

Jammu & Kashmir High Court

Peer Noor-Ul-Haq vs State And Ors. on 9 April, 2003

Equivalent citations: 2003 (2) JKJ 693

Author: S Bashir-Ud-Din

Bench: S Bashir-Ud-Din, Y Nargotra

JUDGMENT Syed Bashir-ud-Din, J.

1. The husbands of appellants 2 to 4 were killed. The killing is attributed to the persons who include police officials. Petitioner No. 1 is stated to be the only eye-witness to the occurrence. The registration of FIR and investigations has culminated in ending up accused for trial on charge of culpable homicide amounting to murder before the competent court at srinagar. However, the case on transfer is at present pending before Additional Sessions Judge Jammu for trial. All four petitioners are cited prosecution witness to the occurrence. Four police officials besides one Abdul Rashid Khan, the then SDPO Police Station, Soura figure accused in the case.

2. Petitioner filed writ petition seeking following reliefs:

"(a) A writ of Mandamus, commanding the respondents to provide the security cover to the witnesses and all the traveling, boarding and loading expenses to the witnesses while attending the court during trial.

(b) A writ of Mandamus, commanding the respondents to Appointed a translator in the trial Court so that the statement of the witnesses could be correctly translated.

Any other writ, order or direction which this Hon'ble Court may deems just and proper in the circumstances of the case though not prayed for be also passed in favour of the petitioners and against the respondents"

3. The writ court after taking note of the fact that one Constable Mohammed Sultan is provided as PSO to the petitioner and that there is categoric statement by Sr. AAG that the State Government would get the witness (es) to the court and take him back to residence with proper security, dismissed the petition and disapproved attempts to stretch the matter further which would lead to delay in trial. Against this judgment dated 23.9.2002 LPA is filed on the ground that the petitioner's submissions with regard to provision of expenses to meet transporting, boarding and lodging at Jammu and sought appointment of a translator, while disposing before the trial court have not been dealt with.

4. So far as the question of provision of security and safe passage to witness from residence at Srinagar to trial court at Jammu is concerned, same is unquestionably to have been granted by writ court in terms of the statement of Sr. AAG before the writ court, of which notice is taken in the impugned judgment.

5. With regard to expenses of witness attending the criminal courts, Chapter 21 of General Rules (Cr) of 1988 holds the field. The criminal courts are empowered to award in their discretion

expenses from public funds to witnesses to cover both subsistence allowance and traveling expenses of the witnesses. In the facts and circumstances of a case, the criminal courts are under a legal mandate to award legitimate expenses and to exclude/minimize, trouble and inconvenience to witnesses. The rules on the subject of award of travel expenses, subsistence allowance, etc. to witness are wide enough to include the general as also the peculiar and may be singularly single expenses to witnesses, which may be requirement of fact situation and circumstances of a case before it.

6. As far the contention that the witness is illiterate and knows only Kashmiri language, hence the necessity of procuring the services of interpreter while deposing before the court, is concerned the rules in Chapter 22 General Rules (Cr) on the subject of recording of evidence together with judicial oath Rules, 1950 (b) (Circular 34), is complete answer to the contention raised before this Court. If the Presiding officer is not in know of the language in which evidence may be given by the witness, he is authorized by law to get services of an interpreter who shall be duly sworn in, prescribed manner to interpret the deposition before the court. Therefore, on both counts when the legal provisions exist, the question of seeking relief under writ jurisdiction is inappropriate . After all the area is fully covered by the statutory rules. The concerned is free to approach the trial Court in the matter. It is not a case where any writ is sought to compel doing of a legal duty or performance of mandated legal obligation.

7. In result, in the light of above observations, LPA is disposed of.