

(2006) 12 JH CK 0006

Jharkhand High Court

Case No: None

Mukty Tirkey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Dec. 22, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 395

Citation: (2007) 2 JCR 331

Hon'ble Judges: M. Karpaga Vinayagam, C.J; D.K. Sinha, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

LA. No. 3527 of 2006

1. By the Court.-Having heard learned Counsel for the parties, the Interlocutory Application for impleading the C.B.I. as party- respondent is allowed. LA. No. 3527 of 2006 stands disposed of.

W.P. (PIL) No. 1654 of 206

2. The prayer in the instant Public Interest Litigation is for issuance of mandamus for direction to the authorities of the Central Bureau of Investigation (CBI in short) to enquire into and investigate the case relating to custodial murder of a tribal boy, namely, Manraj Tirkey.

3. The petitioner, claiming himself as a General Secretary of Adivasi Mahasabha, a Social and Welfare Organisation, especially for the tribal community, has filed this Public Interest Litigation claiming for the above direction.

4. According to the petitioner, Manraj Tirkey, a tribal boy, was arrested by respondent No. 7, Smt. Sandhya Rani Mehta, City Deputy Superintendent of Police, Bokaro, Jharkhand, on 22.12.2005 at about 8.00 a.m. along with five other tribal

boys and they were taken to the police station, Sector-XII (Bokaro). Immediately thereafter, the whole villagers have given a joint application to respondent No. 6 for the release of the innocent tribal boys on 23.12.2005. Five persons were released but the sixth person i.e. Manraj Tirkey was detained and since he sustained severe injuries, he was taken to hospital where he was declared dead on 1.1.2006. After coming to know the death, the father of the deceased, namely, Mukty Tirkey, has given a written statement to respondent No. 6 to register FIR against respondent No. 7 and other police officials, who were directly involved in committing the murder of his son, Manraj Tirkey. The fellow villagers of the deceased also give a joint application to the Governor, State of Jharkhand, through proper channel, but no action was taken. The matter was reported to the National Human Commission also but when they didn't get any response from any end, the petitioner has approached this Court claiming for issuance of mandamus, directing the CBI to enquire into and investigate the case relating to custodial murder of one tribal boy, Manraj Tirkey.

5. A counter-affidavit has been filed by the Superintendent of Police, Bokaro, who is the respondent No. 6 in the present case, stating therein, *inter alia*, that a case was registered on 22.12.2005 for a crime being B.S. City P.S. Case No. 406 of 2005 for the offence u/s 395, IPC and the stolen articles as mentioned in the FIR were found from the premises of the deceased Manraj Tirkey and as such he was brought to the police station along with the recovered articles for interrogation on 22.12.2005 and after initial interrogation, he was allowed to go on personal bond on 23.12.2005. Again on 28.12.2005, the said Manraj Tirkey was summoned to the police station for further interrogation by respondent No. 9, an Assistant Sub-Inspector. While the said Manraj Tirkey was in police station, he complained of stomach pain, who was immediately taken by respondent No. 9 to Bokaro General Hospital for treatment and the fact of his having been taken to the hospital, has been informed to the parents of the deceased as well as to Chief Judicial Magistrate, Bokaro on 30.12.2005. During the course of treatment, the said Manraj Tirkey died on 1.1.2006. This information was also sent to the parents and respondent No. 9 also gave a written report about the death of the said person to the O.C. Sector-IV, B.S. City. Thereafter, during the course of enquiry, inquest report was prepared by the Executive Magistrate. There is no information to the doctor regarding beating, assault and torture committed by the police. Ultimately inquest report on the basis of post-mortem was prepared by the Executive Magistrate. Since, the Magisterial enquiry does not find any material otherwise, there is no necessity for ordering investigation by the CBI.

6. On the above, we have heard counsel for the petitioner as well as the counsel for the State. In the meantime, as directed by this Court, CBI was also impleaded as party-respondent in this case.

7. There is no dispute in the fact that the case was registered u/s 395, IPC on 22.12.2005. It is also not disputed that along with five other tribal boys, the

deceased, Manraj Tirkey, was also taken to the police Station. As a matter of fact, it is admitted by the Superintendent of Police, respondent No. 6, in the affidavit, that only after interrogation the stolen articles, which is the subject matter of the crime No. B.S. City PS Case 406 of 2005, was recovered from the premises of the deceased. The very fact that the stolen articles were found in the house of the deceased and on that basis the deceased was brought to the police station for interrogation would indicate that there are materials to show that he was an accused in a case for the offence u/s 395, IPC. The procedure contemplated under the Code of Criminal Procedure is that once there is material against the particular accused, the accused shall be arrested and produced before the Magistrate within a stipulated time, seeking for remand or police custody. Admittedly, this was not done. On the other hand, he was detained in the police station. Even according to the statements made by the respondent No. 6 in his counter-affidavit, the deceased was allowed to go on personal bond only on 23.12.2005 and such arrest has not been shown and neither any intimation about his arrest was given to the Magistrate nor any intimation regarding his release on personal bond was given and inspite of the fact that when there were materials against the accused-deceased for the offence u/s 395, IPC, the police had no authority to release the accused, that too on personal bond.

8. Admittedly, this was not informed to the Court. Strangely again the deceased was taken back to the police station on 28.12.2005. He was interrogated upto 30.12.2005. According to the Superintendent of Police, since he was complaining stomach pain, he was taken to hospital on 28.12.2005 and he was declared dead on 1.1.2006. It is reported that the deceased was complaining stomach pain for last five days. It means that he was having sufferings from 23.12.2005 itself and the death was occurred only on 1.1.2006. Even the statement of the Superintendent of police shows that he was allowed to go on personal bond on 23.12.2005, there is no necessity for the police to summon him again on 28.12.2005 and when he was summoned on 28.12.2005, there was no necessity for the police to admit him in the hospital on 28.12.2005 at 6.00 a.m. As a matter of fact, as stated above, the deceased was complaining of blood vomiting and other things, he was suffering for five days. Admittedly, all these things happened only when he was in custody of the police. The Magisterial enquiry also does not show anything about the injuries found inside the body, as mentioned in the postmortem report. It is stated that in the post-mortem liver, lungs, kidney and spleen were found congested and there is no details about the particulars given in the Magisterial report about these parts.

9. On the other hand, it would indicate that the deceased was taken to hospital and without showing arrest he was detained in the police station and ultimately he was produced before the hospital on 28.12.2005 at 6.00 a.m. Admittedly only at the instance of the police personnel, the deceased was admitted in the hospital and ultimately he died on 1.1.2006 and as to how those injuries were sustained by him is not clear. This Court is unable to place any reliance on the affidavit filed by the Supdt. of Police that the deceased was allowed to go on personal bond, which has

not been admittedly informed to the Court. So, there are suspicious circumstances with regard to the death of the deceased. When death was caused due to the injuries or the assault committed on various parts of the body, while he was in custody, the death so occurred, will be construed to be a custodial death. The Supreme Court in the case of [Ramesh Kumari Vs. State \(N.C.T. of Delhi\) and Others](#), held that when there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like CBI.

10. In this case, admittedly a complaint was filed against the police officer by the father of the deceased and his complaint has not been investigated into. On the other hand, a Magisterial enquiry has been ordered and that enquiry was not to the satisfaction of the persons, who are the parents of the deceased. As a matter of fact, no explanation has been given as to what happened to the complaint given by the parents of the deceased. In this case, specific allegations have been mentioned in the complaint given by the father at the earliest point of time as well as the joint application filed by the fellow villagers, wherein, specific allegations have been levelled against the Dy. S.P. to the effect that she came and took the tribal boys to the police station.

11. In these circumstances, we are of the view that it would be proper in the interest of justice to hand over the investigation to an independent agency, like CBI. Whether the police officials belonging to State have played any role in the custodial death of the deceased or not, it would be better to entrust the investigation as against local police officers to the CBI, so that there will be no room for doubt that there was an unfair investigation. In order to ensure that there is a fair investigation to satisfy the persons concerned, this Court is of the opinion that the investigation shall be entrusted to CBI.

12. Mr. H.K. Mehta, learned Government Advocate, appearing for the State submitted that earlier enquiry has been conducted by the CID in pursuance of petition given on behalf of the petitioner to the PIL department of the registry of the Supreme Court. But, it has not been stated that what are the materials collected and what are the reasons for dropping the matter. Further, this correspondence was between the department and the DGP. But on the basis of the materials available before this Court, we are of the view that fair investigation has not been conducted fairly either by the local police, or by the police concerned or by the CID.

We have also heard counsel for the CBI.

Accordingly, Central Bureau of Investigation is directed to take up the investigation in the matter and examine the witnesses and file a final report and bring to book case against the culprits, as expeditiously as possible.

Mr. Binod Singh, who was appointed a Amicus Curiae has rendered his assistance to this Court. His services is recorded with appreciation. Order accordingly.