

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.7697 of 1999

Date of decision: **09**.02.2015

Ram Sarup son of Mangla, resident of Village Lohar Majra, Police Station Pehowa, Haryana.

... Petitioner

versus

The State of Haryana through Chief Secretary, Civil Secretariat, Haryana, Chandigarh, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.S. Bains, Advocate,
for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General,
Haryana.

Mr. G.S. Poonia, Senior Advocate,
with Ms. Mandeep Kaur, Advocate,
for respondent No.3.

Mr. H.S. Gill, Senior Advocate,
with Mr. R.K. Dhiman, Advocate,
for respondents 4 and 5.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K. Kannan, J.

1. The petition is for grant of adequate compensation for violation of liberty and dignity in that the petitioner had been maliciously prosecuted for an offence of rape against his own

daughter punishable under Section 376 IPC. The petitioner would state that his daughter had been found raped and murdered on his return to his house in 27.12.1993. He had immediately lodged a complaint with the police that it was done by unknown persons and requesting for investigation to be made. According to the petitioner, he had given names of 3 suspects to the SHO-Gian Singh, arrayed as 4th respondent, but instead of directing the investigation properly, the 4th respondent in connivance with the then Superintendent of Police, Kurukshetra, A.K. Dhull, who was arrayed as 2nd respondent, detained the petitioner in the very house of the suspected persons, and later arrested and prosecuted him for alleged murder and rape of his daughter. The petitioner would state that the villagers were themselves outraged and a social worker, by name Sudesh Kumari collected evidence on her own and had approached the High Court in CWP No.11383 of 1994 when she found that the prime suspects had high political connections and the Speaker of the Vidhan Sabha was himself interested in protecting the suspects. The High Court recorded the fact that there had been representations to the Chief Minister for intervention and the farmers and labourers had all joined the chorus of protest against the unfair investigation. The High Court observed as under:-

“The facts and the circumstances of this case have proved beyond doubt that the investigation in the case

was not properly conducted and completed. The approach adopted by the investigation agency was casual and not specific. The efforts were made to shield the real culprits. The respondent agencies are proved to have been aware to the facts that persons other than father of the deceased were responsible for the commission of the crime.”

The Court also took notice of the fact that the Deputy Superintendent of Police Shri Om Parkash filed an application for reinvestigation but he was transferred from the Crime Branch which the Court observed as clearly pointing out to interference in investigation. The prosecution had proceeded on essentially an extra-judicial confession said to have been made by the petitioner himself to one Zile Singh and the fact that there were blood stains in the clothes of the petitioner, the Court found that it was a fit case where the court should exercise the descretion for doing complete justice to order CBI investigation and the mere conviction or acquittal of Ram Sarup would not by itself be sufficient. The court observed that, *“it is in the interest of the State and the general public that the matter should be thoroughly proved, inquired and investigation by an independent agency”*.

2. The CBI found the petitioner to have been falsely implicated. It recorded, Zile Singh himself, who was himself

undergoing a trial for criminal offence under Section 354 IPC, had resiled from the statement and stated that the petitioner never made any extra-judicial confession. The CBI also found that the scientific lab reports showed that the semen stains found in the undergarments of the deceased did not match with the DNA test done on the petitioner. It also found that the recovery memos of the alleged weapon used for murder had been falsely created with the aid of two witnesses. The report of the CBI was a serious indictment that the case had gone wholly on a wrong trail. The criminal court acquitted him eventually relying heavily on the CBI report and the undependability of the evidence of the prosecution witnesses. The CBI found that the fingerprints that should have been available at the site had not been collected. The 3 suspects were themselves not medically examined and when they were prosecuted 2 ½ years later, there could be no evidence to sustain the charge. Hence, the 3 other suspects were also let off. The police officials were prosecuted for giving false evidence but they were acquitted. It appears there is a revision pending before this court against acquittal.

3. The learned senior counsel appearing on behalf of 3rd respondent-DSP would submit that the CBI itself did not find the 3rd respondent to be responsible. The learned senior counsel appearing on behalf of respondents 4 and 5 would submit that his own investigation at all times had been supported by the higher officials

and they had endorsed the course of investigation. According to him, he had carried on with the investigation in the manner that the situation warranted and there was no mala fide in his action. There is a general denial that his investigation was engineered in connivance with the then Superintendent of Police, Kurukshetra, Shri A.K. Dhull.

4. The State counsel would point out that there were two streams of opinion. The State on its investigation proceeded against the petitioner on the material collected and the CBI had discredited the evidence of 3 important witnesses, namely, of Zile Singh to whom the extra-judicial confession had been made and the two witnesses who had attested the recovery memo for the weapon alleged to have been used. The counsel would argue that the mere fact that the CBI indicted the State investigation cannot mean the proof of malice or that the CBI report was correct.

5. Here is a case where the wailings of the petitioner were that in spite of the fact he had given the names of suspects, the petitioner was actually detained in their own house and to add insult to injury, he had been prosecuted for rape and murder of his daughter. The person, who had given a statement in court that the petitioner had confided to him, had actually resiled from such a statement and confessed that the petitioner did not make any such statement to him. The DNA and the blood samples showed that the

semen stains from the undergarment and vaginal swab did not relate to petitioner. The progress of investigation attempting to implicate the petitioner was clearly wrong. If the criminal court had acquitted him, it was not merely on the CBI report but it could not have come to any different conclusions with the scientific reports clearly providing exculpatory circumstances for the petitioner. In an action for damages for wrongful confinement and malicious prosecution, 3 circumstances would require to be fulfilled: (i) prosecution of the claimant in a criminal case; (ii) acquittal in the criminal case; and (iii) proof of malice of the prosecutor. The first two circumstances are admitted. The only issue is whether there is adequate proof of malice.

6. In this case, it is not merely the acquittal in the criminal case that gives the cause of action. Two intervening circumstances are that the High Court found literally in the public interest litigation in CWP No.11383 of 1994 at the fag end of the criminal trial, that prosecuting agency had not properly conducted the investigation. It found unusual interference of a fairly senior police official, viz., a DSP, who had been transferred when he applied for reinvestigation. The CBI report pointed out to the impossibility of the petitioner being responsible for the criminal act. It found the pivotal evidence relied on by the prosecution, namely, of Zile Singh and the two witnesses, who had attested the recovery memo were manipulated

evidence. The CBI indicted that the 3 suspects had not been interrogated and even the fingerprints had not been collected from the scene or compared with the 3 suspects. Malice could be inferred only from a given set of circumstances and there could be no direct proof of malice. In this case, there is a definite reference to the 2nd respondent-Superintendent of Police as interfering with the investigation and even the statement of the respondents 4 and 5 showed the active presence of the Superintendent of Police to support the nature of investigation which the respondent No.4 was undertaking. I will discard the argument of the State that the CBI report itself cannot afford a basis for taking it as gospel truth. On the other hand, it proves the senseless approach adopted by the police in prosecuting the hapless victim himself. A person who had lost his own daughter in a gruesome way, having to bear the odium of also a suspect as a rapist and murderer, has suffered the worst form of harrassment. I would look for no more corroboration than the petitioner's own assertion that he has been detained in the house of the suspects for 4/5 days before he was arrested and a false case lodged and prosecuted in utter disregard for truth, implicating him. If the police machinery could be activated by political bigwigs that derailed the course of justice and even enabled the rapists go undetected and let go the suspects scot-free, the petitioner's hardship ought to be compensated in terms of money. Malice is writ large in

a situation that apart from prosecuting an innocent person, grave suspects were allowed to go scot-free by inept investigation and a motivated attempt to screen the real accused. The daughter died on 27.12.1993 and the case has been pending for 16 years after its institution in the year 1999.

7. Though both parties relied on large volume of case law, on the deceased's side to contend that the public law remedy shall be available for a person who is illegally detained and falsely prosecuted and on the side of the respondents to say that a mere acquittal cannot prove malice and that the allegation would require elaborate evidence in a civil court, I am not reproducing the case law, for, I will treat the case on first principles that an innocent person harassed by police through unjustified incarceration and prosecution must be compensated. Inference of malice should be made in this case by the finding of the court entered earlier in another public interest litigation that the investigation was not fair and the report of the CBI as feeding materials for the court's prima facie view regarding the inept investigation and the motivated trial. I will award a compensation of ₹5 lakh as payable to the petitioner by the State with interest at 9% from the date of petition till date of payment. The act of the 4th respondent is indefensible as an Investigating Officer and I will take the petitioner's affirmation of the 2nd respondent-Superintendent of Police as being the mentor for

such motivated investigation to take the brunt of the compensation which is assessed. The State shall be competent to obtain recoveries against respondents 2 and 4, who were Superintendent of Police and the Investigating Officer respectively. The amount shall be paid to the petitioner within a period of 4 weeks from the date of receipt of copy of this order.

8. The writ petition is allowed with costs assessed at ₹10,000/- in favour of the petitioner against the respondents 1, 2 and 4.

(K.KANNAN)
JUDGE

09.02.2015
sanjeev