

(2018) 09 J&K CK 0074

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 152 Of 2012

Swarn Chand @APPELLANT@Hash State Of Jammu & Kashmir And Ors

Date of Decision : 28-09-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 279, 304A
Code of Criminal Procedure 1973, — Section 561A

Citation : (2018) 09 J&K CK 0074

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : G.S. Thakur

Judgement

1. It is contended in the petition that on 31.12.2011, the son of the petitioner who was on his way from Jammu to Akhnoor on Motorcycle No. JK02AB-3399 and on reaching Patoli, near "Karan Palace" a Bus bearing registration No.0795-JK02AC, being driven by the driver in a rashly and negligently manner, hit one Kewal Kumar-son of the petitioner. Due to rash and negligent driving of the Bus driver, the accident occurred and the son of the petitioner died on spot. Postmortem was conducted by the Board of Doctors at Govt. Medical College and Hospital Jammu and a FIR No.374/2011 under Section 279/304-A RPC was registered with the Police Station Domana. The investigation of the case was conducted by the Investigating Officer without appreciating the FIR wherein it has been specifically mentioned that the Bus driver who was driving the Bus negligently and rashly hit the Motorcycle by crossing the wrong side, without recording the statement of any witness on spot who were present there and produced the closure report alleging therein that the accident has occurred because of the negligence on the part of the Motorcycle driver.

2. The closure report was transferred to the 2nd Addl. Munsiff, Judicial Magistrate 1stClass who consequently without issuing any notice to the petitioner accepted the closure report by virtue of order dated 25.01.2012.

3. The petitioner being aggrieved by the investigation conducted by the Investigating Officer, has challenged the same by stating that I/O has conducted

the investigation in a clandestine manner and closed the case by declaring that the deceased driver of the Motorcycle was negligent who hit the Bus and died on spot. The petitioner being the father of the deceased sought the indulgence of this Court by invoking the inherent jurisdiction under Section 561-A Cr.P.C. for seeking direction to respondent No.2 to re-investigate the case, as it is alleged that the closure report submitted by the respondent Nos. 3 and 4 is glaring misuse of the powers and the investigation has been conducted in a casual manner and without recording the statement of any witness on spot

4. Counsel for the petitioner further submits that the petitioner is having sufficient evidence to show that the accident occurred due to the rash and negligent driving of the Bus driver but respondent Nos.3 and 4 being Investigating Officer did not bother to seize the Bus or disclosed the name of the Bus driver. Since the petitioner is a rustic villager belonging to a border area, the investigating Officer is alleged to have been influenced by the owner of the Bus. Hence, through the medium of this petition, the closure report is sought to be set-aside with a prayer to pass a direction to the respondents to reinvestigate the case.

5. I have considered the submission of counsel for petitioner. From the perusal of certified copy of closure report, it is evident that there is specific mention in FIR that deceased Kewal Kumar was on Motorcycle No.JKO2AB-3399 and on reaching Patoli, near "Karan Palace" accident took place between motorcycle and Bus bearing registration No.0795JK02AC, resulting in death of deceased-Kewal Kumar. I/O has stated while concluding the investigation that as driver of offending Motorcycle has died so investigation is closed. Accordingly report was submitted to JMIC (2ND ADDITIONAL MUNSIFF), Jammu, who accepted the same without issuing the notices to petitioner (father of deceased) and other family members of deceased. It was legal duty of JMIC to ask from the family members of deceased as to whether they were satisfied with conclusion of investigation or not.

6. Both I/O in the case and JMIC have performed their legal duties in most perfunctory manners.

7. I/O was duty bound to collect the evidence, record the statements of witnesses on spot in order to come to conclusion as to who was rash and negligent, when accident took place.

8. In AIR 1985 SC 1285 a three judges bench in case titled Bhagwat Singh Vs. Commissioner of Police, it is held as under:-

9. (b), because the question we are examining here is whether the magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased when he is considering the police report submitted under section 173 sub-section (2).

10. It will be seen from the provisions to which we have referred in the preceding

paragraph that when an informant lodges the First Information Report with the officer-in-charge of a police station he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer in charge of the police station on the basis of the First Information Report lodged by him. On sooner he lodges the First Information Report, a copy of it has to be supplied him, free of cost, under sub-section (2) of Section 154. If notwithstanding the First Information Report, the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case because it is to be investigated. Then again, the officer in charge of a police station is obligated under sub-section (2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer in charge of a police station on the First Information Report is required to be communicated and the report forwarded to the Magistrate under sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the First Information Report must know what is the result of the investigation initiated on the basis of the First Information Report. The informant having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.

11. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3)

of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be the culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or take the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

9. In view of above law, the order of Magistrate, suffers from infirmity of law; it is set aside accordingly. Matter is remanded back to the Court below, who shall pass fresh order on closure report as per law after hearing the petitioner.