

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 208 of 2018

- Santram Kunjam S/o Dayaram Kunjam Aged About 39 Years R/o Village Bansagar, Thana Narharpur, District- Uttar Bastar, Kanker, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Home Department, Mantralaya Naya Raipur, District- Raipur, Chhattisgarh.
2. The Director General Of Police, District- Raipur, Chhattisgarh.
3. Superintendent Of Police, District- Sukma, Chhattisgarh.
4. Station House Officer, Police Station City Kotwali, Sukma District Sukma Chhattisgarh.
5. Usha Kunjam W/o Late Sant Kumar Kunjam Aged About 26 Years R/o Patnampara, District- Sukma, Chhattisgarh.

---- Respondents

For Petitioner : Mr. Parag Kotecha, Advocate.

For State : Mr. Sudeep Verma, Dy. Government Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

Order On Board

03.08.2021

1. The petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India with prayer for registration of FIR against respondent No. 5 who is wife of the deceased.
2. The brief facts as projected by the petitioner are that petitioner's brother Sant Kumar Kunjam was working as constable in police department. He died in suspicious circumstances on 31.12.2016. When the petitioner was informed about the incident, he reached to the place of incident and when inquired about the death he was only shown photographs. From the close look of the photographs also it is clear that it was a murder and then he was hanged to give it a colour of suicide. It is a clear case of murder not suicide.
3. Learned counsel for the petitioner would further submit that there was a dispute between the deceased and his wife/respondent No. 5. it was

informed by her that she has left the place after dispute and when she came next morning, the door was locked from inside, she informed it to police and neighbours, they opened the door and the deceased was found hanging. Since, the death was in suspicious condition, the police should have registered offence under Section 302 IPC against respondent No. 5 but no action has been taken by the police.

4. Learned counsel for the petitioner would further submit that viscera was sent for examination. As per forensic report no poison has been found in the body. There is clear indication that death of the deceased was murder not suicide. He rely upon the judgment of Hon'ble Supreme Court in the case of **Lalita Kumari vs. State of U.P.**¹ He submits that on the basis of materials available on record the police is bound to register offence under Section 302 IPC against respondent No. 5.
5. On the basis of above factual matrix, the following reliefs have been sought:-
 - I. The Hon'ble Court may kindly be pleased to direct the respondents to register an offence, by registering an FIR against the respondent No. 5 and all the other persons who are culprit of murder of petitioner's brother Sant Kumar Kunjam.
 - II. The Hon'ble Court may kindly be pleased to direct the respondents and its authority to give protection to the petitioner and his whole family till the arrest of accused persons.
 - III. The Hon'ble Court may kindly be pleased to direct the respondents authority to submit the final report as early as possible. “
6. From perusal of reliefs sought, it is quite clear that the petitioner wants that on the basis of complaint, FIR should be registered against respondent No. 5.
7. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others**², has examined the issue holding that the petitioner has remedy of filing of complaint before the concerned Judicial Magistrate First Class under Section 200 of the Cr.P.C. The Supreme Court has again considered and decided the issue in

¹ (2014) 2 SCC 1

² (2008) 2 SCC 409

***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage*³ and M. Subramaniam & another Vs. S. Janaki & another**⁴.

8. Considering the facts and materials on record and in light of the law laid down by Hon'ble the Supreme Court in the above referred judgments, the present writ petition filed under Article 226 of the Constitution of India, is disposed of with liberty to the petitioner to file complaint under Section 200 of the Cr.P.C. before the court of Judicial Magistrate First Class having jurisdiction over the place of offence and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C.
9. It is made clear that this Court has not expressed any opinion on merits of the case whether the complaint discloses any criminal offence or not.
10. In view of the above, the instant writ petition is disposed of with the aforesaid liberty granted in favour of the petitioner.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Deshmukh

³ (2016) 6 SCC 277

⁴ (2020) 16 SCC 728