

(2014) 05 MP CK 0146
Madhya Pradesh High Court
Case No: W.A. No. 959/13

Ashok Kumar

APPELLANT

Vs

State of M.P. and
Others

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

- Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 - Section 2(1)
- Penal Code, 1860 (IPC) - Section 160, 200, 294, 304A, 323

Hon'ble Judges: Rajendra Menon, J; Anil Kumar Sharma, J

Bench: Division Bench

Advocate: Jayant Neekhara, Learned Counsel, Advocate for the Appellant; K.S. Wadhwa, Learned Additional Advocate General for State, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

1. This appeal u/s 2(1) of the M.P. Uchcha Nyayalaya Khand Nyay Peeth Ko Appeal Adhiniyam, 2005 has been filed calling in question tenability of an order dated 19.08.13 passed by the Writ Court in W.P. No. 13851/13.

2. Appellant claims to be a resident of village Sultanpur, Distt. Raisen and it is his case that his son one Latees @ Shankar was having certain affair with a girl who is daughter of respondent no. 7. It is said that respondent nos. 7 and 8 were annoyed because of this relation and were not willing to perform the marriage of the girl with Latees @ Shankar. However, even though certain negotiations took place and the date of the marriage was settled but Latees was found dead on or around 11.05.13. On a complaint filed, even though the offences U/s. 294, 323 and 506B of I.P.C. was registered. It was the case of the appellant before the Writ Court that his son has been murdered and as proper investigation and F.I.R. has not been registered, he filed the writ petition. The Writ Court refused to interfere into the matter and

applying the law laid down in the case of [Aleque Padamsee and Others Vs. Union of India \(UOI\) and Others](#), disposed of the writ petition giving liberty to the petitioner to file a complaint u/s 200 and seek investigation into the matter and disposed of the writ petition by holding that the petitioner has an efficacious remedy under the Code of Criminal Procedure.

3. Inter alia contending that when a cognizable offence has been committed, the F.I.R. should have been registered and proper investigation conducted, this writ appeal has been filed. Notices have been issued to the respondents and they are directed to show-cause as to why F.I.R. has not been registered and proper investigation has not been conducted.

4. Respondents have filed a detailed reply supported by an affidavit of the S.D.O. (P) Obedullaganj and based on the complaint and F.I.R. in Crime No. 215/13 Annexure R-1, an offence U/s. 304A was registered on 11.05.13. Statement of various persons including the statement of Satish Kumar and Ravindra Kumar namely the witnesses as mentioned by the complainant in his statement were recorded and it was found that it was a case of the accident and not a case of homicide as contended by the petitioner. It is said that investigation has been completed and process for filing of the challan is underway.

5. Keeping in view the aforesaid, Shri K.S. Wadhwa argued that now as investigation into the F.I.R. is completed, petitioner may approach the Criminal Court where report after investigation has been filed and after discrepancy in the investigation, the Criminal Court should look into the matter.

6. Shri Neekhra emphasized that the investigation has not been properly conducted, proper statement of the witnesses have not been recorded and, therefore, there is an error.

7. On the contrary, Shri K.S. Wadhwa referred to the postmortem report filed as Annexure R-2 and emphasized that the injuries shown in the post-mortem report and the cause of death arose because of an accident and, therefore, no further investigation into the matter is called for.

8. We have heard learned counsel for the parties and perused the record. The injury report prima facie shows that the injuries caused are crushed injuries and brain hemorrhage and according to the respondents, it is the case of the road accident by hit and run. Except for making an allegation that the private respondents have committed the offence by killing his son, no concrete evidence or material prima facie in nature is adduced by the petitioner to substantiate his contention. On the contrary, the statement of the so called witnesses pointed out by him namely Shri Satish Kumar and Ravindra Kumar whose statement u/s 160 available as Annexures R-4 and R-5 indicates that they have given a statement with regard to the accident that took place involving the petitioner's son.

9. Taking note of all these circumstances, we find no further indulgence to be made into the matter. In case, petitioner has any grievance with regard to the investigation and the charging of the offence when the report is submitted to the Magistrate concerned for taking further action, the appellant may raise proper objection before the Magistrate or the Criminal Court and it would be for the Criminal Court to look into the grievance and proceed in the matter in accordance to law. For the present, in the facts and circumstances of the case, based on the material available and the averments made by the petitioner which is not based on any cogent material, we are not in a position to initiate any further action or show any further indulgence.

10. With the aforesaid, the appeal stands disposed of.