
(2020) 07 J&K CK 0055
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 65 Of 2020

Fayaz Ahmad Bhat

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 20-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(8), 482
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 279, 304(A)
Motor Vehicles Act, 1988 — Section 146, 196, 181
Constitution Of India, 1950 — Article 226

Citation : (2020) 07 J&K CK 0055

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. Sultan, B. A. Dar

Final Decision : Disposed Off

Judgement

Sanjay Dhar, J

1) The instant petition under Article 226 of the Constitution of India read with Section 482 Cr. P. C has been filed by the petitioner above named seeking a direction to respondent No.2 for re-investigation of FIR No.50/2019 for offences under Section 279, 304-A RPC and 146/196/181 of Motor Vehicles Act registered with Police Station, D.H. Pora Kulgam.

2) In the petition it is averred that on 04.05.2019, one Nuzhat Gani Mir D/o Abdul Gani Mir R/o Damhal Hanjipora, Aramwari. Kulgam, a medical student of first year, received critical injuries. It is alleged that the above named victim was abducted by accused Mudasir Ahmad Bhat from the hospital premises and after sustaining injuries, she was admitted to the hospital in an unconscious state. It is further contended that the victim succumbed to the injuries and FIR No.50/2019 was registered with Police Station, D. H. Pora, Kulgam.

3) According to the petitioner, the investigation conducted by the police was

perfunctory and unfair as the incident was a case of murder and not a case of death by a negligent act as has been made out by the investigating agency.

4) Notice of the petition was issued to the respondents and pursuant to the same, response/status report has been filed by the respondents. As per the said response, on the fateful day, the victim was traveling as a pillion rider with accused Mudasir Ahmad Bhat on his motorcycle bearing registration No.JK18A-2963. The said motorcycle suffered an accident on account of its rash and negligent driving by the accused resulting in death of the victim. After investigation of the case, offences under Section 279 and d 304-A RPC stand established against the accused and the challan stands produced before the concerned Court.

5) I have heard learned counsel for the parties and perused the record of the case.

6) It is clear from the status report that the investigation of the case has culminated into filing of a charge sheet against the accused for offences under Section 279/304-A RPC and the charge sheet stands filed before the concerned Court. According to the learned counsel for the petitioner, the investigating agency did not allow him to produce the relevant material/witnesses to show that it is a case of murder and not a case of death by an act of negligence..

7) So far as power of investigating agency to investigate a case, is concerned, it is open to the investigating agency to consider the material/evidence that is obtained by the agency after the filing of the charge sheet and produce a further or supplementary report before the Magistrate. This is clear from the language of Section 173(8) of the Code of Criminal Procedure, which reads as under:

"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-section (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)."

8) From a perusal of the afore-quoted provision, it is clear that an investigating agency is not prevented from undertaking further investigation in respect of an offence even after presentation of the charge sheet before the Magistrate. In the instant case the report of investigation (charge sheet) stands produced before the concerned Magistrate, as such, it would be appropriate to leave the decision regarding further investigation of the case to the same Magistrate.

9) In view of the above, without going into the merits of the allegations made by the petitioner, the petition is disposed of with liberty to the petitioner to approach the concerned Judicial Magistrate with an appropriate application along with

relevant material and in case such an application is made before the Ld. Magistrate, he shall pass appropriate directions in accordance with the law.

10) Copy of this order be sent to the concerned Court for information and compliance.