



CRM-M-47462-2019 and another connected matter

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284 (2 cases)

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

Date of Decision:- 16.12.2024

(1)

CRM-M-47462-2019

Somesh

...Petitioner

Vs.

State of Haryana and others

...Respondents

(2)

CRM-M-41178-2021

Somesh

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Jagjeet Singh, Advocate for
Mr. R.K. Singla, Advocate
for the petitioner in both cases.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. K.D.S. Hooda, Advocate
for respondent No. 4.

Mr. V.G. Jauhar, Advocate as Amicus Curiae.

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AMARJOT BHATTI, J.(Oral)

1. Both petitions, **CRM-M-47462-2019 and CRM-M-41178-2021**
as referred above arising out of common FIR are taken up together with
consent of learned counsel for parties.

2. For convenience of this Court, documents annexed with CRM-
M-47462-2019 are referred.

3. Petitioner Somesh has filed petition bearing No. CRM-M-47462-



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2019 under Section 482 of Cr.P.C. for issuing direction to respondents No. 1 and 2 to inquire matter in question by constituting Special Investigating Team or through any senior police official at least from the rank of DSP deputed outside from District Charkhi Dadri and Hansi in the light of representation dated 10.09.2019 given before respondent No. 2 (Annexure P-10) and to take appropriate legal action against accused persons named in FIR No. 230 dated 31.07.2018 under Section 302 of IPC, registered at Police Station Hansi Sadar, District Hansi, with further prayer to protect his life and liberty.

Petitioner Somesh has also filed petition bearing No. CRM-M-41178-2021 under Section 482 of Cr.P.C. for quashing of impugned order dated 19.08.2019 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Hansi, whereby learned Judicial Magistrate accepted cancellation report (Annexure P-3) in aforementioned FIR.

4. Facts of the case are Somesh son of Daya Kishan gave his statement that his father Daya Kishan was posted at Police Chowki Bhatla in Haryana Police as ESI for the last about 4-5 months. About 10 days ago, his father visited home for 3 days and told him and his mother Shakuntla that ASI Dharamveer, Incharge of Police Chowki Bhatla harassed and humiliated him without any reason and also threatened to finish his life. For this reason, his father was under depression. After leave, his father rejoined his duty at Police Chowki Bhatla. He used to talk to them on phone and repeated same things. Last night, he received information that his father had expired. On this, he along with relatives and respectables of

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village approached Government Hospital, Hansi. He is fully confident that ASI Dharamveer murdered his father. With these allegations, present FIR was registered.

ARGUMENTS IN CRM-M-47462-2019

5. Learned counsel for petitioner argued that no proper investigation was carried out by police. Facts narrated in FIR were confirmed by Satbir, brother of deceased victim and Rajpal, Sarpanch, when their statements were recorded under Section 161 Cr.P.C. during investigation. Their statements are Annexures P-3 and P-4 respectively. Regarding the occurrence, there is statement of Dilbag who was posted in waterworks department of village Bhatla and was the first one who saw his father Daya Kishan lying in pond. Said statement is Annexure P-2. There is Postmortem Report (Annexure P-5), report of Forensic Science Laboratory, Madhuban, Karnal (Haryana), report of Histopathology/Cytology and report of FSL, Madhuban, Haryana as Annexures P-6 to P-8 respectively. Representation was given to Superintendent of Police, Hansi, Haryana. Even then, no proper investigation was carried out. In the occurrence, father of petitioner died under suspicious circumstances while he was on duty. Considering the facts and circumstances of case, matter may be investigated by Special Investigating Team or through some senior police official outside from District Charkhi Dadri and Hansi.

ARGUMENTS IN CRM-M-41178-2021

6. Learned counsel for petitioner further raised issue that without proper investigation in the case in hand, police filed cancellation report



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before Illaqa Magistrate. Copy of challan report under Section 173 Cr.P.C. is Annexure P-3. Said cancellation report was opposed by petitioner and this fact is clear from impugned order dated 19.08.2019, Annexure P-2. Learned Counsel for petitioner has relied upon photographs showing seat of injury as well as photographs of pond where the petitioner's father allegedly died due to drowning. It is argued that water in pond was shallow and it was not possible for deceased victim to drown in said pond. On account of absence of complainant on one date and without considering aforesaid facts, statements of witnesses and documents on record, cancellation report was accepted. Petitioner wanted to file protest petition but due to passing of impugned order, he did not get an opportunity to file protest petition and cancellation report has been accepted hastily without any justification.

7. Learned Amicus Curiae also assisted this Court on the point that as per statement of Dilbag, alleged occurrence took place around 9:45 p.m./ 10 p.m. As per his version, he informed police chowki and on this, Constable Rakesh, ASI Dharamveer (Chowki Incharge), SPO Rohtash, SPO Satish and Home Guard Vikram reached on the spot and pulled out Daya Kishan from pond with the help of a rope. It is further stated by him that at that time Daya Kishan was breathing. As per Postmortem Report from Civil Hospital Hansi, District Hisar, Haryana, body was brought by Inspector Umed Singh. Police was fully aware of the occurrence which had taken place. Even then, FIR was lodged on 31.07.2018 at 16:48 hours (i.e. 4:48 p.m.). Time consumed for taking the injured to hospital and ruka



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when it was sent to police station and time when FIR was registered were material. In the case in hand, FIR was recorded on the arrival of Somesh, son of deceased victim. It is pointed out that aforesaid facts were required to be considered.

8. Learned counsel representing State filed status report. Registration of FIR and statements of witnesses recorded during investigation are matter of record. There is Postmortem Report along with report of Chemical Examiner, Karnal, report of FSL, Madhuban, Histopathology report and finally opinion of doctor, according to which cause of death in this case was due to asphyxia, due to drowning under influence of liquor. Learned counsel representing State pointed out that considering aforesaid facts, cancellation report was prepared on 10.03.2019 and was presented in Court on 08.04.2019. Petitioner had ample opportunity to file protest petition but no such petition was filed. Complainant did not appear and ultimately, cancellation report was accepted vide impugned order dated 19.08.2019. It is argued that proper investigation was carried out and thereafter, cancellation report was submitted. There is no reason for further investigation of case nor impugned order dated 19.08.2019 suffers from any illegality or irregularity. Both petitions deserve dismissal.

9. I have considered the arguments and have gone through the record annexed with both petitions carefully. FIR is lodged on the statement of Somesh son of deceased victim, who leveled allegations against ASI Dharamveer that he was inimical towards his father Daya

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Kishan and he claimed full suspicion on ASI Dharamveer for committing murder of his father. On this statement, FIR was registered and investigation was started. As per record, during investigation, statements of witnesses were recorded. To support the version of complainant, there is statement of Satbir brother of deceased victim Daya Kishan and Rajpal Sarpanch, which are Annexures P-3 and P-4. Aforesaid persons were not eyewitnesses to said occurrence. The occurrence took place in the area of Waterworks, Bhatla. There is statement of Dilbag, who was posted at Waterworks of village Bhatla, who narrated sequence of events which took place on 30.07.2018. As per his version, 'ESI Daya Kishan came there at about 2:00/2:30 p.m., who was under the influence of liquor and was wearing civil clothes. He slept in his room. Even at 4:00 p.m., Daya Kishan was in his room and at about 7:00 p.m., he requested Constable Rakesh to wake up Daya Kishan so that he could lock the room and go home. Constable Rakesh woke up Daya Kishan. After 20-25 minutes, he noticed that nobody was in his room, therefore, he locked the room and went home for taking his meals. At about 9:30/9:40 p.m., when he returned to Waterworks, he saw Daya Kishan sitting on the wall of pond and he was still drunk. Dilbag claimed that he did not say anything to him and went towards gate of Waterworks. Then he heard noise and saw Daya Kishan lying in the pond. He further explained that height of the wall of pond was approximately 10-12 feet. He informed police at Police Chowki and then Daya Kishan was pulled out of the pond with the help of a rope. He further stated that Daya Kishan was still alive when he was being taken to



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hospital.’

There is Postmortem Report (Annexure P-5), showing two injuries on the person of deceased victim. After receiving reports, Board of Doctors consisting of Dr. Meenu Dhingra and Dr. Sanjay Verma, Medical Officers gave opinion that cause of death in this case was Asphyxia due to drowning under the influence of alcohol. After considering the testimony of witnesses and medical records, Investigating Officer filed cancellation report which was duly presented in the Court on 08.04.2019. So far as investigation part is concerned, statements of relevant witnesses were recorded, Postmortem was conducted, samples were sent for the purpose of testing and opinion was given by Board of Doctors. Learned counsel for petitioner has failed to point out any relevant witness or record which was left by Investigating Agency during the course of investigation. So far as appreciation of facts, circumstances of the case, and medical records are concerned, that is always a matter of trial. In light of this, I do not find any valid reason to issue any direction for further investigation of case by Special Investigating Team. Accordingly, petition bearing **CRM-M-47462-2019** filed by petitioner Somesh stands **dismissed**.

10. The other aspect of present case is acceptance of cancellation report vide impugned order dated 19.08.2019. Status report on record indicates that after presentation of cancellation report, sufficient time was there with complainant to file protest petition and to present their own case. Matter remained pending from 19.03.2019, the date when cancellation report was presented till the date when impugned order dated 19.08.2019



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was passed by learned Judicial Magistrate 1st Class, Hansi, by marking absence of complainant. Learned Judicial Magistrate could have issued notice to complainant for deciding the matter in controversy on merits. One effort could have been made to procure presence of complainant but without doing that, cancellation report has been accepted on that very day by passing impugned order dated 19.08.2019. It cannot be ignored that complainant was continuously pursuing matter since the day he received information about death of his father while he was on duty. Learned Judicial Magistrate 1st Class, Hansi should have considered gravity of offence as well as the facts and circumstances of case as referred above.

Therefore, impugned order dated 19.08.2019, in my opinion, is not justified and same is quashed. Cancellation report filed by Investigating Agency is restored to its original number with a direction to learned trial Court to give reasonable opportunity to petitioner/complainant to present his own version by way of protest petition and thereafter, cancellation report should be disposed of as per law.

With this direction, present petition bearing **CRM-M-41178-2021** filed by petitioner Somesh is accordingly, disposed of.

11. Pending miscellaneous application(s), if any, in both cases, stand disposed of accordingly as well.

12. A photocopy of this order be placed on the file of connected case mentioned above.

16.12.2024

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(AMARJOT BHATTI)
JUDGE