

GAHC010173142016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5088/2016

HASMAT ALI and ANR
S/O LT. ARFAN ALI VILL- BAMUNGAON RIVER BLOCK, P.O. JOMDUAR P.S.
CHAPAR

2: FOKRUL ISLAM
S/O RAHAM ALI BROTHER OF LT. RAMJAN ALI VILL- JAMDUAR PT.II P.O.
JOMDUAR P.S. CHAPAR BOTH ARE DIST. DHUBRI
ASSAM
PIN - 783348

VERSUS

THE STATE OF ASSAM AND 11 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
REVENUE and DISASTER MANAGEMENT AND RELIEF and
REHABILITATION DEPARTMENT
DISPUR
GUWAHATI -6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI -6.

4:THE DEPUTY COMMISSIONER

KOKRAJHAR
BTAD
ASSAM

PIN - 783370

5:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI -7.

6:THE SUPERINTENDENT OF POLICE

KOKRAJHAR
DIST. KOKRAJHAR
BTAD
AS SAM. PIN - 783370.

7:THE DEPUTY COMMISSIONER

DHUBRI
ASSAM
P.O. and P.S. and DIST. DHUBRI
ASSAM
PIN - 783301.

8:THE SUPERINTENDENT OF POLICE

DHUBRI
ASSAM
P.O. and P.S. and DIST. DHUBRI
ASSAM
PIN - 783301.

9:THE OFFICER-IN-CHARGE

KOKRAJHAR POLICE STATION
P.O. KOKRAJHAR
DIST. KOKRAJHAR
BTAD
ASSAM PIN - 783370

10:THE OFFICER-IN-CHARGE

CHAPAR POLICE STATION
P.O. CHAPAR
DIST. DHUBRI
ASSAM

11:THE INCHARGE

SALKOCHA POLICE OUT POST
P.O. SALKOCHA
P.S. CHAPAR DIST. DHUBRI
ASSAM
PIN - 783337.

12:PRINCIPAL CHOUDHURY
ACS
EXECUTIVE MAGISTRATE
KOKRAJHAR
P.O. and P.S. and DIST. KOKRAJHAR
BTAD
ASSAM
PIN - 783370

Advocate for the Petitioner : DR.B AHMED

Advocate for the Respondent : GA, ASSAMR1-7

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

14.05.2024

Heard Mr M Hussain, learned counsel for the petitioner. Also heard Mr H Sarma, learned Additional Senior Government Advocate for the State respondents.

2. By filing the present writ petition, the petitioner is challenging the Inquiry Report dated 20.12.2013 conducted and submitted by the respondent No. 12 (Executive Magistrate) Kokrajhar, on the incident of fake counter committed by the Kokrajhar Police, on 24.07.2012, in which two persons, namely, Saher Ali and Ramjan Ali were killed by the gunfire.

3. The case of the petitioner in brief is that on 24.07.2012, the Police Personnel initially apprehended the deceased Ramjan Ali and Saher Ali and thereafter, killed the

deceased with cold blood without any reason.

4. It appears that the petitioner No 1 is the father of Saher Ali and petitioner No. 2 is the elder brother of Ramjan Ali. It is the case of the petitioners that they frequently visited the Kokrajhar Police Station to lodge FIR against the Police Personnel, but the Officer-In-Charge did not accept the FIR. Subsequently, on 01.02.2016, the Officer-In-Charge, Kokrajhar Police Station threatened the petitioners with dire consequences and also threatened to send the petitioners to jail, by showing them as extremists.

5. On 27.07.2012, the informant, namely, Fakrul Islam has lodged an FIR to the In-charge, Salkocha Police Outpost, stating that last on 24.07.2012, at about 08.00 am, his younger brother, namely, Md Ramjan Ali went to the market from home and he is missing from there. Accordingly, an FIR was registered as GDE No. 508 dated 27.07.2012.

6. On 27.07.2012, the informant Somesh Ali also lodged an FIR, stating that his younger brother Md Saher Ali is also missing from the market and accordingly, an FIR with GD Entry No. 508 dated 27.07.2012 was registered.

7. On 25.07.2012, at about 11:30 pm, the informant, namely, Anjan Pandit, Deputy SP (P), Kokrajhar, has lodged an FIR with the OC, Kokrajhar Police Station to the effect that on 24.07.2012, an information was received in the Police Station that a group of miscreants armed with lethal weapon have entered into the village and started setting fire on the dwelling houses. The villagers ran away out of fear. Getting the information,

the informant along with SI and other team members rushed to the place of occurrence, wherein the rowdy mob which was already there, tried to attack the police party with an intention to kill and snatch away service rifles of the Police Personnel. Further, the mob fired towards the police party with guns. Upon seeing this, the police party resorted to fire with rubber bullets and when the mob became more violent and some miscreants from the mob started firing with guns, in order to save the life and property and executing right of private defence, Police also resorted to effective firing, after which the mob dispensed. Later on, while searching the place of occurrence, two unidentified miscreants were found injured lying on the ground and they were immediately shifted to the Civil Hospital. Accordingly, the FIR was received and registered as Kokrajhar PS Case No. 225/2012, registered under Sections 147/148/149/ 447/448/353/307/436/427 IPC, read with Section 25 (1-b) of the Arms Act.

8. In relation to the aforesaid incident, an enquiry was conducted by the Executive Magistrate, Kokrajhar and the finding of the said enquiry report dated 20.12.2013 is put to challenge in the present writ proceedings.

9. Mr M Hussain, learned counsel for the petitioner submits that the enquiry report submitted by Executive Magistrate is vitiated and, therefore, an independent enquiry by the CBI is required to be ordered in the case. He further submits that the two civilians have been brutally killed by the Police Personnel.

9.1 He further relied upon the decision of the Apex Court in the case of *People's*

Union for Civil Liberties and Another –Vs- State of Maharashtra and Others; reported in (2014) 10 SCC 635.

10. Mr H Sarma, learned Additional Senior Government Advocate, on the other hand, submits that the magisterial enquiry dated 20.12.2013, indicates that the two youths were part of an unruly mob, which had opened fire upon the Police Personnel and in order to control the mob in self defence, the Police had to open fire. He accordingly, submits that the instant writ petition is without any merit whatsoever.

10.1. Mr Sarma further submits that in terms of paragraph 31.16 of the Apex Court in ***People's Union for Civil Liberties (supra)***, the Hon'ble Apex Court while laying down the guidelines to be followed in cases of police encounter, provided that in the event the family of the victim finds that the Police has not followed the procedure, can make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident and upon such complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein.

10.2. He further submits that in the present case, no such complaint has been made to the jurisdictional Sessions Judge by the family members of the victim or by the petitioner.

10.3. He further submits that it is abundantly apparent from the report submitted by the Magistrate that this is not a case of police encounter.

10.4. I have heard the submissions made at the Bar and have perused the materials available on record.

11. It appears from the available records that subsequent to the registration of the FIR, the post-mortem of the dead bodies were conducted on 25.07.2012, which indicates bullet injury and cut injury on different parts of the body, caused by sharp weapon. It appears that since 20.07.2012, there was ethnic violence between the Bodos and the Muslims in Kokrajhar district going on and altogether 5,595 nos. of cases were being registered in different police stations of Kokrajhar. A huge number of persons were killed and injured in the incident, affecting 153 nos. of villages of the district. Seizures of available evidences were done in the aftermath of the incidents from the places of occurrence. One inhabitant of the affected village, Bamungaon, Prabin Narzary had also lodged a complaint, which was duly registered by the Kokrajhar Police Station as Kokrajhar PS Case No. 256 of 2012, registered under Sections 147/148/149/447/448/380/436 IPC, against a group of Muslim miscreants on the same day. Besides the said case, a complaint was also lodged by Sri Anjan Pandit, APS, the then Deputy SP (P), Kokrajhar, vide Kokrajhar PS Case No. 225/2012. Further, in the context of the aforesaid incident, a magisterial enquiry was also conducted by the then District Magistrate, Kokrajhar, vide Office Memo No. KMJ 7/2013/5 dated 14.06.2013, wherein the District Magistrate came to the finding that-

“After careful perusal of the statement of the witness, materials on record and other relevant materials, it is found that the two youths who were killed were the members of the violent mob who came to attack the village Bamungaon during the communal riot going on in several parts of the Kokrajhar District. It is also evident from the statements recorded above that the police

party had to open fire only in self defence and in order to disperse the mob who were destroying the houses of the villagers.”

12. It further appears that during the aforesaid magisterial enquiry, statements of the family members of the deceased and of the villagers were also recorded. It appears from the statements of the villagers that the police party in order to retaliate the mob had to fire. It further appears that the two youths had entered Kokrajhar in spite of existing indefinite curfew imposed by the District Magistrate, Kokrajhar and joined the unruly mob and attacked the police party with guns and other sharp weapons, for which the police party had to open fire only in self-defence and in order to disperse the mob who were destroying the houses of the villagers.

13. Undoubtedly, in a given case, where allegations of fake encounters have been made, an independent impartial enquiry is to be conducted. However, in the present case, it appears that the two youths have not been killed in any encounter, but were part of the mob which had attacked the village and the Police Personnel. Further, it appears that in terms of paragraph 31.4 of *People's Union for Civil Liberties (supra)*, the magisterial enquiry under Section 176 of the CrPC has been conducted and a report has been submitted thereof, which clearly indicates that there has been no fake encounter as alleged in the instant writ petition.

14. Further, in terms of paragraph 31.16 of the said judgment, the family of the victim and/or the petitioner is entitled to make a complaint to the jurisdictional Sessions Judge, if the procedures laid down by the Apex Court have not been followed. However, in the

present case, no such complaint, whatsoever, has also been made.

15. This Court upon complete evaluation of the materials available on record, is of the considered view that this is not a case of Police fake encounter.

16. That being so, this Court finds no merit in the writ petition and accordingly, the writ petition stands dismissed.

17. No cost(s).

JUDGE

Comparing Assistant