

GAHC010226362023



2024:GAU-AS:9917

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 1094/2023

Sri Hrishikesh Das, Age-35 years,
S/o Sri Labanya Prasad Das,
R/o- Village- Gandhi Nagar,
P.O. and P.S.- Silapathar,
District- Dhemaji, Assam.

.....Petitioner

-Versus-

1. The State of Assam,
(Rep. by the Public Prosecutor, Assam.
2. Sri Biren Dutta,
S/o- Late Gauri Dutta,
R/o-Vill-Ratanpur, P.S.-Patacharkuchi,
P.O.- Barbang, District- Bajali, Assam.

.....Respondents

Advocates for the petitioner : Mr M A Islam,
Advocate for the respondent : Ms S Jahan, Addl. P.P.,
Mr M Ahmed- R-2.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 10.06.2024.
Date of Judgment : 01.10.2024

JUDGEMENT AND ORDER (CAV)

1. Heard Mr M A Islam, learned counsel for the petitioner. Also heard Ms S Jahan, learned Additional Public Prosecutor for the State of Assam and learned counsel, Mr M Ahmed, appearing on behalf of the respondent No. 2.
2. The petitioner, Sri Hrishikesh Das has filed this application under Section 482 of the Code of Criminal Procedure, 1973, (CrPC, for short), challenging the order dated 27.04.2023, passed by the learned SDJM, Bajali, in PRC Case No. 93/2023, arising out of Patacharkuchi PS Case No. 377/2022, under Sections 342/294/325 of the Indian Penal Code, 1860 (IPC, for short).
3. It is submitted that vide the impugned order dated 27.04.2023, cognizance was taken against the petitioner.
4. The FIR unfolds that on 15.10.2023, at about 09:00 PM, Hemango Kalita committed

suicide after quarrelling with his wife and in this regard, the elder brother of the deceased, Sri Kankan Kalita lodged an FIR with the Police of Patacharkuchi Police Station, against the wife of Late Hemango Kalita, namely, Smt Nibedita Kalita and her father, Sri Bhaskar Choudhury. On the day of the incident, Sri Mridul Dutta, who was a tutor was taking tuition classes of the son of the deceased Hemango Kalita. Thereafter, on 16.10.2022, at about 04:30 pm, the OC of the Patacharkuchi PS, Sri Hrishikesh Das (the present petitioner) took Mridul Dutta to the Police Station for interrogation and detained him in the Police Station, till 10:00 am of the following day, i.e., 17.10.2022. At about 12:30 am midnight, ASI Sashanka Das took Mridul Dutta to Pathshala for medical examination and again brought him back to the Police Station. At about 02:00 am midnight, the petitioner (OC of the Patacharkuchi PS), who was in an inebriated state stripped Mridul Dutta of his clothes and directed him to parade naked and also assaulted him with a stick causing grievous injuries on his person and verbally abused him with obscene words. An FIR regarding this incident was lodged by the father of Mridul Dutta.

5. It is contended on behalf of the petitioner that the offence alleged against him was allegedly committed while he was discharging his duties as a Police Officer. The deceased Hemango Kalita committed suicide immediately after Mridul Dutta, who was taking classes, left the residence of the deceased. A quarrel broke out between the deceased and his wife and then the deceased committed suicide. As the victim Mridul Dutta was closely acquainted with the family of the deceased, he was interrogated and sufficient materials were found against Mridul Dutta, which led to the death of Hemango Kalita. The petitioner has been falsely implicated in this case. No prosecution sanction was accorded to proceed against the petitioner, who is a public servant and the learned SDJM(M), Bajali, had erroneously taken

cognizance vide order dated 27.04.2023, in connection with PRC Case No. 93/2023.

6. It is averred that the matter of granting prosecution sanction lies absolutely within the domain of the competent authorities and in the absence of prosecution, the Courts have no jurisdiction to take cognizance. Section 197 of the CrPC contains certain safeguards for public servants to protect them from frivolous and vexatious prosecution. As a false case has been brought up against the petitioner and as no prosecution sanction has been accorded, the order dated 27.04.2023, is liable to be quashed and set aside.

7. On the contrary, through the written objection filed by the respondent No. 2, it is averred that the respondent No. 2's son Mridul Dutta was detained by the Police on 16.10.2022, in the pretext of interrogation, in connection with PRC Case No. 93/2023. The petitioner, who was posted as OC of Patacharkuchi P S, brutally tortured the respondent No. 2's son. The victim was stripped naked and was assaulted by the petitioner with a lathi and he sustained severe injuries, which impelled the respondent No. 2 to bring up this case against the petitioner. Charge sheet has already been laid against the petitioner and 11 witnesses are cited as witnesses, but unfortunately 8 Police personnel are cited as witnesses, and the respondent No.2's son may be prejudiced as it is fathomable that the Police personnel will not support the prosecution case to the detriment of the respondent No. 2, as the petitioner being a Police personnel is a colleague of the 8 cited witnesses. However, it cannot be overlooked that charge sheet has been laid against the petitioner, as it was apparent that the petitioner has committed the offence *de hors* his official duty. Offences relating to custodial torture, are definitely not a part of official duty and thus, no previous sanction is required as per Section 197 of the CrPC. A public servant has no right to assault a

person in custody, resulting in his death or grievous injuries. A balance has to be struck. Likewise, the manner in which public servants are protected from frivolous allegations, similarly public has also to be protected from the spite of some unscrupulous public servants.

8. I have scrutinized the Trial Court Record as well as the scanned copies of the Case Diary.

9. At this juncture, it cannot be conclusively decided that charge sheet has been erroneously submitted against the petitioner. Charge sheet has been submitted against the petitioner. The Trial Court Record reveals that charges are yet to be framed.

10. I have scrutinized the Medico-Legal Report of the victim. As alleged, the victim was taken into custody on 16.10.2022 and he was forwarded for medical examination on the following day, i.e., on 17.10.2022, at about 06:45 pm. Even then, injuries were detected. The victim has sustained injuries measuring 5 cm x 3 cm on his buttocks and swelling was noticed over his right elbow. The opinion of the doctor was that the injuries were simple in nature, probably, due to blunt trauma.

11. It has been observed by this Court in ***Amitava Sinha –Vs- State of Assam and Another;*** reported in **2015 (3) GLT 1**, that-

(62) In the case of D.K. Basu (Supra), the Supreme Court observed:

"28. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime

should be in true sense purposeful to make the investigation effective. By torturing a person and using third- degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

*33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The Latin maxim *salus populi suprem a lex* (the safety of the people is the supreme law) and *salus reipublicae suprem a lex* (safety of the State is the supreme law) coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair." Using any form of torture for extracting any kind of information would neither be "right nor just nor fair" and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated-indeed subjected to sustained and scientific interrogation-determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated human rights of innocent citizens may render him liable to punishment but it cannot justify the violation of his human rights except in the manner permitted by law. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge.*

41. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. The statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legally injury is a compulsion of judicial conscience.

(64) In view of the above decisions and the observations, made therein, an arrested person i.e. a person in custody can't be subjected to any form of torture causing injury or hurt. The officer doing such act of human right violation is liable for punishment under the penal law.”

12. I have also relied on the decision of Hon'ble the Supreme Court in ***D K Basu (supra)***. It has also been held in my foregoing discussions that charges are yet to be framed against the petitioner. At this juncture, it cannot be conclusively decided that the petitioner acted in discharge of his official duty.

13. The petition stands rejected at this stage.
14. However, the petitioner is at liberty to raise the issue of sanction at the stage of framing of charges or at a later stage, relating to lack of prosecution sanction to proceed against him.
15. No order as to cost(s).

JUDGE

Comparing Assistant