

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO.291 OF 2007

Smt Jyotsna Das,
W/o. Lt. Bhuban Das
of North Kaiyadeptha, P.S. Bishalgarh
Dist. West Tripura.

... Petitioner

- Vs -

- 1. Union of India,**
Represented by the Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi-1.
- 2. The Director General of Border Security Force,**
Shal-Bagan,
Agartala, West Tripura.
- 3. The Commandant**
123 Bn. BSF
Vikky Pandey Road,
Amritswar, Punjab.
- 4. Sri Dharam Paul (Head Constable)**
No.81001292
S/o. Sri Ajit Singh
123 Bn. BSF,
Vikky Pandey Road, Amritswar,
Punjab.

...Respondents

BEFORE
THE HON'BLE MR. CHIEF JUSTICE DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioner : None

For the respondents : Ms. L. Sarkar, Advocate,
Mr. A. Roy Barman, CGC.

Date of hearing & delivery of Judgment and order : **04.08.2015**

Whether Fit for Reporting : **NO**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

This writ petition is of the year 2007. It was listed before the learned single Judge of this Court on 23.07.2015. On that date also none appeared for the petitioner. Today when the matter came up before this court none appeared for the petitioner. We, therefore, proceed to decide the petition in the absence of the counsel for the petitioner.

2. This petition under Article 226 of the Constitution of India has been filed by the widow of late Shri Bhuban Das. Her grievance is that her husband was shot dead by a B.S.F Head Constable and, therefore, compensation should be awarded to her. The stand of the respondents is that the deceased was carrying Ganja and when he was apprehended by respondent No.4 namely, Head Constable, Dharam Paul, the deceased attacked Dharam Paul with a 'Dao' and in self defense, Dharam Paul fired one shot from his official weapon and this shot hit the deceased below the abdomen. The intention of Dharam paul was not to kill the deceased Bhuban Das but to save himself. According to the B.S.F authorities, 10 K.G. of Ganja and one 'Dao' were recovered at the spot itself.

3. The factum of the firing and the death of Bhuban Das are not denied. The only question is whether it can be said that this death has occurred due to carelessness and negligence of the B.S.F officials or the respondent No.4 fired a shot in self defense. In this regard it would be pertinent to mention that a General security

force was conducted against Head Constable, Dharam Paul, wherein he was charged with having committed offence under Section 302 IPC. In those proceedings the GSFC has acquitted the accused Dharam Paul and has found that he had fired one round in self defense and this round hit the deceased in the abdomen. The GSFC also found that the deceased was trying to smuggle 'Ganja' and had in fact attacked Dharam Paul with a 'Dao'.

4. These are disputed questions of fact. There is one version of the petitioner that the deceased was unarmed and was attacked by the B.S.F. officials and killed in cold blood. On the other hand, we have the version of the B.S.F authorities that the deceased was engaged in the illegal activity of sale of Ganja and when questioned he attacked the B.S.F Head Constable with a 'Dao', and, therefore, the Head Constable had to resort to firing to protect his own life. These disputed questions of facts cannot be decided on merits in the writ petition. We cannot say who is right or who is wrong without recording evidence.

5. Therefore, we dispose of the writ petition with liberty reserved to the petitioner to file appropriate proceedings for redressal of her grievances. In case the petitioner files any other proceedings the respondents shall be at liberty to defend the same on all grounds available to them under law.

JUDGE

CHIEF JUSTICE