

230.

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

**Review Application Nos.184-185 of 2015 in
CWP No.7697 of 1999**

Date of decision:03.02.2016

Ram Sarup (since deceased) through his LRs-Dharma, Reshma,
Ramratti, Sakhtula and Sona.

... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Lokesh Sinhal, Additional Advocate General,
Haryana, for the applicant-respondent No.1
in RA No.185 of 2015.

Mr. Deepinder Singh, Advocate,
for the applicant-respondent No.2
in RA No.184 of 2015.

Mr. R.S.Bains, Advocate,
for the non-applicant/petitioner.

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. (Oral)

**I. Ground for review-Compensation awarded to petitioner
does not survive to legal representatives**

1. The application for review is filed at the instance of the State and one of the officials of the State to test the correctness of the order passed by this court in its jurisdiction under Article 226 of the Constitution granting compensation of ₹5 lakhs to the petitioner

who this court found to have been mauled and humiliated by a false case of rape and murder of his own daughter. Thanks to an intervention of a public spirited individual who brought out substantial proof that the man was not in any way responsible for the death of the child but he was the first complainant, the false case had been established as foisted on him to screen some persons connected to politically strong individuals of the State. It was under such circumstances that the writ petition had been filed. This court had made reference to the order of the High Court that led to the institution of CBI enquiry and discharge of the petitioner in the criminal case as the fulcrum issues for awarding compensation for the harassment and humiliation heaped on the petitioner, now deceased.

2. The State has moved this application for review to point out that at the time when the decision was rendered by this court, the petitioner had already died and that information had not been supplied to the court. The ground for review is that a compensation for personal injury and humiliation is in the nature of personal damages which cannot survive to the legal representatives in terms of Section 306 of the Indian Succession Act. The counsel for the State would also rely on case law to point out that a suit for damages for personal injury cannot be prosecuted by the legal representatives after the death of the plaintiff who claimed damages for injuries, if

the death itself was not on account of injuries.

3. Yet another application for review has been filed at the instance of the Senior Superintendent of Police who has been held jointly liable to make the payment, holding that the whole investigation that was found to be flawed was under the direct supervision of the Senior Superintendent of Police and hence, he was also liable for the amount determined as damages.

II. Preliminary observations:

Section 306 of Indian Succession Act contains an archaic principle-Need for legislative amendment

4. In essence, it is the legislative inadequacy that is trotted out, not by an aggrieved individual but the State that comes to this court to defeat the order of this court. It is time to remind ourselves that the 178th Law Commission cited a Full Bench decision of Karnataka High Court in **Kannamma Versus Deputy General Manager, Karnataka State Road Transport Corporation-ILR 1990** **Karnataka 4300** and recommended the amendment of Section 306 of Indian Succession Act. The Kerala Legislature had shown the way by passing Kerala Torts (Miscellaneous Provisions) Act, 1976 to rectify the position. It followed the Law Reforms (Miscellaneous Provisions) Act 1934 of England but there have been subsequent amendments in England through Law Reforms (Miscellaneous Provisions) Act, 1970 and the Administration of Justice Act, 1982.

A comprehensive study of law of Torts is most propitious. With

much acrimony and obstructions that are a regular fare at the Parliament, the legislative exercises that are most pressing take a beating and the imperatives for changes in law are queued up without getting the attention that they deserve. Fortunately, we have an inbuilt flexibility in the Indian Constitution that allows for States to legislate in subjects in Concurrent List where the Union has not been able to take the lead.

5. So many important statutory changes have come through State initiatives in the field of education (such as abolition of Capitation fee through Karnataka legislation), in areas of succession recognizing woman to be a deemed coparcener (through State amendments of Andhra Pradesh, Tamilnadu, Karnataka and Maharashtra) and transparency in governance (through State driven RTI laws in Tamilnadu (1997), Goa (1997), Rajasthan (2000), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), Jammu & Kashmir (2004), Haryana & Himachal Pradesh (2005). Changes in tort law ought to come from States, if Parliament has other pre-occupations. The efficacy of Concurrent List lies in a pro-active State endeavour to fill up areas, where the Union has not acted or has not the time to act. Several stakeholders could take control to make this possible. An enlightened bar can frame a model legislation and petition to the State government to frame a law. Academic bodies and colleges have also the competency to engage

in debates and discussions to help the government shape its laws. Why, even college students could be trained to discuss and prepare model legislation through mock Parliaments. In collaborative efforts of all stakeholders lie the key to legal reform. 'Actionable wrongs' is entry 8 in List III-Concurrent List. It is my hope that the Legislative Assemblies at Punjab & Haryana fill up the legislative deficit of the Parliament in this area of law and stem the rot that Section 306 of the Indian Succession Act does by inhibiting survival of cause of action to claims for personal damages for the benefit of legal representatives. This elaborate statement is truly an aside, as it were, but arises in an extremely poignant tale of political interference in police investigation that lead to an innocent man being prosecuted, a grim reminder of injustice to the classic illustration of Kafka's Trial, but with a less unfortunate twist in this case. The man was saved at the trial, thanks to the court's intervention but only after being burdened by the immense public revulsion of a charge of rape of his own daughter.

III. Response by 'legal representatives' of deceased petitioner

6. On notice, the legal representatives have sought their own impleadment and contended that the limit of jurisdiction under Section 306 of the Indian Succession Act for entertaining the claim for damages by the legal representatives shall be applied only to suits and cannot fetter the jurisdictional ambit under Article 226 of

the Constitution. The counsel would refer to me two decisions where the Supreme Court and the High Court have invoked jurisdiction under Article 32 and Article 226 respectively even if the claims had been made beyond the period of limitation. Of the particular case of importance was the decision in **Paramjit Kaur Versus State of Punjab and others-AIR 1999 Supreme Court 340** that directed an enquiry for violation of human right more than a year after the cause of action arose, although under the provisions of the Human Rights Act allowed for an investigation to proceed only within one year from the incident complaining of violation of human right. The Supreme Court clarified that the power of jurisdiction under Article 32 of the Constitution could not be curtailed by any statutory limitation including those contained in Section 36(2) of Protection of Human Rights Act, 1993.

7. The counsel would also refer me to the Division Bench ruling of this court in **Nachhattar Singh alias Khanda and others Versus State of Punjab in Criminal Appeal No.332-DB of 1998, dated 23.09.2009** which provided for a right to compensation for wrongful prosecution of innocent persons not merely to the persons who were prosecuted, incarcerated and subjected to mental torture but made the compensation as available also to the legal representatives of one of the persons who had died while he was in custody. It was an unusual case of the so-called dead person for

whose alleged murder, 5 persons had been prosecuted and convicted by the trial Court and when the appeal was pending and the case was being argued on behalf of the accused persons, the deceased himself resurrected in court and dramatically and called the bluff of the prosecution story. The court did not wait long before it slapped compensation of ₹1 crore to be paid by the State and split into 5 claims, each claim for ₹20 lakhs for each one of those accused persons. One of them had died and the court did not invoke any issue of technicality to deny the compensation or fetter itself by application of rule of Section 306 of the Indian Succession Act but granted compensation to the legal representatives.

IV. Compensation for violation of human right transcends the frontiers of tort claims-Hence fetters of Section 306 of Indian Succession Act cannot apply

8. A remedy through resort to remedies in civil court normally addresses civil rights and allows for reliefs to a person who is aggrieved. Issue of locus standi is at all times relevant for a court to grant a remedy only to a person whose right is trampled upon. The public law remedies have always opened fresh vistas and discarded the rule of standing. The objection that issue of locus standi could never be alien to public law remedy was discarded on a reasoning that, “(T)he idle and whimsical plaintiff, a dilettante who litigates for a lark, is a specter which haunts the legal literature, and not the court room”. This observation of the Australian Law

Reforms Commission was referred to by the Supreme Court in a passage of the Supreme Court's judgment in **Fertilizer Corporation Kamgar Union (Regd.) Sindri and another Versus Union of India and others-(1981) 1 SCC 568**. The Supreme Court was discarding the 'floodgates theory' that courts will be besieged with frivolous litigations if the rule of standing was relaxed. The jurisdiction exercised by constitutional courts like the Supreme Court and the High Court travel beyond the realm of ordinary civil rights and chart out paths of good governance and expand to secure a high quotient of fairness.

V. False imputation of rape and murder and consequential incarceration constitute humiliation to whole family and violation of human right

9. What happened in this case was an epitome of unfairness to a man who was not even given time to grieve for the death of his own child but was humiliated as having raped her and killed her. Humiliation could never have been merely to the father. The persons who are now seeking for the relief of what was already granted to the father were literally not the representatives to the misery of the father. They were just as well the traumatized persons, who had been hounded out of village on account of the infamy suffered by the father and themselves. A close knit family could not have just let the father suffer in silence singly but, the whole family ought to have suffered in the process. The nature of case was such

that I am prepared to believe that the father was fighting the case just not for himself, he was fighting for the honour of his family; an assault on indignity just not to himself but to all his other children and an affront to the esteem of the whole family. It is not unusual that public law remedies are not necessarily for only a person brought on record. In *Chairman, Railway Board Versus Chandrima Das-(2000) 2 SCC 465*, the court was providing for compensation through a lawyer practicing in Calcutta to a rape victim, a Bangladeshi woman. The court was extending the violation of bodily integrity as dishonour to make possible a claim even to a foreigner as a violation of human right and allowed for a public spirited person to canvass for yet another woman who was alive but too humiliated to come to court to claim compensation. In this case, if all the family members did not join and only the head of the family filed a case, I would take the order that I have passed as an order for reparation for the dishonour caused to the family. I did not indulge in this discourse earlier at the time when I passed the order only because there was no occasion to expand the basis for my assessment. Here is now an occasion when such a dispensation becomes necessary to allow the amount assessed already to be claimed by the mother, sons and daughters.

10. There are other facets to justify the award of compensation to the members of the family. The compensation

assessed was for violation of human right of an individual against arbitrary arrest and police torture. The human rights jurisprudence providing reparation through monetary compensation has long been established through several decisions of the Supreme Court (*D.K. Basu-(1997) 1 SCC 416; Nilabati Behera-(1993) 2 SCC 746, Rudul Sah-(1983) 4 SCC 141*). They are a distinct genre and not to be regarded as a simple tort claim that could be extinguished by the death of a person. Section 306 of Indian Succession Act limits against survival of causes only to non-pecuniary head of claim arising out of defamation, malicious prosecution and personal injury. The limitation cannot apply to human right violation and damages assessed for it. Indeed the legislative intent of Section 306 of Indian Succession Act itself is restricted to what the Section recognizes as when 'the relief could not be enjoyed or granting it would be nugatory.' Here, far from rendering the relief inefficacious, the grant of compensation to the members of the family is a triumph of justice over human rights violation practised by State functionaries. The review sought by the State is, therefore, liable to be dismissed and accordingly, dismissed.

VI. Review sought by Shri A.K. Dhul, the then Superintendent of Police is unfortunate

11. The compensation awarded is justly to go to the members of the family but I cannot depart yet without considering

yet another application filed at the instance of the Superintendent of Police. According to him, the lawyer whom he had engaged, had moved to occupy a higher position and he did not engage any other lawyer at the time of arguments. This could hardly be a ground for a review of the judgment. He had also a point to urge that the impugned judgment did not consider that he was not challaned when CBI undertook the investigation afresh by the orders of this court. According to him, if a Deputy Superintendent of Police must have been exonerated through my order on the ground that he was not prosecuted after investigation, the same logic must apply to him also. In matters of governance, a higher official takes responsibility not because he was standing there at the spot directly ordering arrest of a person but as a person in over all control, he failed to exercise adequate care and supervision that had caused the derailing of justice. It cannot be a situation of no one being responsible for falsely prosecuting an innocent man and heaping insults on him. If somebody must take the blame, the Superintendent of Police justly ought to take that blame. He must have had his own head hung in shame for what had happened. This was verily an occasion for atonement. It is a pity that he still does not feel that way and looks for a scapegoat for the himalayan blunder. I shall grant him no relief from the judicial abomination already administered. His application for review is also dismissed.

VII. Disposition & a post-script

12. The amount deposited already before this court shall be permitted to be withdrawn forthwith by the persons impleaded as parties. The wife of the petitioner (and mother of the rape victim) has also died in 2013.

13. As a post script I must mention that a review application which is dismissed as not requiring any modification of the order already passed ought not to have a long justification. I have carved out an exception to this norm only because the case presented an occasion for a discourse for change of law of what the courts alone cannot do. It is the synergy of efforts of several persons who carry the torch of reformatory spirit that can make India vibrant to weed out archaic laws and usher an orderly change through a new set of laws. This order also underscores the potency of public law remedy in areas for human rights violations, where conventional litigation of vindicating ordinary civil right in civil courts might fail.

**(K.KANNAN)
JUDGE**

03.02.2016
sanjeev