

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

LPA No. 409 of 2015 (O&M)

Date of Decision : 22.08.2016

State of Punjab and ors.

....Appellants

Versus

Kirandeep Kaur @ Kiran Bala
and ors.

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. Gurinder Pal Singh, Addl.AG, Punjab.

Mr. Shekhar Verma, Advocate
for respondents No.1 to 3.

....

MAHESH GROVER, J.

This is an appeal preferred by the State of Punjab against the judgment of the learned Single Judge dated 19.11.2014.

A petition under Article 226 of the Constitution of India was filed by Kirandeep Kaur alias Kiran Bala and others stating that petitioner No.1-Kirandeep Kaur @ Kiran Bala was a qualified B.A.M.S.doctor, in private practice, running her nursing home in a village in District Patiala. Her husband Dr.Parkash Singh Dhaliwal also a qualified B.A.M.S.doctor was employed in a Govt. Dispensary at village Dann Singh Wala, District

Bathinda with a salary of Rs.8,814/- per month.

On 15.08.1997, when Dr.Parkash Singh Dhaliwal was present in the nursing home of the petitioner No.1-Kirandeep Kaur alias Kiran Bala, where the attending staff was also present, Nasib Singh, a Home Guard Constable with an official rifle came and shot dead her husband to flee thereafter. He later shot himself with the same rifle. In the petition a prayer was made that the State be asked to give compensation to the petitioners since Nasib Singh was an employee of the Punjab Government who misused his official weapon.

The prayer was resisted by the State who had pleaded that Home Guard organisation is a voluntary organisation with Nasib Singh not being a regular employee but the incident itself was not denied. That apart, it was stated that Nasib Singh was on official duty with no work assigned to him on the fateful day and he had shot dead the husband of petitioner No.1-Kirandeep Kaur on account of his personal enmity, whereafter he turned the rifle on himself to take his own life as well.

The learned Single Judge relied on *Smt. Nilabeti Behera alias Lalita Behera v. State of Orissa and others*, **1994(1) RCR (CrI) 18**, *Rajesh and others v. Rajbir Singh and others*, **2012(3) RCR (Civil) 170**, *Raman v. State of Haryana and others*, **2013(3) RCR (Criminal) 353**, *Sube Singh v. State of Haryana*

and others, **2006(1) RCR Criminal 802(SC)** to conclude in favour of the writ petitioners and granted the compensation of Rs.23,25,800/-.

Learned counsel for the appellants contends that all the judgments referred to and relied upon by the learned Single Judge indicate failure of the State to protect life of an individual while in custody, thereby violating the fundamental rights which reasoning cannot be applied to the case of the writ petitioners who as a member of the voluntary force with no regular employment with the State killed a person to settle his personal scores while not even on official assignment entrusted to him, to invite the consequences on the State on the principle of vicarious liability which would not arise at all. It is thus contended that the impugned order deserves to be set aside on this ground.

Learned counsel for the respondents, on the other hand, justifies the grant of compensation on the plea that official weapon was misused by a person employed with the State of Punjab which would certainly attract the principle of vicarious liability to enable the writ petitioners to compensation.

We have heard the learned counsel for the parties. The principle of vicarious liability would not be attracted to the facts of the case as it would depend on number of factors which though pleaded have not been established appropriately in writ

proceedings. In any eventuality, the judgments relied upon by the learned Single Judge were not attracted to the facts of the case as there was no failure of the State to protect the fundamental rights of an individual. All the judgments refer to custodial deaths and thus these principles were wrongly applied. It is not a case where there was material to suggest that an official of the State entrusted with a weapon had used it when assigned an official duty or that a death had occurred while putting the weapon to a legitimate use or even in excess of the powers conferred. To attract the principle of vicarious liability the crucial test is whether the employee's initial act was lawful and authorised by his employer. This is not established from the facts of the case but rather the weapon was used only to settle personal scores when the offender was not on an assignment validly authorised by his employer. It would thus have been a valid issue to be considered in terms of Section 357 of the Criminal Procedure Code to award victim compensation but since the perpetrator of the offence himself committed suicide, this remedy has also been rendered illusory.

For the afore-stated reasons, when there is no material to suggest the use of the weapon in the discharge of the official functions and in the absence of any clear-cut regular employment of the offender with the State, it would be unjust to hold the State

vicariously liable for the acts done by someone driven by a personal vendetta.

Appeal allowed.

(MAHESH GROVER)
JUDGE

22.08.2016
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No