



2024:DHC:741



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

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Date of decision: 30.01.2024+ **W.P.(CRL) 2574/2022****GULSHAN**

..... Petitioner

Through: Mr. Shahid Ali, Mr Sameer Tayyeb,
Mr Monish Rais, Mr Rahil Mabood
and Mr Shahrukh Khan, Advocates.
Mr.Sanjay Abbot, Amicus Curae.

versus

STATE AND ORS.

..... Respondents

Through: Ms. Nandita Rao, ASC for State with
Mr. Amit Peswani, Advocate.
SI Devendra Singh, PS Jafrabad,
Delhi.
Ms. Mrinal Elker Mazumdar, Ms.
Aarushi Gupta, Advocates for R-4.
Mr. Anil Mittal, Mr. Shaurya Mittal
and Mr Atul Chauhan, Advocates for
R-5.
Mr. Anupam S. Sharma, SPP for CBI
along with Mr Harpreet Kabi, Mr
Prakash Diran, Mr Ripu Daman
Sharma and Mr Abhishek Batra,
Advocates for the CBI.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (ORAL)**

1. Mr. Sanjay Abbot, learned *Amicus Curiae* points out two inadvertent

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errors in the order dated 18th December, 2023 passed by this Court.

- A. He points out that in paragraph 4 of the said order, inadvertently a wrong reference has been made to Section 174 of the '*Indian Penal Code, 1860*' (IPC) whereas it should have been Section 174 of the '*Code of Criminal Procedure, 1973*' (CrPC).
- B. He further points out that in paragraph 9 his submission has been wrongly recorded that, '*State of Uttar Pradesh may be directed to transfer its investigation to Delhi Police*'. He submits that the submission made by him was that '*Delhi Police may be directed to register an FIR*'.

2. The order dated 18th December, 2023 is corrected in the aforesaid terms.

3. Now I proceed to decide the writ petition on merits.

4. The present writ petition has been filed seeking the following relief:

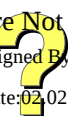
"a. To issue a Writ of Mandamus or any other kind of writ, order or directions and thereby directing the Respondent no 2 to convert the GD entry no. 0020A dated 14.07.22, into an FIR/ to register the fresh FIR and to investigate the incident/offence of murder of son of petitioner as per law and further for directing the respondent no. 3 and 4 to transfer the 'ZERO FIR' No. 00/2022, P.S. Makronia, Distt. Sagar, Madhya Pradesh U/s 174 Cr.P.C. to respondent no. 2."

5. In the present case, notice was issued *vide* order dated 4th November, 2022. Thereafter, *vide* order dated 6th December, 2023, the respondents no. 3 (SHO, Police Station Jafrabad, Delhi), the respondent no.4 (SHO, Police Station Makronia, District Sagar, Madhya Pradesh) and the respondent no.5 (SHO, Police Station Amjhara Ghati, District Lalitpur, Uttar Pradesh) were directed to file their respective Status Reports. Further, taking into account



the sensitivity of the case, Mr. Sanjay Abbot was appointed as *Amicus Curiae* to assist the Court. Submissions of counsels were heard on 18th December, 2023, 22nd December 2023 and on 30th January, 2024.

6. Briefly stated, the case set up in the petition is set out hereinafter:
- 6.1 The Petitioner is the mother of the deceased, Asif (hereinafter referred as 'petitioner's son'). Petitioner's son was running a business with one Monish and he was to be paid an amount of Rs.15,00,000/- from the said business by Monish. However, Monish had not paid the said amount to the petitioner's son even after several reminders.
- 6.2 On 11th July, 2022, petitioner's son received a phone call on petitioner's mobile number from the phone of Monish whereby the petitioner's son was asked to come with two pairs of clothes and a bag. Monish further advised the petitioner's son not to inform the petitioner about this telephonic conversation.
- 6.3 On the very next day i.e., 12th July, 2022, daughter of the petitioner received a phone call from the mobile phone of Monish informing that petitioner's son had met with an accident at District Sagar, Madhya Pradesh and he has been taken to a hospital wherein he is getting operated.
- 6.4 Subsequently, on 13th July, 2022, the police officials from the District Sagar, Madhya Pradesh contacted the petitioner and informed the petitioner that her son, Asif, had died in a road accident.
- 6.5 Post-mortem of petitioner's son was conducted at Sagarshree Hospital, District Sagar, Madhya Pradesh and thereafter police sent the dead body to the petitioner at Delhi on 14th July, 2022.
- 6.6 On arrival of the dead body of the petitioner's son, a PCR call was





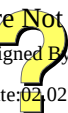
made to the respondent no.3 by the daughter of the petitioner. It was intimated that petitioner's son who had gone somewhere with his friends and had died. Thus, a General Diary Entry bearing GDE No.0020A was registered by the respondent no.3. In this regard, statement of the father of the deceased was taken.

6.7 However, no action was taken by the respondent no.3 stating that no incident had taken place in the jurisdiction of the Delhi. It was further stated that the death occurred in the jurisdiction of Madhya Pradesh and thus, the petitioner should register her complaint in the state of Madhya Pradesh.

6.8 Consequently, the petitioner along with her family travelled to Madhya Pradesh to enquire regarding the incident whereby the petitioner discovered that based on the statement of Monish, a 'Zero FIR' bearing No.00/2022 dated 13th July, 2022 under Section 174 of the CrPC was registered at Police Station Makronia, District Sagar, Madhya Pradesh.

7. In order to get justice for her deceased son, the petitioner filed complaints against Monish, Parvez, Nadeem, Huma and Shareef before: (i) Commissioner of Police, Delhi and SHO, Jafrabad dated 30th August, 2022 [Annexure-P7 (Colly)]; (ii) SSP, District Sagar, Madhya Pradesh dated 2nd September, 2022 [Annexure-P8 (Colly)]; and (iii) SSP, District Lalitpur, Uttar Pradesh dated 3rd September, 2022 [Annexure-P9 (Colly)]. However, no legal action has been taken against the accused persons.

8. In the Status Report filed on behalf of the respondent no.4, it has been stated that during the course of investigation it was found that the place of incident fell within the jurisdiction of Police Station Naarahat, District





Lalitpur in the State of Uttar Pradesh. Thus, all the concerning case papers came to be handed over to the respondent no.5.

9. As per the status report filed on behalf of the respondent no.5, an FIR being Crime Case No. 136/2022 under Section 279/337/338/304A of the IPC came to be registered at Police Station Narahat against the unknown bus driver on 16th December, 2022. It is stated that investigation in the aforesaid FIR is being conducted. It is further stated that an attempt is being made to ascertain the whereabouts of the unknown offending bus and its driver.

10. Counsel for the petitioner submits that the complaint dated 30th August, 2022 was filed by the petitioner with the respondent no.2 and the respondent no.3 on the premise that Asif was murdered by Monish and his friends on account of the ongoing financial dispute. Thus, the respondent no.2 should register an FIR and carry out the investigation in this regard.

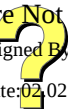
11. Learned Amicus Curiae appointed by this Court submits that in the present case, the concerned authority in the State of Madhya Pradesh has already closed the case, whereas the concerned authority in the State of Uttar Pradesh is investigating only the accident angle. Therefore, he submits that the respondents no.2 may be directed to register an FIR on the basis of the complaint filed by the petitioner.

12. Learned ASC, appearing on behalf of the State has placed reliance on the judgment of the Supreme Court in *T.T. Antony v. State of Kerala and Others*, 2001 SCC OnLine SC 805, to submit that another FIR in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences cannot be registered.

13. I have heard the counsels for the parties and perused the material on record.

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14. In the complaint dated 30th August, 2022, filed on behalf of the petitioner, allegations have been made that the petitioner's son did not die of a road accident but was murdered by Monish and his other friends namely Parvez, Nadeem and Huma in connivance with each other.

15. As per the aforesaid complaint, the motive behind the killing was on account of the fact that Monish had to pay an amount of Rs.15 lakhs to the petitioner's son. Therefore, a conspiracy was hatched to take the petitioner's son out of Delhi and subsequently kill him. It is this aspect which is required to be investigated by the respondent no.2.

16. Further, as noted above, the FIR registered by the respondent no.5 is only limited to offences under Sections 279/337/338/304A of the IPC relating to the death of Asif on account of accident. The said FIR is not concerned with the aspect of murder of the petitioner's son by Monish and his accomplices. Therefore, the judgement of *T.T. Antony v. State of Kerala* (supra), would not be relevant in the present case.

17. It is pertinent to note that the petitioner's son (deceased) as well as all the accused persons were residents of Delhi at the time of the incident and the petitioner's son was allegedly lured out of Delhi by the accused persons in order to kill him.

18. It is a very unfortunate that neither an FIR has been registered nor any investigation has been carried out by the respondent no.2 and the respondent no.3 despite the fact that the petitioner has lost her young son in tragic circumstances, more than one and a half years ago.

19. In view of the discussion above, this Court deems it appropriate to issue a direction to the respondent no.2 to register an FIR on the basis of the complaint dated 30th August, 2022 filed by the petitioner i.e., Annexure-P7



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(Colly) and to investigate the case in accordance with the law.

20. Accordingly, the present petition is disposed of.

AMIT BANSAL, J.

JANUARY 30 2024

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