
(1992) 08 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7022 of 1991

Radhesh Chandra Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-08-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 DMC 176

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : R.N. Khandelwal, for the Appellant; K.N. Sharma, Dy. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.B. Sharma, J.—The petitioner is real younger brother of one Smt. Manisha, who was married to Rajiv Joshi who has his house in Pologround Udaipur. The marriage of Manisha with Rajiv Joshi took place on February 15, 1985 and was preceded by a betrothal ceremony which took place on February 22, 1984. Out of the wedlock, there are two children, one male and the other female. Deceased Smt. Manisha was living with Rajiv Joshi who had lost his father sometime before the incident with which we are presently concerned. In the midnight intervening October 8 and 9, 1991 Shri Manisha died at a result of extensive burn injuries inside the home of her husband Rajiv Joshi. After receiving the burn injuries she was rushed to the hospital and it is said to have made two dying declarations, orally, one made to Dr. (Mrs.) Savita and the other to a Magistrate. The dying declaration said to have been made to Magistrate could not be completed because of her serious condition. A report of the incident was lodged by none else but by Rajiv Joshi, husband of deceased Manisha in the Police Station Amba Mata Udaipur in which he stated that Manisha had committed suicide by sprinkling kerosene and setting fire on her person.

2. It is the case of the petitioner that deceased Manisha was done to death by

her husband and others including her mother-in-law and & false report was lodged at the Police Station, Amba Mata, Udaipur.

3. There is no dispute and it appears from the post-mortem report that Smt. Manisha died as a result of extensive burns and her body was 99% burnt. The case is pending investigation and the investigation has not been completed because this Court after filing of this writ petition by the brother of (he deceased had ordered on December 16, 1991 (that till further orders no report u/s 169 or 173 Cr.P.C. be presented before the Magistrate having jurisdiction in the matter.

4. The petitioner seeks transfer of the Case from CID(CB) of the State of Rajasthan to CBI on the ground that the investigation is not likely to be fair because of the reasons mentioned in para 26 of the writ petition. In the said para the petitioner has come out with a case that one Gopesh Bhatt a retired senior IAS officer (Super Time Scale) is a maternal uncle of Rajiv Joshi and Manoj Bhatt, son of Shri Gopesh Bhatt is a IPS officer in the Rajasthan cadre and is presently posted as S.P. Kota. It has further been mentioned that on Rajendra Joshi, a cousin brother of Rajiv Joshi is a Dy. Superintendent of Police posted at Jaipur and one Shri Manoj Sharma, the brother-in-law (gainer) is a RAS officer. They are all influential persons and are having close relations with other senior IPS and IAS officers in Rajasthan.

5. It may be stated at the very outset that there is no material so far as Gopesh Bhatt and Manoj Bhatt are concerned, up to now, that they had at any stage interfered with the investigation, but one fact cannot be lost sight of that Manoj Bhatt is a senior IPS officer and is posted in Rajasthan and it was given out that presently he is posted at Jaipur. They may or may not influence the investigating officer, but the question is as to whether in the facts and circumstances the investigation of the case should or should not be transferred from CID(CB) to CBI as prayed.

6. It is not proper either to refer to various circumstances and documents on record or to comment on their probative value at this stage. There are two dying declarations, one made by Dr. (Mrs.) Savita on the date of incident and a perusal of her statement recorded u/s 161 Cr.P.C. which is available at page 77 of the case diary will show that she is a cousin sister of the deceased. She having come to know in the intervening night of October 8 and 9, 1991 that Smt. Manisha with burn injuries was admitted in the hospital reached Udaipur on October 9, 1991 by air at 8.30 a.m. and reached in the hospital at 9.30 a.m. She had gone to the hospital directly from the Air Port and Manisha was there in Ward No. 22, bed No. 13 and she was lying with extensive burn injuries. She required as to how she got burn injuries, she gave out that Rajiv and Kamla Bai were responsible for it. She also stated that at that time her husband Rajiv Joshi and others were there in the hospital. As said earlier, I will not comment nor it will be proper to comment about the correctness or otherwise of the dying declaration made by Dr. Savita but such a statement was made and it is a piece of evidence for consideration of the Investigating Officer. The other dying declaration was

made to the Magistrate at 9.05 a.m. which is available at page 17 of the case diary. It appears that only question was put to her by the Magistrate as to how she got burn injuries. She is said to have replied that a tin of kerosene was on a slab and when she was making an attempt to take it, in the process of holding it fell on the ground. There was no light and a candle was burning. Thereafter, as per the endorsement of the Magistrate the patient Manisha stopped speaking and was unable to speak. Again I will not comment on the dying declaration that when the Magistrate proceeded to record her dying declaration if she was in the fit state of mind. There is material on record that she was admitted in the hospital and a morphia injection was given her at about 8 or 8.30 a.m. and whether with such an injection she could be in position to give her statement and I will not like to comment. Similarly, the other statement is said to have been made to Dr. Savita at about 9.10 a.m. and the same can be said about the condition of Smt. Manisha when she is said to have made that statement to her. Again, it is a matter for the Investigating Officer to consider whether it is a case of suicide or homicide. One fact cannot be lost sight that the marriage of Manisha had taken place on February 15, 1985 and she died on October 9, 1991 i.e. within 7 years of her marriage. u/s 304B IPC the presumption, which may or may not be drawn, is that it was a case of dowry death. All these are the matters which need reconsideration. Surprisingly, no attempt has been made by the Investigating Officer to record the statement of the Magistrate who recorded the dying declaration of Manisha in the hospital. It is a lapse on the part of the Investigating Officer. Be that as it may in the facts and circumstances of this case where the retired Senior IAS officer and IPS officer are relations of Rajiv Joshi, and investigation has not taken much progress, I am of the opinion that to see that the investigation is fair and proper the investigation should be done by the CBI and it should be transferred from CID(CB) to CBI. It may not be understood and I have not made any comment against any of the investigating agencies and about their fairness, but the investigation must not only be fair but it must appear to have been made fairly and only on this ground I am transferring the investigation of this case from CID(CB) to CBI.

7. Consequently, I hereby allow this writ petition and direct that the investigation of the FIR No. 150/1991 Police Station Amba mata Udaipur be transferred from CID(CB) to CBI and henceforth the CBI shall investigate the case and proceed further in the matter. The Investigating Officer is directed to hand-over the file to the CBI and the Director, CBI shall hand over the case to some senior officer for further investigation. Costs made easy.