

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 18.07.2023
Pronounced on:26.07.2023

OWP No.921/2009

GHULAM RASOOL SOFI **...PETITIONER(S)**

Through: - Mr. Wajid Haseeb, Advocate.

Vs.

STATE OF J&K & OTHERS **...RESPONDENT(S)**

Through: - Mr. Mohsin Qadiri, Sr. Adv.
with Ms. Maha Majeed, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has sought a direction upon the respondents to implement recommendation dated 21.06.2007 made by the J&K State Human Rights Commission, Srinagar (hereinafter referred to as "the Commission"). A further direction has been sought upon the respondents to register a criminal case involving kidnapping and subsequent killing of petitioner's son with a direction to pay compensation in the amount of Rs.1.00 lac for his custodial death and to grant compassionate appointment to one of the family members of the deceased in terms of SRO 43 of 1994.

2) According to the petitioner, his son, namely, Farooq Ahmad Sofi, a student of 8th class, was arrested on 08.08.1998 by the activists of Ikhwani outfit who were working at the behest of Indian Agencies. It has

been submitted that the above-named person was taken into custody without any justification and was later on killed by Indian agents and his dead body was thrown away from his home. It has been further submitted that the police claimed that the petitioner's son was killed in an encounter. According to the petitioner, he approached concerned police station for registration of a case of murder relating to death of his son but the police under pressure from Indian Security Agencies did not register any case. It is averred that the petitioner approached the J&K State Human Rights Commission and an enquiry was conducted. The Commission found that the son of the petitioner was apprehended by the Security Agencies and subsequently his dead body was thrown near his house. It was recommended by the Commission that an amount of Rs.1.00 lac be given as compensation to the family of the victim. According to the petitioner, he furnished a copy of the recommendation of the Commission to the Chief Secretary of the Jammu and Kashmir Government as also to the Advisor to the Governor but the same was not implemented and no ex-gratia relief was provided to the petitioner. It has been contended that the respondents are under a constitutional and legal obligation to compensate the family of the victim and to implement the recommendation of the the Commission

3) The writ petition has been resisted by the respondents by filing a reply thereto. In the reply, it has been claimed that the petitioner's son Farooq Ahmad Sofi aged about 18/19 years, was an active militant of Hizbul Mujahideen, a banned outfit. It has been submitted that the

deceased was arrested on 2nd June, 1995 by Security Agencies and one AK 47 rifle, one magazine, five rounds and a combat trouser was recovered from his possession. Accordingly, FIR 185/1995 was registered with Police Station, Anantnag, and he was also detained under Public Safety Act for six months vide District Magistrate, Anantnag's order No.DMA/495-99 dated 28th June, 1995. It has been further claimed that the deceased again became active and on 08.08.1998, he along with four militants got killed in an encounter with the Army which took place at Village Thimden Poshnari, Chattergul, Anantnag, regarding which FIR No.51/1998 for offences under Sections 307 RPC and 7/25 of Arms Act stands registered with Police Station, Achabal. On the basis of these facts, it has been contended that since no ex-gratia relief and other benefits can be paid to next-of-kins of a deceased militant in view of the existing rules and Government Orders issued from time to time, as such, the Commission was informed about it in terms of communication No.Home/SHRC-154 of 2007 dated 03.07.2009.

4) The respondents have also filed latest status report as regards the investigation of case FIR No.51/1998 of Police Station, Achabal, in which it has been indicated that the investigation of the case has been closed as 'untraced' on 15.08.1998 and the closure report has been submitted to the Court of Chief Judicial Magistrate, Anantnag, on 24.08.1998. It has been further submitted that vide order dated 15.10.1999, passed by Chief Judicial Magistrate, Anantnag, the closure report filed by the Investigating Agency has been accepted.

5) During pendency of this petition, on 06.07.2011, an order came to be passed by this Court, whereby Chief Judicial Magistrate, Anantnag, was directed to conduct an enquiry as regards the death of the petitioner's deceased son. The learned Magistrate, after conducting the enquiry, has submitted his report dated 8th April, 2013, in which the learned Magistrate has concluded that it is a case of mysterious killing and disappearance of the deceased, whose dead body later on came to be recovered from the nearby field.

6) This Court while considering the aforesaid report of the learned Magistrate, has, in its order dated 1st July, 2015, observed that the enquiry report filed by the Chief Judicial Magistrate does not lead to the definite conclusion as regards the circumstances in which Shri Farooq Ahmad Sofi got killed.

7) I have heard learned counsel for the parties and perused the record of the case.

8) The petitioner claims that his son was an innocent person who was picked-up by Ikhwani outfit which was working under the directions of the Indian Agencies and later on he was found to be dead. The petitioner basis his claim on the strength of the report of the J&K State Human Rights Commission and seeks a direction that the said report be implemented. It is pertinent to mention here that as per the said report, the petitioner was to be paid ex-gratia compensation in the amount of Rs.1.00 lac.

9) Learned counsel for the respondents has brought to the notice of this Court judgment dated 02.04.2021 passed by Division Bench of this Court in OWP No.1756/2018 and connected petitions titled **State of J&K vs. State Human Rights and others**. The writ petition bearing OWP No.370/2018, the subject matter of which is the recommendation of the Commission made in the case of petitioner's son, was also subject matter of the aforesaid judgment. The Division Bench has refused to implement the said recommendation in its aforesaid judgment. Since judgment of the Division Bench is binding on this Court, as such, it would not be open to this Court to issue a Mandamus to the respondents to implement the recommendation of the Commission made in the case relating to death of the petitioner's son.

10) That leaves us with the question whether independent of the recommendation of the Commission the petitioner has been able to demonstrate that his son was an innocent person who was killed at the behest of Security Agencies of the Government. In this regard, the only material before this Court is the report of Chief Judicial Magistrate, Anantnag, and the closure report submitted by the police in FIR No.51/1998, which has been accepted by the competent Court.

11) As already noted, the report of Chief Judicial Magistrate, Anantnag, is sketchy and it does not give any definite opinion regarding any aspect of the matter. Though the learned Magistrate has given a tentative opinion that there is no material on record to show that son of

the petitioner was a militant, yet while doing so, the learned Magistrate has not at all considered the material and the documents produced before him by the State Agencies, which include the documents regarding which a reference was made by the State Agencies in their submissions before the learned Magistrate. These documents include the material collected by the Investigating Agency during the investigation of FIR No.185/1995 of Police Station, Anantnag, the record relating to detention order No.DMA-495-99 dated 28.06.1995 as also the material collected by the Investigating Agency during the investigation of FIR No.51/1998 of Police Station, Achabal. Without undertaking any such exercise, the learned Chief Judicial Magistrate, Anantnag, has simply relied upon the testimony of father of the deceased and his neighbours without even subjecting them to any cross-examination. So, the report of the learned Chief Judicial Magistrate, Anantnag, cannot be relied upon for any purpose whatsoever. In fact, the said report is not even worth the paper on which it has been written.

12) The petitioner has based his claim on the assertion that his son was an innocent person whereas the claim of the respondents is that he was a militant. The claim of the petitioner is backed by the report of the Commission whereas claim of the respondents is backed by the report of investigation in FIR No.51/1998 of Police Station, Achabal, which stands accepted by the Chief Judicial Magistrate, Anantnag. The Division Bench of this Court in the case of **State of J&K vs. J&K State**

Human Rights Commission and others (supra) has, while considering the powers of the Commission, observed that recommendations made by the Commission cannot be termed as a verdict on resolving the disputed facts and that the same are not binding on the parties before the Commission. It has been further observed that the Commission is neither a judicial authority nor a quasi-judicial authority to adjudicate upon disputed facts. In view of this binding precedent, the findings of the Commission, on which the petitioner has relied upon, cannot become a basis for concluding that the petitioner's son was not a militant. The said issue, therefore, becomes a disputed question of fact which cannot be determined by this Court in these proceedings, as the determination of the same would involve examination and cross-examination of the witnesses and appreciation of evidence.

13) For the foregoing reasons, the writ petition is dismissed leaving it open to the petitioner to avail appropriate remedy before a Civil Court.

(Sanjay Dhar)
Judge

Srinagar,
26.07.2023
"Bhat Altaf, PS"

Whether the order is speaking: **Yes/No**
Whether the order is reportable: **Yes/No**