

(2008) 07 P&H CK 0059

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Basant Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: July 4, 2008**Acts Referred:**

- Arms Act, 1959 - Section 25
- Constitution of India, 1950 - Article 21, 226, 32, 9
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 307, 34

Citation: (2008) CriLJ 4455 : (2008) 4 RCR(Criminal) 711**Hon'ble Judges:** Kanwaljit Singh Ahluwalia, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

Kanwaljit Singh Ahluwalia, J.

Basant Singh, who lost his son Munder Singh, has preferred present petition u/s 482, Cr. P.C. seeking independent investigation through CBI as his son was stated to have died while in police custody, due to fire arm attack. He has further prayed that adequate compensation to the family of the deceased be also provided.

2. It has been stated in the petition that Munder Singh son of the petitioner was falsely implicated in case FIR No. 125 dated 4-12-1990 and in FIR No. 27 dated 10-3-1991. Both the cases were registered at Police Station Jaito. Munder Singh was arrested and was sent to Central Jail, Ferozepur of 4th June, 1991 as the Court had ordered his judicial custody. It has been further stated that Jaito Police started harassing the family of the petitioner. Regarding the harassment, telegraph was sent to the President of India on 10th June, 1991. It was stated in the telegram as under:

My son Munder Singh s/o Basant Singh r/o Bishnandi is in Central Jail Ferozepur Police Goneana wants to involve him in false cases innocent intervene.

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3. It has been further stated in the petition, that on 13th July 1991, Munder Singh was taken out from the Central Jail, Ferozepur for production in the Court at Bathinda and thereafter, his whereabouts are not known.

4. It has been averred in the petition that representations to jail authorities were sent, which elicited no response except Superintendent of Central Jail, Ferozepur Cantt. issued a certificate, which is reproduced below:

It is certified that petitioner Munder Singh s/o Basant Singh s/o Joga Singh, Vill. Bishnandi P.S. Jaito Distt. Faridkot was brought in Central Jail Ferozepur on 4-6-1991 in the case FIR No. 125 dated 4-12-1990 u/s 302/148/149, IPC. 25/27/54/59, P.S. Jaito pending in the Court of Sh. P.C. Suman, JMIC Faridkot. (2) FIR No. 27 dated 10-3-1991 u/s 302/452/506/148/149, IPC, P.S. Nehianwala, pending in the Court of Shri G.S. Dhaliwal, JMIC, Bathinda and on 13-7-1991 he was sent to Bathinda to attend the Court. But thereafter he was not brought in the jail.

5. In the petition, Munder Singh (son of the petitioner) has been killed while in judicial custody. He was taken by the police for production to the Court. It was stated in the petition that the fake encounter occurred on 13th July, 1991. Present petition was instituted on 23rd June, 1997. Notice to Advocate General, Punjab was issued on 20th August, 1997. Thereafter, this petition has been taken up for hearing on July 4, 2008.

6. In response to notice of motion. State of Punjab has filed written statement in the form of affidavit. The relevant portion of the reply, which narrates the sequence of events, which led to death of Munder Singh, reads as under:

4) In reply to para No. 4 of the petition, it is submitted that in compliance of production warrants issued by Sh. Inderjit Singh, Judicial Magistrate 1st Class, Bathinda, the accused Mander Singh was produced in the Court of Sh. G.S. Dhaliwal, Judicial Magistrate 1st Class (Duty Magistrate) Bathinda on 13-7-91, in case FIR No. 27 dated 10-3-91, u/s 302/307/452/506/148/149, IPC and 25/54/59 Arms Act P.S. Nehianwala and case FIR No. 93 dated 11-1-90 u/s 302/148/149, IPC, 25/54/59 Arms Act, P.S. Nehianwala and remanded to police custody till 14-7-91 in the above noted cases. In these cases Mander Singh made a disclosure statement before Sh. Harbhaj Ram Inspector to the effect that he has kept concealed one .38 Bore Revolver along with four alive cartridges near the Bridge Drain in the area of Village Ablu which he could get recover as he only knew about this fact. In pursuance of above-said disclosure statement, Mander Singh got recovered one .38 Bore Revolver along with four alive cartridges of .38 Bore and case FIR No. 56 dated 13-7-1991 u/s 25/54/59 Arms Act P.S. Nehianwala was got registered. After this recovery, when the police

party was returning to police Station along with Mandar Singh, some unidentified persons attacked and fired upon the police party. In cross-firing, when Mandar Singh tried to escape, he was hit by the fire of unknown persons and died at the spot. In this counter fire, Constable Gurcharan Singh who was within the police party also received fire arms injuries and a case FIR No. 57 dated 13-7-91 u/s 307/353/34, IPC and 25/54/59 Arms Act P.S. Nehianwala was registered. True English version of the copy of FIR No. 57 is annexed as annexure R-1 and copy of bed-head ticket of Constable Gurcharan Singh is annexed as annexure R-11 and post-mortem report of Mandar Singh is annexed as annexure R-III.

7. During the course of arguments, it has emerged that Munder Singh had died in July 1991. Petition was preferred in this Court after six years and the same is now being decided after nineteen years of the occurrence. Six years' delay and laches on the part of petitioner to approach this Court and thirteen years thereafter to decide the case, is a period during which, all documents, from which it could be inferred whether the version set out by the police was true or false, would have been destroyed. All incriminating pieces of evidence, from which lead could have been taken, as to how the occurrence took place, would have withered.

8. Mr. Mehardeep Singh, AAG Punjab, counsel for the State has relied upon Sardul Singh v. State of Punjab Civil Appeal No. 224 of 1999 decided by Hon'ble Apex Court on March 24, 2004 to state that in such type of cases, the writ petition should have been filed promptly and delay in filing the writ petition is not explained. No useful purpose would be served by directing any investigation as no evidence could be expected to be available after such lapse of the time in the facts and circumstances of the case. Counsel for the State has also placed reliance upon Hakim Singh v. State of Punjab CWP No. 10667 of 1996 decided on November 17, 1997 by a Division Bench of this Court, in which it was held as under:

After hearing the learned Counsel for the parties and on going through the record, we are of the view that in the circumstances of this case, CBI Inquiry is not called for, particularly when the incident relates to the year 1993 and the present petition has been filed in July, 1996 in paragraph 11 of the petition, the petitioner has tried to explain the delay but we are not satisfied with the explanation so given in paragraph 11.

9. My attention has also been drawn to Mohinder Singh v. S.S.P. Mansa CWP No. 1654 of 1996 decided on December 17, 2003, where this Court declined to institute an inquiry after 12 years of the alleged disappearance.

10. In view of the submissions made by the State counsel, I called upon counsel for petitioner as to how, after 18 years of the occurrence any probe by the CBI will be meaningful? In response to it, counsel for petitioner states that he confines his prayer to grant of monetary compensation, as admittedly Munder Singh has died while he was taken by the police in custody allegedly for effecting recovery.

11. It is not disputed that Munder Singh was sent to judicial lock up and therefrom on production of warrants he was to be produced in the Court of Judicial Magistrate (1st Class), Bathinda. After Munder Singh was taken from Central Jail, Ferozepur and the Court at Bathinda has remanded his custody to the police, it was the duty of the police to secure his life. His custody has been granted to the police under the orders of the Court. To say that he died in a cross fire by some unknown persons, especially when Munder Singh was involved in various cases, which had overtones of terrorist crime, such version is to be accepted with a pinch of salt.

12. Counsel for the petitioner has relied upon a decision of this Court in a CWP No. 1495 of 1996, Gurdev Singh v. State of Punjab decided on August 25, 2004, in which it has been held as under:

Be that as it may, no ground exists for ordering an investigation into the disappearance or death of Gurcharan Singh. The facts stand established from the reply and the documents filed by the respondents that Gurcharan Singh died in firing while he was in police custody. It would be very difficult for any investigating officer to come up with any contrary or different conclusion after 14 years. Therefore, the matter regarding the alleged murder of Gurcharan Singh must be closed.

The petitioner did not seek award of any compensation for his son's death in custody. yet this is a case where some compensation must be awarded. Gurcharan Singh may have been a hard core terrorist or a wanted criminal or whatever nomenclature one can use to describe an outlaw but at the time he was shot dead he was in the custody of the police. Gurcharan Singh was entitled to full protection of the police and the police was duty bound to protect his life. Persons detained in police custody have as much right to life as ordinary citizens. They are also entitled to be tried in accordance with law. In the present case one may refrain from holding that Gurcharan Singh's death was in a fake police encounter but one cannot help restating that Gurcharan Singh had died in custody. Therefore, Gurcharan Singh's heirs are entitled to compensation for his custodial death. "No person shall be deprived of his life and personal liberty except according to procedure established by law" is the Constitutional mandate and this principle must be upheld at all times. The only solace that can be provided to the heirs of the deceased is reasonable compensation.

Gurcharan Singh's age has been mentioned as 25 years in the post-mortem examination. It is unknown what Gurcharan Singh's business or occupation was. Presuming that he worked as a mere labourer earning about Rs. 60/- a day, working 20-25 days in a month, his monthly earning would be about Rs. 1200-1500. To this if a multiplier of 20 is applied, since the deceased was only 25 years of age, the compensation payable to the heirs of the deceased would be somewhere between Rs. 2,88,360 lacs. It is, therefore, felt that if Rs. 3.00 lacs is assessed as compensation payable to the heirs of the deceased for his death, his heirs would be well

compensated.

In view of the above discussion, this petition as far as prayer for production of the deceased or for holding of a CBI inquiry is concerned, there appears to be no merit and the petition is dismissed. However, the facts and circumstances of the case require that Rs. 3,00 lacs be awarded as compensation to the heirs of the deceased. The amount shall be deposited within three months from today before Chief Judicial Magistrate, Patiala, who shall disburse the amount to the heirs of the deceased but only after close scrutiny and proof of their rights and entitlement to receive the compensation. If the amount is not deposited within time specified about it shall carry interest @ 9% per annum from the date of this judgment.

13. Hon"ble Apex Court in [Smt. Nilabati Behera alieas Lalita Behera Vs. State of Orissa and others](#), also held as under:

16. It follows that "a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of a fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by a Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse of Articles 32 and 226 of the Constitution. This is what was indicated in *Ruful Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

17. A useful discussion on this topic which brings out the distinction between the remedy in public law based on strict liability for violation of a fundamental right enabling award of compensation, to which the defence of sovereign immunity is inapplicable, and the private law remedy, wherein vicarious liability of the State in tort may arise, is to be found in *Ratanlal & Dhirajlal's Law of Torts*, 22nd Edition, 1922, by Justice G. P. Singh, at pages 44 to 48.

20. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:

Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

14. In [Sube Singh Vs. State of Haryana and Others](#), Hon"ble Apex Court relying on the observations in [D.K. Basu Vs. State of West Bengal](#), held as under:

16. In [D.K. Basu Vs. State of West Bengal](#), , this Court again considered exhaustively the question and held that monetary compensation should be awarded for established infringement of fundamental rights guaranteed under Article 21. This Court held:

Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

Any form of torture or cruel, inhuman and degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs, during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest...The answer, indeed, has to be an emphatic "No".

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

15. In postmortem report, age of Munder Singh has been given as 35 years. In view of the fact that Munder Singh was entrusted to the police by the Judicial Magistrate and he died in their custody, when police was duty bound to ensure safety of his life and when the version set out by the police is not aspiring, taking into consideration these facts, along with the age of the deceased Munder Singh, I have no hesitation to follow the ratio of Gurdev Singh's case (supra).

16. Accordingly, it is ordered that Rs. 3.00 lacs be awarded as compensation to the legal heirs of the deceased Munder Singh. The amount shall be deposited in the Court of Chief Judicial Magistrate, Faridkot, within three months after receipt of the copy of order, who shall disburse the same to the legal heirs of the deceased Munder Singh after determining the rights and entitlement of the legal heirs.

17. The amount, if not deposited within the time specified, shall accrue interest at the rate of 9 per cent from the date of this judgment.

18. With these observations, present petition is disposed off.