

Smt. Kamlesh Vs Govt. of N.C.T. of Delhi and Others

Court: Delhi High Court

Date of Decision: Dec. 19, 2003

Acts Referred: Constitution of India, 1950 Article 226

Citation: (2004) 1 AD 1 : (2003) 108 DLT 718 : (2004) 72 DRJ 644

Hon'ble Judges: Vikramajit Sen, J

Bench: Single Bench

Advocate: A.C. Gambhir, for the Appellant; V.K. Shali and Priyanka, for the Respondent

Judgement

Vikramajit Sen, J.

This petition has been filed invoking the extraordinary powers of this Court best owed on it by Article 226 of the

Constitution. The Petitioner is the widow of late Surender Kumar who earned his livelihood as a three-wheeler scooter driver. He died in police

custody in the afternoon of 8th April, 2000,

2. The following reliefs have been prayed for, out of which the prayer for compensation has been emphasised upon;

(a) That SDM, Rajouri Garden Shri Inderjit Singh Dahiya, be ordered to produce and place before this Hon'ble Court the original inquest report

post-mortem report, the video reel and all other materials (including evidence, if any recorded by him in respect of the circumstances leading to,

and the cause of, the death in custody of Petitioner's husband);

(b) that an inquiry by C.B.I. or an independent judicial inquiry be ordered into the circumstances leading to, and in order to ascertain the cause of,

the death of the Petitioner's husband, fixing an early date for report;

(c) that action in accordance with law (Contempt of Supreme Court and provisions of the Indian Penal Code) be taken against the police officials

who tortured the husband of the Petitioner and against Respondent Nos. 2, 3, 5 and 6, who failed to inform the Petitioner about the arrest and

admission to Central Jail, Tihar, as well as the police officials who failed to provide timely medical help to the Petitioner's husband, after his

condition deteriorated after torture. Action should also be taken in accordance with law against the police officials and others whose duty it was to

inform the Petitioner about the condition of the Petitioner's husband, when his condition deteriorated and he was taken to Dindayal Upadhyay

Hospital;

(d) to order Respondents No. 1, 2, 3, 5 and 6 to pay immediately at least a sum of Rs. 20.00 lacs as compensation for the death in custody of the

Petitioner's husband".

3. It is now well settled that a claim for compensation can be passed by the Court even in the exercise of its extraordinary jurisdiction, as a remedy

available in public law. Division Benches of this Court have awarded compensation in *Shyama Devi and Others Vs. National Capital Territory of*

Delhi and Others, and in *Poonam Sharma v. Union of India and Ors.*, 2003 6 AD (Del) 373 Which is both a comprehensive as well as

perspicuous analysis of the precedents on the point. This proposition has also been acted upon by a Division Bench of the Patna High Court in

Somari Devi v. State of Bihar and Ors., (1996) 2 CCR 364; and by Justice H.K. Sema, as His Lordship then was, in *Smt. Geeta Sangma v. State*

of Nagaland and Ors., 1993 (2) Crimes 805. These cases were predicated on pronouncements of the Hon"ble Supreme Court, inter alia, in

Nilabati Behera (Smt.) @ Lalita Behera (through the Supreme Court Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, in

which it was observed as follows:

Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of

the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the

State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right

under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right of life, he cannot get any relief under

the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the

Courts have, Therefore, to evolve "new tools" to give relief in public law by moulding it according to the situation with a view to preserve and

protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the law", Lord Denning in his own style

warned :

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do

things which they ought not to do and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the

remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power if not. Just as the pick and

shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the

winning of freedom in the new age. They must be replaced by new and up-to-date machinery, by declarations, injunctions and actions for

negligence. This is not the task of Parliament, the Court must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the

new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this

country".

Similar expositions of law are also available in P.A. Narayanan Vs. Union of India (UOI) and Others, . Reliance has been placed in this regard

also on the landmark judgment of the Apex Court in D.K. Basu Vs. State of West Bengal, . Further reference, giving more details, will make this

judgment needlessly prolix, especially when the entire case law has been dealt with.

4. The prayer for committing Contempt of Court is founded on the following elements that have been enunciated in D.K. Basu's case (supra) as

essential prerequisites of arrest, and preventive measures to ensure that human rights and the dignity of every individual is safeguarded :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification

and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a

register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be

attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the

arrest is made. It shall also be counter-signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be

entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he

has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a

relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives

outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a

period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or

is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next

friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her

body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its

copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the

panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned, Director, Health Services should

prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of

custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control

room it should be displayed on a conspicuous notice board.

5. The sequence of events is as follows. On 7.4.2000 the deceased Surender Kumar was arrested at about 8 a.m. by two policemen, namely, late

Om Parkash and Gajey Singh, Head Constables who have been arrayed as Respondents, 5 and 6 respectively. The Petitioner/widow learnt of this

fact in the evening by Shri Dinesh Kumar, another three-wheeler driver and admittedly not by either of the said policemen. Shri Dinesh Kumar has

stated that he declined to accompany the Petitioner to Court on the following day, i.e. 8.4.2000. Immediately on getting this information the

Petitioner made enquiries at Police Station, Paharganj, New Delhi, where unfortunately she failed to get any information. It is not in dispute that the

Petitioner was not informed of the arrest by any Police Officer. On the following day the Petitioner attended the Court of the Metropolitan

Magistrate, Police Station, Paharganj, New Delhi but was unable to meet her husband or get any information about him. The Petitioner has stated

that she again made inquiries at the police post Sangtrashan under Police Station Paharganj as well as the Traffic Police, Record Room and the

Police Control Room telephone No. 100. Eventually she came across Respondent No. 5 who informed her of her husband's arrest on 7.4.2000.

Later on the evening of 8.4.2000 she was informed by means of the following documents that her husband had died while in custody:

To

The Distt. Magistrate, Delhi, SDM, R. Garden, SHO Hari Nagar, SHO, P. Ganj.

From SCJ MI Tihar, N. Delhi.

No. F-1/ASCJ-I/ASUT/2K/125

dt. 8/4/2K

Under trial prisoner Surender Kumar S/o. Haweli Ram R/o. Gali Chandi Wali, H.No. 937, Main Bazar, P. Ganj, Delhi was admitted in this Jail on

7.4.2K in traffic challan case No. 2988/97 DBR 4848 u/s 37(1)(U) of the standard of Cosmo (ENF) Act 1985 and was facing trial before the

Court of Shri Barjesh Garg, MM Court Karkardooma, Shahdara today i.e. 8.4.2K the said under trial has expired in DDU Hospital at about 2.30

P.M. SDM Rajouri Garden is requested to conduct an inquest in this regard. SHO P. Ganj is requested to inform the relatives of the said

deceased Surender Kumar at his residence given above.

VI/1820 dated/8.4.2K THI/1750/08

6. An inquest and post-mortem was conducted on 11.4.2000 but the Petitioner's request for supply of copy of the Report is stated to have been

turned down by Respondent No. 4, The conclusions of the Report dated 9.11.2000 reads thus:

Analysis of the oral and documentary evidences and conclusion--As per records available and from the statements of co-prisoners recorded by

the then S.D.M. (Rajouri Garden) Sh. I.S. Dahiya there was no apparent proof of manhandling with Sh. Surinder Kvimar. No one witnessed any

dispute or physical struggle. However the cause of abrasion as mentioned in post-mortem could not be ascertained. No ligature marks seen as per

post-mortem report Form 25.35(1)(B). The post-mortem report has described cause of death due to cardiac failure, I am of the considered

opinion that death was due to cardiac failure, as there was no contrary evidence. As regards broken central incisor Dr. Manish who accompanied

the patient at Casualty D.D.U. Hospital stated in his statement that during endotracheal incubation front teeth of patient were broken. On analysis

of statements of Smt. Kamlesh Rani wife of deceased, Sh. Rajinder Pal s/o Sh. Haveli Ram (brother of deceased), Sh. Dinesh Kumar S/o Shyam

Swaroop (owner of auto-rickshaws) before whom Sh. Surinder Kumar was arrested, Sh. Om Prakash, Head Constable No. 523, P.S. Pahar

Ganj, P.P. Sangtarashan, Pahar Ganj, Sh. Gaje Singh H.C. No. 349 C, P.S. Pahar Ganj, New Delhi it is clearly apparent that police officials did

not perform their duty of informing the relatives of deceased at the time of arrest as per directives of N.H.R.C. It might be possible his relative may

have arranged for fine or bail well in time. This needs further investigation by the competent authorities.

(Underlining added)

7. By Order dated 16.12.2002 a Report was called for by this Court from the District Judge. It was the opinion of the Additional District &

Sessions Judge to whom this Inquiry was entrusted that the guidelines provided in D.K. Basu's case (supra) could not be strictly applied to the

present case because the deceased Surender Kumar was neither detained in a Police Station nor at an interrogation centre nor in the lock-up. He

nonetheless applied some of them. Noting that the said Judgment enjoined the signing of the attestation of the Arrest Memo by at least one witness

who is a member of the family of the arrestee or a respectable person of the locality, he considered this requirement to have been substantially

complied with since it was prepared in the presence of Shri Dinesh Kvimar who had given the auto-rickshaw on hire to deceased Surender Kumar

and was treated as the latter's employer. In respect of the mandate that the arrested person should be informed of his rights the Additional District

Judge was of the opinion that since the Head Constable Gajey Singh (Respondent No. 6) had given this duty to Dinesh Kumar, the requirement

stood fulfilled. This is despite the fact that it was noted that Dinesh Kumar had not performed the task assigned to him. The learned Additional

District Judge thereafter noted that the duty to inform the Police Control Room was not complied with by arresting officer Head Constable Om

Parkash. This was also found to be insignificant because Dinesh Kumar had conveyed the information of the arrest to the Petitioner which finding is

contradictory. The learned ADJ came to the conclusion that there was no possibility of police torture or that he died due to lack of timely medical

aid.

8. I am unable to appreciate the justification for watering down all or any of the principles enunciated by the Hon'ble Supreme Court in D.K.

Basu's celebrated decision. All of them must be strictly and meticulously complied with by the police officer concerned and not by any surrogate

or substitute. The imperative nature of this responsibility is demonstrated in the present case inasmuch as the persons who had allegedly been

assigned this duty by the arresting officer has not performed it. In my view even if this were not so, unless the police officer had himself complied

with this duty, his conduct must be seen as a dereliction of his official obligations. The purpose behind the second element i.e. that the Memo of

Arrest should be attested either by a member of the family of the arrestee or a respectable person of the locality from where the arrest is made is

not merely to give credibility to the memo of arrest. The ideal situation is where the Memo of Arrest is signed by the member of the family, and

every effort should be made in this direction. The words "respectable person" are nebulous and relative in character as will be evident from this

very case. The Respondents had chosen to have the attestation carried out by the so-called employer of the deceased, who in actual fact was a

fellow auto-rickshaw driver who earned his living as an auto-rickshaw driver like the deceased and in addition thereto owned auto-rickshaws

which he gave on hire. The fact that he undisputedly did not convey the full details to the Petitioner and in the opinion of the ADJ did not inform her

at all, resulting in her running from pillar to post from one police station to a Court, shows that he was neither respectable nor responsible. There is

no answer why the Respondents did not take the precaution of calling upon the Petitioner herself to be present at that stage, especially since

everyone was from the same vicinity. The third element in D.K. Basil's case mandates that information must be conveyed of the custody to a friend

or relative, or "other person known to him or having interest in his welfare" being informed as soon as practicable. So far as Dinesh Kumar is

concerned his responsible attitude is wholly wanting and his respectable standing is a mere illusion. While there may have been a perfunctory

compliance over the second element, there has been no compliance with the third element. Similarly, there is a total absence in complying with the

4th and 5th element. It is not controverted that the deceased was not produced before the Illaqa Magistrate but before the Traffic Magistrate in

Karkardooma Courts where the deceased was ordered to be enlarged on bail which relief he could not avail of since a surety could not be

arranged because none of his relatives knew of his whereabouts. Had any of his family been informed of the arrest and that he was to be produced

before the Traffic Magistrate instead of the Illaqa Magistrate the required surety would presumably have been made available and the tragic death

would have been averted.

9. There has been an effort, which has succeeded before the Additional District Judge, to cloud the non-compliance with the imperatives of D.K.

Basil's case with the absence of torture or lack of medical treatment. In my view this is not the correct approach. The medical examination and

treatment of any and every person taken into custody is only one out of eleven duties enunciated in D.K. Basil's case. It cannot excuse the non-

compliance of the others. Great emphasis has been placed on the fact that the deceased had undergone a by-pass surgery. Had the

widow/Petitioner been informed of the arrest and the Court where the deceased was to be produced she would have been present to inform the

authorities and officials that special care was called for. The police officials unfortunately are insensitive to the trauma which is caused to the person

being arrested. Frequent occurrences of this nature predictably make them blasé to the turmoil caused as a consequence of being arrested or

incarcerated, which almost always drastically affects the well being of even hale and hearty persons. The patient who has undergone major surgery

would be extremely and (as in this case) critically vulnerable. The Police, Therefore, cannot assign or shift this duty to a civilian, and arguably to

any public servant other than the arresting officer. It is not possible to believe that that the deceased's medical history would not have been easily

ascertained or discovered by a doctor on a diligent examination if the deceased had been produced before the doctor immediately. Even if the

widow/Petitioner was aware of the arrest it would not have been possible for her to trace her husband keeping in view the fact that he was

produced before the Traffic Magistrate and not Illaqa Magistrate. She is the wife of a mere scooter driver, totally lacking in the wherewithal

resources or experience to trace her husband in a situation where police officers were mindless or oblivious of the duties cast on them by D.K.

Basil's judgment, and who did not at all care to inform her of the arrest until the unfortunate death. Where specific duties are cast on a person there

is no scope to consider for substantial compliance thereof so as to exonerate them from strict liability. The rule enunciated in *Rylands v. Fletcher*

even though that is in the realm of tort, must be imported and applied to the plight in the facts of the present case. I am at a loss to understand how

the arresting officer can be excused for not complying with every tenet of D.K. Basu on the curious reason that the Form or Memo does "not

contain any column of passing information to Police Control Room regarding the arrest made". It certainly cannot absolve the NCT (R-1) from

liability.

10. In these circumstances I am satisfied that there has been blatant and blameworthy non-compliance with the imperatives enunciated in D.K.

Basil's case, for which each of the Respondents is jointly as well as severally answerable and liable. As has been observed in that Judgment failure

to adhere and comply with all the eleven principles would tantamount to committing Contempt of Court, to which the Respondents are held guilty.

For the present, however, the Respondents are directed to pay a sum of Rs. 5,00,000/- to the Petitioner on behalf of all the legal heirs of the

deceased, Surender Kumar, as compensation for the death of Surender Kumar. Out of this a sum of Rs. 4,00,000/- shall be paid by Respondent

No. 1 on behalf of itself and Respondent No. 2. The remaining sum of Rs. 1,00,000 /- shall be paid by Respondents 3 to 6 in equal proportion i.e.

Rs. 25,000/- each. Payments to be made within six weeks from today. In the event that Respondents 3 to,6 fail to make payment, these sums shall

be paid by Respondent No. 1 and recoveries effected from their salaries. Respondent No. 5 is stated to have died. In the event that the sum of Rs.

25,000/- is not paid by his legal heirs Respondent No. 1 shall be free and authorised to locate assets belonging to his Estate and carry out

recoveries there from. The Petitioner shall be entitled to costs of Rs. 10,000/- payable by Respondent No. 1.

11. The petition is disposed of accordingly.