
(2000) 1 PLJR 672

Patna High Court

Case No: C.W.J.C. No. 2437/98 (R)

Mostt. Ahulash Devi

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Nov. 11, 1999

Acts Referred:

- Constitution of India, 1950 - Article 21, 22(1)
- Criminal Procedure Code, 1973 (CrPC) - Section 82, 83
- Penal Code, 1860 (IPC) - Section 220, 330, 331

Citation: (2000) 1 PLJR 672

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: K.K. Singh and R. Shanker, for the Appellant; A.K. Trivedi for the Central Govt. and Govt. J.C. to G.A. for the State, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

In this writ application the petitioner who is the widow of late Parasnath Singh, has prayed for issuance of an appropriate writ directing the respondents to compensate her suitably as her husband died on account of torture of the respondents and further for appropriate direction commanding upon the respondents to initiate criminal prosecution against the concerned police officials who assaulted the deceased husband of the petitioner as a result of which he died in custody. The petitioner's case, inter alia, is that her husband was a farmer who died on 18.7.98 due to excessive torture by the police personnels leaving behind the petitioner as widow and three sons and one daughter. It is alleged that on 18.7.98 at about 10 A.M. the Sub-Inspector of Police, Surendra Prasad Singh, Devilal Prasad. Inspector of Police, Dinanath Raja, Dy. Superintendent of Police, Sadar B. Circle, Headquarters, Daltonganj, constables of CRPF along with the Asstt. Commandant with

other forces came to the house of the petitioner and entered into the house of the petitioner without any warrant and caught the husband of the petitioner. When she resisted against the alleged action of the respondents and other constables, she was subjected to assault by the said persons. The members of the police party broke open the lock of the boxes and looted the ornaments which had been given by her father at the time of marriage. Petitioners' further case is that after taking away and destroying the articles kept in the house, the members of the police force came out from the house of the petitioner where several villagers protested against the illegal confinement of the husband of the petitioner. It is alleged that the respondents, with the help of other members of the force, surrounded the house of the petitioner and started assaulting him by means of danda and butt of rifles. It is alleged that one Birendra Singh protested the police personnels but he was also assaulted by the respondents. Due to assault when her husband fell down on the ground, his body was taken away by the constables, as directed by the respondents. The respondents, thereafter, threatened the villagers that if anybody comes in their way, he would also be subjected to the same fate as the husband of the petitioner. It is alleged that in presence of the villagers the husband of the petitioner was mercilessly assaulted by the respondents as a result of which the condition of her husband became serious. Thereafter, the husband of the petitioner, under the custody of the respondents, was kept in the police picket situated near the village where again the husband of the petitioner became target of assault by the respondents. The petitioner alleges that her father-in-law and brother in-law seriously protested and requested to release the deceased husband of the petitioner as there was no case pending against him but the respondents neither showed any paper nor released the husband of the petitioner, rather, became very furious. It is further alleged that the incharge of the police picket also requested the respondents either to stop torturing or to go outside the jurisdiction of the picket because if the person will die, he would be field responsible for that. Accordingly, the respondents came out from the picket along with the husband of the petitioner and near the picket itself the respondents, with the help of constable, put a heavy piece of wood on the chest of the husband of the petitioner and asked where he had concealed the L.M.G. Thereafter, the respondents stood up on the piece of wood which was put on the chest of her husband. One of the respondents inserted pieces of clothes into the mouth of her husband and due to that reason the husband of the petitioner became senseless. Thereafter, the respondents returned with the senseless body of the husband of the petitioner to the way of Panki. The petitioner has alleged that she along with her children and relatives rushed to Panki police station from where she came to know that her husband was admitted in the Panki hospital. The petitioner immediately rushed to the hospital where she was informed by the staff of the hospital that her husband died prior to giving any treatment, rather, his dead body was brought to the hospital. It is stated that post mortem was done by the doctor and it was found that cause of death of her husband was due to assault. The petitioner, thereafter, went to police station to lodge F.I.R. but the same was not entertained by the police. She then sent a letter to the Superintendent of Police, Daltonganj for lodging the F.I.R. The petitioner has further stated that she came to know from reliable sources that the police

has also lodged F.I.R. being Panki P.S. case No. 35/98, a copy of which is annexure 2 to the writ petition. She, therefore, claims that the respondents have brutally killed her husband in presence of hundreds of villagers by mercilessly assaulting him after taking into custody. The petitioner has, therefore, prayed for the relief, aforesaid.

2. Two sets of counter affidavits, one on behalf of the respondents-CRPF and another on behalf of respondents 4, 5 and 8 to 12(the State police) have been filed in this case.

In the counter affidavit filed on behalf of CRPF sworn by the Addl. Deputy Inspector General of CRPF, SGC, Ranchi, the case of the respondents in that as requisitioned by the S.P. Palamau District vide his order No. 3085/confidential dated 17.7.98 two platoons of D/26 Bn. CRPF stationed at Bazar samity, Daltonganj proceeded from Coy. Hqr. on 17.7.98 at about 17.15 hours to report police station, Panki, Palamau and subsequently party reached there at about 19.00 hours. The platoons were commanded by Sri Ram Krishnan, Asstt. Commandant D/26 Bn. CRPF. Prior reporting to police station, Panki Sri D.N. Rajak, Dy. Supdt. of Police, Inspector, Devilal Prasad, SHO. P.S. Panki were present there. As proposed by Sri D.N. Rajak, Dy. Supdt. of Police of Bihar Police, the platoons of D/26 Bn. CRPF made night halt in a school located in that area. On 18.7.98 at about 7 hours the police party consisting of Bihar police personnel, BMP personnels and two platoons of D/26 Bn. CRPF went out under over all command of Sri D.N. Rajak, Dy. Supdt. of Police for carrying out joint special search/raid operations. Inspector, Devilal Prasad and SHO. P.S. Panki also accompanied the police party. The police party, on their way after crossing a river, proceeded towards BMP post Pipratand. On reaching near Loharsi school, Sri D.N. Rajak, Dy. Supdt. of Police, ordered division of police party into two groups and directed them to proceed towards left and right side of the lane respectively. The party which proceeded towards left side of the lane, was consisting of one platoon of D/26 Bn. CRPF, Inspector, Devilal Prasad, three SIs of Bihar police and personnels of BMP. Sri Ram Krishnan, Asstt. Commandant D/26 Bn. CRPF also accompanied with this party which proceeded towards Pipratand police post. While the party, after crossing the paddy field, reached near village, Siram, Inspector, Devilal Prasad of Bihar police asked the party to cordon the Panchayat Bhawan where Sri Parasnath Singh and MCC activists were residing there with families. Prior to this operation also troops under the command of Inspector, Devilal Prasad of Bihar police along with SHO. P.S. Panki cordoned the said Panchayat Bhawan twice to apprehend the said MCC activists. Accordingly, the platoon of D/26 Bn. CRPF cordoned the said Panchayat Bhawan and other nearby residential accomodations as per direction of Inspector, Devilal Prasad. After cordoning of Panchayat Bhawan, inspector Devilal Prasad and some BMP personnels while advanced towards the Panchayat Bhawan for search, one suspected person was seen running away from the Panchayat Bhawan but the police party consisting of D/26 Bn. CRPF personnels along with BMP personnels chased the said suspected person for near about 2 kms. and finally managed to over-power him. While he was running, he fell down many times at his own as a result of which he sustained injuries on his body. After apprehending the suspected person, he

was identified as Parasnath Singh. After that, he was handed over to Bihar Police, Inspector Devilal Prasad and other BMP personnels and then said Parasnath Singh was brought to Pipratand outpost where he was interrogated by the police. While interrogation was going on, the platoons personnels of D/26 Bn. CRPF remained outside by cordoning the whole area. After that said Bihar police officers ordered the party to proceed to Panki police station. While the police party was on the way by foot from Outpost Pipratand towards Panki, Sri D.N. Rajak, Dy. Supdt. of police ordered the police party to stop at Loharsi chowk for a while to take rest. After having tea for 10 minutes the condition of said Parasnath Singh started deteriorating and became unconscious. Then he was ordered to be taken to Panki on a bicycle. On the way the police troops crossed the river and thus Parasnath Singh was brought to civil hospital ultimately in a police vehicle. After examination said Parasnath Singh was declared dead by the Medical Officer. Thereafter, the dead body of Parasnath Singh was brought back to Panki police station by SHO Surendra Singh along with other Bihar police personnels.

In a nutshell, these respondents have denied and disputed the allegation of torture by them on the body of the deceased as alleged.

3. In another counter affidavit filed on behalf of the Bihar police the allegation made in the writ application has been denied and disputed. It is alleged that the husband of the petitioner was notorious activist of MCC. These respondents have also denied that the Bihar Police force along with CRPF entered into the house of the petitioner on the alleged date without any warrant. Respondent case is that on 18.7.98 a secret information was received about the MCC activists who were going to kill the deployed police personnels of the said picket and seize their fire-arms and ammunitions and would cause mass murder of the police and innocent persons of the locality.

On receipt of such information respondent nos. 7 and 8 associated with CRPF, BMP and DAP personnels reached Panki and stayed there on 17.7.98 in the night and in the morning of 18.7.98 they proceeded towards the area where the said drastic occurrence was to be materialised by the MCC activists. A raid was planned to be conducted in the entire area adjacent to Pipratand police picket. The raiding party was divided into two groups; one group proceeded towards village Loharsi headed by respondent no. 8 and another group jointly headed by respondents 7 and 10 proceeded towards village area. It is stated that one group having executed the raid, came to the picket and was waiting for the arrival of the second group. Meanwhile on hearing noise a fig tree respondent no. 10 came and informed that respondent no. 7 and other CRPF personnels were interrogating the apprehended persons including the husband of the petitioner who was caught by the police personnels. It is alleged that the raiding party carried the apprehended person to Loharsi on foot and then upto the river and back on bicycle and after crossing on a vehicle to Panki hospital. During chase the deceased fell down on a cut log under the tree itself and sustained injuries. The deceased was brought to Panki hospital where he was declared dead. Thereafter, on application of the Asstt. Commandant, respondent no. 7, a Sanha entry was made on 18.7.98 which shows injuries on the suspected person. The

suspected person was declared dead by the doctor of Panki hospital and then information was sent to Headquarters. The respondents have, thus denied and disputed the other allegations made in the writ application and have said that the death of the husband of the petitioner was not caused due to any torture by the police personnels.

4. I have heard Mr. K.K. Singh, learned counsel for the petitioner, learned Standing Counsel, Central Government and also learned JC Govt. Advocate.

5. Mr. Singh, learned counsel has drawn my attention to annexure-2 which is a copy of F.I.R. of Panki P.S. case No. 35/98 and submitted that one of the State Police personnels who was witness to the occurrence has lodged the aforementioned FIR at Panki police station and admitted that due to excessive torture the husband of the petitioner died. As a matter of fact, it appears that the aforementioned FIR was lodged by the police officer to show that it was CRPF personnels for whose action the deceased died and no torture was attributed so far the State Police Personnels are concerned. For better appreciation and in order to show strong prima facie case of high-handedness on the part of the police personnels as a result of which the deceased husband of the petitioner died in custody, the contents of the F.I.R. is reproduced hereinbelow:

6. From perusal of the F.I.R. it is evident that the informant who lodged the F.I.R. has made strong protest and claimed that it is the CRPF personnels forming D/26 Batalion who brutally killed the deceased after taking him into custody. This fact has been categorically stated in para 39 of the writ petition and the same has not been denied or disputed by the respondents. It has further been stated in the writ petition that the police officers just to save the skin of the State have given false reference of some criminal cases alleged to be pending against the husband of the petitioner, in para 42 of the writ petition it is further stated that the husband of the petitioner was not named in the F.I.R. in the cases referred in the F.I.R.

7. Custodial death is perhaps one of the worst crimes in civilised society governed by the Rules of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. Any form of torture or cruel, inhumane or degrading treatment would fall within the inhibition of Article 21 of the Constitution as held by the Apex Court in the case of D.K. Basu v. W.B. (1997 S.C. 610). The Apex Court has taken notice of the instances where the police, after arrest of the persons without warrant in connection with investigation of offence, has subjected the arrested persons to torture which sometimes resulted into death. Death in custody is not generally shown in the records of lock up and every attempt is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. The

Apex Court, taking into consideration the high-handedness on the part of the police officers, formulated certain guidelines and directed to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures. From perusal of the counter affidavit filed by the respondents it is evident that admittedly the requirements/directions issued by the Supreme Court have not at all been followed by the police personnels.

8. It is well settled that section 330 of the Indian Penal Code directly makes torture during interrogation and investigation punishable under the Indian Penal Code. It is equally well settled that besides criminal prosecution against the persons guilty of such act the victim of the crime or his dependant in case of death, needs to be compensated. The Apex Court observed:-

Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in a confinement with a corrupt or malicious motive. Sections 330 and 331, provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330 therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but monetarily also. The court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong door. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do.

The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the court and paid by given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

9. In the case of *Arvinder Singh Bagga vs. State of U.P.*, [1995 (1) U.J. 144] the Apex Court directed holding inquiry against the claim of the victim for illegal arrest and torture in police custody. On enquiry the allegation was found correct. The Apex Court accordingly directed the State to launch prosecution against the guilty police officials and compensation was also awarded to the victims.

10. In the case of [Kewal Pati \(Smt\) Vs. State of U.P. and Others](#), the convict serving out sentence was killed by co-accused in jail. It was held by the Apex Court that even though the convict was serving out his sentence yet the authorities were not desolved of their responsibility to ensure his life and safety in jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law. The Apex Court observed :

Ramjit Upadhyaya was a convict and was working as a Nambardar in the jail. He was strict in maintaining discipline amongst the co-accused. It was due to this strictness in his behaviour as Nambardar that he was attacked and killed by Happui a co-accused. Even though Ramjit Upadhyaya was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law. (See *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* and *A.K. Roy vs. Union of India*). Therefore, he was entitled to protection. Since the killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of the opinion that they are entitled to be compensated.

11. In the case of *Shakuntala Devi vs. State of Bihar* [1991 (2) PLJR 494], similar writ was filed by the widow for grant of compensation on account of custodial death of her husband. The fact of the case was that the deceased attacked the police men who were deputed on law and order duty in rural area as a result of which the deceased was killed by the police. It was held by the Division Bench that the widow is entitled to compensation on account of murder of her husband caused by the police personnels.

12. As noticed above, after the brutal killing of the deceased the State police personnels were apprehensive that they may not be held responsible for such killing and that is why a responsible police officer of the State lodged F.I.R. (Annexure 2) admitting that the cause of death was severe assault, torture and inhuman conduct of the CRPF jawans. However, in the F.I.R., to justify the action of the police in apprehending the deceased, it was alleged that the deceased was wanted in some criminal cases viz. Panki P.S. case No. 28/98, Panki P.S. Case No. 29/98 and Panki P.S. case No. 50/97. In order to falsify the statements made in the F.I.R. the petitioner filed copies of the F.I.Rs, of the above referred cases and the entire ordersheet of those cases pending in the criminal courts. From perusal of the F.I.R. of those cases it appears that in none of the first information reports the deceased was shown as accused or subsequently no material was ever brought on record by the investigating agency or the prosecution against the deceased nor any prayer was ever made for issuance of warrant of arrest or issue of processes under sections 82 and 83 of the Code of Criminal Procedure. This fact is evident from the ordersheet of those cases; copies of which have been filed and annexed as annexure 4 series to the writ petition.

13. Be that as it may, even if it is assumed that the deceased husband of the petitioner was a criminal or accused in criminal cases, it was the mandatory duty and responsibility of the police personnels to save the life of the deceased after he was arrested and taken into custody. It is prima facie evident that the brutal and inhuman act of the police personnels has resulted in the death of the deceased. It is, therefore, a fit case where, besides initiating criminal prosecution against the culprits, the petitioner who is widow and the children need to be compensated. This writ application is, therefore, allowed with a direction to the C.B.I. to make a thorough enquiry/investigation and to institute criminal prosecution against those police officers who were involved in causing death of the husband of the petitioner by their torture and inhuman acts. It is further ordered that the petitioner shall be paid compensation of rupees two lacs which shall be paid to her by both the Central Government and the State Government in equal share. Such compensation must be paid within a period of two months from today.