

HIGH COURT OF DELHI AT NEW DELHI

W.P.(CrI.) No.813/2008

Date of Decision: September 04,2008

PHOOLWATI

...Appellant

Through: Mr.R.D. Rana, Adv.

Versus

STATE & Ors.

... Respondents

Though: Mr. Akshay Bipin, Adv.

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT

S.L. BHAYANA, J.

This writ petition is filed by the petitioner (cousin sister of the deceased) seeking order/direction for registration of FIR and also for awarding compensation to the petitioner.

2. The facts, giving rise to this petition, are that a missing report was lodged, vide DD No.48, on 26.08.07 about

one Sh. Tek Chand @ Tikku, S/o- Rohtash, who was found dead on 28.08.07 at about 6:30 p.m. from Paschim Vihar.

3. Learned counsel for the petitioner submitted that it is a case of custodial death. According to him, one Sh. Kamal Kishore, respondent No.12 herein, owner of Rama Hardware, where deceased went to purchase some hardware material, gave beating to him along with Gokul Chand, respondent No.11 herein, owner and proprietor of Rama Hardware. Regarding this incident, two phone calls were made, one by Sh. Sanjeev and other by Kamal Kishore. On arrival at the place of incident, ASI, B.S. Solanki apprehended Tek Chand and handed him over to HC, Ghanshyam.

4. Learned counsel for the petitioner further argued that even on repeated inquiry police officials concealed the real fact from them till 19.12.08.

5. He further vehemently argued that Tek Chand was murdered after being taken to PP-Madipur and respondent No.7 to respondent No.14 all in connivance had murdered him as he was firstly beaten up at the spot and later on in PP-Madipur. It is a clear case of custodial death.

6. Learned counsel for the State, on the other hand, submitted that it is a false and baseless case against police officials and others in order to grab compensation. It is further submitted that on 26.08.07 missing report was lodged about Tek Chand and thereupon Superintendent of Central Jail was also intimated with detailed description and photograph of Tek Chand to verify their record whether any person of such identity was arrested after 26.08.07 and on 30.08.07 an FIR was registered. On 18.02.08 relatives were called upon to identify one photograph of one unidentified dead body. Initially they refused to identify the deceased from the photograph and finally on 26.03.08, identified the same in the presence of Smt.Nirmala Sharma, President of Mahila Jagriti Samiti.

7. As per status report, on enquiry it was revealed that ASI Raj Singh made an enquiry under Section 174 Cr.P.C. in connection with the matter. He got the body of the deceased preserved for 72 Hrs. at Sanjay Gandhi Memorial Hospital. He made all efforts to get the body of the deceased identified. Subsequently, on expiry of mandatory period of 72 Hrs. on 01.09.07, made request to in-charge of Department of Forensic Medicine, Sanjay Gandhi Memorial Hospital for conducting

postmortem. Relevant note of medical report conducted by Dr. V.K. Jha reads as under:

“No mark of external injury seen, no foul play suspected, seem to have died of natural illness. P.M. may be waived off.”

8. In view of the above report dated 01.09.07, the dead body was cremated as “unclaimed dead body”. There is nothing in the medical report to show that cause of death was unnatural or was on account of any injury or otherwise. It would not be desirable to doubt the authenticity of medical report. No material or basis could be placed on record to doubt it.

9. On 26.08.07, the deceased was apprehended by the police on suspicion of theft but was released on the same day. Tek Chand was also seen in the area of PS- Paschim Vihar on 27.08.07 and 28.08.07. Statements of those persons who had seen him are on record. There was reasonable cause for police to apprehend the deceased from the shop. Police is under a legal duty and they have a legitimate right to arrest a person who is suspected to have committed theft and interrogate him. In all fair circumstances, missing report was lodged on 26.08.07. Later on, a case vide FIR No.608/07, dated 31.08.07, under Section 365 IPC was registered.

10. Considering all aspects, it is clear that it is not a case of custodial death by torture. On investigation, Tek Chand was found to be a vagabond kind of person completely discarded by his wife and children. Wife and children of the deceased did not come forward for any kind of claim. I do not consider that it was a case where there was a gross violation of fundamental rights of the deceased or there was a custodial torture resulting into his death so that this Court should exercise its discretion in writ jurisdiction for granting compensation.

11. Apex Court warned against the non-genuine claims in Shakila Abdul Gofar Khan Vs. Vasant Raghunath Dhole, **AIR 2003 SC 4567** and Munshi Singh Gautam Vs. State of M.P., **AIR 2005 SC 402**. In Munshi Singh Gautam (supra) the Court held as under:

“there seems to be a disturbing trend of increase in cases where false accusation of custodial torture are made trying to take advantage of serious concern shown and the stern attitude reflected by the Courts while dealing with custodial violence. It needs to be carefully examined whether the allegations of custodial violence are genuine or are sham attempts to gain undeserved benefit masquerading as victims of custodial violence.”

12. There is no clear or incontrovertible material about the custodial death. Therefore, there is no scope for accepting the prayer in the petition.

13. The petition being devoid of any merit is hereby dismissed.

S.L. BHAYANA, J.

September 04, 2008