

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2679 of 2007**

Meena Bai Srivas, W/o Late Shri Kishan Lala Srivas, Aged about 35 years, R/o Halami Munjmeta, Bastar, Chhattisgarh ---- **Petitioner**

Versus

1. Union Of India, Ministry of Home Affairs, Government of India, New Delhi,
2. State of Chhattisgarh, Through the Secretary, Government of Chhattisgarh, Department of Home Affairs, DKS Bhawan, mentralaya, Raipur Chhattisgarh
3. The Director General of Police, Government of Chhattisgarh, Raipur, Chhattisgarh
4. The Inspector General of Police, Bastar Range, District Bastar, Chhattisgarh
5. The Superintendent of Police, Bastar, District Bastar, Chhattisgarh
6. The Superintendent of Police, Police District Bastar, Bastar, Chhattisgarh
7. The Station House Officer, Police Station Narainpur, Police District Narainpur, Revenue District Bastar, Chhattisgarh
8. Chief Commandant, CRPF, Bastar, Chhattisgarh
9. District Commandant, CRPF, Bastar, Chhattisgarh

--- Respondents

For Petitioner	:	Mrs. Aditi Singhvi, Advocate appears under instructions from Mr. Saurabh Dangi, Advocate
For Respondents No.1,8 & 9:	:	Mr. Rajkumar Gupta, Asstt. S.G.
For Respondent/State	:	Mr. Amrito Das, Additional A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

23/10/2019

Heard.

1. By this petition, under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs :

7.1. This Hon'ble Court be pleased to call for the entire records pertaining to the case.

7.2 It is also prayed that this Hon'ble Court be pleased to direct by issuing a writ in the nature of mandamus to conduct an inquiry by an independent agency i.e. CBI against the police officers, into the allegations made by the petitioner. This Hon'ble Court be further pleased to direct the concerned authorities to register offences of murder against the guilty CRPF personnel.

7.3 Direct the authorities to render proper security to the life of the petitioner and her parents and also direct that due protection be given to her and her parents until the disposal of the instant petition.

7.4 It is, prayed that this Hon'ble Court be pleased to direct by issuing a writ in the nature of mandamus to the respondent authorities to pay compensation to the petitioner amounting to rupees 10,00,000/- (Rs. Ten Lacs only)

7.5 Issue any other order or orders, writ or writs, direction/directions as this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the petitioner and against the respondents.

2. The factual background, assertions and grounds on which the aforesaid reliefs have been sought and as narrated in the writ petition are that on 27.07.2006, an incident of explosion took place in petitioner's village which is badly hit in naxalite sensitive zone. The bomb explosion was followed by cross-firing between forces and naxalite. An FIR Ex.P/1 was lodged in the Police Station which reveals an incident of explosion, cross-firing between the forces and naxalites and also that in this cross-firing, a CRPF men was injured and a villager Nandkishore died and another young boy Duryodhan, aged 8 years sustained bullet injury on his thigh. Offences under Section 147,148, 149, 307 as also offence under the Arms Act was registered against named and unnamed naxalites. Further case of the petitioner is that as an aftermath of this incident, some of the villager including petitioner's husband namely Kishanlal Sriwas were caught hold by CRPF men and their hands and legs were tied up and were beaten up, on the allegation that despite they knowing that there was bomb, information was not given to the security forces. According to the petitioner, CRPF men beaten up villagers including petitioner's husband and later on, they were released. Further averments in the writ petition is that the petitioner's husband after the incident remained at home having sustained severe injury but, he was frightened to go to the hospital because of presence of police CRPF (Personnel) both on road as also at the hospital. A nurse from Government Hospital was called to provide certain medicines. Further case of the petitioner is that though, petitioner's husband was treated for 9 days, he finally succumbed to injuries on

05.08.2006. According to the petitioner, as averred in para 5.8, in August, 2006, Meena Bai Srivas (the petitioner) and her son Shivraj went to the police station to file a report regarding death of Kishanlal Srivas but they were asked to put up report in the manner that he was assaulted by naxalites and when Meena Bai Srivas insisted that report should be lodged that he was assaulted by CRPF men, no report was recorded. Later on, Dasruram Salam (Village Chief) and a group of residents, including public representatives of the village, united to file a report before the Superintendent of Police, Narainpur in April, 2007. Despite assurance, nothing happened. Further averment is that later on, an NGO named Forum for Fact-finding Documentation and Advocacy arrived in the village, conducted its own enquiry and prepared a report in Ex.P/6 whereafter, the petitioner having become aware of her rights and remedies approached this Court by filing a writ petition.

3. Learned counsel for the petitioner would argue that there are not only specific averments made in the writ petition but in various enquiries directed by this Court including judicial enquiry, it has come that after the incident of explosion and crossfire on 27th of July in the Village, CRPF men had caught up the petitioner's husband Kishanlal Srivas and many villagers, their hands were tied up and they were also beaten. It is contended that even though, an attempt was made to lodge report in the police station, no report was allowed to be registered as the police was insisting to submit report that the assault and injury was as a result of beating by naxalites not CRPF men. Further submission of learned counsel for the petitioner is that though, there is no postmortem report prepared and dead body of Kishanlal was later on, cremated, only on this count, it cannot be said that no atrocity was committed on petitioner's husband Kishanlal. Learned counsel for the petitioner stressed upon material collected during enquiry that the villagers have stated that they all heard about CRPF men catching hold of villagers including Kishanlal tying their hands and legs and assaulting them. They did not inform the security forces regarding availability of bomb. Therefore, even if in the enquiry directed by this Court, there is no specific material that injuries were found on the body of Kishanlal or that he died of injuries, there is material to show that he was beaten up by CRPF men after the incident of encounter of forces with naxalites on 27.07.2006. Learned counsel for the petitioner would argue that in a case like this, in a sensitive area, the allegations of assault, beating and excesses and atrocities by security forces could not be brushed aside only on the ground that there was no injury report or postmortem report. It is argued that when complaints made, proper reports and FIR were required to be registered and investigated against responsible members of security

forces, who committed excesses and atrocities on innocent villagers suspecting their dubious role. Therefore, it is prayed that proper direction be issued for registration of FIR, institution of criminal cases and also for payment of compensation to the petitioner as she lost her husband as a result of police atrocities.

4. Learned counsel appearing for Union of India and the State, referring to the contents of various reports submitted before this Court by three different agencies including a judicial enquiry submitted that the allegations that Kishanlal was assaulted by police official/ CRPF men has not been supported by any of the witnesses, whose statements were recorded in three different enquiries including judicial enquiry conducted by none other than the District and Sessions Judge, Bastar. They would submit that none of these witnesses has stated that they saw that they witnessed CRPF men assaulting any villagers or Kishanlal, the husband of the petitioner. They would argue that the statement of wife of the deceased that her husband was beaten up by CRPF men is not based on her personal knowledge because she has stated in her statement that she, herself, has not seen the incident. It has further been contended that the statements are to the effect that they overheard in the village that Kishanlal and others were assaulted by CRPF men, with by itself, could not be made a basis to record any finding against the members of security forces that they committed atrocity. It is also submitted that from the date of incident, till the date of death during about 9 days, no report was made to any responsible officer or the police or administration nor any application was made for medical examination. It is also submitted that no request was also made for any postmortem on the allegation of assault and death due to injuries. The statement of various public official including the doctor, nursing staff of the hospital, Sarpanch of village and other villagers do not support petitioner's allegation. It is submitted that under the orders of the Court, several enquiries were held including judicial enquiry. Therefore, no further orders are required to be passed in the case and the case may be closed.

5. I have heard learned counsel for the respective parties and carefully perused and scrutinized the material on record which includes averment made in the petition, material along with the writ petition reply of respondent and three enquiry reports submitted before this Court pursuant to various orders passed by this Court from time to time to enquire into the allegations.

6. The material on record, as placed by both the parties and three enquiry reports submitted before this Court revealed and there is no dispute on this aspect that on 27th of July, 2006 an incident of bomb explosion, followed by

cross-firing between the security forces and naxalites was reported in police Station Narayanpur on 27.07.2006, in which, it was reported that on 27.07.2006, at about 8.15, at the place of incident which is about 11 km. away from village Munjmeta, when the security forces reached at the spot, 3 bomb explosions took place and heavy firing was opened on the police party and cross-firing took place, in which incident, two police personnel were injured. The cross-firing continued for about an hour, whereafter, the naxalites retaliated from the place of incident. After closure of firing, the spot and places around it were searched, in which, a boy named Duryodhan was found injured having sustained a bullet injury on his thigh. Later on, dead body of one Nandkishore having sustained bullet injury was also found. Thus, from the report itself, it is seen that at the instance of the policemen itself, a report regarding death of one villager Nandkishore and injury of another village boy Duryodhan was reported.

7. It is also not in dispute that petitioner's husband, namely, Kishanlal died on 05.08.2006 and his death certificate has also been annexed in the petition. However, there is no material before this Court to show that before his death, Kishanlal was medically examined and any medical report was prepared nor is there any material to show that after his death, postmortem was conducted before his dead body was cremated.

8. As the petitioner made serious allegation that her husband Kishanlal was assaulted by CRPF men on the allegation that he did not inform regarding existence of bombs, though, he was having information, and that he died because of the injury sustained by him, this Court passed an order on 04.05.2007 that respondent No.4/Inspector General of Police, Bastar Range, District Bastar and respondent No.8/Chief Commandant, CRPF Bastar, Chhattisgarh, to file report with regard to the incident in dispute. In compliance of the aforesaid direction, two reports were filed before this Court. First is a report filed by the State and has been marked as document-A. The second report filed by the Commandant of CRPF is marked as document-B. In the first report, document-A, submitted by the Inspector General of Police, Bastar Range, Jagdalpur, there is mention of incident on 27.07.2006 as stated herein above and it also mentioned in that incident, one villager Nand Kishore died and another boy Duryodhan was injured. According to this report, Nand Kishore died of bullet injury, whereas, Duryodhan sustained bullet injury on his thigh. It is stated that proper compensation were paid to the family of deceased Nandkishore and injured Duryodhan. The copies of postmortem report enclosed and other reports concerning injuries and payment of

compensation to the aforesaid two effected persons have also been annexed. As far as the allegation of the petitioner's husband that her husband Kishanlal was beaten up by CRPF men is concerned, the report refers to statements of villagers namely Balshai Vatte, Village Sarpanch, Mr. Pandiram Vatte, Ms.Urmila Netam, the nurse at village Primary Health Centre, Maniram Uike, another villager Mohammad Razzak, whose vehicle was used to take Kishanlal to hospital, statement of Mohhamad Illias who brought Kishanlal to Block Medical Officer and statement of Dr. Suryavanshi, Block Medical Officer. It was concluded that none of these statements, there is any mention about Kishanlal having been beaten up by the police personnel on 27.07.2006 or any of the following days. The report in the conclusion mentioned that, though, wife of Kishanlal and family members had ample opportunity to mention the alleged attrocity to atleast anyone of the above stated witnesses, it was not so done nor they approached the local Police Station or any other authority lodging any complaint regarding the alleged incident.

9. The other report of the Commandant of CRPF marked as document-B, contains factual statement regarding alleged incident of bomb explosion followed by cross-firing between the security forces and the naxalites on 27.07.2006. This report states that injured CT/GD Santosh Trimali Sukdeo and Duryodhan village boy were evacuated to Narainpur for medical treatment, who sustained injury in the naxalite incident. It also states regarding recovery of dead body of Nand Kishore. This report does not talk of any incident of alleged beating by CRPF men. It appears that while making enquiry, the concerned officer of the CRPF did not make any enquiry on the allegation regarding alleged beating of Kishanlal by CRPF men.

10. The petitioner filed affidavit of one Maniram Uike, who stated that in the enquiry made by the police, he had stated that on the date of incident, he had gone to Narainpur and when he came to know that Kishanlal died due to beating by CRPF men, he never stated that Kishanlal died because of excessive drink and other sickness. As the name of this person appeared in the report submitted by the Inspector General as one of those, whose statement were taken and the statement of this person as recorded by Inspector General was found to be different that the affidavit which was filed by the petitioner subsequently. This Court again directed a judicial enquiry into the matter vide order dated 15.06.2007, directing the District and Sessions Judge, Jagdalpur to examine the report and if necessary, examine those persons who have given the statement before the authority concerned and then submit a report to the Court within a period of three months. In

compliance thereof, the District Judge, Jagdalpur held a judicial enquiry and recorded statement of large number of persons including that of Maniram Uike also. Upon conclusion of that enquiry, the District Judge submitted enquiry report dated 21.09.2007. In this enquiry report also, the District Judge, referring to the statement of number of persons, including villagers, mentioned regarding incident dated 27.07.2006 as has already been stated in the petition and two reports submitted by the Inspector General of Police, Bastar and another by the Commandant of CRPF Bastar. The District Judge also recorded the statement of number of villagers including the petitioner. The petitioner and other villagers, Dr. Suryavanshi before whom the dead body of Kishanlal was brought, the nurse of the Primary Health Centre who gave him treatment as also the statement of Sarpanch of Village. There is no reason to disbelieve the statement of witnesses Meenabai Srivas, Maniram Uike, Mr. Pandiram Vatte and Mr. Balshai Vatte. It was also observed that in view of those statements, the report of the Inspector General of Police and that of CRPF official cannot be said to be proper and impartial. Along with the reports, all the statements of persons referred to in the report have also been annexed. From all these statements which have been placed on record, it is found that on many aspects, the statement of the witnesses, as stated before the District Judge, is at variance with what is stated before the Inspector General of Police, Bastar. After going through these statements, it is found that the statements of the villagers are that there was news in the village that some of the villagers and Kishanlal were beaten up by CRPF men. However, none of these witnesses including Meena Bai Srivas, wife of the deceased or Maniram Uike, a villager or Pandiram Vatte, the Sarpanch have stated that they had seen the incident of beating of Kishanlal by CRPF men. The statement of Meena Bai is that she was at home and she has not seen the incident of beating of her husband by CRPF men but she says that when she had gone towards the courtyard of Nandkishore, she found that her husband and another persons were tied with rope. In addition, one of her statement is that she had seen some injury on the body of her husband. One of the witness Maniram states that he had seen some injury on the body of Kishanlal. However, from the entire material brought before this Court under the three enquiry reports including judicial enquiry, there is nothing to show that any of these witnesses had witnessed incident of alleged beating of Kishanlal by CRPF men. Moreover, except oral statement of Meena Bai and Maniram, there is no report of medical examination of Kishanlal to prima facie establish that Kishanlal had sustained injury on his body. Moreover, as no postmortem was conducted, there is no report to show as to what was the cause of death of Kishanlal. The statement of the nurse, namely, Urmila and Dr. Suryavansi

also does not disclose that any of them had seen any injury on the body of Kishanlal. None of these witnesses say that when Kishanlal was brought to the hospital, anyone, who accompanied Kishanlal or his wife Meenabai, the petitioner, alleged that Kishanlal was beaten up by CRPF men and because of that, his condition had become serious.

11. The statement of Sarpanch of village, namely, Pandiram Vatte also does not disclose that either on 27.07.2006 or after death of Kishanlal his wife or any other villager come to him stating that he had seen the incident of alleged beating of Kishanlal by CRPF men or that because of that, Kishanlal had sustained injury and that matter is required to be brought to the notice of higher authorities or report is required to be lodged in the police station. It is also not revealed from the averment in the petition and the statements given by Meena Bai that any attempt was made to approach any of the public authorities including SP, Collector or any public representative with the complaint that police is not prepared to record FIR on the allegation of Kishanlal given beating and injured by CRPF men. According to the statement of Sarpanch Pandiram Vatte, after 7 to 15 days of death of Kisanlan, his wife, Meenabai, the petitioner approached him whether she could get compensation upon death of her husband to which, Sarpanch stated that such compensation could be granted if postmortem would have been conducted and at that stage, when asked as to whether her husband was sick then, Meenabai stated that CRPF men had beaten up her husband because of which, he fell sick and died.

12. Two inquiries; one conducted by the Inspector General of Police and another by Commandant of CRPF were followed by a judicial enquiry conducted by the District Judge and in that judicial enquiry, the District Judge has recorded statements of number of persons. From all the materials which have been placed before this Court, particularly, the statements recorded by the District Judge, it is difficult for this Court to hold that there is a prima facie material that the petitioner's husband Kishanlal died because of injury sustained due to alleged beaten by CRPF men. Firstly, because there is no eyewitness to the incident and nobody has stated that they witnessed the incident of alleged beating by CRPF men. True, it is that in the statement of Meena and Maniram it has come that they had seen certain injury on the body of Kishanlal, that by itself, is not sufficient to make out a prima facie case for registration of a criminal case against any member of security forces. This is more so because neither any medical examination was requested nor done nor any postmortem was conducted. This Court also found that from

27.07.2006, till the death of Kishanlal, no report was made to any of the public authority raising a complaint that Kishanlal was beaten up by CRPF men. In para 5.8 of the petition, it has been averred that in August, Meenabai and her son Shivraj went to police station to file report regarding Kishanlal's death. That means, till the death of Kishanlal, no approach was made to the police station. Even in the statement of Sarpanch of Village, namely, Pandiram Vatte, there is nothing to show that after 27.07.2006, till death of Kishanlal, Meenabai or any other villagers came to him complaining that he had seen Kishanlal assaulted by CRPF men. The petitioner does not say that the petitioner approached any public authority or went to Collector, SP or local representatives that Kishanlal had sustained injury because of beating.

13. Therefore, upon consideration of entire material on record, consideration and minute scrutiny of material on record, this Court is unable to come to any conclusion that there is a prima facie material to support the petitioner's allegation that her husband was beaten up by CRPF men and in that incident, he sustained severe injury which were so much so that he finally succumbed to death because of those injuries.

14. At the last, relying upon a decision of the Supreme Court in the case of **Gopichand V. State of Maharashtra, (2011 SCC Online Bom 1005)**, it has been submitted that even if there is no specific material found to make out a prima facie case to support the allegation of CRPF men committing atrocity on the husband of the petitioner, as it has come during enquiry that CRPF men had caught hold of villagers tied their hands including that of Kishanlal, the petitioner may be awarded appropriate compensation against the said atrocities.

15. Having given my anxious consideration to the submission on the face of material on record, this Court does not find that there is any material that the husband of the petitioner was subjected to any atrocity in the hands of CRPF men. Unless there is a prima facie material of any atrocity committed on the husband of the petitioner by the members of the security force, no relief can be granted, as prayed for in the writ petition.

16. The petition is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge