
(1997) 09 CAL CK 0022

Calcutta High Court

Case No: M.A.T. No. 1665 of 1997

State of West Bengal and Others

APPELLANT

Vs

Tapas Kumar Bhanja

RESPONDENT

Date of Decision: Sept. 16, 1997

Acts Referred:

- Penal Code, 1860 (IPC) - Section 379

Hon'ble Judges: R. Dayal, J; Amitabha Lala, J

Bench: Division Bench

Advocate: Alok Kumar Biswas, Rekha Sarkar Ghose, for the Appellant; Tapas Kumar Bhanja, for the Respondent

Final Decision: Dismissed

Judgement

R. Dayal, J.

CO. 1979(W) of 1995 (Tapas Kumar Bhanja vs. State of West Bengal & Ors.) from which this appeal has arisen was registered on the basis of a letter dated 31st October, 1995 addressed by Sri Tapas Kumar Bhanja, Advocate, Convenor of lawyers' Forum for Human Rights, Calcutta to an Hon'ble Judge of this Court relating to the death-in-custody of Subhas Das. A single learned Judge of this Court disposed of the petition on 14th June, 1996 directing an inquiry to be made by the learned District & Sessions Judge, Alipore into the cause of death. The learned District & Sessions Judge, South 24-Parganas, Alipore, submitted his report dated 5th April, 1997 to the effect that Subhas Das had been arrested by the police on 26th October, 1995 in connection with a case u/s 379 Of the Indian Penal Code and he died on 29th October 1995 while he was in police custody. The report also says that Subhas Das was having a family but was living in red-light area separate from his family. Report says in paragraph 20 that no material could be collected for initiation of any criminal proceeding against any person, though some police officers mentioned in the report are required to be dealt with departmentally. He also stated that in view of the Supreme Court decision reported in 1993 SCC (Cri) 527 in the case

of Nilabati Behra vs. The State of Orissa and Others, sufficient monetary compensation was required to be given to the wife, son and two daughters of Subhas Das who were partially dependent on him. Similarly, sufficient compensation was required to be given to the sex worker Putul under whose care Subhas was residing for the last 10/12 years and who became partially dependent on him. He recommended the payment of Rs. 80,000/- (Rupees eighty thousand only) to be paid by the State Government to the legal heirs of Subhas Das and a further sum of Rs. 20,000/- (Rupees Twenty thousand only) to the sex-worker. The learned trial Judge passed an order dated 25th April 1997 stating therein that nobody had raised any objection as regards acceptance of the report and in this view of the matter, it is expected "that all concerned including Secretary, Home Department, Government of West Bengal shall implement the said report at an early date". A direction was issued to the Registrar Appellate Side, to communicate the order to the Secretary Home Department. Government of West Bengal together with a copy of the report of the District & Sessions Judge, South 24-Parganas, Alipore. Both the Learned Counsel present submit that the report of the learned District Judge is contradictory to terms and opportunity was not granted to them to file any objection against the report. Learned Counsel for the appellant also submits that the recommendation made in the report regarding compensation to be paid is without jurisdiction. We need not enter into these questions as, in our view, the appeal is not maintainable.

2. The learned Trial Judge did not give any direction and left the matter expressing an expectation "that all concerned including Secretary, Home Department, Government of West Bengal shall implement the said report at an early date." The mere expression of expectation does not amount to judgment within the meaning of Clause 15 of the Letters Patent from which an appeal would lie.

We, accordingly, dismiss the appeal as also the application for stay as not maintainable.

Amitava Lala, J.

I agree