

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.11356 of 2014 (O&M)
DATE OF DECISION : 13.1.2016

Harjit Kaur

PETITIONER

VERSUS

State of Punjab and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

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

Present:- Shri Ramdeep Partap Singh, Advocate for the petitioner.

Shri Anant Kataria, D.A.G. Punjab.

MAHESH GROVER, J.

This is a petition under Article 226 of the Constitution of India praying for proper investigation into the unnatural death of one Lakhwinder Singh alias Lucky in police custody. A prayer for award of the compensation to the tune of Rs.25 lacs has also been made.

The petitioner is the widow of Lakhwinder Singh alias Lucky who was lodged in Central Jail, Gurdaspur pursuant to the registration of F.I.R. No.20

dated 19.5.2006 under Sections 302/34 I.P.C. at Police Station Dera Baba Nanak District Gurdaspur. Intimation was received by the petitioner on 8.10.2009 from the Superintendent, Central Jail, Gurdaspur about the death of her husband in jail.

The grievance of the petitioner is that despite the fact that the F.S.L. and the post-mortem reports collectively point out to an unnatural death and subjecting the deceased to unnatural sexual offence within a few minutes of the death, neither the investigation has been carried out properly into the incident, nor has the petitioner been compensated by the State for the custodial death of her husband. Rather, the death has been passed off as suicide on account of hanging.

The facts detailed in the petition would be undisputed as far as the custody and death are concerned. The Court has thus to go into the three issues (1) whether an unnatural, unexplained death took place when the deceased was in custody of the respondents and (2) if so, whether this Court can grant compensation in the exercise of its jurisdiction under Article 226 of the Constitution of India and (3) resultantly, compensation and its extent.

The Hon'ble Supreme Court in numerous judgments has held that the High Court in the exercise of its jurisdiction under Article 226 of the Constitution of India is not precluded from granting compensation in the case of custodial deaths.

In The Deputy Commissioner, Dharwad District, Dharwad and others v. Shivakka and others (2011) 12 S.C.C. 419, while relying on the following judgments the Hon'ble Supreme Court observed as follows :-

In Rudal Sah v. State of Bihar and another A.I.R. 1983 S.C. 1086 the Hon'ble Supreme Court ordered payment of compensation in lieu of illegal detention. While rejecting the State's plea that the petitioner should be relegated to the remedy of suit, the Court observed :

“The petitioner could have been relegated to the ordinary

remedy of a suit if his claim to compensation was factually controversial, in the sense that a Civil Court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predictate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the States as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights

of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights.

13. In Smt.Nilabati Behera's case, a three-Judges Bench while dealing with a case of custodial death, held that in exercise of powers under Articles 32 and 142 of the Constitution, the Court can grant appropriate relief in case of deprivation of constitutional guarantee of life and personal liberty. After adverting to the decision of Privy Council in *Maharaj v. Attorney General of Trinidad and Tobago* (No.2) (1978) 2 AII ER 670 (PC) : (1978) 2 SLR 902, Verma, J. (as His Lordship then was), observed :

“It follows that : “a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies

award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress **available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudal Sah's case, and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of Fundamental rights.”**

14. The Court also referred to the earlier judgment in the case of Khatri and observed :

... the Court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the Court powerless and the constitutional guarantee a

mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the Court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the havenots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

In Nila Bati Behera alias Lalita Behera v. State of Orissa & others A.I.R. 1993 (2) S.C. 1960, the Hon'ble Supreme Court observed as under:-

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36. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Articles 226 by the High Courts, for established infringement of the indefeasible right guaranteed under

Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent

jurisdiction or/and prosecute the offender under the penal law.”

Therefore, the power of the Court in granting compensation would not be in dispute, provided, the facts warrant such interference.

Annexure P-3 is the report of Dr.Gurmanjit Rai, Associate Professor, Forensic Medicine, Govt. Medical College, Amritsar whose opinion may be extracted here below :-

“Opinion : (1) On going through PMR chemical examination report No.3600 dated 1.12.2009, pathology report No.138/Patho/10 dated 5.3.2010. We are of the opinion that cause of death in this case is as physician as a result of antimortem hanging which is sufficient to cause death in the ordinary certificate of nature.

Opinion : (2) On going through PMR and chemical examination report No.3600 dated 1.12.2009 and keeping in view injuries No.3 & 4 of PMR & detectim of sperruatozas in anal swabs exhibits No.V & VI of chemical examination report, we are of the opinion that unnatural sexual act (and intercourse) had been committed with Laqkhwinder Singh. Time elapsed between injuries & death.

Within few minutes DNA report in this case as not been received by this department till date and it will be sent as soon as received by us.

Encl : Pathology report No.138/Patho/10

DLS 3.10. in original duly signed by us.”

The post-mortem report would suggest that the deceased was

subjected to sexual assault and death on account of strangulation which obviously, the respondents have tried to pass off as death on account of hanging. For the purpose of reference, the relevant portion of the post-mortem report is extracted here below :-

“ ”

6(b) As seen at Autopsy : Eyes and mouth found partially open. Eyes found congested.

7(a) External general appearance – Tongue found pressed in between teeth and reddish brown coloured top of tongue found protruding out.

(b) State of eyes : Partially open.

(c) Natural entices : Semen present on top of penis blood and

Sexual stains present on minor surface of kacha and blood strains present around anus and on buttocks Nails found having bhish dis colourabon.

(B) EXTERNAL INJURIES :

(Mention type, shape, length x breadth & depth of each injury and its relation to important body landmark indicate which injuries are fresh and which are old and their duration).

(1) Ligature Mark; Reddish brown coloured grooved ligature mark 2.8 cm to 3 cm in width present on front & both sides of neck 5 cm below chin at the level of thyroid cabbage and then running obliquely in both sides of neck upto 5 cm below mastoid process on (R) side and 8 cm below mastoid on (b) side of neck respectively.

6.5 c.m. area on rape of neck in the of hair found spaced of ligature mark. Margins of ligatures mark found abroded on (R) side and front of neck. Total length of ligature mark is 33 cm and neck ciranfrence in 36 c.m.

Reddish brown abrasion 0.3 x 0.2 c.m. on (L) side of face 2.7 cm below angle of mouth.)Injuries continued).

(i) injuries be given serial number and mark similarly on the diagrams attached.

(ii) In stab injuries mention angies, margins and direction inside body.

(iii) In fore arm injuries, mention about effects of fire also.

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Injury (3) : 1.5 cm x 0.3 cm long vertical lacerated wound in between course of both buttods 4 cm above and opening.

(4) Multiple small lacerated wounds at 6 clock 12 ch & 9 clock positions at anal opening opening size verms from 0.5 x .2 cm to 0.3 x 0.2 cm, anal canal found having marked congestion on dissection gsp. Anal swabs from anal opening and anal canal taken for chemical analysis.

5. SPINAL COLUMN & SPINAL CORD (to be opened where indicated.

Healthy.

OPINION: Time between injuries & death will be given on (sic) of reports of chemical examination to Pb. Khara & Prof & Head Pathology Deptt.

(i) Probable time since death (keep all factors including observations at inquest):-

(ii) Cause & manner of death – The cause of death to the best of my knowledge and belief is :-

Time between death & postmortem about 24.36 hours will be given on report of chemical examiner to Pb. Kharar and Prof. & Head Pathology Deptt. GMC.

(a) Immediate cause :

(b) Due to ASR.

(c) which of the injuries are ante-mortem/post-mortem and duration if ante-mortem.

Injuries No.(1) to (4) are antemortem in nature.

(d) Manner of causation of injuries

(e) Whether injuries (individually or collectively are sufficient to cause death in ordinary course of nature or not ?

Piece of kachha (underwear) marked (1), (2) & (3) nos. are blood stains & seminal stains for DNA test.

(iii) **Any other** Option of regarding sexual intercourse will be given on receipt of chemical examiner report of swabs taken from anus and small canal region.

The relevant portion of the report of the Chemical Examiner is also extracted here below :-

“On the observation of the Analyst the result was as follows :

No poison detected in the contents of exhibits I,II,III & IV.

Spermatozoa were detected in the contents of exhibits
V & VI.

Attested

sd/-

Sd/- 6.1.2010

Dr.Rajvinder Pal Singh
Asstt.Chemical Examiner Govt.
Govt. of Pb. Kharar.”

The respondents who are on notice have filed their reply and stated that the deceased was found hanging with his Parna in jail in latrine on the intervening night of 8/9.10.2009 at about 12.30 a.m. The reply further discloses that the matter was taken up before the National Human Rights Commission who awarded a compensation of Rs.3 lacs which was deposited in the account of petitioner Harjit Kaur. Further, a charge sheet has been sent to the Additional Director General of Police vide letter dated 26.9.2013 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 against the jail officials who were on duty on the fateful night and on enquiry conducted by the Police Station State Crime Branch, Mohali as also a judicial enquiry conducted by the Chief Judicial Magistrate Smt.Priya Sood which establishes the death on account of suicide.

The relevant portion of the report of Dr.Rajiv Giroti (M.Sc. Ph.D) of For Scientific Officer, Bio, Central Forensic Science Laboratory, Chandigarh vide Forensic DNA Report No. # CFSL/737/2009/BIO-123/2009/957 dated 6.9.10, which forms the reason in the reply is also extracted here below :-

“The genetic contribution of suspects (items 37712301 to 37712318) in the evidentiary items (37712319 and 37712320) could not be established. Copy enclosed herewith as Annexure R-4.

On due consideration of the matter, I do not find this case to be a case where the report of the respondents wishing away the death of the deceased to suicide can be easily accepted considering the report of the F.S.L. as also the post-mortem report.

Apart from this, the cursory manner in which the death on account of violence and sexual assault in custody has been handled, can only but invite a caustic reaction from the Court. No attempt has been made by the respondents to explain sexual assault which is so evident from the reports. Even if it is to be imagined that the deceased took his own life after presumably being shamed on account of sexual assault, then there should have been material to indicate as to what action was taken against the perpetrators of the sexual assault in jail.

The reply does not disclose these facts at all and evidently, the enquiry into the matter is not of the standards which ought to have been maintained while dealing with a case of unnatural death in custody. The onus to explain it shifts solely on the custodian. The sexual assault could not have been wished away particularly in view of the report of Dr.Gurmanjit Rai opining as follows :-

“OPINION : (2) On going through PMR & Chemical Exam. report No.3600 dt.1.12.09 & keeping in view injuries No.(3) & (4) of PMR & detection of spermatozoa in anal; swabs exhibits No.V & VI of Chemical Exam report, we are of the opinion that unnatural sexual act (anal intercourse) had been committed with Lakhwinder Singh.

Time elapsed between injuries & death

Within few minutes.”

If spermatozoa was detected in the anal swabs and unnatural sex

(anal intercourse) was established and the death occurring within a few minutes of the injuries, then it is not understandable as to how the death is being wished away as suicide unless the same was established in a thorough enquiry explaining the sexual assault and its relation to death.

I thus, conclude that it is a case where the respondents have failed to discharge their onus to explain the death of the deceased in custody. This would naturally invite consequences to be visited upon the respondents in terms of compensation to be awarded to the petitioner. The deceased was 22 years of age and married and having a minor child.

It would be thus, just and appropriate if the petitioner is granted a compensation of Rs.12 lacs over and above the amount of Rs.3 lacs which already stands granted by the Human Rights Commission. The respondents are also directed to constitute a Special Investigation Team of senior officers to establish the cause of death and also to establish the perpetrators of the sexual assault on the deceased and the police officials who were incharge of the affairs of the jail at the relevant time and who failed in their duties. Enquiry and action report be filed in Court within 6 months from today.

Petition allowed.

January 13, 2016
GD

(MAHESH GROVER)
JUDGE