

IN THE COURT OF SHRI SANDEEP YADAV
ADDL. SESSIONS JUDGE-02 : SOUTH-EAST DISTRICT
SAKET COURT : NEW DELHI

Criminal Revision No. 59/16

Ramakant Gupta

S/o. Sh. Madan Sahu Gupta

R/o. H.No. B-228

Govindpuri, New Delhi

.... Petitioner

Versus

1. **State of NCT of Delhi.** **.... Respondent no. 1**

2. **Gopal**
S/o. Sh. Hurak Bahadur
R/o. Quarter No. 49/1
Flat No. D-2, Road No.1
DDA Flats
Andrews Ganj, New Delhi. **.... Respondent no. 2**

3. **Kake @ Vikram**
S/o. Late Ramdas
R/o. Jhuggi No. 10/10, Road No. 2
Behind House No. F/25
Nearby Andrews Ganj Ganda Nala
Andrews Ganj, New Delhi. **.... Respondent no. 3**

4. **Sonu**
S/o. Sh. Raj Pal
R/o. Jhuggi No. SQ-D2/6
Nearby Andrews Ganj Ganda Nala
Andrews Ganj, New Delhi. **.... Respondent no. 4**

5. **Golu**

S/o. Sh.Sri Ram

R/o. Jhuggi No. D-2/8

Nearby Andrews Ganj Ganda Nala

Andrews Ganj, New Delhi.

.... **Respondent no. 5**

Date of Institution : **29.03.2016**

Date of arguments heard : **23.10.2018**

Date of Order : **23.10.2018**

ORDER

1. Petitioner Ramakant Gupta is aggrieved by the order dated 14.09.2015 passed by learned Metropolitan Magistrate-09, South-East District, whereunder application of petitioner under Section 156 (3) Cr.PC as well as his complaint were dismissed.

2. I have heard Sh. Vishal Singh, learned Legal Aid Counsel for petitioner, Sh. A.T. Ansari, learned Addl. Public Prosecutor for respondent no.1/State as well as Sh. Ravinder Kumar Sharma, learned Legal Aid Counsel for respondent no. 2 to 4 and carefully perused the record available in the file of learned Metropolitan Magistrate. Respondent no. 5 was served by way of affixation. However, none has appeared for respondent no. 5.

3. The case set up by complainant in his complaint filed before learned Metropolitan Magistrate was that complainant was earlier residing at Jhuggi No. 4, RD No.1, Gali No. 23, Indira Camp, Andruj Ganj, New Delhi and the said jhuggi was burnt by some unknown persons when

complainant alongwith his family had gone to his native place in December 2013. Complainant intimated the police about this incident and has been making efforts to reconstruct the burnt jhuggi. It is stated in the complaint that family members of complainant were regularly visiting the jhuggi to reconstruct the same. On 05.05.2014, son of complainant namely Ajay visited the aforesaid jhuggi alongwith his friends i.e. respondent no. 2 to 5 and they stayed there during night. At about 10 PM, son of complainant was found dead and his dead body was found hanging from the branch of a tree and his legs were touching the land. Complainant stated that respondent no. 2 to 5 have murdered his son but police has not taken any concrete steps against respondent no. 2 to 5.

4. Status report filed by SI Subhash Sawariya before learned Metropolitan Magistrate mentions that no foul play was suspected. Postmortem of deceased was got conducted at AIIMS. As per postmortem report, the cause of death was Asphyxia due to ante mortem hanging. The status report concluded that in-depth inquiry was conducted but the allegations levelled by complainant could not be substantiated.

5. The application of complainant under Section 156 (3) Cr.PC was dismissed by learned Metropolitan Magistrate with the observation that as per the action taken report filed by Inquiry Officer, there is no last seen evidence to show that deceased was seen in the presence of accused persons. There is no such conclusion drawn by Inquiry Officer in the action taken report. Reference was made in the impugned order to the statements

of respondents wherein they are pleading innocence. It will be natural for a suspect to contend that he is innocent and he was not present at the spot where crime was committed. Therefore, much reliance cannot be placed on the statements of respondents recorded during inquiry. Certain observations have also been made by learned Metropolitan Magistrate on the photographs of deceased to conclude that deceased was not forcibly hanged by any person. This conclusion could not have been drawn by learned Metropolitan Magistrate in the absence of any expert opinion.

6. The factual position alleged in the complaint is that son of complainant alongwith respondent no. 2 to 5 went to his jhuggi and thereafter, son of complainant was found hanging. Complainant has raised strong suspicion about involvement of respondent no. 2 to 5 in the crime. Therefore, the matter requires thorough investigation by police. The impugned order suffers from illegality and same cannot be sustained. Accordingly, the impugned order dated 14.09.2015 is set aside. Learned Metropolitan Magistrate shall proceed under Section 156 (3) Cr.PC to issue direction for registration of FIR under appropriate provisions of law and for police investigation in the matter.

Petitioner shall appear before learned Metropolitan Magistrate-09/SED on **30.10.2018 at 10 AM.**

Trial court record be sent back alongwith copy of this order.

Revision file be consigned to **Record Room.**

Announced in open Court

on 23.10.2018.

(Sandeep Yadav)
ASJ-02/South East District
Saket Courts/New Delhi.