

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 571 OF 2010

1. Smti. Khursheda Bhanu,
W/O. Late Hanif Miah,
Vill.-Barjala, P.O. Barjala,
P.S. Bishramganj,
District: West Tripura,
The State of Tripura.
2. Miss Sukanya Begam,
D/O. Late Hanif Miah,
Vill.-Barjala, P.O. Barjala,
P.S. Bishramganj,
District: West Tripura,
The State of Tripura.
3. Master Nurjaman,
S/O. Late Hanif Miah,
Vill.-Barjala, P.O. Barjala,
P.S. Bishramganj,
District: West Tripura,
The State of Tripura.

(The Petitioner Nos.2 & 3 are minors, aged about 6 years and 3 years respectively, and as such they are to be represented by their mother and natural guardian, i.e. the Petitioner No.1 herein)

..... **Petitioners.**

- V e r s u s -

1. The State of Tripura,
(To be represented by -
The Commissioner-cum-Secretary,
Department of Home,
Government of Tripura,
New Secretariat Complex,
Agartala, West Tripura).
2. The Director General of Police,
Government of Tripura,
Police Head Quarter,
Fire Brigade Chowmuhani,
P.O. Agartala, West Tripura.
3. The Officer-In-Charge,
Bishagarh Police Station,
Bishagarh Sub-Division,
West Tripura District.

4. The Officer-In-Charge,
Bishramganj Police Station,
Bishramganj, West Tripura.
5. The Investigating Officer(s),
Bishalgarh P.S. Case No.147/10,
Under Sec. 457/380/427 of I.P.C.

..... **Respondents.**

6. Smti. Kamala Bibi,
W/O. Late Bajli Miah,
M/O. Late Hanif Miah,
Vill.-Barjala, P.O. Barjala,
P.S. -Bishramganja,
District-West Tripura,
The State of Tripura.

..... **Proforma-Respondent.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U.B. SAHA**

For the petitioners	: Mr. P. Roy Barman, Advocate, Mr. S. Bhattacharji, Advocate.
For the respondents 1 to 5	: Mr. S. Chakraborty, Addl. G.A.
For the respondent 6	: Mr. R.G. Chakraborty, Advocate.
Date of hearing and delivery of judgment and order.	: 23.07.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

By means of this petition, the petitioners who are the legal representatives of Lt. Hanif Miah have prayed for two reliefs:-

(i) First relief is that the police officials did not record an FIR even though a complaint had been lodged specifically

mentioning that Hanif Miah had been murdered by the police officials by torturing him; and,

(ii) The second claim is that compensation be awarded to the claimant for the custodial death of the deceased which according to the claimants is due to the inhuman torture inflicted upon Hanif Miah during his custody.

2. The undisputed facts are that Hanif Miah was arrested on 22.10.2010 in connection with Bishalgarh Police Station Case No.147 of 2010 under Sections 457/380/427 of the Indian Penal Code (IPC). He was taken to the police station and he was produced before the S.D.J.M., Bishagarh on 23.10.2010 and was remanded to police custody for 7(seven) days. The allegation of the claimants is that in custody the accused was tortured and he died as a result of the torture.

3. The stand of the State and the police officials is that in fact, Hanif Miah committed suicide. Keeping in view the divergent stands, one of us (U.B. Saha, J) vide order dated 22.6.2011 directed the District and Sessions Judge, West Tripura to inquire regarding the cause of death of the deceased Hanif Miah and to submit his report thereof. This report has been submitted and as per this report dated 13.02.2012, the District and Sessions Judge has found that the version of the claimants is not believable. Objections have been filed to this report and according to the counter of Mr. P. Roy Barman, learned counsel for the petitioners, the report has not taken into consideration various factors

including the main factor that in a case of custodial death the burden is on the police to show how the death occurred. His second ground is that the learned District Judge did not take into consideration the fact that Hanif Miah died within 4/5 minutes and in this 4/5 minutes it could not be possible for him to get a blanket, tear it up, make a rope out of it and then hang himself in the cell.

4. We are of the considered view that once this Court appoints a Judicial Officer to submit a report and the Judicial Officer submits the report, then unless the report on the face of it is perverse or is unbelievable, the same should not be set aside in writ proceedings. Evidence will have to be led to show whether Hanif Miah committed suicide or was tortured. The issue will have to be decided on appreciation of postmortem report and other evidence as to whether the death was due to torture or due to suicide. This issue cannot be decided without recording evidence. There are disputed questions of fact in this case and, therefore, we feel that this is an appropriate case where the petitioner should be relegated to the remedy of filing a civil suit. Some of the petitioners are minors and obviously no limitation will run against them. As far as the other majors are concerned, they can also seek benefit of Section 14 of the Limitation Act.

5. Inquest was carried out on the dead body and a magisterial inquiry was also held and in both these, the cause of death was shown to be suicide. We are making it clear that we are not accepting this to be true because we are aware that in cases of

custodial death the burden is on the police to prove that the death is not due to torture and this will be a burden which they will have to discharge in civil proceedings if filed. We also make it clear that in any civil suit which may be filed, the report of the District Judge will not be taken into consideration while deciding the civil suit because that report was only for the purposes of assisting this Court in deciding the writ petition and not for the purposes of deciding the question as to how the death occurred.

6. As far as the prayer for lodging of FIR is concerned, in view of the fact that the magisterial inquiry and inquest had been conducted though we do not appreciate the role of the police in not lodging the FIR at the first instance, we feel that no directions are called for in this matter.

7. In view of above discussion, the writ petition is disposed of. No costs.

JUDGE

CHIEF JUSTICE