

234 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-31538-2013 (O&M)
Date of Reserve:-21.09.2023
Date of Decision: 28.11.2023

Anand Rai Kaushik

...Petitioner

vs.

State of Haryana and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

Mr. Vandeet Jain, Advocate for
Mr. Rajeev Anand, Advocate
for respondent No.6.

Mr. Rajesh Lamba, Advocate
for respondent Nos.7 to 10.

Mr.Sandeep Roy, Advocate for
Mr. IPS Doabia, Advocate
for respondents No.11 and 12.

N.S.Shekhawat J.

1. The petitioner had filed the present petition under Section 482 Cr.P.C with a prayer to direct the respondent No.4 to register a criminal case under Sections 364/302/201/218/120-B of IPC against respondents No.7 to 12 and to handover the investigation into the death of his younger brother to Central Bureau of Investigation or some other independent agency, as his younger brother had died in police custody of Police Station NIT Faridabad.

2. Learned counsel for the petitioner contends that Satender Kaushik,

aged 32 years, brother of the petitioner was picked by the official of Police Station, Kotwali on the intervening night of 24/25.07.2013, on the complaint moved by the Manger of Maha Laxmi Hotel i.e respondents No.11 and 12, as he had not paid the food bill of the restaurant. After taking him to police station, the hotel manager called up the father of the deceased and even the police officials called the cousin of the petitioner namely Kamal Kishore on his mobile phone, confirming the fact that Satender Kaushik was in police station and the owner of the hotel was also sitting in the police station. However, these facts were not mentioned in the *Rojnamcha* of the Police Station nor any medical examination of Satender Kaushik was got conducted by the police. At about 10:30 AM on 25.07.2013, Bal Kishan, uncle of Satender Kaushik received a call that the hotel owner and others were asking to take strict action against Satender Kaushik, who had not paid the food bill. At about 04:00 PM, on 25.07.2013, a phone call was received from the police station that condition of Satender Kaushik was critical. The petitioner along with his other family members reached the police station and came to know that the dead body of Satender Kaushik was kept in the mortuary of B.K Hospital, Faridabad for post mortem examination. The Assistant Commissioner of Police told the petitioner and his family members to come to the police station. The police informed the family of the petitioner that there was a case of suicide in the bath-room/toilet of the conference room by means of hanging. However, the height of the window, where the deceased had allegedly committed suicide, was almost of the same height. Even the post mortem examination was conducted and the cause of death in the present case was “Asphyxia”, due to hanging, which was antemortem in nature and was sufficient to cause death in ordinary course of

nature, however, no ligature mark was present over the neck. Apart from that, there was no injury on the body of the deceased. Ultimately, the petitioner submitted various representations to the Commissioner of Police and requested to take strict action against the accused, but no action was taken against either the police officials or the persons connected with Maha Laxmi Hotel.

3. Various status reports were filed by the State of Haryana from time to time. A status report was filed by way of an affidavit of SHO Police Station Kotwali, Faridabad. As per the said report, on the intervening night dated 24/25.07.2013, the Manager of Maha Laxmi Hotel had brought a boy namely Satender in Police Station, Kotwali. HC Parmod Kumar was posted as duty officer in the police station. On enquiry, the Hotel Manager told him that said boy along with two other boys came to their hotel and had taken beer. The other two boys fled away from the hotel and Satender was caught by the staff of the hotel. The manager left Satender in police station as he was under the influence of liquor. HC Parmod Kumar had taken the boy with him and on the way, he handed over to him to Charanjit Singh, who met on the way for night stay and directed him to produce Satender in the police station on next day at 10:00/11:00 AM. Even DDR were recorded in the Daily Dairy Report (*Rojnamcha*) of the police station in this regard. Next day, at about 04:00/04:30 PM Satender had committed suicide in the toilet of the police station. When he did not come back, on searching the door of the toilet, it was found locked from inside, the door was broken and the boy was found hanging himself in the toilet. The District and Sessions Judge had deputed the Judicial Magistrate First Class to hold the enquiry and it was found that there was no external injury on the person of Satender, since deceased. The enquiry was conducted under Section

176 Cr.P.C by Judicial Magistrate First Class, Faridabad and in her report dated 26.07.2013, she made the following observations:-

4. On examining the testimonies of above said witnesses I have inspected the spot from where the deadbody was recovered. The EW-3 brother of the deceased has stated that he has suspicion that his brother cannot commit suicide as his height is approximately 6'2" and window from where deceased has allegedly to be hanged his also approximately of the same height. While giving due regards to this fact, I am of the view that the suspicion raised EW-3 is not proper and ill-finded because the suicide can be made even from the same height of the window. Moreover, there is no injury on the external part of the body of deceased which also suggests that no manhandling or beating were given to the deceased by anybody.

5. Moreover, while inspecting the spot of suicide I found that the main door of the Conference Room was broken by the police officials. I have inspected the bathroom/toilet (where the deceased commit suicide) had also in a broken position. From the spot it appears that deceased might have used the commode toilet sheet) before committing suicide.

6. EW-2 the road uncle (Chacha) of the deceased has itself stated in his testimony that he received information about 2:30 PM, however, no family members including EW-2 has visited police station to get release the deceased from the police station. The circumstances seen on the spot does not lead to the conclusion that the accused was murdered in the police station.

7. At the same time I have gone through the postmortem report submitted by the board of doctors who had conducted the postmortem. In the postmortem also no external mark of injury has been shown by the doctors. The cause of death has also been reported as strangulation. The cause of death given by the doctor is reproduced here-in-below:

In the opinion of the Board of doctors, the cause of death in this case is asphyxia due to hanging which is antemortem in nature and sufficient to cause death in ordinary course of nature.

8. Even the report submitted by the police prepared under Section 174 Cr.P.C, has also examined be me and even in that report no external injury has been shown on the person of deceased Satender.

9. After going through the entire facts and circumstances of the case, I being Inquiry Officer has come to the conclusion that there is no role of any police officials indulged beating up the deceased which instigated him to commit suicide.

10. It is pertinent to mention here that the videography of the place of occurrence and postmortem of the deabody of deceased Satender was got conducted and a CD of the same here been prepared.

4. After completion of the pleadings, the case was heard by a Coordinate Bench of this Court on 11.03.2015 and the following order was passed :-

“After hearing the learned counsel for the parties at considerable length, this Court is of the prima facie view that since the judicial enquiry report, all the relevant Daily Dairy Reports and post-mortem report conducted by a Board of Doctors are available on the record and a bare perusal thereof, would show that no foul play has taken place in the present case.

In view of the detailed judicial enquiry report, it is not required to get FIR registered with a view to initiate the investigation. However, since the death has taken place in the police station, respondent-State is bound to pay due compensation to the petitioner.

Learned counsel for the State is directed to have instructions from the authorities concerned as to why an amount of Rs.6 lacs be not ordered to be paid to the petitioner. Let the Director General of

Police, Haryana-respondent No.2 file his own affidavit in this regard, be the next date of hearing”.

5. At this stage, it requires mention that this Court had declined the prayer made by the petitioner to get the FIR registered with a view to initiate the investigation. Even the petitioner did not challenge the said order in the last more than 08 years. After passing of the aforesaid order by this Court, the only issue, which remain pending before this Court was with regard to the payment of compensation to the present petitioner.

6. Vide the order dated 08.10.2018, this Court observed that the Director General of Police, Haryana had not determined the amount of compensation which was required to be paid to the legal heirs of Satender, since deceased with reference to notification dated 03.04.2013 relating to Haryana Victim Compensation Scheme, 2013. Thereafter, again an affidavit dated 30.10.2018 was filed by the Director General of Police, Haryana. In the said affidavit, it was submitted that as per clause/para 5(3) of the Victim Compensation Scheme, 2013, the District Legal Services Authority was competent authority to decide the quantum of compensation to be awarded and the said provision is as under:-

“The District Legal Service Authority Shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expense etc. The compensation may vary from case to case depending on the fact of each case.”

7. Accordingly, the DGP directed the Commissioner of Police, to take

up the matter with the Chief Judicial Magistrate -cum-Secretary, District Legal Services Authority, Faridabad. The petitioner appeared before the authority and stated that he did not want any compensation and the following order was passed by the Secretary, DLSA Faridabad:-

“After going through the contents of the application as well as the order from the Hon’ble High Court and the documents, it is transpired that the deceased was unmarried and issueless and his LR i.e mother and father have refused to come before the undersigned and shown no interest in giving any documents whatsoever, which may enable the undersigned to decide the compensation under VCS. On the other hand the petitioner who is appearing before the Hon’ble High Court, although appeared before the undersigned but has shown complete reluctance in giving any detail about the deceased and gave statement in writing that they do not want compensation and want only justice. From the perusal of Ex.AW3/A. again it appeared that the petitioner and his family refused to receive the compensation amount passed from NHRC. In view of the above mentioned discussion the present application is disposed of and file be consigned after necessary compliance.”

8. I have heard the learned counsel for the parties and perused the record.

9. The petitioner in the present case has primarily made two prayers. The first prayer has been made to get a criminal case registered against respondents No.7 to 12 and after the registration of the criminal case, a further prayer has been made to handover the investigation to CBI or to some other independent agency.

10. Vide the order dated 11.03.2015, a Co-ordinate Bench of this Court had observed that after perusing the judicial enquiry report, all relevant Daily

Dairy reports of police station and post mortem report prepared by board of doctors, it was apparent that there was no foul play in the present case and it was not required to get the FIR registered with a view to initiate the investigation. However, taking a lenient view in the matter, this Court had directed the State to have instructions as to why an amount of Rs. 6 lacs be not ordered to be paid to the petitioner as compensation. However, when the proceedings were taken up for awarding the compensation by the Secretary, District Legal Service Authority, Faridabad, the present petitioner had shown complete reluctance in giving any details about the deceased and made a statement, they did not want any compensation. Even they had refused to receive the compensation amount, which was awarded by the National Human Rights Commission. Apart from that, the petitioner never challenged the order dated 11.03.2015 passed by this Court, whereby this Court had observed that no foul play had taken place in the present case and the prayer of the petitioner to get the FIR registered with a view to initiate the investigation was specifically declined by this Court. Only an application was filed after 03 years, on 07.12.2018 for recalling the order dated 11.03.2015 passed by this Court. However, such an application for reviewing the order dated 11.03.2015 was not at all maintainable and that to without any lawful justification. No reasons were mentioned in the said application for recalling the order dated 11.03.2015 passed by this Court.

11. From the above referred judgment, it is clear that in the present case, the prayer made by petitioner had been specifically declined vide the order dated 11.03.2015 and the said order has not been challenged by the petitioner before the Hon'ble Supreme Court of India. Even otherwise, I have perused the

entire record and find that there are no reasons for recalling the said order or to deviate from the said order. Apart from that, the petitioner has clearly refused to receive the compensation awarded by the National Human Rights Commission. Apart from that, the present petitioner clearly refused to co-operate with the Chief Judicial Magistrate-cum-Secretary, DLSA, Faridabad and made a statement in writing that he did not want any compensation in the present case.

12. Thus, in view of the above discussion, no further directions are required and the petition is accordingly, ordered to be dismissed. However, the petitioner shall be at liberty to avail his alternative remedies, if any, in accordance with law.

(N.S.SHEKHAWAT)
JUDGE

28.11.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No