

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A no. 123/2008

Date of Decision: 17.08.2009

Devinder Kour and ors. vs. State and ors.

Coram:

Mr. Justice J.P.Singh, Judge

Appearing Counsel:

For the Petitioners : M/s Navneet Dubey and S.Kour, Advocates.

For the Respondents : Mr. A.H.Qazi, AAG.
Mr. Surinder Singh,
Advocate

- i) Whether approved for reporting in Press/Journal/Media : Yes
ii) Whether to be reported in Digest/Journal : Yes

Petitioners have filed this petition seeking quashing of FIR no. 189/2008 registered at Police Station Poonch, under Section 304 R.P.C on the grounds that the allegations made in the FIR were incorrect, and the registration of case by the police, on the basis of an order passed by

Judicial Magistrate First Class, under Section 156 (3) Cr.P.C on the complainant's application, without holding any enquiry thereto, was unwarranted.

Referring to the photocopies of the documents placed on the records, learned counsel appearing for the petitioners submitted that there being no proof on the records that it was Dalip Kour, who died because of the injuries sustained by her in the alleged quarrel, the investigation into the FIR needs to be quashed.

Learned counsel referred to one of the documents, placed on the records, indicating that the person who had died on 16.8.2008 because of Broncho pneumonia, Septicemia and azotaemia was not, in fact, Dalip Kour, who had lodged the initial complaint with the Police, but was one Amrit Kour, wife of Jaswant Singh,

and, in this view of the matter, investigation into the FIR would result in abuse of the process of law.

Lastly learned counsel submitted that in view of the facts of the case, no offence under Section 304 R.P.C can be said to have been committed by the petitioners; the FIR and investigation, therefore, need to be quashed.

I have considered the submissions of learned counsel for the petitioners as also the State counsel and the learned counsel who had put in appearance on behalf of respondent no.6, the husband of deceased Dalip Kour.

Perusal of the FIR reveals that Dalip Kour herself had approached the concerned Police Post on July 24, 2008, in an injured condition, saying that, on being told not to dump clay in her Courtyard, the petitioners had initially abused her and later severely beat her. It was

because of the intervention of the neighbours that she was saved from the clutches of the petitioners, otherwise she would have been done away with by the petitioners. The petitioners, while having, had threatened to kill her and her family members. Her report was registered as Report No. 10 in the Daily Diary Register at 9.30 a.m.

It appears that dissatisfied with the inaction of the police in not proceeding further on the report, the Chief Judicial Magistrate Poonch, too, was approached, who referred the case to the Police under Section 156 (3) Cr.P.C.

It was indicated in the complaint made to the learned Magistrate that the petitioners had caused internal and external injuries to Dalip Kour and blood had oozed from her mouth because of the injuries. Finding Dalip Kour unstable in the Government Hospital Poonch,

she was referred to the Medical College Hospital, Jammu, on 13th of August, 2008. Keeping in view the condition of the injured, blood too had to be transfused in the hospital, where she however, died on 16.08.2008.

Petitioners' counsel's submission that the FIR was based on incorrect facts, is found to be without merit, in view of the report lodged by the deceased herself with the police post on 24.07.2008 indicating that she had been beaten by the petitioners. The facts indicated in the report of the deceased gets support from the subsequent events of her having been admitted with injuries initially in District Hospital Poonch and thereafter in the Government Medical College Hospital, Jammu, where she ultimately died.

The other plea of the petitioners' counsel that it was Amrit Kour and not Dalip Kour, who

had died, too, is found to be without any substance, in that, one of the documents placed on the records by the petitioners specifically indicates Dalip Kour, wife of Jaswant Singh, to have been admitted in District Hospital Poonch with injuries over her both forearms and at the head of the ring finger, and in this view of the matter, it cannot be said that Dalip Kour had not died, when the FIR specifically indicates her to have been injured, admitted initially in District Hospital Poonch and thereafter in Government Medical College Hospital Jammu, where she had died.

That apart, mere incorrect mention of the name of the deceased in one of the documents, would not, of itself, affect the veracity of the facts stated in the FIR, which eloquently indicates Dalip Kour to have been injured and later died in

Government Medical College Hospital Jammu on August 16, 2008.

All the pleas raised by the petitioners' counsel, disputing the facts appearing in the FIR, are such, which are required to be considered initially by the investigating agency and later by the Court, in case the investigating agency finds the petitioners to have committed one or the other offence.

Petitioners' plea that no offence under Section 304 RPC can be said to have been committed by them, on the basis of the facts appearing in the FIR, cannot be examined by this Court at this stage in the absence of requisite records. Even otherwise, it is the Court seized of the case which has to first examine this question and, in this view of the matter, the petitioners' plea needs to be rejected at this stage.

For all what has been said above I do not find any merit in this petition, which is, accordingly, dismissed.

**(J. P. Singh)
Judge**

JAMMU:
17.08.2009
Anil Raina, Secy