expunged including lodging of a complaint against them even where in the discharge of the official duties they faulted certain provisions until and unless an opportunity was afforded to them to explain their conduct.

The result of the aforesaid is that the direction passed in paragraph 40 of the impugned judgment in the present case fall within the mischief referred to in the aforesaid judgments whereby the learned Additional Sessions Judge as

straightway issued directions for registration of the FIR against the police officers and proceedings against them without following the mandatory provision of Section 340 Cr.P.C. The direction is, thus, liable to be set aside. I, however, deem it appropriate that in view of the observations made foresaid it would be open to the trial court to consider the matter afresh and take a considered decision whether the matter needs to be referred to the CMM/MM for inquiry under Section 340 Cr.P.C., as also on the aspect whether before issuance of any directions an opportunity ought to be given to the petitioners to explain their stand which may necessitate such an action. The petitions are, accordingly, allowed.”

It has been contended that the circumstances in which directions have been issued to register FIR are no different, as directions have been issued to register the FIR without giving an opportunity of being heard to the petitioner.

8. A perusal of the judgment dated 16th September, 2006, makes it ample clear that the directions to register FIR against SI B.D.Sharma has been given without affording him an opportunity of being heard despite the fact that he was not the Investigating Officer in FIR No.161/2005 P.S. New Ashok Nagar registered against Jagmohan. It is relevant to mention here that statement of Dr.Vinay Kumar Singh, who conducted the post mortem, referred to in para 8 of the judgment, opined that “cause of death was haemorrhagic shock on account of blunt force impact, caused by right foot of some third person by jumping over the victim or on account of fall from a height. Facts testified by Dr.Vinay Kumar Singh make it clear that death of Gulab was either homicidal or accidental.”

9. The learned ASJ has observed that the facts testified by Dr.Vinay Kumar Singh make the case of death of Gulab as either homicidal or accidental. It is clear from the facts of the case that mother of the deceased did not make any complaint, expressing suspicion on her husband behind the unnatural death of her son and when the trial was going on she was no more there to depose as she had already been murdered.

10. Thus the role of SI B.D.Sharma was limited to conduct inquest proceedings at the time of post mortem. If the learned ASJ was of the view that SI B.D.Sharma opted not to obey the command of law, at least, an opportunity of being heard was

required to be given before passing strictures and giving the directions to register a FIR against him.

11. Accordingly the directions in the impugned judgment dated 16th September, 2006, contained in para 11 are set aside. A copy of the order be sent to the learned trial court with the directions that in case it chooses to proceed against the petitioner, an opportunity of being heard would be afforded to the petitioner.

12. With the above observations, revision petition is disposed of.

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