

03.03.2022

Present: Sh. Sachin Anand, Ld. Counsel for the revisionist.
Sh. Nischal Singh, Ld. Addl. PP for respondent no. 1.
Ld. Counsel for respondent no. 2.

Heard arguments as advanced by Ld. Counsel for the revisionist, Ld. APP for State and Ld. Counsel for respondent no. 2.

This is a revision petition filed against order dated 09.02.2021 passed by Ld. ACMM, South District in CC no. 169/21 titled '*Bula Devi vs. Seema Meena & Anr*' (hereinafter referred to as the Impugned Order).

The material facts leading to the filing of this revision petition and which are relevant to dispose off this revision petition are mentioned in the paragraphs [1(a) to 1 (e)] -

1 (a) Smt. Bula Devi, filed an application under Section 156 (3) CrPC seeking directions for registration of FIR and investigation into the sudden and unnatural death of her husband Sanjay Kumar. The deceased, Sanjay Kumar was working as a Head Constable with the Delhi Police and was lastly posted at P.S. Saket, Delhi. While Sanjay Kumar was discharging his duties at Delhi, Smt. Bula Devi and the children born out of the wedlock were residing in the village at Alwar, Rajasthan. The deceased visited his family on 26.07.2020 and appeared troubled. Upon inquiry by Smt. Bula Devi regarding his condition, he said that he was being harassed and blackmailed by

one Seema Meena and another who are also police officials working with Delhi Police and infact Ms. Seema Meena was also posted in Saket Police Station only. Further Sanjay informed his wife Smt. Bula Devi that Ms. Seema Meena in connivance with others was trying to extort money from him threatening to level false charges of sexual harassment against him, if he does not pay the money being asked for. According to Smt. Bula Devi, before leaving the house on 27.07.2020 her husband even raised some suspicion that something wrong may happen with him and that he feared for his life. Thereafter, Sanjay went to report for his duties at Delhi.

1 (b) On 28.07.2020, the dead body of Ct. Sanjay (husband of Bula Devi) was found in suspicious circumstances within the jurisdiction of P.S. Saket itself. Ct. Sanjay was found dead inside his car which was parked at a lonely spot and he had suffered a gunshot injury to his head. When the body was so discovered, the deceased even had his official gun in his hand. A mobile phone and two sim cards were also found from the car in which he was found dead.

1 (c) Smt. Bula Devi wanted fair investigation into the cause of unnatural, sudden death of her husband and therefore she made various complaints before different authorities seeking registration of an FIR, including complaints made to the DCP, South District and to the Commissioner of Police. However, no FIR was registered on the asking of this widow of a young police official.

1 (d) She then approached the court of Ld. Metropolitan Magistrate seeking registration of FIR and investigation into the

cause of death of her husband. A status report was sought by the Ld. ACMM, South District from the concerned police station about the entire incident. In this status report it was informed by the police that indeed Ct. Sanjay Kumar was found dead on 28.07.2020 inside a Wagon R car and was found shot with a pistol on the right side of his head. One Pistol 9 mm with magazine, 8 live cartridges, two *khali khol*, one *sikka*, one mobile phone and one knife were also found in the said car. Further, it was mentioned in the status report that the postmortem of the deceased had been conducted and exhibits like wound swab/body swab etc were sent to FSL for examination. It was also mentioned in this status report that call recordings between Ms. Seema Meena, one Kalu Ram and the deceased Ct. Sanjay Kumar had been analysed. Proceedings/inquiry u/s 174 CrPC was also initiated. However, as per this status report, nothing ‘suspicious’ came on record during police inquiry and therefore, the police did not lodge any FIR and the police authorities wanted more time to “*finalize*” the same.

1 (e) After considering the entire material before it and after hearing the arguments as advanced by the counsel for Smt. Bula Devi, vide the Impugned Order, Ld. ACMM issued directions u/s 156 (3) CrPC to the SHO concerned to register an FIR under the appropriate provisions of law and conduct investigation into the allegations as made by Smt. Bula Devi. Thus, the application u/s 156 (3) CrPC was disposed off vide the Impugned Order.

2. Aggrieved of the Impugned Order, Ms. Seema Meena

and Ct. Kalu Ram Meena have filed this revision petition praying that the Impugned Order be set aside. It is admitted by the revisionist that they are working as constables with Delhi Police. It is the case of revisionist Seema Meena that she had cordial friendly relationship with the deceased. The Impugned Order has been challenged on the following grounds -

- (i) That the Impugned Order was passed in a mechanical manner without application of judicial mind and without mentioning the exact penal offences for which the FIR was to be registered.
- (ii) That the various complaints made by Smt. Bula Devi are contradictory in nature.
- (iii) That the trial court ignored the status report filed by the police and the fact that the FSL results and final postmortem reports were still awaited and in a hurried manner gave directions for registration of FIR.
- (iv) That the cause of death of the deceased was not mentioned in the Impugned Order which is a cryptic and non speaking one. Ld. Counsel for the revisionist argued on similar lines and prayed that the Impugned Order be set aside.

3. On the other hand, Ld. Counsel for Smt. Bula Devi i.e. respondent no. 2, argued that the Impugned Order is a speaking and well reasoned one which must be upheld. Ld. Counsel argued that the pendency of the final postmortem report and FSL report which were not available with the police, even after six months of the death of a

serving police official, can be no ground for non registration of FIR and keeping the registration of FIR in abeyance for an even longer time will defeat the ends of justice.

4. Before deciding the instant revision petition, it would be relevant to reproduce concerned provisions of law which is as under :

“ Section 397 : Calling for records to exercise powers of revision :—(1) *The High Court or any Sessions Judge may Crl Rev. No. 337 of 2020 Manju Devi Vs The State (Govt. of NCT of Delhi) & Ors Page No. 4 of 10 call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record. Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.*

(2) *The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*

(3) *If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”*

5. The Hon'ble Delhi High Court in *Nishu Wadhwa vs*

Siddharth Wadhwa & Anr on 10 January, 2017 observed at para 13 :-

“13. The issue that since the accused has not been summoned as an accused and has no right to file a revision petition is alien, while deciding an application under Section 156(3) Cr.P.C. The said issue crops up when the Magistrate entertains the complaint and on taking cognizance proceeds as a complaint case. In case directions are issued for registration of FIR immediately, on registration of FIR, the person against whom allegations are made in the FIR attains the status of an accused. His rights in so far as the Police can summon him for investigation, arrest him without warrants for allegations of cognizable offences are duly affected. In a situation where the fundamental right of freedom and liberty of a person is affected, it cannot be held that he has no right to be heard at that stage. Thus to hold that since directions only have been issued under Section 156(3) Cr.P.C. and no cognizance has been taken thus no revision would lie would be an erroneous reading of the decisions of the Supreme Court. Therefore, an order dismissing or allowing an application under Section 156 (3) Cr.P.C. is not an interlocutory order and a revision petition against the same is maintainable .”

Thus, in light of the aforesaid legal position, it is clear that the instant revision petition is maintainable. Having resolved the issue of maintainability in favour of the revisionist, now I proceed to test the case of the revisionist on its merits.

6. It is the view of this court that once an application under section 156 (3) Cr.P.C. is moved before a Magistrate, she has two options. She can either send the case for investigation to concerned Police Station in the facts and circumstances of a particular case or

instead of doing so, she may opt for taking cognizance on the complaint of the complainant, may proceed to record the testimony of the complainant and his witnesses in pre-summoning evidence and thereafter, may decide whether a case for summoning of accused is made out or not. Once, the Magistrate has opted to exercise her discretion of sending the matter for investigation by ordering for registration of FIR, this court while exercising the power of revisional jurisdiction, cannot substitute its own opinion with the opinion of the Ld. Magistrate unless something perverse in the exercise of discretion is brought out. For this view, reliance is placed upon judgment of Hon'ble Apex Court in *Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke* and others, 2015 (3) SCC 123 wherein it has been observed as under :

“14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly

ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. ”

Now a perusal of the entire record and consideration of the arguments advanced does not highlight any illegality in the impugned order. The impugned order is a speaking one and self explanatory. Therefore, in my considered opinion, the Ld Magistrate has passed the Impugned Order after considering all the relevant factors and this court can not interfere with rightful exercise of the discretionary powers vested in the Ld Magistrate. Ld counsel for revisionist has failed to point out any patent illegality or jurisdictional error in the Impugned Order. In the case at hand, I find that the Ld. Magistrate has rightly exercised the discretionary power vested in her. I do not find any malafide or arbitrary exercise of discretion.

7. The facts of this matter are such that a thorough police investigation supported by due scientific investigation is absolutely warranted. The sensitivity of the matter itself requires detailed investigation. After all a serving police official was found dead within the jurisdiction of the same PS where he was serving and was on duty. Admittedly, he suffered an unnatural death and as per the status report filed by the police he was found shot by a pistol on his forehead. Many notorious elements of any local area develop enmity with serving police officials. Unnatural death of a cop on duty must be effectively investigated especially when the surviving family members are seeking such investigation raising suspicion over the cause and manner of death.

8. Thus, in the present facts, on the one hand, the widow of the deceased is knocking the doors of the very department her husband was serving, seeking atleast registration of an FIR upon the unnatural death of her husband and on the other the police department even in the death of one of its own is acting in a lackadaisical, insensitive and illegal manner by refusing to lodge even an FIR in time.

9. Interestingly or unfortunately, a postmortem has been conducted, inquiry u/s 174 CrPC initiated, crime team reached the spot, wound swabs - blood samples have been seized and sent for chemical examination to FSL, CFSL team also went to the spot and ballistic results have been sought... all this without even registration of an FIR ! This court fails to appreciate this 'reverse gear' approach adopted by the local police.

10. Strangely the stand adopted by the police is that they will register an FIR only after receipt of all the results from FSL and after they have analyzed these results. Considering that even after more than six months of the death, the FSL results were pending and the police is willing to wait even longer (perhaps endlessly) before they register an FIR the Ld. Magistrate was completely justified in passing the Impugned Order.

11. No preliminary inquiry as was pending even six months after the death of a police official was warranted. The Hon'be Superior Courts have time and again condemned this practice of conducting lengthy, detailed and time consuming never ending

‘preliminary inquiries’ by the police. It has been held that no such inquiry can be kept pending for more than a week and in case the preliminary inquiry ends up closing the complaint a copy of the entry of such closure must be supplied to the survivors forthwith. In the present case the preliminary inquiry was pending for half a year before the Impugned Order was passed. Registration of an FIR is the first step which must be taken in such cases before the police conducts further investigation. This duty of the police becomes all the more important and urgent when the deceased is a police official and his widow is sending written complaints mentioning her suspicion to higher officials of the police department.

12. There is no merit in the argument by the Ld. Counsel for the revisionist that since the Impugned Order does not mention the cognizable offence for which FIR was to be registered therefore it is bad in law. The Impugned Order clearly states that an FIR be registered under the relevant provisions of law, which is sufficient to set the wheels of criminal justice system into motion. It is only after an investigation is conducted pursuant to the registration of FIR that the appropriate agency will know about the exact offence committed. Even otherwise an FIR is not an encyclopedia of facts.

13. The cries of a widow have so far fallen on deaf ears giving her no answers regarding the reason behind or cause for her husband’s death. Registration of FIR will be the first step towards access to justice for the family members of the deceased police official. Registration of an FIR will facilitate swift investigation into

this matter. There already has been too much delay in lodging of the FIR and the more delay is caused, the more are the chances of investigation being embellished. Thus, registering of FIR brooks no delay and must be promptly registered by the concerned SHO immediately after receipt of this order.

14. The landmark judgment delivered by the Hon'ble Apex Court in *Lalita Kumari Vs. State of UP & ors*, AIR 2014 SC 187, must be honored in its letter and spirit. Non registration of FIR even in cases of unnatural death like the present one where suspicion is being cast in writing by the family members of the deceased clearly violates the mandate of law. If the death of a cop, who died due to bullet injuries in an isolated spot and whose wife is crying foul blaming some people by name does not warrant even a registration of FIR, one wonders what does? An FIR is just the information of commission of a cognizable offence, reduced and recorded in writing. Other details like which offence exactly was committed, which provisions of law are attracted etc can be ascertained later.

15. It is clarified that this order merely upholds the Impugned Order and nothing mentioned herein should sway the investigation in any manner. The persons against whom suspicion has been raised in this matter are also experienced police officials, therefore, needless to say the investigation must be fair, unbiased and meet gold standards. The proposed accused must also feel secure that the investigation is a fair one.

16. Accordingly, this court finds no valid reasons to interfere with the Impugned Order. The revision petition is accordingly dismissed.

TCR be sent back to Ld Trial Court along with copy of this order.

Revision file be consigned to Record Room after due compliance.

Announced in the open
Court on 03.03.2022

(Monika Saroha)
Spl. Judge-NDPS/ASJ (South)
Saket Courts, New Delhi