

(2009) 05 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : 561-A No. 51 Of 2008 And Cr.MP No. 59 Of 2008

Suraj Parkash

APPELLANT

Vs

SHO P/S Reasi

RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 156, 173, 561A
Ranbir Penal Code, 1989 — Section 302

Citation : (2009) 3 JKJ 211 : (2010) 1 SriLJ 37

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : Adrash Sharma, Advocates appearing for the Parties

Judgement

1. Petitioner seeks quashment of FIR No.45/08 as also order No.20809/SJR dated 11th March 2008 whereby and whereunder complaint was

sent to police concerned under section 156(3) Cr.P.C. At the time of filing of this petition in May 2008, the investigation of the case has been

ordered to stay.

2. The complaint filed before the Id. Magistrate was forwarded to P/S Reasi under section 156 (3) Cr.P.C for investigation of the case. It is

alleged that son of the complainant was killed by the accused in his house on 8th April 2005 and thereafter the dead body was thrown out of the

house and the complainant was informed by accused that his son has died because he suffered cardiac arrest. It is also alleged that the accused is

an influential person and while being in league with police personnel is trying to get the case hushed up. It was further alleged in the complaint that

despite knocking at the door of highest authorities, justice has not meted out to him, that is how he filed the complaint before the Id. Magistrate. The

Id. Magistrate after considering the contents of the complaint exhibited concern about the state of affairs in which the matter was dealt with and

accordingly forwarded the complaint u/s 156(3) Cr.P.C to police station Reasi. A case FIR No. 45/2008 came to be registered on 12th March

2008 under section 302 RPC. The petitioner is aggrieved of the aforesaid FIR, has challenged the same before this court.

3. Heard learned counsel for petitioner. The Id. Counsel for petitioner submits that after the death of son of the complainant, an enquiry was

conducted and the said enquiry culminated in holding that the son of the complainant has died by hanging it was a case of suicide. The annexure

enclosed with this petition reveal that further magisterial enquiry has been ordered in the case by District Magistrate concerned. The Id. counsel

further submits that as the enquiry has been conducted u/s 174 Cr.P.C so no case could be registered on the same set of allegations which have

been enquired into. Petitioner thus seeks quashment of FIR.

4. Section 174 Cr.P.C deals with enquiries and report on suicide by police officer or some other police officer specially empowered by the

Government in that behalf, on receiving information that some body has committed suicide; or has been killed by another, or by machinery or by an

accident; or has died under circumstances raising a reasonable suspicion that some body has committed an offence and shall immediately give

intimation thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Government

or by any general or special order of the District or Sub District Magistrate, shall proceed to the place where the body of the person is lodged.

Complete procedure is provided u/s 174 about the conducting of investigation, for the cause of the death. The report filed by SHO police Station

Reasi dated 12th March 2008 before Id. Magistrate reveals that the enquiry was conducted and the apparent cause of death was stated to be

suicide by hanging. This report was submitted by SHO police station Reasi to the Executive Magistrate first class Reasi on 19th May 2006. The

said report further reveals that at the request of the complainant the Magisterial enquiry was ordered by SDM Reasi vide order dated 25th Jan.

2005 and the District Magistrate Reasi vide order dated 31.08.2007 entrusted the said magisterial enquiry to Executive Magistrate first class Reasi

which is still under investigation. The report further reveals that matter is still under investigation and could not file the report. The jurisdiction to conduct an inquest u/s 174 Cr.P.C provides an independent machinery. The report of the police is to be forwarded to Executive Magistrate. The inquest is to be conducted by the Magistrates duly empowered in this behalf.

5. A case under section 154 Cr.P.C is registered when a complaint filed discloses commission of cognizable offence. The officer in charge of the

police station is under statutory obligation to enter the same in relevant register. The investigating officer if he has reason to suspect commission of

offence, is duty bound to investigate the same in accordance with law. In this case after registration of the case FIR No 45/08 u/s 302 RPC, matter

could not be investigated because this court stayed the investigation of the case. The FIR can be quashed only if it does not disclose commission of

offence or if malafidies are alleged against the investigating officer. The FIR placed on the files of this court prima facie disclose the commission of

offence. The I.O is thus duty bound, if he has reason to suspect to investigate the same. The FIR in such circumstances cannot be quashed but the

police authorities are duty bound to investigate the case and bring the same to some logical conclusion one way or other. If during investigation it is

found that no offence is committed in such eventuality concerned police officer is within its statutory powers to close the case as not proved subject

to orders passed by the Magistrate on filing of the such report. In case on investigation the allegations as contained in FIR are found to be prima

facie proved then report u/s 173 Cr.P.C is required to be filed in the court of competent jurisdiction. In this case investigation could not proceed

which benefits neither the petitioner nor society at large.

6. The inquest proceedings are underway so cannot become a stumbling block in registration of case and conducting of enquiry. Even, otherwise,

in the scheme of code, the two investigations being permissible, no fault can be found with registration of case and investigation thereof.

7. This petition being merit less is dismissed. The investigating agency shall proceed with the investigation of the case strictly in accordance with

law. Registry is directed to inform the concerned police agency about this order.