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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 29th March, 2012*

+ CRL.M.C. 1650/2010

GYANENDER RANA Petitioner
Through : Mr. Mohit Mathur, Mr. Rajbir Singh
Guha and Mr. Ashok Kumar, Advs.

versus

STATE GOVT. OF NCT OF DELHI Respondent
Through : Ms.Rajdipa Behura, APP for State

AND

+ CRL.M.C. 1651/2010

INSPECTOR ABHINENDER JAIN Petitioner
Through : Mr.Anurag Jain, Adv.

versus

STATE Respondent
Through : Ms.Rajdipa Behura, APP for State

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. At the outset, it is observed that since both the petitions arise out of the same judgment in case FIR no. 451/2008 registered at PS-Dabri, therefore disposed of by way of common judgment.
2. The instant petitions are being filed to challenge the impugned judgment dated 29.01.2010, passed by Id. Addl. Sessions Judge-02 District

Courts, Dwarka, New Delhi decided in case FIR no. 451/2008, registered at PS-Dabri for the offences punishable under Section 302 read with Section 34 Indian Penal Code, 1860, only to the extent that petitioners are aggrieved with the findings of Id. Trial Judge against them. While deciding the above case, the Commissioner of Police was directed to initiate appropriate, urgent and immediate action against the petitioners for the lapses / manipulations and concoction made during the investigation.

3. Ld. Counsels appearing on behalf of the petitioners submit that vide DD entry no. 10A, recorded in Police Station-Dabri on 08.08.2008 to the effect that at Palam Road, Dabri Village, Telephone Exchange, behind Baarat Ghar in Vaishali Park, a dead body was lying. The said DD Entry was entrusted to Gyanander Rana, one of the petitioners. Accordingly, the petitioner reached at the spot and found the dead body lying there.

4. He made endorsement on the said DD entry describing his observations. Thereafter, he informed the then SHO, Inspector Abhinander Jain / petitioner who also reached at the spot.

5. The crime team was called and photographs of the spot were taken. No eye witness was available. The case was registered for the offences mentioned above and further investigation was handed over to Inspector Abhinander Jain / petitioner. Through Special Messenger, the information was transmitted to concerned Senior Officers accordingly.

6. After registration of the case, further investigation followed, which culminated into a final report under Section 173 Cr.P.C. Accordingly, Challan was filed before the Court of Ilqa Magistrate.

7. Thereafter, charges were framed against the accused persons for the offences punishable under Section 302 Indian Penal Code, 1860 read with

Section 34 Indian Penal Code, 1860, to which they pleaded not guilty and claimed trial.

8. The prosecution in order to substantiate their claim and contention examined as many as 18 witnesses.

9. Ld. Trial Judge while deciding the case mentioned above, recorded as under:

“PW1, Shahid Solanki was cited and examined as the material witness, who according to the prosecution had witnessed the occurrence. This witness did not support the case of the prosecution at all, in as much as, he has turned hostile. He was cross-examined by the APP for State at length but nothing fruitful came out in his cross-examination, which should help the prosecution.”

10. Ld. Counsel for the petitioners submits that if the aforesaid material did not support the case of the prosecution, in that case, the police officers cannot be held liable for the same.

11. Ld. Trial Judge has further recorded as under:

“PW-2, Bhagwat Singh is a formal witness, who identified the body of the deceased vide, statement Ex.PW2/A. He received the dead body of the deceased vide, receipt Ex.PW2/B. It is the case of the prosecution itself that this witness was available at the spot even before registration of the case, at about 7 a.m. It is not understood as to how his mention does not find any place in the FIR, or as to why he, being the father of the deceased, was not associated with the investigation of this case from that movement onwards.”

12. Ld. Counsel for the petitioner further submits that when SI Gyanendra Rana reached at the spot, there was no eye witness available.

13. The aforesaid PW was not available, therefore not associated with the investigation, however, thereafter, made witness who identified the body of

the deceased vide statement Ex.PW2/A.

14. Ld. Trial Judge has further recorded as under:

“PW4, Anwar Rehan allegedly provided first aid to PW-1, who allegedly sustained stab wound injury at five places and then he advised the mother to take the patient to the hospital. In cross-examination, he has stated that he practiced in ‘Ayurveda Treatment’. He was holding no Diploma / Degree to show that he was a doctor. It is not believable that the injured, who had five stab injuries, at different places, would rush to such a quack.

15. Ld. Counsel for the petitioner further submits that if the said PW was available and he gave the first aid and further advised the mother of the deceased to take the patient to the hospital then, nothing wrong in giving the first aid without wasting the time and thereafter the injured was taken to the hospital.

16. Further recorded as under:-

“PW6, W/ASI Saroj Yadav took ruqqa given by SI Gyanender Rana, for registration of the case. The ruqqa is Ex.PW6/A. Her endorsement on the ruqqa is Ex.PW6/B. In cross-examination, she admitted that registration of the FIR, was firstly recorded, in brief, in DD Entry NO. 15-A, which is called ‘Kayami Muquadma’. She has admitted that before recording the FIR, she registered DD Entry No. 15-A. This witness was directed to produce DD Entry No. 15-A as she did not bring the same, on the day she was examined.”

17. Ld. Counsel further submits that if the aforesaid witnesses could not produce the DD Entry No. 15A on the day she was examined, then on direction, thereafter copies of the entries of DD no. 15 and 15A and 16A were produced Ex.PW6/C & C/D. Therefore, it proves that there was no manipulation in the record rather fairly conceded what has been recorded by

the police.

18. Ld. Trial Judge has further recorded as under:

“PW7, Ct. Umed Singh deposed that he collected sealed parcels FSL Form from MHC (M) of the Police Station Dabri. It emerges from the testimony of this witness that he took seven pullandas from MHC (M) but in the FSL report only six pullandas are mentioned. The prosecution has neither produced the road certificates nor the extract of the relevant entries in the Register no. 19. All this shows that there was hanky-panky having been adopted by the police, in this case.”

19. It is submitted that in fact, there were six pullandas and one sample seal was there, however written as 7 pullandas including the sample seal, however, sent to FSL only relevant six pullandas. Therefore, there is no manipulation.

20. Ld. Counsel has shown the same to this Court and it is found that the submission of Ld. Counsel is correct.

21. Ld. Trial judge has recorded as under:-

“PW10, Head Ct. Ram Dhan deposed that at the pointing out of the secret informer, accused Sikander was apprehended. He has stated that when accused Sikander was interrogated in detail, he confessed his guilt and made disclosure statement Ex.PW10/A, and thereafter, accused Sikandar was arrested vide, memo Ex.PW10/B and his personal search was carried out vide, memo Ex.PW10/C. This witness has, thus, revealed that the disclosure statement of accused Sikander was recorded first and then he was arrested. His version, therefore, vitiates the entire version of the prosecution, in as much as, it is revealed that the accused was arrested only after he made disclosure statement, which is a very strange thing to be observed in the settled and prescribed methods of investigation.”

22. He submits that first the accused Sikander disclosed the offence committed thereafter, he was arrested in the case, therefore, there was no lapses on the part of the police officials.

23. Ld. Trial Judge has further recorded as under:-

“There is no evidence on record that special report in this case to the ld. MM and other senior officers, as per law, was sent.”

24. Ld. Counsel submits that Constable Hira Lal (PW5) has stated as under:-

“On 28.08.2008, I supplied the copy of FIR of this case to the Senior Officers i.e. Ilaka Magistrate, DCPs and Joint CP etc. Therefore, I recorded the requisite entries i.e. DD NO.12A and 16A. Copy of which are Ex.PW5/A and PW5/B respectively.”

25. Therefore, the observation of the ld. Trial Judge is without going through the evidence on record.

26. I note, vide order dated 25.05.2010, the direction issued by the ld. Trial Judge in the impugned judgment were stayed by this Court.

27. Ld. APP appearing on behalf of the State has joined the hands with the petitioners and submits that after going through the Judgment, she finds no major lapses committed by the Police Officers and if the witness turned hostile and made some contradictory statements that it does not mean the Police Officers have deliberately, intentionally and with the ulterior motive have booked the accused persons in the case.

28. After perusing the judgment and submissions of ld. Counsels appearing for the parties, I am of the view that there was no material before

the trial judge while issuing the directions against the petitioners.

29. In view of the above, Crl. M.C. 1650/2010 and Crl. M.C. 1651/2010 are allowed.

30. Since the main petitions are allowed, Crl. M.A. 6426/2010 and Crl. 6429/2010 (for Stay) in Crl. M.C. 1650/2010 and Crl. M.C. 1651/2010 respectively become infructuous and disposed of as such.

31. No order as to costs.

SURESH KAIT, J

MARCH 29, 2012

Jg