

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1365 OF 2021
IN
CRIMINAL WRIT PETITION NO.363 OF 2008**

The State of Maharashtra - APPLICANT

VERSUS

1) Saheba s/o Gajanan Kale & Anr. - RESPONDENTS

Mr.MM Nerlikar, APP for Applicant-State

**CORAM : SMT.VIBHA KANKANWADI &
M.G.SEWLIKAR, JJ.**

DATE : 21st August, 2021.

COURT'S ORDER (PER:- SMT.VIBHA KANKANWADI, J.)

1. Present Criminal Application has been filed for re-calling of order passed by this Court on 13th January, 2021 in Criminal Writ Petition No.363 of 2008 and the companion matter. The Judgment was pronounced by the Division Bench of this Court (Coram: T.V.Nalawade & M.G.Sewlikar, JJ.) and one of the Judges (Justice T.V.Nalawade, J.) demitted his office on 7.3.2021.

2. It will not be out of place to mention here that the Criminal Application restricts only in so far as compensation of Rs.5,00,000/- (Rupees five

lacs), which has been directed by this Court to be paid to legal representatives of deceased Suman.

3. Heard learned APP Mr.Nerlikar for the applicant-State. It is not even necessary to issue notice to the respondents for the reasons stated later on in this order.

4. In nut-shell, one lady by name Suman Kale, aged about 50, belonging to Pardhi – tribal community, died while in police custody. Criminal Writ Petition and the companion matter were relating to her death. This Court, after hearing all the persons concerned, including the State, who was well represented by learned APP, allowed the writ petitions partly and certain directions were given to the Trial Court regarding framing of charge and then after coming to the conclusion that Suman died in the police custody; though the fact was denied by the State authority that she died in the police custody, this Court held that, sufficient material has been produced to come to the conclusion and thereafter taking help of the ratio laid down in the case of D.K.Basu Vs. State of West Bengal – (1997) 1 SCC 416

and Ashok Kondaji Rokade Vs. The State of Maharashtra and Ors. (Writ Petition No. 1548 of 2016 decided on 26.11.2020 by the Division bench of this Court), compensation of Rs.5,00,000/- was awarded to the legal representatives of deceased Suman in respect of her death.

5. The applicant-State is now coming with a case that when the death of Suman was reported, National Human Rights Commission had taken cognizance and directed the State Government to pay compensation of Rs.5,00,000/- to husband of deceased Suman by order dated 11th June, 2012. The Government had sanctioned and disbursed the said amount to Gajanan Haribhau Kale, who is husband of deceased Suman by cheque. The cheque was handed over to him on 12.12.2013. A copy of the receipt has been produced.

6. Learned APP submits that in view of the said fact, which was not brought to the notice of this Court when the judgment was delivered in this case on 13th January, 2021; the said order, directing the amount of Rs.5,00,000/- to be paid as compensation to the legal representatives of deceased Suman, needs to

be re-called.

7. It will not be out of place to mention here that Justice T.V.Nalawade, who was author of the judgment, has demitted his Office on 7.3.2021. No application was filed by the State for re-call of the said order till he was holding the office. Such action of waiting till demitting the office of a Judge of this Court, and then file an application for re-call or review, is required to be deprecated. We may take help of the decision in the case of Vedanta Ltd (Formerly known as M/s Sesa Sterlite Ltd) Vs. The Goa Foundation and Ors. (Review Petition (Civil) Diary No.18447 of 2020 decided by the Hon'ble Supreme Court on 9th July, 2021, wherein, it has been observed, in view of the fact that two of the Hon'ble Judges of the Supreme Court, who had retired and who were part of the Bench earlier, and then Review Petition was filed, thus, -

"2. In accordance with Rule 2 of Order XLVII of the Supreme Court Rules, 2013, an application for review of a judgment has to be filed within thirty days of the date of the judgment or order that is sought to be reviewed. No cogent grounds have been furnished for the delay between 20 and 26 months by

the two parties in filing their applications for review. The judges comprising the two-judge bench in Goa Foundation II, Justices Madan B Lokur and Deepak Gupta, retired from this Court on 30 December 2018 and 6 May 2020, respectively. The State of Goa preferred its four review petitions in the month of November 2019, after Justice Madan B Lokur's retirement, while Vedanta Limited preferred its four review petitions in the month of August 2020, right after Justice Deepak Gupta's retirement. Such practice must be firmly disapproved to preserve the institutional sanctity of the decision making of this Court. The review petitioners were aware of the decision of this Court."

8. Now, as regards the contention, raised by the State-applicant that since the Human Rights Commission has directed the State Government to pay compensation amounting to Rs.5,00,000/-, which has been paid, the order in so far as it directs payment of compensation granted by this Court, should be re-called, we do not find any justification. The first and foremost fact is that Writ Petition No.363/2008 was pending since 2008 and thereafter it appears that another Writ Petition bearing WP No.900 of 2011 was filed in 2011 and third Writ Petition,

being WP No.1658/2015 was also filed. However, all of them have been considered and disposed of on 13.1.2021. It was not pointed out, when the submissions were made on behalf of the parties, especially the State Government, that any such compensation was directed to be paid by Human Rights Commission and accordingly it is paid. If the State Government had paid that amount in 2013, there was no hurdle for the concerned Department of the State Government to give instructions to the learned APP, who was conducting the case on behalf of the State before this Court. The said payment cannot be taken as a subsequent event and when that was paid earlier; yet without bringing that fact on record, and when the Government had clear knowledge that the petitioners are claiming the compensation, then at least those instructions ought to have been given and submissions ought to have been made to that effect. On this count also, we do not find any merit in the present application.

9. Even if we try to take the things in alternative; it can be seen that as per Section 18(3) of Protection of Human Rights Act, 1993; the Commission has power to make recommendation for payment of compensation. Now along with this application, the applicant has not produced a copy of the order passed by the Commission. Therefore, we are unable to get as to how the said amount computed by the Commission. We do not want to enter into debate as to whether the Commission has power to make such order or not since that order has been already implemented by the applicant-State.

10. This Court, while arriving at the quantum, has in para 28 of the order, given as to how it has calculated it. It is stated that the deceased was aged 50. The multiplier that was applied was 10 and it was considered or presumed that the income of the deceased would have been at least Rs.3,000/- per month. Further, taking into consideration that amount, it was held that

the amount of compensation only in respect of loss of income and dependency can be around Rs. 2,50,000/- and thereafter further an amount of Rs.2,50,000/- was given for the torture and the harassment of the relatives of the deceased. Now, taking advantage of the present application, it can be put in more particular way. It can be seen that the multiplier that was applied taking into consideration the age of the deceased, was not as per the decision in the case of Smt. Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr – (2009) 6 SCC 121. So also the decision in the case of National Insurance Company Ltd. Vs. Pranay Sethi and Ors – (2017) 16 SCC 680 and Kirti and Anr. Etc. Vs. Oriental Insurance Company Ltd. – (2021) 2 SCC 166, were not considered. Therefore, we may say that we take an opportunity to re-calculate it. The best way to compute compensation where there is no criterion laid down is, that it should be equivalent to or the procedure that is adopted while computing the compensation in any Motor Accident claim. The

incident had taken place in the year 2007 when the notional income in any case under the Motor accident claim was taken at Rs.6,000/- per month. However, taking into consideration the fact that the deceased might be the house-wife, it can be taken at Rs.4,500/- per month. Further, in view of the decisions in the cases of Pranay Sethi and Kirti and Anr. (supra), 15% of the said amount is required to be added towards future income. It comes to Rs.6,75,000/-. Therefore, the income would be Rs.5,175/- per month and yearly it would be Rs.62,100/-. Even if we deduct 1/3rd for the personal expenses, i.e. Rs.20,700/-, the dependency would be at Rs.41,400/-. Here we would like to say that we are unable to get as to how many legal representatives were left by deceased Suman and, therefore, we are deducting 1/3rd. Further, taking into consideration the age of the deceased, i.e. 50 years, and the decision in the case of Sarla Verma (supra), the multiplier would be 13 and, therefore, loss of income would be to the tune of Rs.5,38,200/-.

This Court had not earlier quantified the amount towards love and affection and the harassment specifically; but it was in lump sum given and, therefore, taking into consideration the facts and circumstances, which are specifically narrated and the agonies that the legal representatives of the deceased have undergone, then amount of Rs.2,00,000/- can be awarded towards loss of love and affection as also consortium and further amount of Rs.3,00,000/- towards the harassment. In D.K.Basu (supra) it has been observed in respect of the custodial torture in para Nos.10 and 11 as follows, -

"Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word 'torture' today has become synonymous with the darker side of human civilisation. In all custodial crimes that is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual

personality. IT is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward-flag of humanity must on each such occasion fly half-mast."

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. "Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. The expression "life or personal liberty" in Article 21 includes the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. The precious right guaranteed by [Article 21](#) cannot be denied to convicts, under-trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. It cannot be said that a citizen 'sheds off' his fundamental right to life the moment a policeman arrests him. Nor can it be said that the right to life of a citizen can be put in 'abeyance' on his arrest. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of [Article 21](#), whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy. No civilised nation can permit that to happen."

Why we want to give more amount under the head 'torture' is that deceased Suman was illegally picked up on 12.5.2007 from her residence at 12.30 pm. She was illegally detained in the places like Kotwali police station; LCB office, situated in the building of office of District Superintendent of Police, Ahmednagar; Government Rest House, Jamkhed, Tehsil Jamkhed and also in Deepak Hospital, Ahmednagar, till 16.5.2007. Suman died in Deepak Hospital on 16.5.2007. On the basis of these allegations, the relevant circumstances were quoted by this Court in its earlier judgment and even how the Chemical Analyser's report needs to be discarded, has been elaborated. Suman was not suffering from any diseases. She was active in social life and the cause of death, of which opinion was sought from three doctors of JJ Hospital, Mumbai dated 19.1.2009 was, - "Septic shock with pneumonia and Pancreatitis in case of poisoning (the most likely poison being organophosphorous compound), associated with multiple contusions as a

contributor factor". Further, in respect of head injury and injury to brain, those doctors had given an opinion that those injuries are unnatural and non-accidental. Under those circumstances, this Court opined that the police officers, in order to screen themselves, had created the evidence and, therefore, though the charge-sheet did not disclose further charges under different offences; yet this Court given a word of caution to the Trial Court for consideration of framing charge for the offences punishable under Sections 302, 201 read with 120B of IPC. When this brutality is said to have been committed, it requires more compensation to be awarded for the harassment undergone. Further, it is to be noted that there was no such evidence produced before this Court to show that the deceased was a hardened criminal and further this kind of treatment is given to the deceased who was a lady.

11. Therefore, it was the bounden duty of this Court, dealing with the petitions under

Article 226 of the Constitution of India, to grant compensation in the matter. Accordingly, this Court has awarded it. Thus, as per the fresh computation given in aforesaid Para No.10, it would come to around Rs.10,38,200/-, even if we deduct the amount granted by the Human Rights Commission. Under that circumstance, the amount, which has been awarded by this Court, would be in addition to the amount ordered by the Human Rights Commission.

12. We do not find any reason to re-call the order sought for. Under such circumstance, the Criminal Application stands dismissed.

(M.G.SEWLIKAR)
JUDGE

(SMT.VIBHA KANKANWADI)
JUDGE

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