* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 16th March,2009
Judgment delivered on : 20th April, 2009

\+ **WP(C) No. 7985 of 2008 & CM No. 15506 of 2008.**

Commissioner of Police & Others ..... Petitioners
Through: V.K.Tandon & Ms. Manpreet Kaur, Advocates

Versus

Manoj Kumar ..... Respondent
Through: Mr. Arun Bhardwaj & Mr. Neeraj Walia, Advocates

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SURESH KAIT, J.

For Orders see *WP(C) No.8042/2008*.

SURESH KAIT
(JUDGE)

A.K.SIKRI
(JUDGE)

APRIL 20, 2009
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WP(C) No.8042 of 2008 & CM No. 15506 of 2008**

% Judgment reserved on: 16th March,2009
Judgment delivered on : 20th April, 2009

Commissioner of Police & Others ..... Petitioners
Through: V.K.Tandon & Ms. Manpreet Kaur, Advocates

Versus

SI Karuna Sagar ..... Respondent
Through: Mr. N.K.Sharma, Mr. Arun Bhardwaj & Mr. Neeraj Walia, Advocates

AND

WP(C) No. 7986 of 2008 & CM No. 15394/2008

Commissioner of Police & Others ..... Petitioners
Through: V.K.Tandon & Ms. Manpreet Kaur, Advocates

Versus

Bajinder Singh ..... Respondent
Through: Mr. Arun Bhardwaj & Mr. Neeraj Walia, Advocates

AND

WP(C) No. 7988 of 2008 & CM No. 15397of 2008,

Commissioner of Police & Others ..... Petitioners
Through: V.K.Tandon & Ms. Manpreet Kaur, Advocates

Versus

Abhey Singh ..... Respondent
Through: Mr. Arun Bhardwaj & Mr. Neeraj Walia, Advocates

AND

WP(C) No. 8021 of 2008 & CM No. 15447 of 2008 & CM No. 2825 of 2009

Commissioner of Police & Others ..... Petitioners
Through: V.K.Tandon & Ms. Manpreet Kaur, Advocates

Versus

Insp. Ranbir Singh ..... Respondent

Through: Mr. Arun Bhardwaj & Mr. Neeraj Walia, Advocates

AND

WP(C) No. 7985 of 2008 & CM No. 15506 of 2008.

Commissioner of Police & Others ..... Petitioners

Through: V.K.Tandon & Ms. Manpreet Kaur, Advocates

Versus

Manoj Kumar ..... Respondent

Through: Mr. Arun Bhardwaj & Mr. Neeraj Walia, Advocates

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

SURESH KAIT, J.

1 The respondents, herein in these writ petitions, have filed OAs under Section 19 of the Administrative Tribunal Act, 1985 challenging the impugned order dated 10.09.2007. The impugned order is common in all the writ petitions as per which the departmental inquiry was ordered against them by the Joint Commissioner of Police, New Delhi. Being aggrieved, the respondents have filed OAs before the Central Administrative Tribunal, Principal Bench, New Delhi to quash and to set

aside the impugned order dated 10.09.2007. After hearing all the OAs, the Tribunal has passed common judgment dated 22.05.2008 in all the OAs being OA No. 2211/2007, OA No. 2244/2007, OA No. 2298/2007, OA No.2307/2007 & OA No. 2303/2007.

2 Since the Tribunal has passed the common judgment in all the OAs, therefore, we have also decided to take up all the writ petitions together and for the adjudication purpose we are taking WP(C) No. 8042/2008 entitled as ***Commissioner of Police & Others v. Karuna Sagar*** as a lead case.

3 The facts of the case as per the impugned orders are as follows:-

> "While posted in PS Sarojini Nagar, SI Ranbir Singh, No. D/2790 (now Inspector) arrested accused Deepak @ Deepu , S/o Shri Arvind, R/o D-58, Chanakya Place and also effected his arrest in case FIR No. 364/96, u/S 25/54/59 Arms Act PS Sarojini Nagar and also effected his arrest in case FIR No. 319/96, u/S 454/380/411 ICP PS Sarojini Nagar on the same day. In both the cases, he was remanded to judicial custody and under the orders of Shri O.P. Gupta, MM, Patiala House Courts, he was to be got X-rayed for determination of bone-age from Safdarjung Hospital on 29.08.2006. SI Karuna Sagar , No. D/3406 and HC Girish Parshad, No. 46/SW (now 7173/DAP) of PS Sarojini Nagar proceeded from the police station to Patiala House at 9.15 AM vide DD No. 31-B were they took the custody of accused Deepak @ Deepu from Patiala House and took him to Safdarjung Hospital. Accused Deepak @ Deepu slipped away from the X-ray Hall, Safdarjung Hospital in the afternoon and to that effect an information was given to PS Sarojini Nagar vide DD

No. 24-A at 4.35 PM. On this SI Ram Singh was detailed for enquiry, who reached Safdarjung Hospital, recorded statement of SI Karuna Sagar, got registered case FIR No. 374/96 dated 29.08.2006 u/S 224 IPC at PS Sarojini Nagar, on the basis of statement of SI Karuna Sagar."

4 The enquiry was initiated in respect of the aforesaid incident. The family members of the deceased revealed that accused Deepak had absconded from the police custody on 29.08.2006 at around 1.00 PM. On the information, SI Ranbir Singh(now inspector) along with constable Bijendra No. 1740/SW (now 7425/DAP), constable Vijendra No. 679/SW(now 7323/DAP), HC Ram Niwas No. 1928/SW, constable Sadhu Ram No. 1160/SW (now HC No. 7325/DAP), constable Abhay No. 6216/DAP and lady constable Renu Bala No. 2117/SW in connection with the investigation of case FIR No. 475, u/S 380 IPC. Constable Manoj Kumar No. 1512/SW (now 7344/DAP), was sent on patrolling at 1.25 PM vide DD No. 54-Bk in the area to join either SI Karuna Sagar or SI Ranbir Singh (now inspector).

5 The wife of Sonu (deceased) revealed in the enquiry that around 2.30 PM on 29.08.1996, one policeman in plain clothes came to their residence at Chankaya Place and enquired about Deepak. On not finding Deepak, he dragged her husband Sonu (brother of Deepak) and started beating him. Within no time, two vehicles full of policemen in civil clothes

came there and all of them also beaten her husband. On seeing, she sent her sister-in-law Rupa to call Joginder, her relative living in the neighbourhood. Sh. Joginder, S/o Ram Lal, R/o G-25 Chankaya Place, Janak Puri corroborated the facts of bearing Sonu by policemen and taking him away with them in a Maruti Car No. DDB-540. The police party took him to the Jhuggi of Raju, S/o Ram Karan, relative of Sonu in Tilak Vihar . Raju has disclosed that at around 6.00 PM on 29.08.1996, one police Gypsy and one white Maruti Car carrying 10/12 policemen in plain clothes came to his place and enquired about Deepu and his brother. He further disclosed that Sonu was already in the Gypsy. Thereafter, they took Sonu to double storey, Harijan Basti, Vikas Puri. When they were on the way, the Maruti Car got some starting problem, where, Sonu was badly beaten by the policemen enquiring about the whereabouts of Deepu. Thereafter, the alleged police party took Sonu to his house again and beaten him there also. Raju was taken to police station Sarojini Nagar in Maruti Car. He did not know about Sonu any more as he (Sonu) was taken somewhere else in Gypsy. Raju was released next morning from PS Sarojini Nagar around 6.00 AM.

6 From the enquiries from SI Ram Singh and from the circumstances, it is revealed that SI Karuna Sagar and HC Girish Parshad joined the police party headed by SI Ranbir Singh (now inspector) in the search operation to nab Deepak @ Deepu. But in between this period, HC

Ram Niwas and W/Ct. Renu got separated from the search party and rest of the staff continued with the search operation. The search party then reached House No. 80/81, Village Burari at the residence of Smt. Birawli W/o Balwant, a relative of Sonu around 2.40 AM on 30.08.1996. Smt. Birawli and her brother Joginder confirmed that 4 vehicles full of policemen came there and one of the vehicles was blue Gypsy driver by one driver being called Charli with one arm amputated. . One of the policemen was being called SI Ranbir Singh (now inspector). They further revealed that Sonu was in that blue Gypsy and the alleged police party enquired about Deepu, awoke her brothers and other family members, beaten them and asked his men to take all of them to the police station. In the meantime, the driver of Gypsy came up and whispered to SI Ranbir Singh (now inspector). After that SI Ranbir Singh (now inspector) and party left the place without taking them.

7 Around 4.00 AM the dead body of Sonu was taken to Safdarjung Hospital Emergency. According to the security guard, namely, Goverdhan Lal of Safdarjung Hospital, the dead body was brought in white car (number not known) at the gate of emergency and the occupants called for a trolley saying that there was a MLC case. The security guard, Goverdhan Lal got Sonu in a trolley and took him to casualty. In the meantime, the car occupants vanished without disclosing their identity. The

said Sonu (deceased) was examined by Dr. Sandip Bhalla and declared him dead. The MLC was prepared, duty constable Sunil Kumar who was posted at Safdarjung Hospital, informed the duty officer PS Sarojini Nagar about the incident. Report was lodged vide DD No. 12-B at 4.20 AM and SI Rajender Pal was detailed for enquiry, who went to Safdarjung Hospital and found a dead body of male aged about 25 years in the casualty. Meanwhile, Smt. Kamlesh Addl. SHO/PS Sarojini Nagar reached there and conducted further enquiries. She came to the conclusion that Sonu was lifted by the staff of P.S. Sarojini Nagar in order to trace absconder Deepak, on finding Sonu (dead) left abandoned surreptitiously at Sufdarjung Hospital's Emergency gate. On the basis of this enquiry, the Addl.SHO registered a case FIR No. 375 dated 30.08.1996 under Section 304 IPC at P.S. Sarojini Nagar at 7.15 A.M.

8 Since all the involved staff, namely, SI Ranbir Singh (now inspector), constable Bijendra No. 1740/SW (now 7425/DAP), constable Manoj Kumar No. 1512/SW (now 7344/DAP), constable Sadhu Ram No. 1160/SW (now HC No. 7325/DAP), constable Vijendra No. 679/SW(now 7323/DAP), constable Abhey Singh No. 6216/DAP (now 7356/DAP), SI Karuna Sagar No. D/3406 and HC Girish Parshad No. 46/SW (now 7173/DAP), were placed under suspension. Vide DD No. 8A dated 30.08.1996. Mr. K.K.Dahiya, SDM, Hauz Khas, New Delhi had conducted

inquest into the death of Sonu. Further under the orders of DCP/SWD, the investigation of case FIR No. 375/96 under Section 304 IPC, PS Sarojini Nagar was entrusted to inspector Tulsi Ram of DCC/South-West District.

9 The post-mortem examination was also conducted by a Board of Doctors on the dead body of Sonu and the Board of Directors found presence of 51 anti mortem injuries on the dead body.

10 On conducting the investigation in case FIR No. 375/96 under Section 304/34 IPC, PS Sarojini Nagar, a charge sheet was filed in the Court of Law against SI Ranbir Singh (now inspector) and other accused persons and they all were acquitted giving them benefit of doubt on the ground that four material witnesses have already expired and some witnesses turn hostile and the trial court found that there was no use to examine the remaining witnesses.

11 The Additional Sessions Judge framed charge against the accused persons on 09.01.2001.

12 The prosecution examined 20 witnesses, namely, PW 1 Ct. Sunil Kumar, PW 2 Goverdhan, PW 3 Shri O.S. Srivastava, PW 4 Inspector Kamlesh, PW 5 Rupa, PW 6 Veerawali, PW 7 SI Ram Singh, PW Inspector Kamlesh, PW 5 Rupa, PW 6 Veerawati, PW 7 SI Ram Singh, PW 8 Brahm Swarup, PW 9 Chintoo, PW 10 Raju, PW 11 Shri Krishan Lal, Dr. D.N. Bhardwaj who was recorded as PW 11, now treated as PW 11A, PW 12

Smt. Savitri Devi. Another witness Mangal who was recorded as PW 12 now treated as PW 12A, PW 13 Arvind Kumar, PW 14 SI Rajinder Pal, PW 15 Joginder, PW 16 ASI Renu, PW 17 Smt. Geeta and PW 18 Inspector Umrao Singh.

13 Additional Sessions Judge came to the conclusion that the witnesses examined on the record who are material witnesses such as PW2 Goverdhan, PW 5 Smt. Rupa Sister of deceased, PW 6 Smt. Veerawati, Mausi (mother's sister), PW 8 Brahm Swaroop colleague of deceased, PW 9 Chintoo, PW 10 Raju, PW 11 Krishan Lal, PW 12 Smt. Savitri Devi, PW 12A Maneet, PW 13 Arvind Kumar, PW 15 Joginder, PW 17 Smt. Geeta, wife of deceased Sonu. None of them have identified the accused persons as culprits and virtually turned hostile. Hence, they did not support the case of the prosecution despite cross examination by Ld. APP. Others are official and formal witnesses who could not establish the link between the accused persons and the crime in the absence of the material evidence. Finding no other material witness left, therefore, was no purpose of examination of remaining witnesses, accordingly prosecution evidence was closed.

14 On acquittal, the facts were examined by the Competent Authority, Joint Commissioner of Police under Rule 21 of the Delhi Police (Punishment & Appeal) Rules, 1980 and found the same to be fit for

conducting the departmental enquiry against all the accused. The Joint Commissioner of Police has invoked rule 12 of the Delhi Police (Punishment & Appeal) Rules and found the case fit for conducting the departmental enquiry against all the accused on the following grounds.

> 1. That they failed to perform duly diligently in as much as they lifted Sonu without preparing any record from his residence and kept him illegally confined.
> 2.That they gave Sonu third degree treatment while in Police Custody violating the human right standards, which resulted in the death of Sonu in Police Custody. The acts of the delinquent police officials added in giving bad name to police as barbarous.
>
> 3. That even after the death of Sonu in Police custody they left his dead body as unknown at the hospital gate without disclosing their identity, which is highly unprofessional act on their part, and unbecoming of a police officer.
> 4. That in escape of accused Deepak @ Deepu from the custody of SI Karuna Sagar and HC Girish Prasad also shows grave negligence, misconduct and dereliction in discharge of their duty, as result of which the life of innocent Sonu was taken away by the barbarous acts of police.

The charges framed are as under:-

> 3. "... Finding sufficient proof against the accused persons. SI Karuna Sagar, HC Girish Prasad. Ct. Sadhu Ram were arrested on 01.10.1996. Their TIP was conducted in jail before Ld. M.M. SI Karuna Sagar and constable Sadhu Ram were not identified by the witnesses. HC Girish Prasad was identified by one witness Raju. Thereafter, the Inspector arrested Manoj Kumar on 03.10.1996 and accused Abhey Singh on 27.11.1996. They refused to participate in TIP. Thereafter, accused Vijender Singh and

> Bijender Singh on 17.12.1996 surrendered before the Court of Shri O.P.Gupta Ld. M.M. and they were accordingly arrested. They refused to join the TIP. Thereafter, on 26.12.1996 the investigation was transferred to crime branch and it was entrusted to Inspector Rajiv Midha. Accused Vijender and Bijender in custody at Patiala House Courts were shown to the witnesses who identified them. Thereafter, investigation was transferred to Inspector Umrao Singh who on 27.01.1997 Accused Ranbir Singh was identified in Patiala House Courts by the eye witnesses. Statement of witnesses were recorded. The whereabouts of Maruti Car No.DDB-540 could not be made our despite efforts made. SI Karuna Sagar and Ct. Sandhu Ram were identified subsequently in the crime team office by the witnesses. The report of CFSL was obtained. As per the investigation it was found that the death of deceased Sonu took place due to the beating by all the eight accused persons of police party. Therefore, offence u/S 304 r/w Section 34 IPC was made out.
> Section u/S 197 Cr.P.C. was obtained and challan was filed.

15 The main issue before the Tribunal and now before us is that, whether, the grounds taken by the Joint Commissioner of Police in the departmental enquiry comes under the four corners of Rule 12 of Delhi Police (Punishment & Appeal),1980.

16 To examine Rule 12 of Delhi Police (Punishment & Appeal),1980, it is required to reproduce the same which is as under:-

> "12. Action following judicial acquittal. – When a police officer has been tried and acquitted by a criminal court, he shall not be

punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless"-

(a) the criminal charge has failed on technical grounds, or

(b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or

(c) the court has held in its judgment that an offence was actually committed and that suspicious rests upon the police officer concerned; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or

(e) additional evidence for departmental proceedings is available."

17 We have carefully gone through the aforesaid Rule 12 and all the four grounds on any of which departmental enquiry could be initiated against the respondent herein. The Joint Commissioner of Police has ordered the enquiry accordingly.

18 After careful reading of the grounds taken by the Joint Commissioner of Police for initiating departmental enquiry, none of the grounds covers the case for departmental enquiry against the respondents.

19 We, also have noted that the statements of the respondents were recorded during investigation under Section 161 Cr.PC and Test of Identification Parade conducted on different dates at Tihar Jail before the Metropolitan Magistrate. During TIP none of the witnesses have identified

the respondents. More so, as per the statement under Section 161 Cr.PC, no direct allegations by name have been made against the respondents.

20 We have gone through the statements recorded under Section 161 Cr.PC and the statements recorded before the trial court, there is hardly any diversion from the statements recorded under Section 161 Cr.PC. The witnesses have stated almost the same as was stated before the Investigating Officer. The contention of the petitioner is that one of the witness had identified the respondents when the witnesses were called by the Investigating Officer and incidentally the respondents were also present before the Investigating Officer. It is on record that during Test of Identification Parade, the respondents herein were not identified but if they were identified subsequently and specially before the Investigating Officer, in our view identification subsequently before Investigating Officer has no meaning in the eyes of law. The witnesses have neither identified the respondents in Test of Identification Parade nor before the trial court.

21 The trial court examined all the witnesses. But after going through the statements of the witnesses, the learned judge closed examination further and come to the conclusion that since no material has come out from the witnesses, therefore, there is no necessity of recording the statement of other formal witnesses and even recording the statement of the accused under Section 313 Cr.PC will not serve any purpose . When all

the witnesses refused to identify the respondents herein, the witnesses were declared hostile and crossed by the public prosecutor appearing on behalf of the State. Accordingly, the trial court acquitted all the respondents on merit.

22 After going through the statements under Section 161 Cr.P.C. and the statements recorded before the trial court and after declaring the witnesses hostile and further cross-examined by the public prosecutor, nothing came out from the proceedings before the trial court. We, fail to understand by conducting departmental enquiry, what material will come out from the same set of witnesses. It is not the case of the petitioner that they have some additional documents in possession on which they would rely upon during the departmental enquiry. The petitioner has decided to initiate departmental enquiry merely for the sake of challenge. There is no doubt in our mind on this ground, the department can proceed but none of the grounds taken in the order by the Joint Commissioner of Police are covered the ingredients of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980.

23 We have no hesitation to say that such a shameful incident took place. The family of the deceased came forward in spite of that the police officers could not nab the culprit and establish the case properly. Further, we have no hesitation to say that the Joint Commissioner of Police, who has issued the order for departmental enquiry has also not applied his mind

while taking the decision of initiating a departmental enquiry. No doubt a human being was murdered and that is, in the National Capital. The deceased person belongs to lowest strata of the society, but the police itself have not given the proper heed to nab the actual culprits. Lastly, we say that this case was dealt with by the police very casually, up to the top level.

24 It is very necessary to mention here that one of the accused, constable Vijender Singh, who, was acquitted and his case was examined under Rule 12 of Delhi Police (Punishment & Appeal) Rule, 1980 by the disciplinary authority and decided vide orders dated 26.04.2005 that no further departmental action be taken against him. Later on the said order was withdrawn by the DCP/SW District, New Delhi vide orders dated 13.03.2006. The aforesaid, constable Vijendra Singh, filed OA No. 1395/2006 before the Central Administrative Tribunal, Principal Bench, New Delhi . The Tribunal vide its judgment dated 04.04.2007 has held that as we do not subscribe to the review exercised by the disciplinary authority in this case over the decision of the equivalent authority in rank, the action of the respondents and the justification tendered is not apt in law. Accordingly the impugned order was quashed and set aside.

25 While directing the respondents not to proceed further , the Tribunal had also awarded consequential benefits, if any, and directed the respondents to release and pay to the applicant in OA within a period of two

months from the date of receipt of the order. Learned counsel for the respondent pointed out that the judgment of the Tribunal in the case of constable Vijendra Singh has already been complied with by the department and released all his benefits. But, very discriminately, as in the case of the respondents, the department has preferred to challenge the judgment of the Tribunal before this Court.

26 We, therefore, find that the present case has no merit. The judgment passed by the Tribunal is perfect. The Tribunal has considered all the pleas taken by the parties. Therefore, this is not a case, where, we require to interfere under Article 226 of the Constitution, accordingly this writ petition is dismissed. No orders as to costs.

SURESH KAIT
(JUDGE)

A.K.SIKRI
(JUDGE)

APRIL 20, 2009
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