

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13725 of 2003

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Smt. Dulari Devi w/o Sri Joga Singh @ Yogendra Singh, resident of village Bahadurpur, P.O. Rupas, P.S.Athmal Gola, district Patna.

.... Petitioner/s

Versus

- 1.The State of Bihar.
2. The Commissioner and Secretary, Home (Special) Govt. of Bihar, Patna.
3. The Director General of Police, Bihar Patna.
4. The Inspector General, Prison, Bihar, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Sub-Divisional Police Officer, Barh, Patna.
7. The Superintendent, Mandal Kara, Barh, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Tiwary, Adv.
 Mr. Tej Narayan Singh, Adv.
 Mr. Qaisar Reza, Adv.

For the Respondent/s : Mr. Ravi Bhardwaj, Adv. Ac to GA-V

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-05-2015

Heard learned counsel for the petitioner and the State.

In this case, petitioner has made a prayer for granting compensation to her, as her son , namely, Ranjan Kumar @ Ranju Singh being the sole bread earner in the family was shot dead on 4th April 2002 while he was in judicial custody, by a group of criminals while he was returning to jail after being produced in connection with Barh (Athmalgola) P.S.Case No. 1 of 2000 in the court of SDJM, Barh under Police Protection.

It appears that the son of the petitioner was made accused in Barh (Athmalgola) P.S.Case No. 1 of 2000 u/s 364A



IPC and he was taken in judicial custody and was lodged in District Jail, Barh. He used to be produced from time to time in terms of provisions of Code of Criminal Procedure. On 4th April 2002, son of the petitioner was sent to Barh Civil Court from jail under Police protection. After his production in the court, he was on way to jail, in between 14-15 criminals surrounded the Police vehicle. The Police in stead of protecting the petitioner, fled away and the miscreants started firing from their respective lethal weapons which resulted in death of the son of the petitioner. One constable, namely, Ganesh Kumar Yadav also sustained injury on his person. After committing the crime, all the criminals fled away towards Athmalgola in their Maruti van. Thereafter son of the petitioner was brought to Barh Hospital where he was declared dead.

Counsel for the petitioner submits that while the son of the petitioner was in judicial custody, it was the duty of the State to protect his life. The son of the petitioner could have been prosecuted and punished, under the due process of law. Not protecting the life of the son of the petitioner and allowing the criminals to kill is nothing but violation of Article 21 of the Constituting of India. It will be deemed that the son of the petitioner has been killed due to utter negligence on the part of the State and its agencies.

Claim has been made that the son of the petitioner

was the sole bread earner. The petitioner was completely dependent on him, by taking away the life of the son of petitioner, bread has been taken from her mouth.

Counsel for the State submits that the son of the petitioner was himself a veteran criminal and due to gang war, he was killed by his opponents and, as such, petitioner is not entitled to any compensation. He has further submitted that Police tried its level best to protect the life of the son of petitioner but could not and in exchange of fire one constable has lost his life.

Having considered the rival contention of the parties, even though a person is a veteran criminal, he can be prosecuted and punished under due process of law. To protect the life of a citizen while in Police or in judicial custody is paramount duty of the State, even though he was is a veteran criminal he cannot be allowed to be killed by another gang of criminals, that too, while retuning to jail after production in the court. If the life has been taken by criminals, the State or its agents cannot be allowed to go free from their responsibility as because of their negligence, the life has been taken away while he was in judicial custody, while deciding the issue of entitlement, factors to be considered are the nature of police protection given and the manner Police gave response when criminals attacked.



It has not been denied that the petitioner was completely dependent on the earning of her son. In such view of the matter, looking to the earlier judgment, this Court has taken a very serious view with respect to the person who has been wrongly treated by the State, its agents and not protecting the life of a citizen, the Court in the past also granted heavy compensation.

In the present case, in the attending facts and circumstances question is whether the petitioner is entitled to the compensation amount or not is dependent on many factors including the nature of protection given by the State. The son of the petitioner was in judicial custody. He was produced before the court on the fateful day and while returning back to jail, antisocial elements/criminals surrounded the vehicle and started firing in which son of the petitioner died and one constable, namely, Ganesh Kumar Yadav also lost his life while saving the life of some under trial prisoners.

For deciding the issue, certain judgments are required to be considered. The Hon'ble Supreme Court in AIR 1980 SC 1579 (Sunil Batra v. Delhi Admn.) considered a similar case in which Sunil Batra was under judicial custody and he was brutally assaulted by the Jail Superintendent. The Hon'ble Court in Para-15 said that under trial prisoners unless they are convicted will be deemed to be innocent. Where the rights of a



prisoner either under the Constitution or under other law, are violated the writ power of the court can and should run to his rescue. There is a warrant for this vigil. The Court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a belighted institutionalization geared to a social good. The court has continuing reasonability to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. The Court has held whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods 'right, just and fair'. Prisoners have right to read and write, to exercise and recreation, to meditation and chant, to creative comforts like protection from extreme cold and heat, to freedom from indignities like compulsory nudity forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security to the minimal joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment.

In custodial death cases, the Hon'ble Court has taken very harsh attitude and awarded heavy cost. This issue came for consideration in (2006)3 SCC 178 (Sube Singh v. State of Haryana) in Para 46 the Hon'ble Supreme Court has held that while awarding compensation, the Court will have to pose it to

itself the following questions:

- a) Whether the violation of Article 21 is patent and incontrovertible,
- b) Whether the violation is gross and of a magnitude to shake the conscience of the court,
- c) Whether the custodial torture alleged has resulted in death is supported by medical report or visible marks or scars or disability.

Where there is no evidence of custodial torture of a person except on his own statement and where such allegation is not supported by medical report or other corroborative evidence or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action. It is relevant to quote Para 46 and 47 of the judgment which are as follows:

" 46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding



under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

47. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or



independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier paragraph are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters. In *State of M.P. v. Shyamsunder Trivedi*¹², reiterated in *Abdul Gafar Khan*⁹ and *Munshi Singh Gautam*¹⁰, this Court observed: (SCC pp. 272-73, paras 16-17)

“[R]arely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more

often than not even pervert the truth to save their colleagues,....

... The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, ..., often results in miscarriage of justice and makes the justice-delivery system suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture."

In (2000)2 SCC 465 (The Chairman, Railway Board & others v. Mrs. Chandrima Das & others) a Bengladeshi lady was repeatedly sexually assaulted by the Railway staff. A writ petition was filed claiming compensation for that lady which came for consideration before the Hon'ble Supreme Court and



the Hon'ble Supreme Court found the lady was wrongly put to sexual harassment. Even for the action of the agent, the Railway Administration was directed to make payment of compensation on the Principle of vicarious liability. In this case, the Hon'ble Supreme Court considered the meaning of life and facets of life of human in Para-32 & 33.

In AIR 2011 SCW 6418 ((M.C.D. v. Association of Victims of Uphaar Tragedy) the Hon'ble Supreme Court held that it is not proper to award damage against the public authority merely because there has been some inaction in discharging statutory duty or because the action taken by them was ultimately found to be without authority of law. It is relevant to quote Para032 of the judgment which is as follows:

32. It is evident from the decisions of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where



damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the licensing authority. The position of the DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that insofar as the licensee and the DVB are concerned, there was contributory negligence. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them or anything done by them. Their actions/omissions were not the proximate cause of the deaths and injuries. The licensing authority and MCD were merely discharging their statutory functions (that is granting licence in the case of the licensing authority and submitting an inspection report or issuing an NOC by MCD). In such circumstances, merely on the ground that the licensing authority and MCD could have performed their duties better or more efficiently, they cannot be made



liable to pay compensation to the victims of the tragedy. There is no close or direct proximity to the acts of the licensing authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the licensee and the DVB on the one hand and the fire accident resultant deaths/injuries of victims. In view of the well-settled principles in regard to public law liability, in regard to discharge of statutory duties by the public authorities which do not involve mala fides or abuse, the High Court committed a serious error in making the licensing authority and MCD liable to pay compensation to the victims jointly and severally with the licensee and the DVB.

On the question awarding compensation for negligence following judgments will be relevant,

Lata Wadhwa and others v. State of Bihar 2001)8 SCC 197:

2002(1) PLJR 119 (SC),

M.S.Grewal and another v. Deep Chand Sood and

others(2001)8 SCC 151,

Sabe Singh v. State of Haryana and others (2006)3 SCC 178,

Ram Lila Maidan Incident, (2012)5 SCC 1,

C.K.Subramonia Iyer and other v. T. Kunnikuttan Nair and
Six others (1970)2 SCR 688,

Saheli A Women's Resources Centre, through Ms. Nalini
Bhanot and others v Commissioner of Police and others
1990)1 SCC 422,

Delhi Poilice Headquarters and others v. Smt. Nilabati Behera
@ Lalita Behera v. State of Orissa and others, AIR 1993 SC
1960,

Rudul Sah v. State of Bihar & another AIR 1983 SC 1086,
Bhim Singh, MLA v. State of J.K. and others AIR 1986 SC
494.

In such view of the matter, the test for awarding compensation, is culpable negligence and malice. It is held by the Hon'ble Supreme Court that for every inaction in performance of duty cannot lead to awarding of damage. On the touch stone of the rider that has been provided by the Hon'ble Supreme Court this Court has to consider whether the action of the State and its agency suffers from culpable negligence and was actuated with malice. While returning back to jail from the court the son of the petitioner lost his life, when he was in the closed van supported by armed guards but he could not be saved. As it appears from the facts emerging from the record, prisoners were returning under cover of police guard in close

van, when criminal surrounded the van, there was exchange of fire in which one constable received firearm injury, but police party was outwitted by the criminal, spread bullet upon the son of petitioner who ultimately died.

So this Court is of the view that possible protective umbrella was given by the State machinery, while saving the life of the son of petitioner, one of the Police constables had lost his life. In such a situation, the State or its agency cannot be said to have not acted diligently, as such, loss of life of son of petitioner will not attract monetary compensation. This Court is of the view that in the facts and circumstances, it is not a fit case where compensation can be granted to the petitioner.

This petition is, accordingly, dismissed.

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(Shivaji Pandey, J)