

M.A.Khan Vs. State and ors.

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Court : Delhi

Decided On : Apr-18-2013

Judge : S. P. Garg

Appellant : M.A.Khan

Respondent : State and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

6. h MARCH, 2013 DECIDED ON :

18. h APRIL, 2013 + W.P.(Crl.) 2131/2005 & CRL.M.A.4000/2011 M.A.KHAN
Through :Petitioner Mr.Bahar U. Barqi, Advocate. versus STATE & ORS.
Through : .Respondents Mr.Saleem Ahmed, ASC with Ms.Charu Dalal, Advocate.
CORAM: HON'BLE MR. JUSTICE S.P.GARG S.P.GARG, J.

1. Petitioner- M.A.Khan has preferred the present Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) seeking directions to Central Bureau of Investigation (for short CBI) to conduct thorough inquiry and investigation for the atrocities committed upon his son by police officials of Police Station Bhajanpura and to quash the inquiry conducted by Mr.D.C.Srivastava, Additional Deputy Commissioner of Police (North-East), Delhi conveyed by letter dated 05.10.2005.

2. I have heard the learned counsel for the parties and have examined the record. Counsel for the petitioner urged that on 14.02.2005, Smt.Qamar Abidi, R/o C-5/56, First floor, Yamuna Vihar, Delhi expired. Danish, her son, came to know about her death at 11.30 P.M. when he opened the door of the house. The investigation was taken over by the police of Police Station Bhajanpura. On 16.02.2005, the police took him and his son Rajab Ali aged 21 years to the Police Station at about 10.30 P.M. They asked several questions from him for which he gave satisfactory reply. However, Rajab Ali was taken to 1st floor and locked up in a room. 7-8 police officials including HC Rishipal Singh, SI Virender Singh Punia were present there. During interrogation, pressure was put upon Rajab Ali to name Sh.Jammi, deceaseds step son and Asad, another tenant, to implicate them in the case. When Rajab Ali refused to do so, he was given merciless beatings. He was tortured and assaulted throughout the night. At about 05.00 A.M., on 17.02.2005, they were released after getting their signatures on blank papers. Rajab Ali sustained injuries and multiple fractures. He was taken to LNJP Hospital where the doctors refused to lodge MLC. Thereafter, he took Rajab Ali to GTB Hospital where MLC No.369/2005 was prepared and he was given treatment. The petitioner lodged complaint dated 17.02.2005 but no legal action was taken. He and his wife were forcibly brought at the Police Station on the pretext of interrogation and threatened not to lodge any complaint. They were released at 12.30 A.M. after obtaining signatures on blank papers. On 22.02.2005, Rajab Alis conditions deteriorated and he was referred to Institute of Human Behaviour & Allied Sciences (for short IHBAS). Ravi Sharma, ACP conducted some enquiry and gave clean chit to the police officials. Counsel urged that the complaint dated 17.02.2005 disclosed commission of cognizable offence but for ulterior reasons, no First Information Report was lodged by the police. The petitioners son is still under treatment at IHBAS due to mental problem caused by beatings and torture in custody. Fair investigation was not carried out by the police to protect its officials. Counsel referred order dated 12.01.2006 by which Rajab Ali was granted bail. The police did not comply the directions given in the order. Reliance was placed upon the authorities reported in (2006) 2 SCC 677.AIR 200.SC 98.and 2011 (2) Crimes 142 (SC).

3. Counsel for the respondents urged that the petitioner or his son were not beaten during interrogation. They are suspects for Qamars murder and have not deliberately joined the investigation. No serious injury was found on the body of petitioners son when he was medically examined on 17.02.2005 at GTB Hospital. Report from IHBAS dated 21.03.2005 also reveals that petitioners son is normal and there was no sign of any bone injury.

4. Status report reveals that both the petitioner and Rajab Ali are suspects and have been arrested on 16.04.2006. Vide order dated 12.01.2006, Rajab Ali was granted anticipatory bail with the directions to join the investigation on 17.01.2006 at 04.00 P.M. at PS Bhajanpura and on subsequent dates as may be required. Vide order dated 28.09.2007, this Court disposed of the bail application No.71/2006 with the directions that Rajab Ali would not be arrested in FIR No.59/2005 under Section 302 IPC, PS Bhajanpura. The Investigating Officer would visit his residence after three months to verify his mental health status. Medical papers pertaining to the continued treatment of the petitioners son would be supplied for verification to the Investigating Officer. It would be open to the State to file an appropriate application should mental health of the petitioners son improve. Status report further reveals that the application has been moved before Metropolitan Magistrate, Karkardooma Courts, Delhi for constitution of Medical Board to know the present status of Mohd. Rajab Ali.

5. It is disputed that the petitioner was given beatings or/ and tortured during interrogation. The petitioner or his son did not file any complaint case or civil suit against the respondents. The petitioner earlier filed Writ Petition No.275/2005 in this Court seeking directions to register FIR against SI Virender Singh Punia, HC Richpal Singh and six other police officials. Prayer was made that the matter should be investigated by CBI. Notices were issued to the respondents. DCP Vigilance (PHQ) was directed to conduct enquiry and submit the report vide order dated 01.03.2005. On 17.03.2005, this Court asked Medical Superintendent, IHBAS to report about the mental health of petitioners son Rajab Ali. On 23.03.2005 after getting report from IHBAS, this Court directed to constitute a Medical Board of doctors of AIIMS. DCP Vigilance (PHQ) filed vigilance enquiry report dated 04.05.2005 reporting that the allegations could not be substantiated

and the petitioner was avoiding to join the investigation in case FIR No.59/2005. The Medical Board examined the petitioners son. Vide order dated 09.08.2005, this Court dismissed the writ petition with the directions to DCP (North-East) to look into the matter and take necessary action in accordance with law. DCP (North-East) conducted enquiry in which the allegations about beatings and torture could not be substantiated. The petitioner was given due intimation.

6. Prima facie, there is nothing on record to show that Rajab Ali was giving severe beatings or was tortured during interrogation. There is dispute as to what caused the mental trauma. When the petitioners son was medically examined at GTB Hospital on 17.02.2005, he was conscious and oriented. Only multiple abrasions were noticed on his body. No fracture was detected on the body. No X-ray report has been placed on record. He was not admitted in the Hospital. When Rajab Ali was medically examined by board of doctors at AIIMS from 14.05.2005 to 24.05.2005 no evidence of fracture or organic brain disease was found.

7. The petitioner had earlier filed petition W.P.(Crl.) No.275/2005 seeking similar relief claimed in present petition which was declined. No material change of circumstances emerged thereafter to entertain the present writ petition on similar grounds. Rather enquiries conducted by two different agencies did not substantiate the petitioners allegations.

8. Vide order dated 30.01.2009, judgment of Supreme Court in Aleque Padamsee and ors. Vs. Union of India (UOI) and ors. 2007 Cri.L.J.3729, was brought to the notice of the counsel for the petitioner. It held : Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code.

9. In *Sakiri Vasu vs. State of U.P. and Ors.*, AIR 2000 SC 907, the petitioner had prayed that the matter be ordered to be investigated by CBI. It held :

10. It has been held by this Court in *CBI and Anr. v. Rajesh Gandhi and Anr.* :

1997. 11 L.J. 63 that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

10. The petitioner was not justified in approaching High Court time and again seeking extraordinary jurisdiction for direction to investigate the case through independent investigating agency like CBI. The principles enunciated in the above referred decisions make it clear that if any person is aggrieved by the inaction on part of the police or not getting proper response, there are adequate remedies provided under the Criminal Procedure Code. The allegations are vague and unspecific and have not been substantiated with cogent materials. The petition lacks merits and is dismissed.

11. Pending application also stands disposed of infructuous. (S.P.GARG) JUDGE
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