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

+ **W.P.(CRL) 3270/2016**

INDU DEVI

..... Petitioner

Represented by: Mr. Anand and Ms. Rajeshri
Nivuratirao Reddy, Advocates
with petitioner in person.

versus

STATE

..... Respondent

Represented by: Ms. Richa Kapoor, Additional
Standing Counsel for State with
Ms. Sushila and Ms. Shikha
Mehra, Advocates with
Inspector Ravinder, PS Kalkaji.
Mr. Sanjeev Bhandari, Spl. P.P
for CBI with Mr. Prateek
Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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04.04.2018

Crl. M.A. No. 17718/2016 (Exemption)

Allowed, subject to all just exceptions.

Crl. M.A. No. 17719/2016 (delay in refilling)

For the reasons stated in the application delay of 45 days in refiling
the petition is condoned.

Application is disposed of.

W.P.(CRL) 3270/2016

1. The petitioner preferred the present writ petition for transfer of
investigation to CBI, to conduct a free and fair investigation in FIR

No.476/2010 under Sections 363/365 IPC registered at PS Kalkaji, New Delhi or other similar suitable direction, to find out the whereabouts of the accused persons and present them before the Court of learned Metropolitan Magistrate, Saket.

2. Brief background of the case of the petitioner is that in the afternoon of 27th August, 2010 the daughter of the petitioner received a phone call from bus Conductor namely Mohd. Dilshad informing that the school bag of her brother was lying with him and she could take the same. Thereafter the petitioner tried to contact the said person on phone but it was found switched off. Waiting till the evening when the son of the petitioner did not come home, the petitioner approached the local police and subsequently came to know that body of a student was found in the middle of the railway track in between Okhla and Tughlakabad railway station. The body was identified by the petitioner in the mortuary to be that of her son namely Chandan @ Rahul. Inquest proceedings were carried out.

3. According to the petitioner despite the fact her son Chandan @ Rahul was assaulted and manhandled by the Conductor, driver and helper of the said bus yet no arrest was made nor the bus was seized. Though the victim was last seen in the company of the said persons no case was registered against them and the police hushed up the matter by declaring the same as a train accident.

4. Being aggrieved by the act of the police, petitioner filed an application under Section 156 (3) Cr.P.C. wherein the learned ACMM, Saket directed registration of FIR and on 21st November, 2018 FIR No. 476/2010 was registered under Sections 363/365 IPC against unknown persons however, Section 302 IPC was not added. When this fact was

pointed out to the learned Metropolitan Magistrate an order dated 17th December, 2011 was passed directing the Investigating Officer to register the case under Section 302 IPC.

5. It is the case of the petitioner that after investigating the case a closure report was filed stating that it was a case of train accident. On a protest petition filed by the petitioner, the closure report was not accepted and the learned Metropolitan Magistrate directed proper investigation. Pursuant thereto a Medical Board was constituted which further opined that possibility of injuries 4, 5 and 6 in the post-mortem report and the underlying visceral injuries being caused by human beating, cannot be ruled out. Thus charge sheet for offences punishable under Sections 323/341/342/34 IPC was filed against Gurnam Singh @ Rangila, Bharat Lal and Mohd. Dilshad i.e. the helper, bus driver and Conductor of the bus respectively out of which Mohd. Dilshad had expired on 21st May, 2011.

6. Despite the police filing the charge sheet under Sections 323/341/342/34 IPC learned Metropolitan Magistrate took cognizance against the accused persons under Sections 302/34 IPC.

7. The grievance of the petitioner is twofold, firstly that the identity of Mohd. Dilshad on the basis of death certificate is incorrect and the actual Mohd. Dilshad is still alive and secondly, since incorrect address and father's name have been added, summons could not be served and the accused persons are absconding.

8. A status report has been filed by the State with the further affidavit of the Commissioner of Police. According to the affidavit of the Commissioner of Police, the investigation was conducted by three inspectors and two ACP rank officers, polygraph tests of the two alleged persons namely Bharat Lal

and Gurnam Singh @ Rangila were got conducted. Statements of the eye witnesses and circumstantial evidence were also recorded. The evidence qua the Driver of the bus was insufficient, hence he was kept in column No.12. On the basis of the report received from the Safdarjung Hospital, it was noted in the charge sheet that Mohd. Dilshad, the Conductor had expired due to an ailment on 21st May, 2011 at Safdarjung Hospital and thus his name was kept in Column No. 11 in the charge sheet as abated. It was further stated that Rangila, the helper had his permanent residence and joined the investigation. Since no recovery was to be effected from his possession, he was not arrested.

9. As regards the death of Mohd. Dilshad, s/o Mayuddin on 21st May, 2011 at Safdarjung Hospital treatment papers from Safdarjung Hospital and burial report were taken. In the death certificate name of Mohd. Dilshad's father was mentioned as Mayuddin whereas his father's name was Bhola Mahto, as per the statement given by him under Section 174 Cr.P.C. To clear this confusion the Investigating Officer called Ms.Shabnam, wife of Mohd. Dilshad and obtained photographs of Mohd. Dilshad from her vide seizure memo dated 12th August, 2011 and placed the same on the case file. The photographs were shown to the witnesses who were present in the bus along with the deceased, some of the witnesses being the classmates of the deceased and had also participated in the altercation. All the witnesses identified the photograph as that of the bus conductor with whom altercation took place in bus No. DL 1PA 7141 and who had caught hold of the deceased Chandan @ Rahul. Photograph of Mohd. Dilshad was also identified by the bus owner, driver and the helper of the bus as the Conductor of the bus. Photograph was also shown to the Investigating

Officer ASI Ram Avtar who conducted the proceedings under Section 174 Cr.P.C. and recorded the statement of Mohd. Dilshad where his father's name was mentioned as Bhola Mahto who also identified Mohd. Dilshad from the photograph.

10. As per the affidavit of the Commissioner of Police apart from initial investigation re-inquiry was conducted by the Additional DCP, South East District, an IPS Officer who ascertained that Mohd. Dilshad was earlier a Hindu and for marrying Shabnam Sultana, a Muslim lady, he had converted himself to Islam in the year 2001. In this regard statement of Ms.Shabnam Sultana was recorded. She stated that she had lost her father in her childhood so she gave her father's name to be used by Mohd. Dilshad as his own father so as to adopt Islam. Ms.Shabnam Sultana has four children from her earlier marriage and one from Mohd. Dilshad. Descriptive details of the name, school and classes of all the children of Mohd. Dilshad are the same as stated in the proceedings under Section 174 Cr.P.C. which were also re-verified and found to be correct. Address of Mohd. Dilshad and that his family was residing at 7B, 550, Sangam Vihar, New Delhi was also physically verified. Copies of Aadhar cards of the family members of Mohd. Dilshad were also collected. Presently the family of Mohd. Dilsahd including his wife Shabnam Sultana is residing in Khori Village Kacchi Colony in front of Sai Mandir, Lal Kuan, Pul Prahlad Pur, New Delhi. Mohd. Wasim, son of Mohd. Dilshad aged 19 years stated that his grandfather's name is Bhola Mahto as he accompanied his father to his native place in the year 2009 to Muzzafarpur, Bihar and met his grandmother, grandfather and his uncles Sushil and Bittu. Thus even in the re-inquiry by the Additional DCP, South East, identity of the bus conductor

has been found to be correctly established.

11. One of the grievances of the petitioner was that the owner of the bus was having links with the Delhi Police and thus no proper investigation was being carried out. The Additional DCP (South East) M Harsha Vardhan, IPS also carried out an inquiry into this aspect and it was found out that no family member of bus owner Satnam Singh s/o Balbir Singh, r/o E-50, Kalkaji, New Delhi was in Delhi Police, nor the Driver, Conductor or the Helper had any links with any Delhi Police personnel. Further investigations and inquiries in the matter have been carried out first by the local police, then the District Investigating Unit, South East and the Crime Branch, all of which are independent wings.

12. As per the Commissioner of Police, further investigation after the arrest of the remaining two accused persons, who are absconding and on their arrest thorough interrogation is still required to be done. Accordingly, DCP, South East has been directed to ensure that the District Investigating Unit of South East District proceeds with further investigation under his close supervision. To ascertain whether initial investigation by the local police was properly conducted or not, a vigilance inquiry has also been directed.

13. In view of the further action taken, as per the affidavit of the Commissioner of Police, no further orders are called for in the present petition. It is hoped and expected that the report of the further investigation under the supervision of DCP, South East and the report of the vigilance inquiry by the DCP, (Vigilance) would be filed before the learned Trial Court expeditiously.

14. Petition is disposed of.

APRIL 04, 2018
‘vn’

MUKTA GUPTA, J.