

CWP No.2131 of 2016 (O&M)

[1]

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

**CWP No.2131 of 2016 (O&M)
Date of decision:17.04.2018**

Harjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Mohinder Kumar, Advocate,
for the petitioner.

Ms. Deepali Puri, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The petitioner is the widow of one Mukhjit Singh @ Mukha who was allegedly killed by the police in a fake encounter on 16.06.2015 has preferred this petition for seeking compensation.

In brief, the petitioner was married to Mukhjit Singh and is having two children. He was the sole bread winner of the family. He was 38 years of age when he was killed by a police party of Amritsar District on 16.06.2015 at about 6.30 pm at Mudhal, near Verka, by opening indiscriminate firing at him when he was sitting in his car and caused 23 gunshot injuries to which he succumbed at the spot. It is submitted that in order to cover up the killing of Mukhjit Singh, one FIR No.242 dated 16.06.2015, under Sections 307 IPC read with Section 25 and 27 of the Arms Act, 1959 was registered at Police Station 'A' Division, Amritsar at 11:00 pm on the complaint of one SI Ramesh Kumar.

In response to this petition, various affidavits by way of reply have been filed. In the reply dated 27.05.2016, filed by G. Nageswara Rao, IPS, IGP/Crime, Punjab, it is averred that the Director General of Police, Punjab, vide his order No.1304-09/Crime/Inv.-1 dated 17.06.2015, constituted a Special Investigation Team to investigate the above-said FIR case. It is further averred in the said reply that the SIT is finalizing the report of investigation of the aforesaid FIR case which would be submitted to the Court shortly. Thereafter, another reply was filed by G. Nageswara Rao, IPS, IGP/Crime, Punjab on 18.07.2016, in which he made the following averments:-

“5. That the Special Investigation Team has completed the investigation of abovesaid case FIR No.242 dated 16.06.2015 under Sections 307 IPC and 25, 27 of Arms Act, PS `A' Division, Commissionerate Amritsar and the Report of Investigation was submitted to the Director General of Police, Punjab through the Director, Bureau of Investigation, Punjab, vide letter No.2127/R/IGP/Crime, dated 16.6.2016, which has been approved by the DGP, Punjab. The Report of Investigation along with case file has been sent to Commissioner of Police, Amritsar, for further necessary action as per recommendations of the SIT. The following recommendations have been made by the Special Investigation Team in its report submitted to the Director, Bureau of Investigation, Punjab:-

“RECOMMENDATIONS OF THE SPECIAL INVESTIGATION TEAM

Based upon the investigation conducted by the SIT, the following is recommended:-

- (I) The allegations levelled in the FIR against deceased Mukhjit Singh @ Mukha amounting to commission of offences under Section 307 of IPC, 25, 27 of Arms Act, 1959, are not proved.
- (II) Police Report under Section 173(2) Cr.P.C., be filed for commission of offence punishable under Section 304 read with Section 34 of IPC, after obtaining

necessary Sanctions for prosecution under Section 197 Cr.P.C. against the following police officials:-

- i. SI Ramesh Kumar No.1382/GSP.
- ii. ASI Joginder Singh No.2639/ASR.
- iii. HC Ranbir Singh No.821/ASR.
- iv. HC Rajesh Kumar No.3564/ASR.
- v. HC Sandeep Kumar No.2176/ASR.
- vi. HC Jasbir Singh No.669/ASR.
- vii. C-II Navjot Singh No.2895/ASR.
- viii. Ct. Satwinderjit Singh No.3894/ASR.

Although, as per record of the Kot Incharge, Amritsar, AK-47 Assault Rifle No.88320625 was issued to Ct. Love Kumar No.3568/ASR, the same was used by HC Rajesh Kumar No.3564/ASR, on the day of incident.

(III) In view of the fact that AK-47 Assault Rifle issued to Ct. Love Kumar No.3568/ASR was used by HC Rajesh Kumar No.3564/ASR, Regular Departmental Action is recommended against Ct. Love Kumar No.3568/ASR for allowing HC Rajesh Kumar No.3564/ASR to use his weapon on the day of incident.

(IV) As MHC Baljit Singh, No.70/ASR allowed 'Malkhana' vehicle bearing Registration No.PB-08/BP-4613 to be misused by Sub Inspector Ramesh Kumar, No.1382/GSP, Departmental action is recommended against these two officials.

(V) As HC Kanwaljit Singh, No.1957/ASR, Incharge Cyber/Computer Cell misused 'Malkhana' vehicle Verna car No.PB-33A-7979, Departmental action is recommended against this official.”

Another short reply was filed on 03.08.2016, in which similar averments were made. Thereafter, affidavit of Sudhanshu Shekhar Srivastava, Commissioner of Police, Amritsar City dated 09.10.2017 was filed, in which he has made the following averments:-

“2. That so far as the departmental action taken against the erring police officials is concerned, it is most respectfully

submitted that Regular Departmental Enquiries have been ordered against the erring police officials namely, S.I. Ramesh Kumar No.1382/ASR, H.C. Kanwaljit Singh No.1957/ASR, Constable Love Kumar No.3568/ASR and H.C. Baljit Singh No.70/ASR vide orders No.40441-44/A-1 dated 13.09.2017, 40445-48/A1 dated 13.09.2017 and 40449-52/A1 dated 13.09.2017 issued in this regard by the deponent pursuant to the recommendations made by the Special Investigation Team, which are being conducted by the Assistant Commissioner of Police, Special, Amritsar City. These departmental enquiries are under progress and summary of allegations and lists of prosecution witnesses have been delivered to the erring police officials and next date in these departmental enquiries has been fixed at 10.10.2017 for recording statements of the prosecution witnesses by the enquiry officer.

3. That so far as the investigation being carried out in the instant FIR No.231 dated 06.07.2016 under Section 304, 34 IPC, P.S. 'A' Division, Amritsar City is concerned, it is most respectfully submitted that the investigation of the said FIR has been conducted by various Police Officials including Inspector Amolak Singh, SHO, PS Verka, Inspector Vavider Kumar the then In-charge Anti Narcotic Cell, Amritsar, Inspector Rajesh Kumar, the then SHO, PS Verka and present SHO PS Verka and present SHO-PS Verka Inspector Ravinder Pal Singh. During the investigation numbers of witnesses have been joined in the said investigation and their statements have been recorded and this whole investigation is depicted in various case diaries.

4. That it is most respectfully submitted that in view of the order dated 30.05.2017 for further investigation of the case FIR No.242 dated 16.06.2015 under Section 307 IPC, 25, 27 Arms Act, P.S. 'A' Division passed on the cancellation report by the Ld. Illaqa Magistrate, a letter dated 13.09.2017 has been written to the Director General of Police, Punjab, Chandigarh to constitute a Special Investigation Team of the Rank of Inspector General of Police/Addl. Director General of Police to further investigate both the above mentioned cases. In the meantime, a Special Investigation Team comprising of Additional Deputy Commissioner of Police (Crime), Amritsar City-as Chairman, Assistant Commissioner of Police, (East), Amritsar City and SHO

P.S.Verka, Amritsar as members has been constituted vide order No.1491/R/COP dated 17.09.2017 issued by the deponent, for carrying out investigation of both these cases FIR no.242 dated 16.06.2015 under Section 307 IPC, 25, 27 Arms Act, P.S. 'A' Division and FIR No.231 dated 06.07.2016 under Section 304/34 IPC P.S. 'A' Division, Amritsar City. This SIT is carrying out investigation of both these cases. Copy of the order is annexed herewith as **Annexure R-1/T** for kind perusal of this Hon'ble Court. The SIT has carried out investigation which has been depicted in case diaries recorded in these cases on 19.09.2017, 25.09.2017, 28.09.2017, 01.10.2017 and 05.10.2017. The SIT has also examined the Magisterial Enquiry Report is annexed herewith as Annexure R-2/T for kind consideration of this Hon'ble Court.

5. That so far as the details/status of the FIRs registered against the deceased Mukhjiti Singh @ Mukha are concerned, it is most respectfully submitted that details/status of these FIRs are as under:

- i) FIR No.172/2000 Dt. 24.07.2000, U/S 382, 452, 427, 148, 149, 120-B IPC, PS Civil Lines, Amritsar.

This case was registered on the statement of the complainant Surjit Singh that on 24.7.2000 at about 10:30 pm, the deceased Mukhjiti Singh along with Jagtar Singh @ Boxer, who is notorious gangster and other accused persons armed with deadly weapons trespassed into his shop, ransacked his shop i.e. broke window panes, TV, AC and glasses etc., took out Rs.10,000/- from the counter and ran away from the spot. In this case the deceased Mukhjiti Singh was arrested and was challaned along with other accused persons. The deceased Mukhjiti Singh @ Mukha and other accused persons. The deceased Mukhjiti Singh @ Mukha and other accused Amandeep Singh, Manjit Singh, Kashmir Singh, Mukhtiar Singh and Jagtar Singh who were cahallaned, have been acquitted on 21.4.11 by the court of Sh. S.S.Jossan, JMIC, Amritsar as the prosecution (private) witnesses turned hostile and did not identify the accused persons in the Ld. Court.

- ii) FIR No.170 dated 25.07.1999 under Section 307, 148, 149 IPC, 25 Arms Act, P.S. Ajnala, Amritsar (Rural).

This FIR was registered against the deceased Mukhjit Singh along with co-accused Hira Singh, Kulwant Singh, Kabal Singh and Manpreet Singh on the allegations that these accused persons had fired at the police party with an attempt to kill, who were holding nakabandi and thereafter the accused persons were apprehended after having an encounter. Fire arms were recovered from the accused, in which the deceased Mukhjit Singh was found having in his possession of one illegal SBBL gun 12 bore along with 5 live cartridges and 2 empty cartridges of the same bore. After completion of trial, the court of Sh. M.S. Randhawa the then Ld. Addl. Sessions Judge (Adhoc) (Fast Track Court), Amritsar acquitted the accused by giving them benefit of doubt vide judgment dated 03.06.2003.

- iii) FIR No.173 dated 25.07.1999 under Section 25 Arms Act, P.S.Ajnala, Amritsar (Rural).

This FIR was registered as a fall out of the recovery of one illegal SBBL gun 12 bore along with 5 live cartridges and 2 empty cartridges of the same bore in the aforementioned 170 dated 25.07.1999 under Section 307, 148, 149 IPC, 25 Arms Act, P.S.Ajnala, Amritsar (Rural) from the deceased Mukhjit Singh. After completion of trial, the court of Sh. M.S. Randhawa the then Ld. Addl. Sessions Judge (Adhoc) (Fast Track Court), Amritsar acquitted the accused by giving them benefit of doubt vide judgment dated 03.06.2003.

- iv) FIR No.224 dated 20.08.2006 under Section 323, 324, 148, 149 IPC, P.S. Sadar, Amritsar City.

This FIR was registered on the complaint of Ram Saran Yadav. The present FIR was cancelled and later on the cancellation report was accepted by the Hon'ble Court of Sh. Roshan Lal Chauhan, the then ACJM, Amritsar as complainant agreed with the cancellation report.

6. That it is pertinent to further submit here that Princepal Singh-the nephew of the deceased has also instituted a complaint case under Section 302/371/148/149/201 of IPC in the Court of JMIC, Amritsar on 23.02.2016 with regard to the said incident and the said accused police officials had been summoned in the said

case on 08.09.2017 and now the case is fixed on 20.10.2017.”

He further filed another affidavit on 14.11.2017, in which the following averments have been made:-

“2. That Regular Departmental Enquiries were ordered against the erring police officials namely S.I. Ramesh Kumar No.1382/GSP, H.C. Kanwaljit Singh No.1957/ASR, Constable Love Kumar No.3568/ASR and H.C. Baljit Singh No.70/ASR vide orders No.40441-44/A-1 dated 13.09.2017, 40445-48/A1 dated 13.09.2017 and 40449-52/A1 dated 13.09.2017 issued in this regard by the deponent pursuant to the recommendations made by the Special Investigation Team, which are being conducted by the Assistant Commissioner of Police, Special, Amritsar City. These departmental enquiries are under progress.

3. That thereafter the erring police officials H.C. Baljit Singh No.70/ASR, H.C. Kanwaljit Singh No.1957/ASR and Constable Love Kumar No.3568/ASR presently posted in Police Commissionerate, Amritsar City have been placed under suspension vide orders No.46396-402/A1 dated 24.10.2017, 46403-9/A1 dated 24.10.17 and 46389-95/A1 dated 24.10.17 respectively issued in this regard by the deponent, which are annexed herewith as **Annexure R-1/T to R-3/T** for kind perusal of this Hon'ble Court.

4. That other erring police officials namely P.HC (local rank ASI) Joginder Singh No.1046/Amritsar-Rural, P.HC Jasbir Singh No.782/Amritsar-Rural, P.HC Rajesh Kumar No.299/Amritsar-Rural and C-2 Navjot Singh No.1167/Amritsar-Rural presently posted in District Amritsar (Rural) have also been placed under suspension vide office order No.55382-88/A-5 dated 24.10.2017 issued in this regard by the Senior Superintendent of Police, Amritsar (Rural), which is annexed herewith as Annexure R-4/T for kind perusal of this Hon'ble Court.

5. That the investigation of the present case/FIR No.242 dated 16.06.2015 under Section 307 IPC, 25, 27 Arms Act, P.S. 'A' Division and FIR No.231 dated 06.07.2016 under Section 304, 34 IPC, P.S. 'A' Division, Amritsar City is being carried out by the Special Investigation Team comprising of Additional Deputy

Commissioner of Police, (Crime), Amritsar City, Assistant Commissioner of Police, (East), Amritsar City and S.H.O. P.S. Verka, Amritsar, which is under progress.”

He further filed affidavit dated 08.12.2017, in which the following averments have been made:-

“2. That so far as the amount of compensation to be awarded to the petitioner is concerned, it is submitted that an amount in the tune of Rs.5 lakhs as compensation has already been awarded to the petitioner by the State Government, which has been paid to her through payee accounts cheque No.029069 dated 30.06.2015 by Red Cross Society, Amritsar and it has been disbursed to the petitioner Harjit Kaur, who is wife of the deceased Mukhjit Singh @ Mukha. Letter in this regard issued by the Executive Secretary of Indian Red Cross Society, District Branch, Amritsar is annexed herewith as Annexure R-1/T for kind perusal of this Hon'ble Court.”

Thereafter, Rajnish Kumar Sharma, Under Secretary to Government of Punjab, Department of Home Affairs & Justice also filed his affidavit on 14.12.2017, in which the following averments have been made:-

“1. That during the hearing on in this petition this Hon'ble Court was pleased to pass the following order on 15th September, 2017, which is as under:-

“..... In view of the aforesaid facts and circumstances, the Commissioner of Police, Amritsar City, is directed to file his own affidavit, giving details on the following points:-

- (i) to bring on record the details as to what departmental action has been initiated against the erring police officials.
- (ii) giving details of the investigation much-less as to whether the erring police officials have been arrested in FIR No.231 dated 06.07.2016 and what kind of interrogation has been done therein.
- (iii) giving details/status of the four FIRs mentioned in para 6 of the affidavit dated 15.09.2017 registered

against the deceased Mukhjit Singh @ Mukha.

2. That thereafter another order dated 14.11.2017 was passed by this Hon'ble Court which is as under:

“Additional affidavit of Sudhanshu Shekhar Srivastava, Commissioner of Police, Amritsar City, filed today in the Court, is taken on record and a copy thereof is given to the counsel for the petitioner.

Learned State counsel also prays for another adjournment in order to apprise the Court as to what amount of Compensation is going to be awarded to the petitioner.

On her request, adjourned to 08.12.2017.”

3. That in compliance of above orders of Hon'ble High Court a meeting was convened on 11.12.2017 under the Chairmanship of Chief Secretary, Government of Punjab, which was attended by the followings:-

- (i) Sh. N.S. Kalsi, IAS, Additional Chief Secretary, Department of Home Affairs and Justice, Punjab;
- (ii) Sh. Prabodh Kumar, IPS, Director, Bureau of Investigation, Punjab;
- (iii) Sh. D.K.Tiwari, IAS, Secretary, Expenditure, Department of Finance, Punjab; and
- (iv) Smt. Kavita Singh, IAS, Secretary Home, Department of Home Affairs and Justice, Punjab.

4. The case in Hon'ble High Court has now been adjourned to 15.12.2017 on the request made by the learned State Counsel. In CWP No.2131 of 2016, various affidavits were filed by the Commissioner of Police, Amritsar before the Hon'ble High Court. In the affidavit dated 15.09.2017 filed by Commissioner of Police, Amritsar it has been submitted that case FIR No.242 dated 16.06.2015 u/s 307 IPC was registered at Police Station 'A' Division, Amritsar City, concerning the incident of death of Mukhjit Singh @ Mukha in police firing. The investigation of this case was taken up by an SIT headed by the then IGP/Crime, Punjab, which submitted its report after completing investigation. Subsequently, another FIR No.231 was registered on 06.07.2016 u/s 304, 34 IPC, at Police Station 'A' Division, Amritsar against the police officials concerned.

5. As per the report of Director Bureau of Investigation in

case FIR No.242 dated 16.06.2015, the cancellation report was filed by the police, which was returned by the court for further investigation vide order dated 30.05.2017 passed by Ld. Illaqa Magistrate. The abovesaid FIR no.242 dated 16.06.2015 is under further investigation with the police. The case FIR No.231 dated 6.7.2016 is also under investigation with the Amritsar police and the Police Official against whom the FIR was registered, is also to be awarded the opportunity to defend himself. Both the above FIRs registered concerning the incident of death of Mukhjit Singh @ Mukha are under investigation/further investigation. The trial in the above cases would commence only after the completion of investigation by the police and report under section 173 Cr.P.C. is presented in the court of competent jurisdiction.

6. That the issues were deliberated upon in the meeting of the Committee and the following decision was taken:-

Regarding the amount of compensation to be awarded to the petitioner, it was discussed that presently the State Government has no approved policy in place for determining the amount of compensation in such cases.

In this case, the fact that a person has died in police firing has been brought on record. However, the circumstances surrounding and leading to this incident are a matter before the Hon'ble Trial Court. Hence, at this stage, it will not be appropriate for this Committee to express any opinion about this incident in the circumstances. It would be appropriate that the State Government sanctions an amount of Rs.5 Lakhs as compensation for the death of above said Mukhjit Singh @ Mukha (which has been disbursed by the Red Cross Society, Amritsar).

Accordingly the reply may be filed by the Department of Home Affairs & Justice in the Hon'ble High Court.”

Learned counsel for the petitioner has submitted that since Mukhjit Singh has been killed by the police, therefore, the petitioner, being his widow, should be suitably compensated. In this regard, he has relied upon a judgment of the Supreme Court rendered in the case of **Rohtash Kumar vs.**

State of Haryana and others, 2013(14(SCC 290, in which it has been held that even if a person is a dreaded criminal or a proclaimed offender, even then he cannot be killed in cold blood much-less in a fake encounter. In the said Case, the Supreme Court had awarded ₹20 lacs as compensation.

I have heard learned counsel for the parties and examined the available record with their able assistance.

It is evident from the narration of the facts mentioned here-in-before that the deceased Mukhjit Singh @ Mukha had not opened any attack upon the police party, who had been gunned down by AK47 assault rifle by which as many as 29 shots were fired at him, causing his death then and there. Various affidavits have been filed by the Director General of Police, the Inspector General of Police, Amritsar and various other officers from time to time in regard to the action being taken against the erring police officials but at present, the Court is only concerned as to what amount of compensation is to be awarded to the widow of Mukhjit Singh @ Mukha.

In the affidavit dated 08.12.2017, the respondents have averred that they have already paid ₹5 lakhs as compensation to the widow of the deceased vide cheque no.029069 dated 30.06.2015, whereas the petitioner has prayed for compensation to the tune of ₹50 lakhs on account of death of Mukhjit Singh @ Mukha in the fake encounter at the hands of the Punjab Police. The petitioner has relied upon a decision of the Supreme Court rendered in **Rohtash Kumar's case (supra)**, in which the Supreme Court has awarded the amount of ₹20 lakhs to the father of the deceased therein on the ground that the deceased was killed in the fake encounter observing that even if a person is a dreaded criminal or a proclaimed offender, even then he cannot

be killed in cold blood and the police must make an effort to arrest such person.

The petitioner has also referred to a decision rendered by this Court in the case of **Manjit Kaur vs. State of Punjab**, 2016(2) RCR (Criminal) 383, in which compensation to the tune of ₹15 lakhs was awarded for the custodial death.

Thus, I rely upon the decision rendered by the Supreme Court in **Rohtash Kumar's case (supra)** and award the petitioner in the present case an amount of Rs.20 lakhs as compensation, out of which the amount of ₹5 lakhs, already paid to the petitioner, shall be deducted/adjusted.

Consequently, the present petition is hereby disposed of with a direction to the respondents to pay the remaining amount of compensation of ₹15 lakhs to the petitioner within a period of 3 months from the date of receipt of certified copy of this order.

April 17, 2018
vinod*

(Rakesh Kumar Jain)
Judge

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