

(1991) 05 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Criminal Writ Petition No. 7 of 1991

Munna Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 23-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) CriLJ 1558 : (1992) 2 RCR(Criminal) 254 : (1992) 1 ShimLC 68

Hon'ble Judges : V.P. Bhatnagar, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Vijay Thakur, for the Appellant; M.L. Chauhan, Assistant A.G., for the Respondent

Judgement

V.P. Bhatnagar, J.—Petitioner Munna Lal has filed this writ petition under the provisions of Articles 226/227 of the Constitution of India. The averments made in the petition are that his eldest son Rakesh Kumar was married to Smt. Santosh daughter of Sham Lal in the month of October 1990. The petitioner had gone to Uttar Pradesh on February 4, 1991 where he got the information from his brother-in-law that Rakesh Kumar had died. He rushed back. It was then that he gathered that the dead body of Rakesh Kumar was recovered by the police at Kufri on February 5, 1991, at about 9.10 a.m. He further learnt that Sham Lal had come to Rakesh Kumar's house on February 4, 1991 and persuaded to take him to Jatol Dispensary where he was posted as a sweeper. Rakesh Kumar's wife Santosh wanted to accompany them but Sham Lal did not agree. She further requested her father that let Rakesh Kumar take his meals but got an answer that he will be served special diet on that day after which he will not become hungry. It is further averred in the petition that Sham Lal was inimical towards the deceased from the very beginning when marriage took place in October 1990.

2. The petitioner has thereafter been knocking at one door or the other for having his F.I.R. registered. He approached the police and thereafter the Deputy

Commissioner, Shimla and then the Director General Police, Himachal Pradesh but all in vain.

3. In reply to the notice issued to the State the Director General Police, Himachal Pradesh, Shimla, has filed his affidavit today in the Court. Its perusal shows that the dead body was first noticed on February 5, 1991 by one H. C. Shiv Ram. It was then taken for post-mortem examination and the opinion given by the Medical Officer was that "deceased died due to respiratory distress (Asphyxia) due to exposure to cold while under the effect of alcohol". Here, it is submitted by Shri Vijay Thakur, learned counsel for the petitioner, that the above medical opinion was tendered as a result of reviewing the entire case and is not the original opinion. Further contents of the affidavit filed by the Director General Police, Himachal Pradesh, are to the effect that the enquiries made have revealed that there was no motive for killing Rakesh Kumar and that it appears that Rakesh Kumar in a state of inebriation left Jatol for Mashobra at about 9 p.m. brushing aside all requests made to him and that he died a natural death due to exposure to extreme cold and as a result of consuming alcohol.

4. We are not satisfied at all about the manner in which this case is sought to be closed. The provisions of law about the registration of F.I. R. are very clear. When the petitioner approached the police on February 9, 1991 and brought the facts which are given in this petition to their notice and prayed for the registration of F.I.R. the police had no option but to register it and thereafter start investigations. It is another thing that after making investigations as a result whereof the police may come to a conclusion that no offence is made out in which eventuality it has to submit a report to the Court for cancellation of the F.I.R. Making an investigation and thereafter forming an opinion about the non-commission of an offence followed by refusal to register F.I.R. is a procedure not known to law. It is in fact violative of the manner in which F.I.R. is to be registered and thereafter investigated. Cumulatively, we are, therefore, of the opinion that a direction should issue to the State for the registration of the F.I.R. forthwith and, in the facts and circumstances of this case, for entrusting the investigation of this case to a Police Officer not below the rank of Inspector Police. Before parting with this case we would like to observe that nothing stated in this order would prejudice or have any effect on the course of the investigation or any evidence that may be produced by the complainant in proof of the case. Orders are made accordingly.

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