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

+ **W.P.(CRL) 2670/2018**

ABDUL SAMAD

..... Petitioner

Represented by: Mr. Simon Benjamin, Adv.
DHCLSC.

versus

THE STATE (GOVT OF NCT OF DELHI)

..... Respondent

Represented by: Ms. Richa Kapoor, JASC with Ms.
Amita Sachdeva, Adv. with Insp.
Abhinendra, Cr.Br.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

09.01.2019

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1. Petitioner is unfortunate father of Mohd. Ahmad who was found lying dead on 23rd April, 2007 near railway lines in the jurisdiction of PS Hazrat Nizamuddin Railway Station. On 27th April, 2007 petitioner lodged a missing report at PS Kalyanpuri regarding his son Mohd. Ahmad aged 14 years who was stated to be missing since 23rd April, 2007. He gave the description of Mohd. Ahmad and the clothes he was wearing and that he had gone to nearby canal for bathing but had not returned and despite efforts Mohd. Ahmad could not be traced.

2. During the course of enquiry on 18th May, 2017 wife of the petitioner visited the Missing Persons Squad, Kotwali where she learnt that a dead body was found on 23rd April, 2007 in the area of PS Hazrat Nizamuddin.

She identified the deceased to be her son Mohd. Ahmad from the photographs. Later the petitioner also identified the deceased as his son from the photographs and the clothes. Post-mortem of the said dead body had been conducted and viscera was sent for forensic analysis. The cause of death as per the post-mortem report was “cranio-cerebral damage with associated hemorrhagic shock. All injuries were anti-mortem in nature caused by blunt force impact possible in train attack episode. However, possibility of knock down before running train cannot be ruled out. Presence of ethyl alcohol in blood had suggested that deceased had consumed alcohol prior to death”.

3. On the complaint of the petitioner wherein he alleged that on 23rd April, 2007 his son was called by some local boys namely Rohit @ chinni, Nadeem @ Babu or Ballu and Suraj whereafter he went missing, and that these persons had taken his son, killed him and left the corpse on the railway track, FIR No. 15/2009 under Sections 364/302/120B IPC was registered at PS Hazrat Nizamuddin Railway Station on 4th March, 2009 and investigation transferred to Anti-Homicide Section, Crime Branch, Delhi Police.

4. After registration of FIR the suspects namely Nadeem, Rohit, Suraj, Bablu, Irfan, Shanu were questioned. People living around the railway track where the dead body was found were also examined but no clue was revealed. The petitioner had earlier filed a writ petition before this Court Being W.P.(CRL) 42/2010 seeking transfer of investigation to CBI wherein this Court directed the Police to get in touch with railway authority to ascertain whether any report about an accident was recorded by them and also verify whether any train driver or guard has made any report. Petitioner

was also directed to be examined and given a personal hearing. Investigation on the said lines was conducted and it was revealed that whenever any train accident or run-over happened, and the train driver had knowledge he would inform the same to the Station Master through walky-talky or personally. On checking the records of 23rd April, 2007 no such information was found. Train drivers/guards were examined but they did not have any knowledge about any accident or any person calling/ pushed from the train or chain pulling. The writ petition was therefore disposed of.

5. Having conducted the investigation from all angles and finding that no person was found involved in the alleged murder of the petitioner's son, a closure report was filed before the learned Trial Court which issued notice to the petitioner. Thereafter a protest petition dated 1st July, 2014 was filed by the petitioner enlisting various steps not taken by the investigating agency during the course of investigation. After hearing the petitioner as well as the State and going through the written submissions filed, the learned Trial Court dismissed the protest petition and accepted the cancellation report vide the impugned order dated 8th September, 2017.

6. Aggrieved by the order dated 8th September, 2017 the petitioner preferred a criminal revision petition before the learned ASJ which was dismissed vide order dated 8th February, 2018. Hence the present petition.

7. The petitioner challenges the above two impugned orders on the ground that the petitioner's son was cremated under suspicious circumstances, the petitioner was not given the opportunity to perform the last rites of his son. FIR was registered after a delay of two years though the Police was bound to register FIR immediately, the petitioners were not informed about unidentified dead body despite a missing report lodged on

27th April, 2007, the investigating agency failed to take notice of the complaint given by the petitioner dated 30th March, 2007 against one Khurshid who was running a dhaba in the vicinity, the viscera was sent belatedly to the FSL and that even as per the records of the train, no train driver had reported about any incident, hence it is a clear case of murder of the petitioner's son.

8. As noted in the facts above, initially a missing report was lodged by the petitioner which did not disclose the commission of a cognizable offence as the petitioner did not raise suspicion of kidnapping by any of the persons. Hence no FIR could be registered and on the missing report steps were taken to trace the son of the petitioner. An unidentified dead body was recovered by the officers of the PS Hazrat Nizamuddin Railway Station and post-mortem was got conducted. Since autopsy did not show any foul play and cause of death was possibly train impact, no FIR could be registered. Subsequently, when the petitioner filed the complaint raising his suspicion on four boys FIR No.15/2009 as noted above was registered where an investigation was conducted by Crime Branch. Despite sustained interrogation of all the suspects nothing was revealed.

9. On a query put by this Court as to the time when the petitioner had seen his son with the four boys, learned counsel for the petitioner had no reply to the time when they were allegedly seen together. Apparently no accident was noted by the driver of the train as the present case is not where the deceased was run-over which could have certainly been noted by the driver of the train as the person is then in front but because it was a death due to the impact of the train it would normally not be possible to come to the knowledge of the train driver. Thus, there being no report of an accident

by train does not exclude the possibility that the death of the petitioner's son did not take place by the impact of the train. Suspicion raised by the petitioner on Khurshid who was running a dhaba in the vicinity was belated. In any case all suspects including Kurshid and Survivor have been interrogated and nothing have been revealed from them.

10. Considering the material collected during the course of interrogation and that even the petitioner does not have any concrete clue about the alleged murder of his son, this Court finds no error in the two impugned orders.

11. Petition is dismissed.

MUKTA GUPTA, J.

JANUARY 09, 2019
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