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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 9th May, 2017

+ WP(CRL.) 1861/2010

RAM KISHAN

..... APPELLANT

Through: Mr. N.S. Dalal and Ms. T.
Banerjee, Advocate

versus

U.O.I. & ANR.

..... RESPONDENTS

Through: Mr. Ashwani Bharadwaj, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the petition at hand, the prayer is made for a direction to the respondent for an inquiry to be made through Central Bureau of Investigation (CBI) into the circumstances in which Constable (GD) Rakesh Kumar No.045210527 of 45 Battalion of the Central Reserve Police Force (CRPF), son of the petitioner, met an unnatural death due to firearm injuries sustained at about 02.45 hours on 19.07.2007 in the area of Sumbal, Baramulla, J& K, where he was then posted.

2. By order dated 16.12.2010, notice was issued to the respondent. A counter affidavit on behalf of the respondents, sworn by Shri R.S. Tyagi, Joint Assistant Director (Legal) in the office of Inspector General of Police, NIS, CRPF was submitted on 24.10.2011. The

petitioner filed a rejoinder affidavit on 08.04.2013. The counter affidavit submitted by the respondents is based, *inter alia*, on report of Court of Inquiry that had been held by CRPF. During the course of these proceedings, a copy of the said report was made available to the petitioner.

3. The Court of Inquiry conducted by the CRPF, *inter alia*, brought out that the deceased Constable Rakesh Kumar, son of the petitioner, had been detailed for guard duty in the advance party of his battalion in Sumbal Colony Ground at the training barracks. The evidence collected during the Court of Inquiry brought out that while on guard duty at 02.45 hours, he fired two bullets from his own rifle at his own neck and as a consequence died on the spot. The Court of Inquiry had thus concluded on the basis amongst others of oral account of the witnesses who had seen the deceased at the guard duty station, that he had committed suicide.

4. The petitioner, however, has not been satisfied with the above conclusion. His suspicion, *inter alia*, on the condition of the dead body indicating certain other wounds is that it could not have been a case of suicide. It is his case that the deceased was a disciplined personnel of CRPF who had good relations with others and had no vices. It is his contention that it is physically impossible for a person to aim the weapon (rifle) at his own neck and to pull the trigger in the manner stated, the firearm injury reportedly having been suffered in the middle of the neck region. It is also the contention that there has been no proper probe as to how a particular telephone number was found written in coloured ink on the dead body.

5. The case at hand presents background facts which are virtually identical to those in the case of *Sakiri Vasu vs. State of Uttar Pradesh and Ors.*, (2008) 2 SCC 409, decided by the Supreme Court on 07.12.2007. As in the said case, in the case at hand, there is no material presented by the petitioner disclosing a *prima facie* case calling for inquiry by CBI. Mere allegation that the son of the petitioner may have been intentionally subjected to death, without any evidence even remotely justifying such suspicion cannot, in the opinion of this court, justify the relief claimed to be granted. The Court of Inquiry conducted by the CRPF seems to have probed the possible angles into the cause of death.

6. In the case of *Sakiri Vasu* (supra), the Government Railway Police (GRP) at Mathura where the unnatural death had occurred (on the Railway lines) had conducted an investigation on the conclusion of which a report of such investigation had been submitted before the court of the Magistrate. The Supreme Court held that there is an implied power vested in the Magistrate under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr. PC) to order registration of a criminal offence and / or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps as may be required for ensuring a proper investigation including monitoring the same.

7. In the present case, the petitioner has not even approached the concerned police seeking an investigation and has rushed to this court by this petition. In *Sakiri Vasu* (supra), the Supreme Court was of the opinion that such practice ought not be encouraged and that instead of

interfering in the writ jurisdiction, the petitioners in such matters should be relegated to the alternative remedy first under Section 154(3) and Section 36 Cr. PC before the police officer concerned or if that were to be of no avail by approaching the concerned Magistrate under Section 156(3) Cr. PC.

8. Following the view taken in *Sakiri Vasu* (supra), the petition at hand is disposed of giving liberty to the petitioner to pursue the alternative more appropriate remedy under Sections 154 and 156(3) Cr. PC.

MAY 09, 2017

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R.K.GAUBA, J.

