

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

1. RSA No.860 of 2012 (O&M)
Date of decision : 12.12.2016

Sohan Lal Singla

...Appellant

Versus

Balbir Singh @ Billu and others

..Respondents

2. RSA No.1002 of 2012 (O&M)
Date of decision : 12.12.2016

Sat Narain SI Police (Retired) and another

...Appellants

Versus

Balbir Singh and others

..Respondents

3. RSA No.99 of 2013 (O&M)
Date of decision : 12.12.2016

State of Haryana and others

...Appellants

Versus

Balbir Singh @ Billu

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Arun Jain, Sr. Advocate with

Mr. Arnav Sood, Advocate for the appellants and
Mr. Suman Jain, Advocate
(In RSA No.860 of 2012)

Mr. N.R. Dahia, Advocate for the appellants.
(In RSA No.1002 of 2012)

Mr. J.S. Brar, Advocate for the respondent No.1.
(In all appeals)

Mr. D.K. Mittal, DAG, Haryana.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three appeals filed at the instance of Sat Narain, Ram Chander, Sohan Lal Singla and State, in a suit titled as Balbir Singh @ Billu Vs. State of Haryana and others, bearing No.531/2003 claiming recovery of ₹5,00,000/- along with interest at the rate of 18% p.a. from the defendants as compensation on account of the custodial death of Darshan Singh @ Kala Singh, son of the plaintiff.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Arnav Sood, learned counsel in RSA No.860 of 2012, Mr. N.R. Dahiya, Advocate, in RSA No.1002 of 2012 and Mr. D.K. Mittal, DAG, Haryana in RSA No.99 of 2013 submits that in pursuance to the FIR bearing No.220 dated 28.06.1999, registered against unknown persons under Section 411 of the Indian Penal Code at Police Station Sunam by Sohan Lal Singla, whose car bearing registration No.RNC-8929 was stolen. The aforementioned car was found by the Police Post Cheema, District Sangrur on 28.06.1999 which had been allegedly recovered from one Darshan Singh @ Kala and Hardev Singh. Since FIR was registered at Punjab, in respect of selling of the

vehicle whereas preceding to that, FIR No.127 of 27.06.1999 was lodged by Dr. Sohan Lal Singla at Police Station Kalanwali, District Sirsa regarding the theft of aforementioned vehicle. Police Station, Sunam had lodged the FIR as Darshan Singh and Hardev Singh were found to be in possession of the stolen vehicle and they were in process of selling the same. Since the Haryana police was investigating the matter, the aforementioned persons were taken into custody by the Haryana Police on 06.07.1999 i.e. from 28.06.1999 till 05.07.1999, the custody was with the Punjab police. However, unfortunately, Darshan Singh aged about 18 years died on 06.07.1999 i.e. in the custody of the Haryana Police. He suffered a dying declaration dated 06.07.1999 Ex.DW6/A foisted responsibility on the Punjab police officials who alleged to have caused injuries upon him. In respect of custodial death of Darshan Singh, the matter reached this Court in Criminal Miscellaneous No.19890-M of 2001 and this Court vide order dated 11.01.2002 disposed of the same by granting the compensation of ₹1,00,000/- to the kin of the deceased by the State of Haryana which was without prejudice to the right and contention of the parties. The relevant portion of order dated 11.01.2002, reads as under:-

“In view of the admitted position, that the son of the petitioner died in custody, the State of Haryana will pay Rs. One lac as compensation to the next of kin of the deceased within six months, which will be without prejudice to the right and contention of the parties.

Petition is disposed of.”

The present suit has been filed claiming the damages. Thrust of arguments of Mr. Jain, Sr. Advocate is that aforementioned appellants were

never impleaded in the trial Court. Memo of parties in the trial Court, reads as under:-

“Balbir Singh @ Billu son of Shri Gurdiyal Singh aged about 50 years, resident of Water Works Road, Ward No.6, Kalanwali, Tehsil and District Sirsa.

...Plaintiff

Versus

- 1. State of Haryana through its Secretary, Home Department, Civil Secretariat (Sic), Chandigarh.*
- 2. State of Punjab through its Secretary, Home Department, Civil Secretariat, Chandigarh.*
- 3. The Superintendent of Police, Sirsa District Sirsa.*
- 4. The Senior Superintendent of Police, Sangrur, District Sangrur (Punjab).*

...Defendants”

The respondents-plaintiff has failed to lead any direct and cogent evidence, much less, corroborative evidence, to establish the claim of damages. Neither Medical Expert nor Doctor, has been examined and there is a doubt about veracity of the post mortem report vis-a-vis dying declaration, in essence, the plaintiffs have miserably failed to prove that it was a case of custodial death. Having failed to lead evidence, the trial Court dismissed the suit, but the lower Appellate Court, without appreciating the aforementioned fact, fastened the liability of ₹5,00,000/- along with interest at the rate of 9% p.a. upon Dr. Sohan Lal Singla, whose car was stolen and as well as upon other persons jointly and severally and further directed to register an FIR under the relevant provisions of the Act. He further submits that even complaint under Sections 302 and 120-B IPC filed at the instance

of father of Darshan Singh, had been dismissed and all the accused therein had been exonerated.

Though the factum of the filing of the complaint had not been disclosed by the plaintiff before the lower Appellate Court. Had it been so, perhaps there would not have been any direction for registration of the FIR, thus, there is gross illegality and perversity.

Mr. J.S. Brar, learned counsel appearing on behalf of respondent No.1 submits that it is a case of gross dereliction of duty. The police have not discharge their duties and they have been acting as demons, much less, above law. Their duty is to protect the life and liberty of the people and not to take away, thus, there is a gross violation of the provision of Article 21 of the Constitution of India. The compensation awarded by the lower Appellate Court is perfect, legal and justified as the respondents-plaintiff has been deprived of love and affection of young son aged approximately 18 years. Since it was the plaintiff who had brought to the notice of this Court regarding the outcome of the complaint, he is not averse to the setting aside/expunging the findings of the lower Appellate Court with regard to the directions qua registration of the FIR, but urges this Court for upholding the judgment and decree for compensation.

I have heard learned counsel for the parties and appraised the paper book.

The factum of the order passed by this Court granting the compensation of ₹1,00,000/- is not disputed. Non-disclosure of the outcome of the complaint under Sections 302/34 of the Indian Penal Code is also not

disputed. Perhaps, in my view, had this fact been brought to the notice of the lower Appellate Court, there would not have been any occasion for direction to the State for registration and lodging of the FIR. Be that as it may, the suit, in my view, was not properly instituted or framed. In a suit for damages, the plaintiff seeking claim for damages is required to implead/arrayed parties in individual capacity de hors of the fact that they are holding the official charge. No doubt the State is also responsible. It is a case where a complainant has been hauled up for custodial death of Darshan Singh who was just an ordinary citizen and informed the police regarding theft of his car. In fact, he had gone for redressal of his grievance but he has been burdened with such onerous liability. In case such things are allowed to go under the nose and eyes of the Court, no sane or responsible person would dare to complaint or lodge an FIR as he would be always afraid rather the constant threat of being not embroiled into the litigation or having been fastened or burdened with such liability would borne. Such type of observations given by the lower Appellate Court, in my view, are totally off the record. In fact, Court should be very wary/circumspect in passing such order. It was statutory appeal under Section 96 of the Code of Civil Procedure and not a writ petition under Section 226 or any order under Article 141 of the Constitution of India. The suit is based upon preponderance of the evidence. As noticed above, respondents-plaintiff have failed to lead any direct and cogent evidence to establish the claim of damages, rightly so, the trial Court dismissed the suit.

For the reasons aforementioned, I am of the view that order of

the lower Appellate Court in imposing a fine or damages to the tune of ₹5,00,000/- along with interest and registration of the FIR is totally fallacious, capricious, perverse, repugnant and an Act of aberration.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213***, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in ***Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262*** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus*

overruled." [at paras 27 – 29] ”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Judgment and decree of the lower Appellate Court is set aside

RSA Nos.860, 1002 of 2012 and
RSA No.99 of 2013

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and that of the trial Court is restored, as it was at the back of the appellants who were not the parties.

Accordingly, all the appeals are allowed.

12.12.2016

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No