

(2012) 01 JH CK 0035

Jharkhand High Court

Case No: Writ Petition (Cr.) No. 350 of 2009

Erik Hessa

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Jan. 25, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 173(2), 173(3), 173(4), 173(5)

Citation: (2012) 1 JLR 294

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: Sameer Saurabh, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

P.P. Bhatt, J.

Heard the learned counsel for the petitioner as well as learned counsel for the State.
Perused the papers.

2. With the consent of the learned counsel for the parties, this case is taken up for final disposal.

3. The present petition has been filed for issuance of appropriate direction commanding upon the Respondents for issuance of appropriate order for handing over investigation to the C.I.D. (Respondent No. 4) in connection with unnatural death of Elias Hessa registered as Unnatural Death Case No. 33 of 2006 by Railway Police Station, Chakradharpur as the Railway Police submitted final report in the aforesaid case with observation that it is a case of suicide.

4. The learned counsel for the petitioner submitted that the petitioner was serving as an Assistant Manager in the Canara Bank in Chakradharpur. On 5th October, 2006, as reported by the driver of 212, Ajad Hind Express, one male dead body was

found lying in Section Lotapur-Chakradharpur. The learned counsel for the petitioner has also drawn the attention of this Court to Annexure-2, i.e. the complaint given by the wife of the deceased on 7th October, 2006, wherein, she has stated that her husband was serving as an Assistant Manager in the Canara Bank, Chakradharpur and when the deceased did not reach till late evening, they started making enquiry about himself and that the dead body of the husband of the complainant was found lying on the Railway line near Village-Silpori. She has also stated in her complaint that her husband seems to be under mental stress since last few days. The learned counsel for the petitioner also submitted that the Railway Police submitted report on the same day without conducting proper investigation in the matter. Even the post mortem was not done as required during the course of investigation and the final report was submitted without awaiting for the post mortem report. In support thereof, the learned counsel for the petitioner invited attention of this Court towards Annexure-9, Page 28 of the petition, highlighting the fact that the final form has been submitted on 7th October, 2006, i.e. on the same day on which the U.D. Case was registered vide Annexure-2 of the petition. The learned counsel for the petitioner submitted that as per the final report submitted by the Railway Police, the incidence was treated as an accidental death, though the wife of the deceased had indicated suspicion about the death of her husband. It is further submitted that the Railway Police did not record statement of other Bank employees and other relatives of the deceased so as to find out some material in respect of suspicion indicated by the wife of the deceased and therefore, according to learned counsel for the petitioner, the investigation was done in a fishy and hurriedly manner without proper application of mind.

5. As against that, learned counsel for the State submitted that the petitioner has approached this Court at a belated stage as the incident occurred in 2006, whereas, the petition has been filed in 2009 and that itself would suggest that this is an afterthought. It is submitted that, in fact, during the course of investigation, no material was found and it was a pure case of an accidental death and i.e., why the Railway Police submitted final report without any further delay. Learned counsel for the State has referred to and relied upon the averments made in the counter affidavit filed by the Respondent No. 5. Learned counsel for the State also invited attention of this Court to Paragraph 17 of the counter affidavit and submitted that the statement of the witnesses, namely, Mulaki Kanpai, Asin Hessa and Sarika Ho, who are younger sister of the deceased and the place of occurrence, by no way, indicates towards murder of the deceased and the alleged casual approach of the Railway Police towards investigation, it is further submitted that during the course of investigation, no information has been given regarding apprehension of murder. It is lastly submitted that, in fact, the investigation conducted by the Railway Police is proper and in no way an U.D. Case can be registered as a case of murder and the application filed by the petitioner is not a bona fide one and deserves to be dismissed.

6. With regard to the contention raised by the learned counsel for the State regarding delay and laches in filing the instant petition on the part of the petitioner, the learned counsel for the petitioner submitted that the petitioner is the younger brother of the deceased and looking to their family background, weak financial condition and lack of knowledge it was difficult for him to collect all the papers. However, with great difficulty, he could collect certain papers pertaining to the case and thereafter, he moved this Court in the year 2009. In support of this contention, the learned counsel for the petitioner referred to and relied upon Annexure-10, page 38 of the petition and submitted that before filing the present petition, the petitioner made efforts to collect the papers but it was replied on 26th March, 2009 that the papers pertaining to U.D. Case No. 36 of 2006 is not available. Under the circumstances, the petitioner could not approach the Court well within time but the apprehension raised by the petitioner is well-founded and it is the duty of the police investigating authorities to make proper investigation and find out the real culprit on the basis of the suspicion expressed by the petitioner.

7. Considering the aforesaid rival submissions and on perusal of the papers, it appears that the incident occurred on 5.10.2006 and the U.D. Case was registered on 7th October, 2006. On perusal of Annexure-2, it transpires that Sangita, the wife of the deceased, had clearly expressed suspicion about the unnatural death of her husband. On perusal of Annexure-9, i.e. the final report submitted by the Railway Police, it transpires that it was submitted on the same day, i.e. on 7.10.2006. This, itself suggest that the Railway Police carried out investigation in a hurriedly manner, though specific indication was given by the wife of the deceased in her statement about the stressful behaviour of his husband during the last few days before the occurrence of the incident. I found substance in the argument advanced by the learned counsel for the petitioner that the concerned police authority was required to at least record the statement of the other Bank employees, where the deceased was serving and some of the relatives and friends of the petitioner to find out some clue. But it appears that Railway Police failed to carry out investigation in a proper way. It also appears that the post mortem was not done, as required during the course of investigation. Annexure-4, appears to be the post mortem report but the same is not in a prescribed format. The date of post mortem report is 12.10.2006, i.e., subsequent to the date of submission of the final report i.e., Annexure-9, dated 7.10.2006. The argument advanced by the learned counsel appearing for the State with regard to delay and laches in filing of the present petition cannot be accepted in view of submission made by the learned counsel appearing for the petitioner regarding limited resources as also lack of proper guidance to the petitioner's family. It also appears that the petitioner made efforts to collect the requisite papers, but he could not get those papers as indicated vide Annexure-10. Therefore, there is reason to believe that the petitioner made efforts to approach the various authorities before filing this petition, but he could not get requisite papers due to non-availability of the U.D. Case papers as reported on 26.3.2009 and 4.6.2009.

Learned counsel for the petitioner invited attention of this Court to the provisions, as contained in Section 173 of the Code of Criminal Procedure and submitted that in view of sub-clause 8 of Section 173, Cr.P.C., there is scope of further investigation and therefore, if the Court is not convinced to handover the investigation to the C.I.D., as prayed, in that case, necessary direction may be given to the concerned police authorities to conduct further investigation in view of sub-clause 8 of Section 173 of the Cr.P.C.

8. Sub-clause 8 of Section 173 of the Code of Criminal Procedure reads as under:--

173(8). Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)

9. In the light of the aforesaid provision and looking to the facts and circumstances of the present case, this Court is of the view that this appears to be a fit case, wherein, necessary direction is required to be issued to the Respondent No. 5 for carrying out further investigation. Accordingly, the Respondent No. 5 is directed to see that further and proper investigation as provided u/s 173(8) of the Code of Criminal Procedure be carried out in the matter and further report be forwarded to the Magistrate as required u/s 173(8) of the Code of Criminal Procedure. With the aforesaid observations and directions, this writ petition stands disposed of.