

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.12554 of 2013
Date of Decision: February 09, 2017

Inderjit Kaur

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Vivek Salathia, Advocate,
for the petitioner.

Mr.P.S.Bajwa, Addl.A.G.Punjab,
for the State.

AMIT RAWAL, J. (Oral)

Petitioner is the mother of deceased Inderpal Singh @ Sunny, who unfortunately died while being tried in FIR No.211 dated 29.8.2012 registered at Police Station Kotwali, Patiala under the NDPS Act, in essence in custody.

Mr.Vivek Salathia, learned counsel representing the petitioner submits that in view of the aforementioned FIR, the deceased was being kept in Central Jail, Patiala. However, on 2.5.2013, he unfortunately died. The postmortem report did not indicate the cause of death. Even the viscera report dated 12.2.2014 (Annexure R-I) and histopathological examination report dated 13.3.2014 (Annexure R-2) do not indicate the cause of death, in essence submit that the cause of death was never detected.

He further submits that it was a case of negligence on the part of the jail authorities/police of not having given the treatment to the

deceased. The medical report placed on record shows that the deceased was given treatment, i.e., antibiotic and some ointments. The story of the police/State that the deceased was suffering from Pilonidal Cyst has not been proved to the hilt, thus, he submits that it was the duty of the jail authorities/police to take care of the deceased and having not done so, it cannot be ruled out that the victim was subjected to ill-treatment, which resulted into negligence of the police, which is being camouflaged by all possible means. The petitioner-widow was deprived of love and affection of the child. In support of his contention, he has relied upon the Division Bench judgment of the Orissa High Court rendered in **Radhakanta Majhi and others Versus State of Orissa and others**, 2014 AIR (Orissa) 206 to project that the custodial death is a violation of Article 21 of the Constitution of India and, therefore, the petitioner should be compensated in terms of money for the custodial death of her son. He referred to paragraph 8 of the judgment to submit that callousness and negligence of the jail authorities was established. He has also relied upon various other judgments of this Court and other High Courts.

Per contra, Mr.P.S.Bajwa, learned Additional Advocate General, Punjab representing the State submits that the petitioner has failed to produce on record any iota of documentary evidence, much less make out the callousness and negligence of the police from the documents annexed with the written statement. The treatment being given to the under-trial is reflected from Annexure R-1 with the affidavit dated 5.12.2013. He was given treatment w.e.f. 5.9.2012 till 30.4.2013. The aforementioned treatment has not been denied by way of rejoinder. No evidence, much less documentary evidence taken under the provisions of law, i.e., Right to

Information Act regarding the death of the deceased, has been placed on record. It was not a case of negligence of the police, but he died as he was suffering from Pilonidal Cyst.

He further submits that the postmortem report has been disputed. An enquiry was also marked to the Sub-Divisional Magistrate, Patiala, who, after recording the statements of the other inmates, has also given the report that the deceased was not kept in an isolation cell, but was in the company of four inmates, who have also not deposed against the police, thus, it was not a case of custodial death, though the deceased unfortunately died while in jail and, thus, urges this Court for dismissal of the writ petition.

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

No doubt, the jurisdiction of this Court under Article 226 of the Constitution for the purpose of granting compensation can be invoked, but the same can be done only in the circumstances where there is a clear cut callousness and negligence of the police. Only the photographs have been placed on record, which do not indicate any external injury. The factum of the treatment as given to the deceased has not been denied. It is also not even stated the petitioner and her relatives were not allowed to meet the inmate, so that his health could be ascertained. The petitioner should have agitated that she was not allowed to meet the victim and was being subject to any maltreatment by the police. Even the statements of the other inmates as recorded by the Sub-Divisional Magistrate, Patiala reveal that he was given medicines.

In my view, it is not a fit case where this Court can be called

upon to grant compensation in the absence of the direct evidence with regard to callousness and negligence. At the best, the petitioner should have invoked the jurisdiction of the Civil Court by proving all the aforementioned questions by production of documents.

There is no dispute to the ratio decidendi culled out in **Radhakanta Majhi's case (supra)**, but each and every case has to be tested on the preponderance of oral and documentary evidence. In the present case, no cogent evidence qua the negligence of the police has been placed on record, therefore, the ratio could not apply.

The petitioner still is at liberty to invoke the jurisdiction of the Civil Court. The findings of mine would have no impediment as the same are only rendered on account of the jurisdiction of this Court under Article 226 of the Constitution.

For the foregoing reasons, no case for interference is made out.
Writ petition stands dismissed.

February 09, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No