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

Judgment delivered on: 26th August, 2015

+ CRL.M.C. 3165/2015

MANGTU RAM

..... Petitioner

Represented by: Mr. Navin Kumar Jaggi
and Mr.R.C.Nangia, Advs. with petitioner in
person.

Versus

GOVT OF NCT OF DELHI AND ANR

..... Respondents

Represented by: Mr. Amit Chadha, APP
for the State with SI Shiv Darshan, Crime
Branch in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

+ **CRL.M.C. 3165/2015**

1. Vide the present petition, petitioner seeks directions thereby setting aside the impugned order dated 02.05.2015 passed by Id. ASJ, New Delhi. Further seeks directions thereby lodging prosecution against the accused persons.

2. The facts in brief are that petitioner is a father of deceased namely Kamlesh, who married to one Jagdish on 23.05.1987. However, Raghbir Singh (Uncle of Jagdish), Smt. Gyawati (mother of Jagdish) and Malkhan Singh (cousin of Jagdish) were not satisfied with the dowry articles brought by deceased Kamlesh at the time of her marriage and used to harass, torture and taunt her for the same. In

the year 1989 daughter of the petitioner gave birth to a male child. Despite, they were not satisfied and had been harassing and torturing her.

3. In the year 1993, Kamlesh was given beatings by all the aforesaid family members, as a result of which, a miscarriage took place. Despite, she had been tolerating all the miseries with the hope and expectation that her fortune will change, but it did not happen.

4. Thereafter, on 28.02.1995, deceased Kamlesh kept fast on the occasion of Shivratri. In the night, she was given Kheer (sweet dish) to break her fast. After taking the said Kheer, her condition became precarious and she was brought to Safdarjung Hospital, New Delhi in the morning of 01.03.1995 wherein the Doctor disclosed that some poisonous substance was mixed in the Kheer. The daughter of the petitioner was under treatment in the aforesaid Hospital up to 03.03.1995. Thereafter, she was brought to Modi Hospital, Saket, New Delhi, where she remained under treatment till 16.04.1995. The entire expenses of the hospital amounting to the tune of Rs.60,000/- were borne by the petitioner. However, due to the long treatment, the daughter of the petitioner became physically and mentally handicapped and was not in a position to move without an Attendant. Since, April, 1995, the daughter of the petitioner had been living with her parents along with her son till 26.09.2003 when she was murdered.

5. Ld. Counsel appearing on behalf of the petitioner submits that the accused persons named above were not on visiting terms during

the period from April, 1995 till 26.09.2003 and the relations between the parties had deteriorated further. Consequently, a case FIR no. 1161/2000 for the offence punishable under Section 498A IPC was registered against the aforesaid accused persons and their family members at PS-Malviya Nagar, which is still pending.

6. Ld. Counsel further submits that accused Jagdish and his family members wanted to marry Jagdish somewhere else as deceased Kamlesh had become mentally and physically handicapped and was a liability upon them. Therefore, they made a plan to eliminate her.

7. On 29.09.2003, petitioner received an information from PS-Mandir Marg regarding the recovery of dead body of a lady. On receiving the same, petitioner and his family members went to the above-named Police Station on 30.09.2003 and identified the body as that of Kamlesh. Petitioner disclosed to the SHO, PS-Mandir Marg the fact and circumstances under which Kamlesh was murdered by her in-laws in collusion with Smt. Santosh. Accordingly, on 01.10.2003, a case FIR no. 264/2003 under Sections 302/201 IPC was registered at PS-Mandir Marg. Statement of Smt. Santosh was recorded by the IO on 02.10.2003 at her house and thereafter the statement of the petitioner was also recorded on the same day.

8. Being not satisfied with the investigation, petitioner made a complaint against the IO of the case to the higher authorities. Despite, Inpsr. Aakash Rawat of Crime Branch filed an untraced report before the Court of Id. ACMM, Patiala House Court, New Delhi. Thereafter, a notice was served upon the petitioner and he appeared before the Id.

ACMM along his Counsel and filed a Protest Petition by raising various grounds *inter alia* that, he is not satisfied with the way the investigation was proceeded and also submitted that the untraced report is found to be defective, dishonest, tainted, perfunctory and an irresponsible investigation was conducted with the aim and object to save the culprits from legal punishment. However, Id. ACMM after hearing the petitioner rejected the same vide order dated 22.03.2014. Being aggrieved, the petitioner filed a Review Petition no. 49/2014. Same was also dismissed vide order dated 02.05.2015. Hence, the present petition.

9. Ld. Counsel appearing on behalf of the petitioner submits that the Smt. Santosh, wife of Attar Singh had gone through a Polygraph test on 16.12.2014 & 20.12.2014 in CFSL, CBI, CGO Complex, New Delhi by Dr. Asha Srivastav, Senior Scientific Officer (LD). As per the expert opinion, the Polygraph examination and the analysis of Polygrams did not reveal deceptive responses.

10. On 12.01.2006, suspect Santosh had undergone Brain Finger Print Test from Forensic Psychology Division, DFS, Gandhi Nagar, Gujarat. During brain wave mapping test it has been concluded that the suspect Santosh has the awareness that a plan was made to kill Kamlesh. Ld. Counsel submits that findings of the brain wave mapping are sufficient to try for Narco Analysis of the suspect. Therefore, it was requested that necessary permission to conduct Narco Analysis of the suspect may be granted.

11. Ld. Counsel for the petitioner further submits that Id. ASJ has

failed to appreciate that the order dated 22.03.2014 is a judicial discretion of Id. ACMM and it was imperative to give reason for dismissing the Protest Petition filed by the petitioner under Section 173 (8) Cr. P.C. with the prayer to make an order for further investigation by some senior experience police officer as the untraced report is based on defective, dishonest and irresponsible investigation.

12. Ld. Counsel further submits that the Courts below have failed to appreciate that the present matter is a murder case and the investigating agencies are required to collect all material and relevant piece of evidence to establish its case. There are serious allegations against Smt. Santosh that deceased Kamlesh was last seen in her company and thereafter her dead body was recovered on 29.09.2003. It has further come to evidence that one Maruti Van no. DL-6CH-4586 was involved in the crime and one Mr. R.K. Arora, resident of Connaught Place saw that a dead body was dropped from this Van on 26.09.2003 at the place of occurrence, but this valuable piece of evidence was not properly investigated for ulterior purposes.

13. It is not in dispute that on 29.09.2003, a dead body of a lady, aged about 30-32 years in a nude condition was recovered from the herbal forest opposite Gate no. 29 of Rashtrapati Bhawan. Accordingly, DD No. 9A was registered at PS-Mandir Marg, New Delhi. The face, nose and eyes of the body had been eaten by the insects. The deceased was found to be wearing gold colour ear rings and two rings in her two fingers. A torn pink colour printed ladies Kurta and one of its torn piece was found on the dead body. A salwar of the same colour without string was lying near the hedge along the

road. The body was sent for post-mortem examination on the same day.

14. On 30.09.2003, the petitioner identified the deceased as his daughter Kamlesh, who was reported missing from his house since 26.09.2003, vide DD No. 34A, PS-Malviya Nagar, New Delhi. She was told to be unsound mind and suffering from prolonged illness. The post-mortem was conducted on 01.10.2003 and the cause of death was opined as *“Asphyxia as a result of manual strangulation, all the injuries are ante mortem produced by blunt force.”* There were 18 injuries in the form of bruises and abrasions, which were opined to be ante mortem in nature. The approximate time since death was given 4-5 days. Accordingly, an FIR no. 264/2003 was registered and the investigation was carried by the Insp. Dharampal Sharma, SHO, PS-Mandir Marg. The statements of the close relatives of the deceased as well as the suspects were recorded by the local police, but no incriminating evidence could be collected.

15. Further investigation was transferred to Ante Homicide Section, Crime Branch, Delhi by Commissioner of Police, Delhi on 12.01.2004. The investigations were carried out and exhibits were deposited at FSL. During the investigation, petitioner, i.e., father of the deceased suspected the involvement of following 15 persons in the murder of his daughter:

1. Sh. Jagdish,
2. Sh. Raghubir Singh,
3. Smt. Gyanwati,
4. Sh. Mukesh
5. Smt. Santosh.

6. Sh. Siri Chand,
7. Sh. Radhey Shyam,
8. Sh. Rai Singh,
9. Sh. Harbans,
10. Sh. Ram Chander,
11. Sh. Rajan,
12. Smt. Rani.
13. Sh. Udai Pal.
14. Sh. Surjit
15. Sh. Mohan Singh.

Consequently, the police investigated all the suspects mentioned above. However, found no incriminating evidence against them.

16. A polygraph test was done at CFSL, CBI, CGO Complex, Lodhi Road, New Delhi for four main suspects namely Santosh, Rajan, Jagdish and Ramesh, but none of them gave any deceptive response.

17. On 19.01.2009, the court allowed Narco Analysis test of Santosh. Accordingly, FSL, Gandhinagar was requested to fix a date for Narco Analysis Test. Thereafter, above named Santosh filed an application for review / modification of Court order dated 19.01.2009, but the same was dismissed. Being aggrieved, a Writ Petition was filed before this Court. Same was also dismissed. Accordingly, Narco Analysis Test of Santosh was conducted at FSL, Gandhinagar from 10.01.2010 to 16.01.2010 and the conclusion given by the experts was *"The information revealed in the narco interview of Santosh Devi, depicts Santosh Devi has no involvement in the incident of missing Kamlesh."* Accordingly, it was concluded that after

extensive investigation, no clue could be found towards solving the case. It was further revealed that during investigation blood group of deceased Kamlesh was found as AB+, while the blood group found on Kurta, Salwar, heirs, seized from the hands of the deceased was opined as of Group A. In these circumstances, the identity of the body became suspicious. The photographs were shown to Jagdish, husband of the deceased Kamlesh, who stated that neither he saw the dead body of his wife nor he attended her funeral and the dead body was identified by the parents of the deceased only.

18. However, on seeing the photographs, Jagdish stated that dead body did not appear to be his wife as her height was 4-5” and her fingers as well as palms were short and she was thin built. However, the height of the dead body was 5.2” as per the post-mortem report and in the photographs, the fingers and palms were looking very long. It was also added that her wife had a flat foot while there was clear curve on the foot of the dead body as shown in the photographs.

19. Keeping in view the identity of the body of the deceased, the report of missing persons of September, 2003 were checked and it was found that one lady namely Hans Kaur, wife of Harbans Singh, aged about 40 years was reported to be missing on 22.09.2003 vide DD No. 16A, PS-Kalyanpuri, Delhi. Smt. Vaijyanti Kaur and Phool Kaur, sisters of missing of Hans Kaur were shown the photographs of the deceased and they identified the dead body as of their sister. Father of Hans Kaur namely Parsa Singh was also shown the photographs, who identified it as that of his daughter. However, the DNA finger prints of Parsa Singh did not match with the deceased and

it was found that he was not the biological father of the deceased.

20. In view of the controversy on the identity of the deceased, the petitioner and his wife were requested to provide their blood samples to match their DNA profiling with the DNA profile of the deceased. But both of them refused to provide their blood samples for DNA finger printing. Thereafter an application for directing the petitioner to give the blood sample for DNA was moved before the Id. MM, but the petitioner failed to do so. However, the petitioner filed a Writ Petition no. 1155/2007 before this Court to direct the investigating agency to finalize the case in a time bound manner. Again, the petitioner refused to give his blood sample before this Court. Accordingly, the said Petition was dismissed by this court on 20.03.2003. Accordingly, investigation was concluded that despite extensive investigation, no sufficient incriminating evidence against any of the suspects could be unearthed.

21. The petitioner filed a protest petition before the Id. MM against the untraced report, wherein, he expressed his suspicion against Smt. Santosh Devi. It was also alleged that investigations were carried out in a slip shod and perfunctory manner. The deceased was last seen in the company of Santosh and the theory of last seen was fully applicable in this case. It was further alleged that Santosh had killed the deceased in compliance with Jagdish as he wanted to get rid of her so that he could remarry with some other lady.

22. After hearing Id. Counsel for the parties, Id. ACMM in its order dated 22.03.2014 observed that the latest technology, i.e., brain

mapping and narco analysis test were conducted on Smt. Santosh Devi, however nothing incriminating could be found.

23. The FIR was registered in the year 2003, while the untraced report was filed in the year 2012. Therefore, thorough investigation has been carried out and protest petition was found to be without any force. Consequently, final report was accepted vide order dated 22.03.2014 and the same has been confirmed by the Revisional Court vide its order dated 02.05.2015.

24. After hearing Id. Counsel for the petitioner and perusal of the impugned orders passed by the two Courts below, I am of the considered opinion that in report under Section 173 Cr.P.C. all steps for thorough investigation were taken and only thereafter it was concluded that no incriminating evidence could be collected against any of the 15 suspects, named by the petitioner. Though, the main suspect was Santosh, however, no sufficient incriminating evidence could be brought out against her also. Her brain mapping and narco analysis test was done with the permission of the Court, but could not yield any result. Moreover, the height of the deceased did not match with the height of the daughter of the petitioner as the length of the body as per the post-mortem is indicated as 5.2” whereas as per the post-mortem, the height of the deceased was 4.5”. Accordingly, a doubt was created that if the deceased was in fact the daughter of the petitioner. Moreover, the blood group of the deceased and petitioner’s daughter differs as the blood group of the dead body was found to be AB+ whereas the blood group of the daughter of petitioner was of Group A. Accordingly, every endeavour was made

by the investigating agency to confirm the parentage of the deceased by doing the DNA profiling, but the petitioner for reasons best known to him refused to come forward to give his blood sample to match with the DNA of the deceased in order to conclusively establish that the recovered dead body was that of his daughter. He refused to give blood sample before the Trial Court as well as before this Court. Since, there is a doubt with regard to the identity of the body as being that of the daughter of the petitioner, I find no discrepancy in the orders passed by the Courts below.

25. Therefore, finding no merit in the instant petition, same is accordingly dismissed in *limine*.

Crl.M.A.No.11304/2015(Stay)

Dismissed as infructuous.

SURESH KAIT, J

AUGUST 26, 2015

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