

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2166 OF 2007

Jawaharlal Ramtirth Sharma Petitioner
versus
The State of Maharashtra & Ors. ... Respondents
.....

- Mr.A.R. Pitale, Advocate for the Petitioners.
- Mr.N.B. Patil, APP for the State/Respondent.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.
RESERVED ON : 04th AUGUST, 2017
PRONOUNCED ON : 09th AUGUST, 2017**

JUDGMENT (PER : SARANG V. KOTWAL, J.) :

1. This is an unfortunate tale of the petitioner who had suffered prospect of facing criminal prosecution for a period of 10 prime years of his life. The petitioner has approached this Court by way of present petition mainly claiming damages for the sufferings caused to him due to major and grave lapses in the investigation. By another prayer the petitioner has also prayed for direction to take action against the erring officers who had carried out the investigation.

2. A few facts leading to filing of the present petition are as follows:

2.1 -: On 14/03/1996 an FIR came to be lodged at Jogeshwari Police Station at the instance of PSI Chikhalkar, attached to the same police station. According to him on 14/03/1996, the dead body of a man approximately 20-25 years of age, was found near I.Y. College, within the jurisdiction of Jogeshwari Police Station. The head of the dead body was crushed by a heavy stone and obviously he was murdered. Therefore said PSI Chikhalkar lodged FIR vide C.R.No.45/96 at Jogeshwari Police Station, u/s 302 of the Indian Penal Code against unknown persons.

2.2 -: The investigation commenced, and it appears that the then Investigating Officer recorded statements of various witnesses. One of the statements was that of Mohamed Asfaq Mohamed Ibrahim Sayyed.

According to him, one boy named Guddu, aged about 21 years, had come to his workshop in search of work. The said Asfaq allowed him to work with him initially for two months. Thereafter the said Guddu had left for his native place and in the month of June 1996 he returned with a lady, aged about 30 years, claiming to be his wife. According to said Mohd. Ashfaq in the month of March 1996, three persons came from Ludhiana asking for Guddu and that married lady. It is Mohd. Ashfaq's case that one of the three persons gave his name as Jawaharlal Sharma, which incidentally is the name of the present petitioner. As these three persons were enquiring about Guddu, the said Ashfaq tried to trace Guddu, but he was not found. Therefore when the police approached the said Mohd. Ashfaq in connection with finding of the dead body, he expressed his suspicion against these three persons and also claimed that the photograph of the dead body was that of Guddu.

2.3 -: The police recorded the statements of eight witnesses, who identified the photograph of the dead body as being that of the said Guddu @ Laeek. Out of these eight persons, four persons also identified the dead body and claimed that it was Guddu's dead body. On the basis of this information the police arrested the present petitioner on 24/05/1996 from Ludhiana. Till the month of July 1996, the police arrested two more accused.

3. On 04/07/1996, the present petitioner was granted bail. However, he could avail of the said bail order only on 17/07/1996.

4. We are not so much disturbed by the initial arrest of the present petitioner on 24/05/1996; because at that time the investigating agency had sufficient material to raise reasonable suspicion against the present petitioner. However, the disturbing feature of the present case started from 05/07/1996. Incidentally from March 1996 to July 1996, the police made

efforts to inform the family of said Guddu at Uttar Pradesh to claim his body. However, they elicited no response.

5. On 05/07/1996 PSI Bansode recorded the statement of one Rashida Nawab Khan, resident of Bareilly (UP). In the said statement the said Rashida clearly stated that she was the mother of the said Guddu. According to her in June 1996 she had received a telegram that her son Guddu was murdered in Mumbai; but on the very same day when she had received the telegram, she had met Guddu and therefore she was convinced that the news in the telegram was not correct. She immediately informed Dr.Madan Mohan Dhawan, who advised her to approach the police station. Thereafter she went to Baradari Police Station and informed the police officers that her son Guddu was very much alive.

6. The record reveals that PSI Bansode also recorded the statements of Dr.Madan Mohan Dhawan, PSI Satyaprakash Tyagi attached to Baradari Police Station, Uttar Pradesh, Rayees

Miya Akbar Hussain Ansari, Nanhe Khan Anwar Khan and Jamir Basheer Pathan on 08/08/1996. All these witnesses clearly stated that the said Guddu @ Rais Nawabdulla Khan was very much alive and he was seen by witnesses after March 1996. Thus, at least from 05/07/1996 the then Investigating Officer of Jogeshwari Police Station was alive to the strong possibility that the said Guddu might not be dead.

7. In spite of this background, the investigating agency chose to file charge-sheet on 04/01/1997 in the Court of Metropolitan Magistrate, 10th Court, Andheri, Mumbai. The case was duly committed to the Sessions Court and was continued as Sessions Case No.25/04 before the Court of Sessions, at Mumbai.

8. It appears that on 29/11/2002 also the then Investigating Officer recorded the statements of Rashida Nawabdulla Khan and Dr. Madan Mohan Dhawan. In both these statements, the witnesses reiterated that the said Guddu was alive and that he was seen by them after 1996.

9. As a subplot to the main story, in February 1996 itself a search warrant u/s 98 of Cr.P.C. was issued by the Sub-Divisional Magistrate, Ludhiana, against the said Guddu in connection with the abduction of a married lady. That was the reason why the said Guddu was avoiding to come forward.
10. The petitioner had preferred an application for discharge before the Court of Sessions for Greater Mumbai vide Ex.4 in Sessions Case No.25/04. The said application was rejected and the petitioner was not discharged.
11. From the record it appears that the case was pending before the Sessions Court at Mumbai and the petitioner on his own, was continuing his efforts to get the said Guddu before the authorities and before the Court in order to prove his innocence. All this while there was hardly any efforts or some positive action on the part of the then Investigating Officer to trace the said Guddu. The Roznama of the case shows that the petitioner

attended the Sessions Court at Mumbai for more than 15 occasions. The record shows that in the year 1996 he was around 37 years of age and he had to undergo this ordeal for over a decade. The petitioner was a resident of Ludhiana and was having a small scale industry in Ludhiana. The petitioner had to come all the way from Ludhiana on many occasions to attend the Court. The record further reveals that by the order dated 30/06/2005, the learned Additional Sessions Judge, Mumbai, directed the petitioner not to leave the jurisdiction of the Court till disposal of the trial. This further added to the misery of the petitioner and therefore he had to approach this Court by way of criminal writ petition No.1771/05. In the said petition the present petitioner had prayed that the direction be issued to the police to produce the said Guddu before this Court. He had also prayed for setting aside the order dated 30/06/2005 passed by the Court of Sessions at Greater Mumbai, directing the petitioner to remain in Mumbai till conclusion of the trial.

12. The petitioner had also challenged the order dated

03/05/2005 whereby the application for discharge was rejected by the learned Additional Sessions Judge, Greater Mumbai. The petition was disposed off by this Court and the order dated 30/06/2005 directing the applicant to stay in Mumbai till conclusion of the trial was set aside. However, other reliefs were not granted in the said petition.

13. In the meantime, the petitioner continued with his efforts to trace the said Guddu on his own. The petitioner also came across an agreement executed in the year 2003 wherein the said Guddu alongwith his other family members had agreed to sell some of his properties. The petitioner also procured an electoral roll of the year 2000, wherein Guddu's name was appearing as one of the voters living in his area in Uttar Pradesh. On 14/03/2006 the petitioner preferred an application before the Court of learned Additional Sessions Judge, Greater Mumbai, in Sessions Court No.25/04, for issuance of summons to the said Guddu. This time the trial Court was pleased to issue summons for the said Guddu directing him to remain present

before the trial Court. Here again the petitioner himself had to make efforts and he had to go to District Bareilly (Uttar Pradesh) to serve the summons and through his efforts summons could be pasted on the house of the said Guddu @ Laeek. Since the said Guddu did not remain present even after issuance of such summons, by the order dated 17/04/2006, the learned Additional Sessions Judge, Greater Mumbai, was pleased to issue a non-bailable warrant against the said Guddu. The Roznama of the case shows that the said NBW was handed over to the petitioner for execution at the concerned police station at Baradari, in District Bareilly (Uttar Pradesh). Thus, it can be seen that even after issuance of non-bailable warrant, it was the petitioner who had to take efforts for execution thereof.

14. Finally in the month of November 2011, the said Guddu was brought before the Sessions Court in execution of the warrant. Thereafter the investigating officer recorded the statements of the witnesses, who in the year 1996, had stated that the said Guddu was dead and the dead body found on

14/03/1996 was that of Guddu. After ascertaining from all the possible sources, the learned Judge finally accepted that the said Guddu was very much alive and was present before the Court and thereafter discharged the present petitioner and other accused by his order dated 18/11/2006. We may note here that the said order is very cryptic and does not even record the bare essentials of the case. By the same order the officers of the Jogeshwari Police Station were directed to reinvestigate the matter in respect of the dead body traced by them on 14/03/1996. Thus, putting an end to a decade long ordeal faced by the present petitioner, the Additional Sessions Judge, for Greater Mumbai discharged the Petitioner.

15. In this background the petitioner has preferred the present petition before this Court for the reliefs as mentioned earlier. With the assistance of learned counsel Mr.Pitale for the petitioner and learned APP Mr.Patil, we have gone through the record and proceedings of the case and various statements recorded during the investigation.

16. Mr.Pitale submitted that this is a fit case in which compensation can be awarded to the petitioner in view of the fact that he had undergone tremendous mental agony and physical inconvenience in order to prove his innocence. All the while, the police officers were aware that the said Guddu was alive. In his support, Mr.Pitale relied on the judgment of Honourable Supreme Court in the case of *Nilabati Behera (Smt) Alias Lalita Behera, vs. Legal Aid Committee, reported in (1993) 2 Supreme Court Cases 746* and in particular he invited our attention to the para No.31 of the said judgment which reads thus;

“31. It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody.

The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of “sovereign immunity” in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.”

17. Mr. Pitale further relied on the judgment of the Division Bench of this Court in the case of **Sharda Narayan Bhongade, vs. Surendra Jagmohan Pali and another, reported in 2002(4) Mh.L.J. 865**. We have gone through the said judgment

and we find that paragraph No.14 of the said judgment is relevant for our purpose which reads thus;

“14. Article 21 of the Constitution of India which guarantees the right to life and personal liberty, will be rendered nugatory and its significance would become blunt if the powers of the Courts were limited to passing the orders of release from the illegal detention. One of the method of preventing the violation of Article 21 and ensuring its due compliance is to grant compensation to the victim who has suffered at the behest of the State Authorities or its instrumentalities which act in the name of public interest and yet abuse the very process of law which they are supposed to protect.....”

18. We can accept the action of police officers while initially arresting the present petitioner in pursuance of the information, which they had at that point of time. However, the inaction, lethargy and callousness shown by the police officers after 05/07/1996 cannot be countenanced. The police machinery and the investigating officers under the Code of Criminal Procedure, 1973 (for short Cr.P.C.), enjoy wide powers

for the purposes of investigation. However, with wide powers, comes higher responsibility and the police officers investigating into a crime are expected to act in impartial, fair and efficient manner. The investigation into an offence is not a mechanical process. The investigating officer has to apply his mind at every stage of the investigation and is expected to make an effort to find out the truth. The investigation does not mean merely recording of statements and carrying out different panchanamas, but there has to be a definite direction in which the investigation should proceed. The investigating agency has to explore all the facets of the case. If the accused has any circumstances in his favour, the investigating officer is not only expected to find out the veracity of the version given by the accused, but it is his duty to investigate the case from all angles. That does not mean that the investigating officer has to accept blindly whatever is stated either by the accused or even by the witnesses. The investigating officer has to form his own opinion before filing report u/s 173 of Cr.P.C. In this connection we are relying on the observations made by the Hon'ble Supreme Court in the case of *Ram Lal*

Narang vs. State (Delhi Admn.), reported in AIR 1979 Supreme Court 1791. In particular we are relying on the paragraph No.21 of the said judgment which reads thus;

“21. *Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon*

the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh

fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. ”

19. In case, the investigating officer is of the opinion that no offence is made out for various reasons, he has an option of filing different summaries. In case, the investigating officer is of the opinion that a particular accused has not committed the offence, he has an option to take recourse to section 169 of Cr.P.C. In short, the investigating officer has wide powers and he has to use them with application of mind. His only aim should be to unravel the truth and to collect the evidence in support of his opinion.

20. In the present case we find that the investigating

officers investigating the case from 1996 to 2006 have shown utter disregard to the cause of justice. Particularly from 05/07/1996, the investigating officer was made aware by the mother of the said Guddu that he was alive. We did not find that the investigating officers have taken any efforts to trace him seriously. Even at later stages, the petitioner himself had to collect the summons and the warrant, and make efforts to execute them in the State of Uttar Pradesh. We find that the charge-sheet was mechanically filed and there were no real efforts made to fix the identity of the dead body and to investigate into the matter.

21. We find that because of this apathy, inefficiency and negligence bordering on criminal negligence, the petitioner had to endure the agony of facing criminal prosecution for no less an offence than the capital offence. The petitioner was based in Ludhiana, Punjab and had his small scale industry there. He had to attend the trial Court on many occasions and had to file different petitions before this Court including the present

petition. This, in our opinion, is sheer mental as well as physical torture and agony. The right to life and personal liberty is certainly very much available to a person who is facing a criminal prosecution and in this case we find that this fundamental right guaranteed under Article 21 of Constitution of India was seriously infringed because of callous attitude and inaction on the part of investigating agency. We can advantageously make a reference to observations made in the two judgments referred to hereinabove, in the cases of *Nilabati Behera* and *Sharda Bhongade*. Since the investigating agency is the instrument through which the State operates, in this case we are of the opinion that compensation needs to be awarded to the petitioner and the State should be directed to pay such compensation.

22. While it is difficult to quantify the amount of compensation, because no such amount can adequately compensate the petitioner for the mental and physical agony he has suffered in his prime years of life over a decade; but still, by

way of keeping in balance all the circumstances, we are of the opinion that, an amount of Rs.5,00,000/- by way of compensation, would be just and proper in this case. In addition we are also of the opinion that the petitioner should be paid Rs.1,00,000/- to cover his expenses for pursuing various legal proceedings from his hometown Ludhiana.

23. The police report dated 04/08/2017 and affidavit dated 03/04/2012 filed by the Senior Inspector of Police Jogeshwari Police Station shows that the earlier investigating officers namely PI Sharma and PSI V.N. Bansode have expired and Mr.R.R. Yadav has retired. Therefore we are not inclined to grant the second prayer of the petitioner that directions should be issued to take necessary action against the erring officers who had committed lapses in the investigation of crime No.45/96 registered with Jogeshwari Police Station. The State of Maharashtra, if it so desires, is at liberty to recover the said amount of compensation from the investigating officers who had investigated the case from 1996 to 2006 and who are available or

from the estate of such investigating officers who have expired, in accordance with law. The petitioner is at liberty to prefer any other proceedings for claiming damages, which is permissible in accordance with law.

24. With the result we partially allow the present petition and direct the State of Maharashtra to pay a compensation of Rs.6,00,000/- (Rs. Six Lakhs) to the petitioner within a period of eight weeks from the date of this order.

25. The petition is disposed off in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)