

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

CRM-M No.41045 of 2013 (O&M)
Date of decision: 17th December, 2015

Manjit Kaur and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Anupam Bhardwaj, Advocate
for the petitioners.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab
for the respondents.

FATEH DEEP SINGH, J.

The present petition invoking the jurisdiction of this Court under Section 482 Cr.P.C. is by the unfortunate mother Manjit Kaur and brother Jodh Singh, who both have sought holding of a fact finding enquiry as well as for registering an FIR against the concerned guilty officials for mysterious custodial death of Raju, son and brother respectively of the petitioners.

Facts of the case, as have been enumerated by the petitioners, are that on 16.10.2013 police officials of Police Station Maqboolpura (Amritsar) came to their house around 8.00 a.m. and took away Raju (now deceased) for questioning, promising that they

would send him back. It is alleged that the police had subsequently registered a false case by way of FIR No.87 dated 15.10.2013 under Section 21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Maqboolpura against Raju on the allegations that he was arrested near Gaushala roundabout on 15.10.2013 and 105 intoxicating capsules were recovered from him. It is claimed that the family had gone to the Police Station to meet Raju but were denied permission to do so. Thereafter, it is alleged that Raju was produced before the Court and thereafter was sent to judicial custody, however, it is during the course of judicial custody Raju was tortured and on 04.11.2013 was got admitted in Guru Nanak Dev Hospital by the police officials where he died because of the injuries on 06.11.2013 and thus, was a case of custodial death at the hands of the officials of the Administration/Police/Jail Authorities and hence sought the relief in question.

The State had filed response to the same, whereby it was admitted as to the arrest and thereafter sending of the deceased to judicial custody, however, the Police have denied any hand in the torture of the deceased and alleged that an enquiry was held into this episode by way of Annexure R2/T which was filed as the allegations could not be established, and hence denied the allegations made in the petition and denied that the alleged injuries found on the dead-body could be attributable to the local Police and have sought to shift the onus upon the Jail Authorities and to get out of the imbroglio.

This Court had directed the learned District & Sessions Judge, Amritsar to hold a fact finding enquiry. The learned District & Sessions Judge in his Enquiry Report had highlighted that the under-trial Raju suffered injuries while in custody at Central Jail, Amritsar and as per the post-mortem report, there were 22 injuries on his person varying from forehead to lower parts of the body and even medical opinion as to the cause of death has attributed failure of function of the brain as a result of the injuries No.1 to 5 individually or collectively which was sufficient to cause death in the ordinary course of nature, and thus, it was an unnatural death because of these injuries.

The Enquiry Officer had further elaborated that the medical examination of Raju was not conducted properly by the Medical Officer, Civil Hospital, Amritsar neither by the Jail Authorities, as even on 02.11.2013 he was suffering from injuries and instead of medical reference having been made to take the patient for emergency treatment, he was only taken to OPD Ward and there were concerted attempts by the doctors as well and that the collusion of the doctors and officials of Ward No.3 of this hospital is well borne out from their denial to make available the medical records of the deceased even to the Judicial Magistrate to facilitate holding of inquest proceedings and instead the Local Administrative Authorities to circumvent the Law have got conducted inquest proceedings from only a Naib Tehsildar, contrary to the law and that the viscera was illegally retained for a long period of time by the Police and thereby indicted the officials.

After hearing at length Mr. Anupam Bhardwaj, Advocate representing the petitioners; Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab on behalf of the respondents and on perusal of the records.

By now, it is well entrenched law, reference of which can be taken note of the ratio laid down in '**Smt. Neelabati Behera @ Lalita v. State of Orissa and others**' 1994(1) RCR (Criminal) 18, where it has been laid down and held that the prisoners or the under-trials are not denuded of their rights under Article 21 of the Constitution of India and further it is obligatory on the part of the State to ensure that there is no infringement of the inalienable rights of a citizen to life except in accordance with law.

Punjab Jail Manual by way of Chapters XXIII, XXVII, VI, X, deals with sudden and violent death of an under-trial and further this Manual lays down duties of Superintendent/Deputy Superintendent Jails. As is reflected from the conduct of these officials neither the Superintendent Jail much less Deputy Superintendent Jail, Assistant Superintendent Jail, Head Warder and Warders, who were on duty throughout the period the under-trial Raju was under judicial detention, have taken steps to ensure protection of his life and even after the receipt of injuries by him neither they had come forward to explain under what circumstances he received injuries culminating into his death or what steps they have taken to save his precious life. Even conduct of the Medical Officers of the Jail, who were on duty during

the period from the date of receipt of injuries/during his lodging in Jail have not taken appropriate steps in fulfillment of their public duty towards a citizen of this country. As if it was not enough, the role of the Local District Administration also is under cloud as instead of exercising powers of appointing a competent officer who is a Class-I Executive Magistrate, the Local Administration for obvious reasons has handed over inquest to a lowly placed Naib Tehsildar who was not even conversant with the conduct of such inquest and who as is apparent even connived obviously under some machination of his superiors in suppressing and concealing the material aspects of the inquest, even though Administration was under an obligation to have proceeded under Sections 174/176 Cr.P.C. by getting simultaneous inquest proceedings from a Judicial Magistrate and even after the matter was highlighted, the Authorities have the audacity to deny access to a Judicial Magistrate to carry on inquest as well as to the medical documents, spells out the intent and purpose of abundant interference by the top officials of the Administration/Medical Profession in suppressing the truth and this incident for a motivated cause. Seemingly, there is total non-adherence to the guidelines issued from time to time regarding conducting of Magisterial Enquiry in cases of Death in Custody. Neither there is promptness in holding Enquiry nor the report of so called Magistrate can be even loosely termed so coupled with the apathy in the despatch of Viscera and

other necessary formalities including provisions of Para No.820 of Punjab Jail Manual.

Custodial death is a worse type of crime in a civilized society which is governed by the rule of law. The State of Punjab tops the chart in custodial deaths. The governance of the State instead of reducing this graph are more bent upon looking towards its ascent. To the mind of this Court, in the present incident, right from the top officials of the local administration till the bottom, there is an active connivance/participation of the officials which needs to be seriously and sternly dealt with. It is often seen that in such custodial deaths, direct evidence of role of each of the officers/officials is rarely forthcoming. Even the police official Parampal Singh, PPS, Additional Deputy Commissioner of Police, City-I, Amritsar, who claims to have conducted the inquiry, has shown the partisan attitude to attain sinister goal in sweeping under the carpet all these allegations against the force. From what has come on the records, especially report of the Enquiry Officer, complicity can be easily gathered from the facts and circumstances of this case that not only the officials of the Police, Jail, Local Administration and the Government Hospital, but the doctors are also hand in glove to attain a sinister design in giving a decent burial to this ugly episode. This state, since time immemorial, has attained the notoriety of worse scenario in custodial deaths and thus, such an incident needs to be taken seriously and being not only in violation of the Universal Declaration of Human Rights, 1948, reliance placed on

‘People’s Union for Civil Liberties v. Union of India’ 1997(2) RCR (Criminal) 161 SC, officials responsible and also the Government running affairs of the State cannot hide under the cloak of sovereign immunity, which principle does not apply in such a case where, to the mind of this Court, every official in this transaction is vicariously liable, may be because of his direct involvement or may on account of lack of administrative command/control and looking the other way round, while such an ugly incident was happening right under their nose. Thus, all the officials in this chain have either actively or passively participated and cannot be allowed off the hook.

In the totality of what has been discussed above and keeping in view that the matter needs to be investigated in the light of law laid down in **‘Lalita Kumari v. State of U.P. and others’ 2012(2) RCR(Criminal) 188**, since a serious cognizable offence of murder has taken place while in judicial custody, that too, at the hands of Government officials, necessary directions are issued to the Director General of Police, Punjab to immediately order registration of an FIR against the persons named in the Enquiry Report and also whose names have not cropped up and who have a role, actively or passively, to play in commission of the crime through a series of acts. Having regard to the fact that top officials of the Administration are involved, it would sub-serve the ends of justice if the investigations are ordered to be conducted by an official not below the rank of Additional Director General of Police (Crimes) who will be assisted in his team by

another official from the local area, i.e. Deputy Inspector General of Police (Border Range), Amritsar. To facilitate impartial investigations and for logical conclusion of the trial, it is desirable to issue necessary directions to the State through the Secretary (Home) to immediately transfer all these officials responsible from Amritsar district within 15 days from the date of receipt of a copy of this order so that investigations are not subverted. However, to ensure that at subsequent stage there may be attempts to interfere in the fair investigations, it is desirable that the officials who are entrusted with the investigations from the rank of ADGP (Crimes); DIG Border Range, Amritsar and other officials of credible integrity and outstanding record are not transferred out of the investigation/district till submission of the challan.

To ensure safety of the life and personal liberty of the family of the deceased so that they are not unnecessarily put to harassment/torture by those officials, the State is directed to ensure due protection of life and personal liberty of the entire family members.

Keeping in view that the deceased belonged to a poor economic class of the society and after his death the family must be left to fend for itself, it would be appropriate and would secure the ends of justice if a sum of ₹15.00 lacs is ordered to be paid as interim compensation to the mother of the deceased and in case the deceased was married, to his widow and children in equal shares. The interim compensation shall be paid by the State within one month of

receipt of copy of this order as the matter has already become more than three years old and in case the State fails to pay the same within prescribed period it shall pay interest @ 8% per annum from the date of death till realization of the amount. This amount shall be taken into account in any case instituted for seeking compensation for this death. However, the State shall be at liberty to recover this amount from the salaries/pensions of the officials so held responsible for this crime. It is made clear that this prosecution of the officials shall not preclude the State from taking administrative action against these officials of the State.

The petition stands disposed off with these observations.

A copy of this order be handed over to the learned State counsel for taking appropriate steps for due compliance of the same.

(FATEH DEEP SINGH)
JUDGE

December 17, 2015

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