

**(1999) 01 J&K CK 0001**  
**In the Jammu And Kashmir High Court**  
**Case No : P.I.L (W) No. 750 Of 1998**

President Nari Jagarn Manch

APPELLANT

Vs

State of J & K

RESPONDENT

**Date of Decision :** 01-01-1999

**Acts Referred:**

Constitution of India, 1950 — Article 226

Jammu and Kashmir Consumer Protection Act, 1987 — Section 156, 174

**Citation :** (2000) KashLJ 26 : (1999) 1 SriLJ 252

**Hon'ble Judges :** Arun Kumar Goel, J

**Bench :** Single Bench

**Advocate :** Sunil Sethi, Shaishta Hakim, R.P.Bakshi, Parmod Kohli, A.K.Gupta,  
Advocates appearing for the Parties

## Judgement

Arun Kumar Goel, Judge.

1. Keeping in view the controversy involved in this case, it was agreed between the learned counsel for the parties that this petition needs to be

disposed of at this stage only. Accordingly, this petition is admitted and is being finally disposed of.

2. Facts which are not in controversy, are that respondent No.3 Vikram Malhotra was married to Smt. Ashu Malhotra on 31st Jan, 1998. Mrs.

Ashu Malhotra since deceased, was found hanging with a fan at her matrimonial home on the evening of 24th July, 1998. This fact was noticed by

her husband i.e respondent No.3. It is further not in dispute that before anybody could arrive at the spot, respondent No.3 had brought down the

dead body of his wife by cutting the Dupatta from the fan. It is further not a dispute that after the postmortem of the body of the deceased, she was

cremated.

3. Meanwhile on 25th July, 1998 around 10. A.M. information was received at Police Station Gandhi Nagar, Jammu, regarding the death of Ashu

Malhotra wife of Vikram Malhotra resident of 701A, Gandhi Nagar, Jammu, having died under suspicious circumstances on the previous evening

i.e. 24th of July, 1998. Report No. 9 was entered in Daily Diary register. Proceedings were undertaken by the police under section 174 of J and

K Cr. P.C. and as observed earlier herein, postmortem was got conducted.

4. Treating it to be a case of suicide by hanging, investigation was undertaken by the police. According to the prosecution case, during investigation

it was revealed that the deceased was abetted to commit suicide by her husband i.e. respondent No. 3 Vikram Malhotra.

5. During the course of investigation, statement of the mother of the deceased was recorded on 30.7.1998. Police, on the basis of statement

recorded and other material collected during the course of investigation, lodged a formal F.I.R. at Police Station Gandhi Nagar, U/S 998A 306,

201 R.P.C. moved in the matter by arresting respondent No.3 on 10.8.1998 and on his having been produced before the concerned Magistrate,

he was admitted to bail.

6. As is revealed from the affidavit of senior superintendent of Police, the investigation of the case has been closed and after completion of certain

formalities, as required under law, challan is going to be produced in the court.

7. A communication was addressed to Hon'ble the Chief Justice of this Court for handing over the investigation of this case to Central Bureau of

Investigation (C.B.I) for a detailed investigation of the murder/death of Smt. Ashu Malhotra above named. This was ordered to be treated as a

writ petition. Notice was ordered to be issued to the State, Sr. Superintendent of Police and respondent No.3 was ordered to be added as a

party.

8. Objections have been filed by respondent No.3 who has stated that investigation has been properly carried out by the police and he has been

falsely implicated in the case unnecessarily. According to him this is a pure and simple case of suicide having been committed by the deceased.

Besides this, delay in lodging the FIR was pleaded as another ground not to take cognizance of the petition filed by the petitioner as noted above.

In addition to this, it is pleaded that no ground is there for handing over the

investigation to C.B.I, because there is nothing to suggest that local police has tried to shelter or protect respondent No.3, muchless it has held thorough investigation. In addition to this, it is also pleaded that the PIL in question is aimed at causing undue harassment to the respondent No.3. In this background respondent No.3 has prayed for dismissal of the petition in question.

9. The process of carrying out investigation is to separate Chaff from the grain, thereby ensuring that truth is dug out and accused is brought to book so that law takes its course against him. In the instant case the only and pivotal question is whether the death of Smt. Ashu Malhotra was suicidal or homicidal. As revealed from the file of the prosecution, referred to by Mrs. Hakim and the stand of respondent No. 3, the case was dealt with being pure and simple of abatement having been caused by the husband to compel the wife to extort gifts etc. from her parents. It is also revealed from the police file, that the parents of the deceased had got an Air Conditioner installed in the bed room of respondent No. 3 at his behest. Besides this, while the father of the deceased was undergoing treatment for his hearth ailment at Delhi, deceased had asked her mother as to when her father is coming to Jammu and is going to sell the land. In the aforesaid circumstances, deceased was compelled to commit suicide, as per prosecution case, by the respondent No. 3.

10. Learned senior counsel appearing for the petitioner submitted that police has not at all investigated the case to ascertain whether this is a case of homicidal death or not. In this behalf, it was pointed out that the knot which was tied 9n the fan wherefrom the deceased has tried to have hang and committed suicide was not taken into possession by the police after the Dupatta had been cut for the purpose of bringing down the dead body by respondent No.3. It was also urged that the respondent No. 3 was the only person who was there at the spot. Instead of calling for any other person, it was taken upon himself by the former to bring down the dead body. By referring to the chair and stool which were .used as tools for hanging herself, it was pointed out by Mr. Kohli that it is impossible to have hung herself by the deceased. Both of these were in the same position when dead body was hanging. This could not be possible because with the hanging. This could not be possible because with he hanging the

deceased was to come down and this stool could not have remained intact in a standing position.. Police also did not record the statement of sister

of the deceased as well as her husband despite having adequate information. On the other hand, learned counsel appearing for respondent No. 3

urged that there were no circumstances calling for sending of the case for further investigation to C.B.I, and in case after the challan is filed and trial

court feels that further investigation is required, it is not powerless U/S 173(8) of the Cr. P.C. from doing the needful. It has also been urged on the

behalf of State respondents that when a reference is made to the report of Forensic Laboratory and of the Doctor who conducted the postmortem,

it hardly leaves any room for doubt that this is a case of pure and simple suicide. Bonafide of their client was writ larged when he readily returned

all the belongings of the deceased to her relations before 10.8.1998 while he joined the investigation.

11. It is not always that because there is lack of(sic) both in the State Police or otherwise that case has to be referred to CB.L for further

investigation. However, keeping in view the larger public interest and reimposition of confidence of the public at large, in a given situation that court

may order investigation of a particular case by the C.B.I.

In 1995 AIR SCW 3054, Uma Shankar Sitani Vs. Commissioner of Police, Delhi, Supreme Court ordered the investigation of the case by the

C.B.I, when the case of the petitioner there was that a false case has been registered against him on account of business rivalry and address of the

complainant noted in the police station was found to be nonexistent.

Again in 1995 AIR, 3248, in case titled Navkiran Singh and others Vs. State of Punjab and others in the matter relating to Kidnapping/elimination

of Advocates conducting case of TAD A, Police Excesses, Human rights violation, Supreme Court ordered investigation to be carried out by the

C.B.I.

In AIR 1996 SC 1515, State of Bihar Vs. Ranchi Zila Samta party, Supreme Court upheld the order of entrusting the case to C.B.I, from the

State Police where large scale defalcation of public funds, fraudulent transaction and falsification of accounts in Animal Husbandry Department of

the State Government was alleged.

IN (1992) 1 SCC, 397, Gudlure M.J. Cherain and others Vs. Union of India and

others while ordering transfer of case to CBI, it was observed

that in a given situation, to do justice between the parties and to install confidence in public mind, it may become necessary to ask the C.B.I. to

investigate the crime. It only shows the efficiency and independence of the agency.

12. It may be worthwhile to note that in the instant case there is no direct evidence. Entire case of the prosecution hangs on circumstantial

evidence. It is further not in dispute that it was respondent No. 3 who reached the spot first of all and who alone had brought down the dead body

from the fan after cutting Dupatta. In these circumstances more cautious approach was required on the part of the police while investigating the

matter, after the fact of death having taken place in suspicious circumstances come to its notice. May be, in the wisdom of investigating officer,

being a case of suicide simplicitor on account of demand of dowry by respondent No. 3 that he proceeded in that direction. Another fact that was

pointed out by Mrs. Hakim was that the knot which was tied on the fan was not taken into custody and for that purpose case u/s 201 RPC was

added in the challan. Another reason for referring the case to C.B.I, can be to have more efficient and specialized investigation and it in no way

casts stigma on the investigation carried out by the state police. This fact, coupled with fair stand of the SSP that though they have investigated the

matter thoroughly, still they have no objection if the court wants to refer the matter for further investigation by the C.B.I.

13. The case of the respondent No. 3 is clear and specific. He says that he neither demanded any dowry nor abetted the commission of suicide by

the deceased. If that be so, and if the stand of respondent No. 3 is based on true facts, there should hardly be any difficulty for him to face further

investigation of the case at the hands of C.B.I.

14. Other plea argued on behalf of the parties concern the merits of the case which can only be adjudged after referring to the material collected

so far and those are not being determined. I have refrained from going into the merits of the evidence collected so far as was referred to by the

learned counsel for the parties, lest such examination prejudiced anyone of them in any proceedings henceforth.

15. No other point is argued.

16. As a result of aforesaid discussion, this petition is allowed, consequently, it is ordered that C.B.I. Jammu, will hold further investigation in the case relating to FIR No. 175/98 U/ S's 498A, 306, 201 RPC and section 3 of Dowry Restraint Act and to proceed further in accordance with law. It is further directed that all out efforts would be made by the C.B.I, to complete the investigation and take further action with utmost expedition and as far as possible on or before 15th of April, 1999. Senior Superintendent of Police, Jammu, is directed to forthwith handover the entire recorded of investigation, including case diaries to Superintendent of Police, C.B.I. Jammu. Registry to of send a copy of this judgment to C.B.I. Office at