

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 11079 of 2006

Reserved on: 4th March 2010
Decision on: 25th March 2010

PREMPAL & ORS. Petitioners
Through: Mr. Wills Mathews with
Mr. D.K. Tiwari, Advocate

versus

THE COMMISSIONER OF POLICE & ORS. Respondents
Through: Mr. Aditya Madan with
Mr. Rohit Madan and
Mr. Arvind Gupta, Advocates

CORAM: JUSTICE S. MURALIDHAR

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

JUDGMENT
25.03.2010

1. The present petition by Prempal (Petitioner No.1), his wife, Munni Devi (Petitioner No.2) and his four children (Petitioners 3 to 6) claims compensation for the undue harassment that Prempal and his family have been subject to at the hands of the Delhi Police.

The judgment of the learned ASJ

2. The basis for the claim is a judgment dated 28th September 2004 passed by the Additional Sessions Judge (ASJ), New Delhi in SC No. 29 of 2002 (*State v. Prempal*) acquitting the Petitioner of the offence under Section 376 IPC. In the process, the learned ASJ observed:

“This case is a glaring example that the poor in this country

have no say and if they cry for justice, their cries fall on deaf ears. They are made to suffer and pay by their life and liberty, when they complain against police officials.”

3. After narrating the long history of the suffering undergone by Prempal, at the hands of the police for about 15 years in a number of false cases, including the one in which he was being acquitted, the learned ASJ concluded:

“I consider that this is an eye-opener case, which reveals the manner in which police lets off real culprits and falsely implicates innocent persons, who dare ask for justice or who want erring police officials to be brought to book. The police torture of Prempal has converted him into a living corpse. It is a case which shows that police force has persons of criminal character in it, who are out to damage the whole institution and needed to be weeded out. It is recommended that all police officials who were involved in framing Prempal in different cases be given exemplary punishment and Prempal be adequately compensated for loss of valuable years of life and wrongful imprisonment for several years and his harassment for 15 years and physical and mental torture. Copy of this judgment be sent to Commissioner of Police, New Delhi for necessary action.”

4. What is significant as far as the present proceedings are concerned is that the above judgment of the ASJ has attained finality since no appeal was filed against it by the Delhi Police. When on the basis of the above judgment, Prempal and his family members made a claim for compensation by serving a legal notice dated 28th January 2006, they received no response. Prempal and his family state that they still live under the fear of harassment by the police. It is stated that even

after the above acquittal, Prempal has been falsely implicated in yet another case FIR No. 893 of 2005 registered at Police Station Sangam Vihar, the quashing of which is also sought in the present writ petition. In pages 73 to 76 of the writ petition, details have been given of the cases in which Prempal and his family members were arraigned as accused, the period of time spent by each of them in jail and the break-up of their claims for compensation.

Affidavits and written submissions of the parties

5. This Court had, by an order dated 12th February 2007, directed the Respondents to file an affidavit indicating the action taken by them pursuant to the recommendations/directions given by the learned ASJ. The Respondents sought time on 29th January 2008 to place on record a copy of the departmental inquiry report before the court.

6. On 9th January 2007, an affidavit of denial was filed by the Delhi Police. It was maintained that Prempal had never been implicated falsely; that he and his son Sanjay Kumar were “noted criminals” in the records of PS Sangam Vihar and that they were arrested and charge-sheeted for their “criminal acts”. Even while not denying that the Petitioner No. 1 has been convicted in 5 cases and “acquitted in some cases by Hon’ble Court after due course of trial”, it was stated that the “police officials have acted as per the provisions of law and performed the lawful duties assigned to them”. It was contended that “the action of respondent never resulted in the violation of the human rights”.

7. On 24th March 2007, an affidavit of H.M. Meena, Deputy Commissioner of Police (Police Headquarters) was filed pursuant to the orders of 12th February 2007. In it, it was interestingly maintained that “apart from the testimony of the doctor all the prosecution witnesses have fully supported the prosecution case. However, the Ld. ASJ has been pleased to acquit the accused Prempal only because of the earlier complaints made by the accused against the police machinery”. It was further stated that the **“ASJ was swayed away with the defense created by a known criminal which is not only illegal but also unconstitutional”**. The affidavit chose to ignore the fact that several strictures have been passed against police officials by the learned ASJ while acquitting Prempal. Although the affidavit of Mr. Meena stated that the State was “in the process of challenging the judgment” dated 28th September 2004, no appeal has in fact been filed since then. The order dated 11th July 2005 passed by the competent authority ordering a departmental inquiry against the Investigating Officer (IO) of the case was enclosed.

8. On 28th February 2008, a further affidavit was filed by H.M. Meena in this Court stating that the outcome of the departmental inquiry against the IO was that “two years approved service of SI Major Kumar No. D/3568 has been forfeited permanently entailing proportionate reduction in his pay for his alleged misconduct.”

9. On 19th May 2009 while admitting the writ petition, this Court

passed the following order:

“Admit.

List this matter for disposal on 9th September, 2009.

The petitioner has claimed compensation on the ground of malicious prosecution and has relied upon judgment of the learned Additional District Judge dated 28th September, 2004 and the observations made therein. The Petitioner and the respondents will file written synopsis not exceeding three pages along with relied upon judgments within one month from today.”

10. In response to the above order, on 22nd September 2009, Prempal filed his written submissions. It has been pointed out between 1991 and 2007, 18 criminal cases were filed against Prempal by the Delhi Police. Out of the 18 cases, Prempal was acquitted in 13 cases after a full trial. However, in 5 cases (four cases of theft and 1 case under the Arms Act) the petitioner was convicted “as the petitioner was not having the resources to conduct the case properly by engaging lawyers, and also to file appeal in time, as he was physically, mentally and financially a living corpse with no hopes and resources and was finding it difficult to have even a meal in a day.” The latest was the case under Section 376 IPC where he was charged with having raped a minor girl who happened the child of his former landlord. The prosecution’s case was that Prempal and one Aleem had frequent quarrels and that by way of revenge Prempal raped Aleem’s minor daughter. For this he was arrested, tortured in custody and suffered incarceration for several years in jail. He was finally acquitted by the judgment dated 28th September 2004 of the learned

ASJ who found that the prosecution had hopelessly failed to prove its case. On the other hand, it was held that the police had deliberately fabricated the evidence to somehow rope in Prempal as well as his son Sanjay. In para 2 of the written submissions of the petitioners it is stated as under:

“2. The first petitioner was forced to spend 2349 days in jail (6 years, 5 month and 9 days) on various occasions which is elaborately mentioned at page 66, and was badly beaten, tortured, harassed several times by the police, which was resulted in wasting almost 20 years of his precious time of his life in contesting various cases at various courts, all because of the reason that, few persons of the Delhi Police working with Sangam Vihar Police Station, New Delhi was inimical to the Petitioner for the reasons mentioned in the writ petition. The total amount the first petitioner is claiming in terms of money spent, and also in terms of compensation amounts to Rs.18,68,075.00 which is elaborately mentioned in detail at pages 68-71 of the Writ Petition.”

11. Meanwhile, a hearing of the case took place on 4th November 2009, when the following order was passed by this Court:

“Counsel for the petitioner submits that he restricts his claim for compensation in the present writ petition to prosecution in FIR No.231/2002, Police Station Sangam Vihar, which was made subject matter of the decision dated 28th September, 2004. The Court file of the said case will be requisitioned by the Registry for the next date of hearing. The respondents will file their written submissions at least two weeks before the next date of hearing.”

12. After the above order was passed, a written submission by way of
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an affidavit was filed by the Respondents on 9th February 2010. In the affidavit sworn to by Mr. Mangesh Kashyap, Deputy Commissioner of Police (Police Headquarters), the judgment of the learned ASJ was criticized in a strong language. In spite of the fact that no appeal had been filed against the said judgment of the ASJ till date, it was repeatedly urged that as the case in which Prempal has been acquitted was a child rape case and that it was the duty of the court “to consider the testimony of the child victim with more care and the testimony should not be thrown away easily.....” Further, in para 9 of the said written submissions, the following statement was made:

“That in the present case while the records show that the victim baby * had very clearly identified the accused as the offending person, **the Ld. Trial Court had thrown away the necessary testimonies and fall prey to irrelevant details in acquitting the petitioner.**”

(In order to preserve her privacy, the name of the victim is indicated as ‘’)*

13. This court found that the language used in the affidavits of Mr. Meena and Mr. Kashyap to criticize the judgment dated 28th September 2004 of the learned ASJ and the learned ASJ himself, far exceeded the permissible limits of legitimate criticism by a party to a case. This Court passed an order on 24th February 2010 asking them to explain why proceedings should not be initiated against them for contempt of court. In response to the said order, both Mr. H.M. Meena and Mr. Mangesh Kashyap have filed their affidavits dated 3rd March 2010 in identical terms. Paras 3, 4 and 5 of each of the

affidavits read as under:

- “3. That at the outset most respectfully it is submitted that the deponent has the highest regards for all the Courts of Justice. The deponent firmly believes in the administration of justice and its dignity in all respects. It is humbly submitted that the Affidavit/Written submission was filed in good faith and bonafidely.
4. That there was no intention on the part of deponent to lower the dignity of the Ld. Trial Court Judge, nor it was the intention to interfere in the administration of justice.
5. That the deponent submits its unconditional apology with the request that averments made in the written submissions dated 09/02/2010 may kindly be expunged and it is humbly prayed that further action in this regard may kindly be dropped accordingly.”

Submissions of Counsel

14. Mr. Wills Mathews, learned counsel for the petitioners, referred to the findings and observations of the learned ASJ in the judgment dated 28th September 2004. Consistent with limiting the claim in the petition to the compensation payable to Prempal for his false implication in FIR No. 231 of 2002, Mr. Mathews pointed out that in connection with the proceedings emanating from the said FIR, Prempal had to undergo 2 ½ years of wholly unwarranted and illegal incarceration. A detailed break-up of the claim of Prempal for compensation in connection with FIR No. 231 of 2002 is set out as under:

Fees given to the lawyers for conducting the above said case.	Rs.50,000/-
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Expenses given on account of preparing documents etc.	Rs.11,000/-
Loss of income during the judicial custody @ Rs. 150/- per day at that relevant point of time, from 3.5.2002 to 28.9.2004 i.e., 2 years 4 months and 28 days rounded as 2 years 5 months = 29 months	Rs.1,31,000/-
Loss of income: Minimum 30 days/hearings and 15 days on account of conference with lawyers total 45 days @ Rs. 150/- per day	Rs. 6,750/-
Conveyance to and fro from court to house for the abovesaid period per visit @ Rs.100/- for the abovesaid 45 day.	Rs. 4,500/-
Conveyance to and fro from court to house for the abovesaid period per visit @ Rs. 100/- for the abovesaid 45 day	Rs. 4,500/-
Loss of reputation and for (being) branded as bad by names.	Rs.2,00,000/-
Mental agony, physical harassment, humiliation and pain etc till the date of acquittal i.e. from 3.5.2002 to 28.9.2004 for about 2 ½ years @ Rs.50,000/- per year	Rs.1,25,000/-
Total	Rs.5,32,750.00

Therefore, the claim for compensation by Prempal as regards the FIR No.231 of 2002 is computed by him as Rs.5,32,750/-.

15. The above submission has not been countered at all by the Respondents despite filing their written submissions and having several opportunities to do so. Mr. Aditya Madan, learned counsel for the Respondents did not dispute the fact that no appeal had been filed against the judgment of the learned ASJ, Delhi and therefore the Respondent No. 1 and 2 were bound to honour the observations made thereunder and that this is a fit case where the Petitioners should be compensated. The written submissions of the Respondents do not

address the points urged by the counsel for the Petitioners. They merely state that FIR No.231 of 2002 was a case of rape of a child and, therefore, a serious one. While it is true that the case is indeed a serious one, the fact remains that no appeal had been filed against the said judgment. At the same time, the State has also not taken any steps to implement the directions issued by the learned ASJ.

Prempal not a hardened criminal

16. The other plea of the Respondents is that Prempal was a noted criminal and has been convicted in five cases. However, an analysis of the details of the cases as provided by the Respondents themselves shows that this conclusion that Prempal is a hardened criminal is not justified.

17. Prempal was convicted in five out of eighteen cases, the FIRs for which were all registered at P.S. Sangam Vihar. Four of the five convictions were in FIRs Nos. 49, 75, 84 and 138 of 1999 registered under Sections 457/380/411 IPC [S.457 IPC is house trespass/house breaking by night in order to commit offence punishable with imprisonment; S. 380 IPC - Theft in dwelling house and S.411 IPC - Dishonestly receiving stolen property.] He was sentenced to rigorous imprisonment for 18 months in each, with the benefit of set off granted under Section 428 CrPC. However, Prempal was acquitted in seven similar matters. The fifth conviction was under Sections 25/27/54 and 59 of the Arms Act, 1959 in FIR No. 146/1999 wherein Prempal was sentenced to rigorous imprisonment for one year plus

six months and had to pay a fine of Rs. 100 or if unable to pay, had to undergo simple imprisonment for 15 days. However, he was acquitted in three other similar matters where the police charged him under provisions of the Arms Act where he was able to defend himself in a court of law. Prempal was further acquitted in FIR No. 117/1991 where he was charged under Sections 302/34 IPC in addition to the present case of rape of a minor girl where the Learned ASJ acquitted Prempal. Explaining the convictions, Prempal has stated that these were due to his “not having the resources to conduct the case properly by engaging lawyers, and also to file appeal in time, as he was physically, mentally and financially a living corpse with no hopes and resources and was finding it difficult to have even a meal in a day.” Given that Prempal has been acquitted in thirteen cases after a full-fledged trial, as compared with being convicted in five cases involving less serious offences, the explanation appears plausible. What is disconcerting is the number of cases registered in the same police station and the ordeal that Prempal has had to undergo over several years to get relieved of the cases. The most precious years of his life were spent in merely trying to defend himself against a number of false cases. Despite so many acquittals, the Delhi Police continues to dub him as a ‘hardened’ criminal, an appellation that is at once unfair and unjustified.

18. In the above background, the false implication of Prempal in FIR No.231 of 2002 assumes serious proportions. The offence was under Section 376 IPC and for a heinous crime of child rape. The Delhi

Police has slapped Prempal with false charges for an offence in relation to which it would have been next to impossible for him to obtain bail and even more difficult to avoid trial. And, since they were able to demonstrate his 'criminal' background, notwithstanding the number of acquittals, the Delhi Police had Prempal done in for. It was fortunate that Prempal was able to establish his innocence in this case and justice prevailed. However, by this time Prempal was obviously a man broken in spirit and in health. The illegal actions of the Respondents have not only taken away precious years of Prempal's life, which can never be retrieved, but has caused irreparable damage to his reputation.

Fabrication of evidence by the police in FIR No. 231 of 2002

19. Given the long history of the litigation that Prempal had to suffer due to the highhandedness of the police, the observations of the learned ASJ are fully justified. As regards the evidence in FIR No. 231 of 2002, the order of the learned ASJ discusses it in great detail. This court has also perused the trial court record. The following findings of the learned ASJ are fully borne out from the record:

“Surprisingly, police did not examine the landlord of house to show that accused had lived in that house as tenant at any point of time. In fact, the accused was being falsely framed and for this reason a stand was taken that accused had lived as tenant for three months, despite the fact that he had his own house about 4 kms. Away from that place and was living in that house since 1990 with his family except that after the year 2000 when he was implicated in several theft cases and he, out of fear, had stopped living in Delhi.

Accused had made specific request that his DNA test be conducted and also sperm if any found on the frock of prosecutrix, be got compared. However, CFSL report shows that no sperms were found on the frock of victim.

It is stated that police was shown the place in the jungle, where rape had taken place but police did not collect any evidence from the place of rape. **If *victim was raped in the jungle and there was bleeding from her private part and her frock got blood smeared, it is obvious that some part of the blood would have found on the ground or bushes under nearth (sic `earth') but in this case, purpose of police was not to catch hold of the real culprit but to use this child as a tool to falsely implicate accused Prempal in this case. For this purpose, police went to the house of accused and pressurized his wife to call the accused from village. Accused came from the village, he was apprehended, given beatings brutally by the police and implicated in this case.**

“The story of prosecution about accused having taken a room on rent in the house of Aleem is unbelievable. Aleem is not the landlord of the house. He himself was a tenant in one room accommodation. So, accused could not have lived in the room as tenant of Aleem. There were other tenants in that compound. If accused had lived there as a tenant, the landlord would have been called to prove it. Neither landlord nor any other tenant was examined to prove tenancy of accused. The statement of *victim, telling that an old man who used to beg with a temple on a rickshaw and then twisting the story that accused used to collect donation for the temple shows that police deliberately implicated the accused. No person has been examined from whom the accused might

have collected donation and no recovery of rickshaw with temple has been made.” (emphasis supplied)

[In order to preserve the privacy, the name of the victim is concealed and indicated as `*’]

20. The learned ASJ thus commented on the testimony of the victim’s mother and baby’s father and found that the same has been totally unbelievable as under:

“I consider that testimony of “victim on the question of identification of accused and testimony of Baby* and Aleem on all points is unbelievable. They seem to be deposing under police pressure or influence. **The accused who has been fighting for justice had limited resources. He had been working as ‘Raj mistri’ and then as a labour. His house is in a resettlement colony. He could not engage good counsel to defend him to move higher courts in time, against his false framing in various cases of Arms Act, theft cases, murder case and then rape case. Had accused been a rich man, he would have been able to engage good advocates and move wheels of justice. The police atrocities on him had been unending. In last fifteen years, he had spent half of time in jail only because he was a poor ordinary person whose cry for justice was not listened by any authority. He made application after application to CP but with no result. He placed on record his all complaints made to CP and other officers with proof of receipt of complaints.**”

(emphasis supplied)

[In order to preserve the privacy, the name of the victim is concealed and indicated as `*’]

21. The judgment of the learned ASJ also shows that Prempal did

make use of the opportunity during his examination under Section 313 CrPC to put across his case. The judgment records:

“The accused examined himself as DW 2 after seeking permission u/s 315 Cr.P.C. He narrated his entire tale of woes with proof of FIRs, judgments, orders and complaints. The documents filed by him are Ex.DW2/1 to DW2/68 (187 pages). During his examination, Id. CPP observed that DW2 Prempal was a real sufferer and a truthful witness. Prosecution had nothing to belie his version.

The testimony of DW 3 Munni Devi, who is wife of accused corroborates DW2. She has narrated how police tortured her and implicated her son, her husband and herself in false cases, how no law and rules were followed in her arrest. No woman constable ever accompanied when she was apprehended. Police invariably came at night, several times, in absence of her husband. Her hands were tied with a `balli' above her head and she was beaten by male police persons.

In cross examination, prosecution has not disputed most of the vital facts stated by defence witnesses and their false implication in cases. Accused proved the complaints made by him and his wife. These complaints were made on 15.10.91 (Ex. DW2/67) 22.11.97 (Ex.DW2/68), undated (Ex.DW2/9), 30.12.91 (Ex.DW2/11) 17.3.92 (Ex.DW2/12), 23.3.92 (Ex.DW2/13), 25.3.92 (Ex.DW2/3), 8.4.92 (Ex.DW2/14), 14.5.92 (Ex.DW2/15), 1.2.93 (Ex.DW2/16), 6.11.98 (DW2/51), 9.11.98 (DW2/54), 11.11.98 (Ex.DW2/55) and 2.5.01 (Ex.DW2/61). **In these complaints, accused had also narrated the threats given to him by Sangam Vihar police officials of ruining his life.** Accused also proved anticipatory bail applications and report of police which proves the harassment being done by

police. Accused produced receipt of purchase of 'Jugar' and a witness DW.1 to show that accused was not in Delhi on the date of incident and that he received message from his wife that police was harassing her and he reached Delhi on 3.5.02.” (emphasis supplied)

22. It is after a detailed analysis of the above evidence that the learned ASJ came to the conclusion that Prempal was not involved in the rape of the child; he was framed in the case and was innocent. In light of the overwhelming evidence discussed threadbare in the judgment of the learned ASJ, which has attained finality, there can be no manner of doubt that Petitioner No.1 has been treated most unreasonably, unfairly by the police and his fundamental rights under Article 21 were brazenly violated by the Respondents.

Case law concerning liability of the state to pay compensation

23. At this stage this Court considers it necessary to recapitulate the well settled law of liability of the state to pay compensation to victims of police excesses. Recently in *Sube Singh v. State of Haryana AIR 2006 SC 1117*, the Supreme Court noted that: “Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the Law of Torts, was evolved in the last two and half decades.”

24. A decision that is not cited but which perhaps unique in acknowledging the unconstitutional practices adopted by the police

and perhaps laid the foundations for the later development of the law in the area is *Prem Chand (Paniwala) v. Union of India AIR 1981 SC 613* where the poignant life of a stock witness, and how such persons are ‘used’ by the police, was taken note of by the Supreme Court. Speaking for the Bench, Justice V.R. Krishna Iyer observed:

“In Justice, Justices and Justicing and likewise in the Police and Policing, the Peril to the judicial process is best left to imagination if professional perjurers like the self-confessed Paniwala are kept captive by the Police, to be pressed into service for proving "cases". Courts, trusting the Police may act on apparently veracious testimony and sentence people into prison. The community, satisfied with such convictions, may well believe that all is well with law and order. We condemn, in the strongest terms, the systematic pollution of the judicial process and the consequent threat to human rights of innocent persons. We hope that the higher authorities in the Department who, apparently, are not aware of the nefarious goings-on at the lesser levels will immediately take measures to stamp out this unscrupulous menace.”

“The petitioner’s reply affidavit makes startling disclosures about the police methods of implicating innocent people. However, the version of the petitioner can hardly be swallowed since he is a self-confessed perjurer. Nevertheless, it is not too much to ask Government to take effective measures to prevent Police methods straying into vice. We hopefully remind the State about what Justice Brandeis once observed: [*Olmstead v. U. S. (1928) 277 US 438*:

Crime is contagious. If the government becomes a law breaker, it breeds contempt for law".... "To declare that in the administration of the criminal law the end justifies

the means-to declare that the government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this Court must resolutely set its face.

In the same American decision we have just mentioned Justice Holmes observed:

We have to choose, and for my part I think it a less evil that some criminals should escape than that the Government should play an ignoble part.”

25.1 Among the early cases where the seeds of the law relating to payment of compensation to victims of state excesses was laid down is the *Bhagalpur Blinding case [Khatri (II) v. State of Bihar 1981CriLJ 597]*, Bhagwati J., (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution:

“...but if life or personal liberty is violated otherwise than in accordance with such procedure, is the Court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty?”

25.2 The question was expanded in a subsequent order in *Bhagalpur Blinding case [Khatri (IV) v. State of Bihar (1981) 3 SCR 145]*, thus:

“If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injunction the State from acting through such officer

in violation of his fundamental right under Article 21 ? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would ex-concessions be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the court under Article 32 for a writ injunction such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him ? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the court for enforcement of his fundamental right, the court cannot give him any relief?"

25.3 Answering the said questions, it was held that when a court trying the writ petition proceeds to inquire into the violation of any

right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation. This Court clarified that the nature and object of the inquiry is altogether different from that in a criminal case and any decision arrived at in the writ petition on this issue cannot have any relevance much less any binding effect, in any criminal proceeding which may be taken against a particular police officer. The Court further clarified that in a given case, if the investigation is still proceeding, the Court may even defer the inquiry before it until the investigation is completed or if the Court considered it necessary in the interests of Justice, it may postpone its inquiry until after the prosecution was terminated, but that is a matter entirely for the exercise of the discretion of the Court and there is no bar precluding the Court from proceeding with the inquiry before it, even if the investigation or prosecution is pending.

26. In *Rudul Sah v. State of Bihar AIR 1983 SC 1086* the Supreme Court ordered compensation to be paid by the state to a person who had to undergo wrongful incarceration for several years. It held:

“10. ...The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal

detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, **the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt.** The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, **the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.**” (emphasis supplied)

27.1 *Nilabati Behera v. State of Orissa AIR 1993 SC 1960* was a case where the son of the petitioner was taken in police custody from his home and was later found dead with bodily injuries on a railway track the next day. The deceased was aged 22 years and his

monthly income was between Rs. 1,200 and 1,500 in 1987. The Supreme Court, while directing the State of Orissa to pay a sum of Rs. 1,50,000 as compensation to the Petitioner and Rs. 10,000 as costs to the Supreme Court Legal Aid Committee, observed:

“12. ... award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.”

“16. In this context, it is sufficient to say that the decision of this Court in *Kasturilal* upholding the State's plea of sovereign immunity for tortuous acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in *Rudul Sah* and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, *Kasturilal* related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. *Kasturilal* is, therefore, inapplicable in this context and distinguishable.”

27.2 In his concurring opinion Justice Dr. A.S. Anand, (as he then was) observed:

“37. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar & Anr.* granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a

view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned.” (emphasis supplied)

28. A few years later in *State of Madhya Pradesh v. Shyamsunder Trivedi (1995) 4 SCC 262* it was observed:

“16. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve otherwise the common man may lose faith in the judiciary itself, which will be a sad day.”

29. Following this was the celebrated decision in *D.K. Basu v. State of West Bengal (1997) 1 SCC 416* where the entire law relating to payment of compensation by the state to a victim of state excesses was expostulated. In *Mrs. Sudha Rasheed v. Union of India 1995 (1) SCALE 77*, the Supreme Court granted compensation of Rs.7,50,000/- to the relatives of an Advocate who had died in police custody. This court in *Nasiruddin v. State*, [Criminal Writ No. 585 of 1996, decided on December 16, 1997], while relying on the decision of the Supreme Court in *D.K. Basu v. State of West Bengal* (supra), granted monetary compensation to the father of an accused who died

in Tihar Jail as a result of sixteen injuries which were found on his person.

30. Consistent with the law as explained in the above and several later decisions, this Court holds that Prempal is entitled to be compensated by the Respondent State for the suffering he has had to undergo on account of the illegal actions of the police in implicating him falsely in FIR No.231 of 2002 and consequently getting him wrongly arrested and incarcerated unjustifiably for nearly two years and five months. In *Sube Singh v. State of Haryana* (supra) the Supreme Court sought to draw a distinction between the cases where there was “established and incontrovertible evidence of violation of Article 21” and cases where it was not. The present case falls in the former category. There is no doubt in the facts and circumstances of the present case that there has been a clear-cut violation of the fundamental rights guaranteed to Prempal under Article 21. It is a case that shocks the judicial conscience.

Computation of compensation payable

31. The next question is the exact amount of compensation that is payable to Prempal. As already noticed, Prempal has submitted the detailed break-up of the heads of claim and the figures of compensation aggregating to Rs.5,32,750 which has not been rebutted by the Respondents. Still, this Court is required to examine whether the quantum of compensation claim made by Prempal is justified.

32. Recently in *Tasleema v. State (NCT of Delhi)* 161 (2009) DLT 660 a Division Bench of this court was called upon to decide whether the Petitioner should be compensated by the State of Gujarat, as a public law remedy, by way of strict liability, for the adventure undertaken by its police officials in taking away her minor son, without reason and without the authority of law, from Delhi to a lock-up in Ahmedabad? And, if so, how was the compensation amount to be determined? These questions were to be decided in the backdrop of the allegation that the Petitioner, her husband and children were Bangladeshis. After finding the State of Gujarat liable to pay compensation to the victim, this Court turned its attention to question of computation of compensation and held:

“63. Now comes the question of how to calculate the amount of compensation that should be awarded to the petitioner and her son Shamim. In *Bhim Singh* (supra), a case decided in 1985, the Supreme Court had awarded a sum of Rs 50,000/- by way of compensation for the deprivation of personal liberty of Mr Bhim Singh by the police officials of the J & K Government. We see no reason to award anything less, particularly, as, in the present case we are concerned with the deprivation of the personal liberty of a minor. But, as explained by one of us (Badar Durrez Ahmed, J) in *Kamla Devi v Government of NCT of Delhi* 114(2004)DLT57 the amount of compensation has to be corrected for the erosion in its real value due to inflation. A sum of Rs 50,000/- may have been just and fair in 1985 but, a sum of Rs 50,000/- in the year 2008 would be worth much less because of inflation in the intervening years. As pointed out in *Kamla Devi* (supra), the figure of Rs 50,000/- as on 1985, as awarded in *Bhim Singh*

(supra), has to be enhanced to correct for inflation and consequent decline of the real value of the rupee in the intervening years. A good index to work with is the consumer price index of industrial workers [CPI (IW)] (Source <http://labourbureau.nic.in/indtas.html>).

64. With the base year 1982 (= 100), the CPI (IW) for June, 1985 was 606 and for June 1982 was 470. Hence, the inflation corrected value of Rs 50,000/- in 1985 would work out to approximately Rs 38,779/- in 1982. Taking 1982 as the base year (= 100), the said index for 2001 is 457. In other words, the value of Rs 38,779/- in 1982 which we derive from Rs 50,000/- in 1985, would be Rs 1,77,220/- in 2001 ($38,779 \times 457/100$). Now, taking the base year to be 2001 (= 100), the CPI (IW) for April, 2009 was 150. Consequently, the sum of Rs 1,77,220/- as of 2001 would translate, in real terms, to Rs 2,65,830/- in April, 2009. The sum and substance is that Rs 50,000/- in 1985 as awarded in Bhim Singh (supra) would, in real terms, be equivalent to Rs 2,65,830/- in April 2009. This figure can be rounded to Rs. 2,70,000/-.”

33. Applying the above standard and considering that Prempal was working as a mason, i.e. a skilled worker entitled to statutory minimum wages, the compensation as claimed by him for loss of income during the period of his illegal detention appears to be reasonable. If these were to be adjusted for inflation as has been done in *Tasleema* then the compensation payable would be even higher. This court finds that the claims under the other heads are consequential and are also reasonable and therefore admissible. It is clarified that the aforementioned sum of compensation together with interests and costs as directed hereafter will be paid by the

Respondents to Prempal in the first instance with liberty to recover the amount in accordance with law from the individual police personnel found responsible for the illegal acts.

Apology of police officers not convincing

34. Before concluding this Court would like to deal with the affidavits of apology dated 10th March 2010 filed by Mr. H.M. Meena and Mr. Mangesh Kashyap, both senior police officers serving as DCPs. It is unfortunate that despite the judgment of the ASJ, which forms the basis for the present petition, attaining finality, both of them have criticized the said judgment, and also the learned Judge himself, in a manner that clearly is beyond the permissible limits of legitimate criticism. When the illegal actions of some of the personnel of the Delhi Police, resulting in the violation of the right to life of a citizen, is brought out so clearly by a senior judicial officer on the basis of evidence, the least that is expected of the Delhi Police is that it would study the implications of the judgment and if the judgment is not sought to be appealed against, it would implement the directions, if any, given therein. In the instant case, the two directions in the judgment delivered by the learned ASJ on 28th September 2004 were to give exemplary punishment to all those police officials involved in framing Prempal and to compensate Prempal adequately “for loss of valuable years of life and for wrongful imprisonment for several years and his harassment for 15 years and physical and mental torture.” A copy of the judgment was

also asked to be sent to the Commissioner of Police. Yet, the

Respondents took their own time. Neither was any appeal filed nor were steps taken to implement the judgment. A departmental enquiry was initiated against only the IO of the case on 11th July 2005 and that enquiry resulted in his being awarded, on 26th March 2007, the punishment of forfeiture of two years' of approved service and proportionate reduction in his pay. This punishment can hardly be termed 'exemplary' and then again only against one police official, although several of them were obviously involved in falsely implicating Prempal. Further, no action has been taken till date on the direction for payment of compensation, thus compelling Prempal and his family to approach this Court.

35. It is in this background that the unjustified criticism of the judgment of the learned ASJ has to be viewed. It is reflective of the general lackadaisical attitude that is noticed when it comes to the police dealing with the weak and the vulnerable in society. This Court can only echo what the Supreme Court said recently in ***Dalbir Singh v. State of U.P. AIR 2009 SC 1674*** where it was dealing with a claim for compensation for a death in police custody. While observing that "custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread," the court noted:

"The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in

death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in *Raghubir Singh's case* (supra) more than two decades back seems to have fallen to deaf ears and the situation does not seem to be showing any noticeable change.”

Directions to the Commissioner of Police

36. The apologies offered by both officers by their respective affidavits dated 3rd March 2010 are unconvincing. This Court is therefore not persuaded to accept them. The court expresses its disapproval of Mr. H.M. Meena and Mr. Mangesh Kashyap for filing the aforementioned affidavits using impermissible language (as extracted in paras 7 and 12 of this judgment) to criticise the final and binding judgment of the learned ASJ and the learned ASJ himself. The court cautions each of them not to repeat this in future. The Commissioner of Police, Delhi is directed to take note of this court's disapproval. In addition the Court directs the Commissioner of Police to send, within a period of two weeks from today, a written apology to Prempal and each of his family members on behalf of the Delhi Police for the suffering they have had to undergo at the hands of the police as found by both the learned ASJ as well as this court. If confidence has to be restored among the citizenry that the police is meant to protect their rights, then such expression of contrition by those at the helm is an imperative. As regards any further criminal

case(s) (including FIR No. 893 of 2005 registered at P.S.Sangam

Vihar) against Prempal, the Commissioner of Police will have them reviewed and take a decision within four weeks whether the said cases need to be continued. He will communicate within a further period of one week thereafter his decision in writing to Prempal. Thereafter it will be open to Prempal to seek such appropriate remedies as are available to him in law in respect of such case(s).

Conclusion and further directions

37. For the aforementioned reasons, in addition to the directions issued to the Commissioner of Police in para 36 above, a direction is issued to the Respondent No. 1 to pay to Petitioner No. 1 a sum of Rs. 5,32,750/- together with simple interest at 6 per cent per annum from 23rd May 2002, the date on which Prempal was arrested till the date of payment, and a further sum of Rs. 30,000/- towards costs of the present petition, within a period of four weeks from today.

38. The writ petition is disposed of in the above terms. A certified copy of this order be delivered forthwith each to the Commissioner of Police as well as the Chief Secretary, GNCTD, for compliance. The trial court record be returned.

S. MURALIDHAR, J.

MARCH 25, 2010

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