

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

CRIMINAL WRIT PETITION NO. 358 OF 2002

Suresh s/o Pochanna Kurollu
Age 25 years, Occ : Education,
R/o Tanaji Nagar, Nanded.

... Petitioner

Versus

1. The State of Maharashtra
Copy to be served on
Government Pleader, High Court,
Bench at Aurangabad.
2. The Superintendent of Police,
S. P. Office Vazirabad,
Nanded.
3. The Superintendent of Police,
S. P. Office, Karimnagar, A. P.
4. Hanmantrao Banduke,
Head Constable B. No. 1049 of
Bhagyanagar Police Station Nanded.
5. Laxman Doiwad
Constable B. No. 1673 of Bhagyanagar
Police Station Nanded.
6. Police Inspector,
One Town Police Station,
Karimnagar, A. P.
7. G. Krishna Driver, (Home Guard)
R/o Rekurthy, Tq. & Dist. Karimnagar.

8. P Sanjeev Kumar s/o Sammaiah
S.I. Police, P.S. N.T.P.C.,
Gandawari Khani Mandal,
Gandawari Khani,
District Karimnagar, A. P

(Respondent no. 8 deleted as per
Court's order dated 19.07.2021)

9. The Home Secretary,
Secretariat Government of
Andhra Pradesh,
Hyderabad (A.P)

... Respondents

.....

Mrs. Maya R. Jamdhade, Advocate for the Petitioner.
Mr. Mahendra M. Nerlikar, APP for Respondent Nos. 1, 2, 4 & 5.
Mr. R. R. Imale & Mr. S. P. Chapalgaonkar, Advocates for
respondent No.7.

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**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.**

RESERVED ON : 28.07.2021

PRONOUNCED ON : 03.09.2021

JUDGMENT (PER V. K. JADHAV, J.) :

1. In the instant petition, the petitioner prays for compensation on account of the illegal arrest and detention by Karimnagar I-Town Police Station at Karimnagar (State of Andhra Pradesh).

2. Brief facts giving rise to the present petition are as follows:

a. The petitioner is at present a practicing lawyer at Nanded District Court. However, at the time when he was illegally arrested and detained by respondent nos. 6 and 7, he was a student of law collage at Nanded. The petitioner is having five brothers, out of them two were married at the relevant time and petitioner's second elder brother, namely, Shyam, got married in the year 1996 with one Saritha, whose parental house is situated at Karimnagar, Andhra Pradesh State. After marriage, said Saritha had cohabited with her husband i.e. the elder brother Shyam for six months at Nanded. Thereafter, Saritha went to Karimnagar at her parents' house without any reason. Though the petitioner's brother had tried to take Saritha back to the house at Nanded, she refused to come with him. Consequently, the brother of the petitioner had filed HMP No. 93/1997 before the Civil Judge Senior Division, Nanded for restitution of conjugal rights and even though notices came to be issued to Saritha, she did not appear in the said proceedings.

b. Meanwhile, Saritha filed a complaint against the petitioner's brothers, namely, Shaym and Ravi, and petitioner's mother and father under Section 498-A of IPC with Karimnagar I-Town Police

Station. On 23.01.1998, the police of Karimnagar I-Town Police Station, State of Andhra Pradesh, namely, G. Krishna, Home Guard B.No. 1768 (Traffic Police) along with police personnel having B. Nos. 2485 and 2685 had come to the house of the petitioner at 4.00 am to effect his arrest. However they returned back because respondent no.6 did not inform to the local police station i.e. Bhagyanagar Police Station at Nanded. At about 7.00 a.m., respondent no.6 along with respondent nos. 4 and 5 came at the house of the petitioner when petitioner was going to the law collage to attend classes. The petitioner was arrested by respondent nos. 4, 5 and 6 in connection with the said crime registered under Section 498-A of IPC. He was shown a copy of the FIR. According to the petitioner, his name was not included in the list of the accused persons and though he had pointed out the same to respondent nos. 4 to 6, his arrest was effected. Respondent nos. 4 to 6 had not only arrested him, but ill-treated him. After his arrest, the petitioner was brought to Bhagyanagar Police Station, Nanded, where he was subjected to torture. The petitioner was forcibly put in a private jeep and was taken to Karimnagar I-Town Police Station in the State of Andhra Pradesh. He was confined in Karimnagar I-Town Police Station from 23.01.1998 to 31.01.1998

without giving any information to the petitioner's relatives and also without any reasonable cause and reason.

3. Learned counsel for the petitioner submits that though the petitioner was not arraigned as an accused person in connection with crime no. 496/1997 for the offence punishable under Section 498-A of IPC, he was arrested from his house in connection with the said crime. He was initially taken to the Bhagyanagar Police Station, Nanded. As per the extract of the station diary of Bhagyanagar Police Station, the brother of the petitioner, namely K. Raju, got information about illegal arrest of the petitioner and he was taken away to the Karimnagar District. Said brother K.Raju had therefore filed an applications to respondent nos. 2 and 3 narrating the aforesaid incident. A copies of the said applications dated 23.01.1998 are annexed to the petition and marked Exhibit "C-Collectively". Even then the respondent nos. 2 and 3 did not take any cognizance of the above said applications and did not make any inquiry regarding illegal arrest of the petitioner effected by respondent nos. 4, 5 and 6. Learned counsel submits that when the petitioner was brought to the Bhagyanagar Police Station, Nanded, respondent nos. 4 and 6 had given inhuman treatment to

the petitioner by extending beating with fist and kick blows and also abused him by using filthy language. Learned counsel submits that respondent no. 6 kept the petitioner illegally in his custody for 8 days without producing him before the Judicial Magistrate and also without furnishing any information to the petitioner's relatives about his arrest. Learned counsel submits that the petitioner and his family members all are educated and law abiding persons. The petitioner himself was a student of law collage at Nanded. The petitioner was mentally shocked due to the behaviour of the responsible police officers. The petitioner's father had frequently made applications to the authorities like the Collector of Nanded, the Chief Minister, the MLA of Nanded and also respondent nos. 2 and 3 referring the same subject matter for making an inquiry into it. However, no one had taken cognizance of his applications. The Petitioner is thus claiming an amount of Rs.3,00,000/- towards compensation for his illegal arrest and unlawful detention for the period of 8 days.

4. Learned counsel for the petitioner, in order to substantiate her contention, placed reliance on the following cases.

1. ***D. K. Basu v. State of W. B.***, reported in AIR 1997 SC 610.
2. ***The State of Maharashtra v. Shri. Sagar Balu Ubhe***, reported in 2014 All MR (Cri) 1010.
3. ***Laxman Dattatraya Dahiphale v. The State of Maharashtra & Ors.***, reported in 2016 ALL MR (Cri) 754.
4. ***Vachhalabai w/o Bharat Shinde v. The State of Maharashtra and Ors.*** [Criminal Writ Petition No. 1778 of 2018 decided by the Division Bench of this Court on 17.10.2019]
5. Learned APP for respondent nos. 1, 2, 4 and 5 submits that on 23.01.1998, respondent no. 4 was on P.S.O. duty at Bhagyanagar Police Station, Nanded till 08.00 a.m. His duty as P.S.O commenced from 20 hrs on 22.01.1998. On 23.01.1998 around 6.00 a.m., two police constables (B. Nos. 1768 and 2485) from Karimnagar I-Town Police Station approached to the Bhagyanagar Police Station, Nanded and informed him that they had come to Nanded for investigation in crime no. 496/1997 registered with Karimnagar I -Town Police Station under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act.

Accordingly, respondent no.4 had taken entry in the Police Station diary at serial number (9). The said constables accordingly proceeded towards the house of the accused and came back at 07.05 hrs. along with the petitioner Suresh. Those two Police Constables informed him that they are taking petitioner Suresh to Karimnagar for further investigation into the crime. Thus, respondent no.4 had taken entry to that effect in the station diary at serial number (11). Learned APP submits that Exhibit R-1 is the copy of extract of the station diary. Learned APP submits that around 10.00 a.m., one Raju Pochanna (brother of the petitioner) had filed a complaint at Bhagyanagar Police Station that said constables from Karimnagar had taken away his brother Suresh without ascertaining whether he is accused in crime no. 496/1997 registered at Karimnagar Police Station. Learned APP submits that the entry about his complaint had also been taken in the station diary by P.S.I. K.S.Patil, who was the P.S.O. at the relevant time. Learned APP submits that before the police could find out the whereabouts of petitioner Suresh, he was already taken to Karimnagar by the constables from Karimnagar I-Town Police Station. Learned APP submits that respondent no.4 had not accompanied the constables from Karimnagar I-Town Police Station

to the house of the petitioner and respondent no. 4 had not abused or beaten the petitioner in Police Station. He being the P.S.O., he could not have left the Police Station at all until his duty was over. Similarly, respondent no.5 was on lock-up guard duty and therefore he also could not have left the Police Station. The petitioner has made false allegations about it. Learned APP submits that the petition against these respondents is therefore misconceived and deserves to be dismissed.

6. Learned APP, in order to substantiate his contention, placed reliance in a case ***Sandeep Kumar v. The State (Govt. of NCT Delhi)*** [W.P. (Crl.) No. 2189/2018 decided by the Division Bench of the High Court of Delhi at New Delhi on 12.12.2019].

7. By order dated 12.03.2004, this Court by recording absence of respondent nos. 3, 6 and 7 to 9 though duly served, granted rule returnable after 10 weeks. After completion of service, this Court, by noticing absence of respondent nos. 3, 6, 8 and 9 even after rule service, by order dated 08.02.2010 partly allowed the petition as against respondent nos. 3, 6, 8 and 9 and thereby held that the petitioner would be entitled to an amount of Rs.1,00,000/- as

compensation for his illegal arrest and detention by Karimnagar Police Station and the amount to be paid by respondent no.9 and the same is directed to be recovered, if necessary, from respondent nos. 3, 6 and 8. However, respondent no. 8 filed Criminal Application No. 2287 of 2010 in this petition for recalling the aforesaid order dated 08.02.2010. By order dated 22.01.2013, this Court allowed the said application and recalled the order dated 08.02.2010 and restored the petition.

8. Being aggrieved by the said order dated 22.01.2013 restoring the petition, the petitioner herein approached the Supreme Court by filing Special Leave Petition No. 801 of 2014. It is not clear as to whether said SLP has been disposed of or not, however, by order dated 20.02.2020 when the matter was called out for hearing, the Supreme Court has observed that no stay has been granted in the matter and requested this Court to proceed with the hearing of the case itself. Thereafter, though the matter was listed on various dates, the same could not be heard finally due to various reasons, including absence of the counsel representing the respondents.

9. On 28.06.2021, when this matter was called out, learned counsel Mr. P. B. Patil representing respondent no.8 submitted that after the matter was posted for hearing, learned counsel had tried his best to contact respondent no.8. According to him, it is learnt from the friends of respondent no.8 that respondent no.8 is no more. Learned counsel submitted that respondent no.8 was serving in Andhra Pradesh Police and he was residing within the jurisdiction of Karimnagar Police Station at the time of filing of this Writ Petition. Learned counsel thus sought time to take specific instructions in this regard. We also requested learned APP to take instructions from the concerned police station, particularly from respondent no.3 as to the present status of respondent no.8.

10. In compliance with the order dated 28.06.2021, learned APP informed this Court that a letter has been issued to the Superintendent of Police, Nanded to take instructions as to the whereabouts of respondent no.8 P. Sanjeev Kumar, who was the circle inspector at the relevant time and who is in the service of Andhra Pradesh Police Department. Mr. Patil, learned counsel for respondent no.8 also sought time.

11. On 19.07.2021, in compliance of the order dated 12.07.2021, learned App placed before this Court a communication in writing received from the Commissioner of Police, Karimnagar, Telengana State. The Commissioner of Police, Karimnagar, has informed the Superintendent of Police, Nanded vide communication dated 14.07.2021 that respondent no. 8 herein, namely P. Sanjeev Kumar, Who was working as a Police Inspector at Karimnagar I-Town Police Station, has expired on 04.03.2019 while on duty due to cardiac arrest. Learned counsel for the petitioner thus sought leave to delete the name of respondent no.8. In view of the communication in writing sent by Commissioner of Police, Karimnagar, Telangana State, name of respondent no.8 came to be deleted from the array of respondents. Learned counsel for the petitioner further sought leave to amend prayer clause 'D' of this petition to the extent that respondent nos. 1 to 3, 4 to 7 and 9 may be directed to pay the compensation to the petitioner for illegal and unlawful detention of the petitioner. Leave was accordingly granted.

12. We have carefully gone through the contents of FIR No. 496/1997 (Exh. A), and its translation from Telugu to English, registered at Karimnagar I-Town Police Station for the offence

punishable under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act. The said FIR was registered on 20.12.1997. It further appears that Saritha w/o Shyam Kurolla is the complainant and on the basis of her complaint the crime came to be registered against her husband Shyam, father-in-law Pochanna, mother-in-law Venkamma and brother-in-law Ravi. In clause 15 of the format of the FIR, the crux of the allegations are mentioned. On careful perusal of the same, it appears that Saritha w/o Shyam Kurolla has alleged that at the time of her marriage, her mother and father gave dowry of Rs.70,000/- and other incidental articles to her husband and the couple lead a peaceful married life for six months. It has been alleged that thereafter, her husband Shyam, father-in-law Pochanna, mother-in-law Venkamma and brother-in-law Ravi jointly demanded additional dowry of Rs.50,000/- and mentally harassed and ill-treated her. At that time, she was having four months pregnancy. It was told to her that if she is not able to bring the dowry, her husband would leave her and perform second marriage with another girl who can bring more dowry. They forcibly thrown away her from home. Thus, she came to her mother's house and at that time she was having a female baby aged eight months. It is thus clear that neither the petitioner arraigned

as an accused person in connection with the crime, nor the allegations have been made by referring name of the petitioner. The allegations have been made against the husband, father-in-law mother-in-law and another brother of the husband, namely, Ravi, but certainly not the petitioner.

13. We have minutely gone through the entries taken in the station diary of Bhagyanagar Police Station, Nanded, the extract of which is placed on record and marked at Exhibit R-1 along with the affidavit-in-reply filed by respondent no.4, the then P.S.O. on duty at Bhagyanagar Police Station. The first entry at serial number 9 pertains to the date 23.01.1998 at about 0600 hrs. and it is recorded in vernacular as :

या वेळी ONE Town P. stn. करीम नगर आं.प्र. येथून
तेथील CR. No. 496/97 कलम 498 (A) IPC व 4
D.P Act मधील आरोपीचे शोधार्थ तेथील PC's 1768,
2485 असे हजर आले.

sd/-
(HC 1049 बंदूके)

On the given time, the Police Constables
Buckle Nos. 1768, 2485 of the One Town
Police Station, Karim Nagar, Andhara Pradesh
arrived in search of accused in Crime No.

496/1997 U/Sec. 498-A of IPC and 4 of D.P.
Act.

Signed
HC 1049 Banduke

(translated by official translator of this Bench)

On the same day, at serial number 11, at 0705 hrs, it is recorded as “खाना” and the information is recorded in vernacular in the following manner :

या वेळी वरील नोंद नं 9 मधील PC's 1768, 2485 हे सदर गुन्ह्यातील आरोपी सुरेश पोचन्ना कुरोल्लु रा. शिवनगर, नांदेड यास घेवून करीम नगरला खाना झाले.

sd/-
(HC 1049 बंदुके)

On the given time, the PCs Buckle Nos. 1768, 2485 as mentioned in entry No. 9 proceeded towards Karim Nagar by taking Suresh Pochanna Kurollu, R/o. Shiv Nagar, Nanded, the accused in said crime.

Signed
HC 1049 Banduke

(translated by official translator of this Bench)

There is one third entry in the station diary (Exh. R-1), however, we will refer that entry in the later part of the judgment.

14. On the same day, i.e. on 23.01.1998, the brother of the petitioner, namely, K. Raju s/o Pochanna had filed a complaint in writing (Exhibit "C") before the Superintendent of Police, Nanded, about illegal arrest of the petitioner by Karimnagar I-Town Police Station, District Karimnagar. He specifically stated in the said complaint that on 23.01.1998 at about 04.00 a.m., the police from Karimnagar I-Town Police Station had been to their house, arrested the petitioner and took him along with them, when in fact the petitioner was having no concern with the said offence and his name did not find place in the FIR bearing FIR No. 496/1997 dated 20.12.1997. Likewise, no name of the petitioner found in the complaint lodged by Saritha. There is also reference in the said complaint Exhibit "C" filed before the Superintendent of Police, Nanded that the brother of the petitioner, namely, K. Raju, has filed a complaint in writing with the Bhagyanagar Police Station, Nanded about illegal arrest of his brother. On perusal of the extract of the station diary Exhibit R-1, it appears that an entry about filing of the complaint by Raju Pochanna was also taken. The said entry at serial number 15 seem to have been recorded at about 10.00 hrs., which is in the following manner:

या वेळी राजू पोचन्ना पिता पोचन्ना, वय 27 वर्ष धंदा खाजगी नौकरी रा. तानाजी नगर, नांदेड यांनी पो.स्टे. ला समक्ष हजर होवून लेखी तक्रार दिली की दिनांक 23.01.1998 चे 04.00 वा. त्यांचे घरी करीम नगर ONE Town police station चे पोलीस आले व त्याचे भावास नामे सुरेश पोचन्ना कुरोल्लु यास त्याचे CR. No. 496 मध्ये नाव नसतांना देखिल त्यास घेवून गेले त्यांनी स्थानीक पोलीसांची मदत घेतली नाही. करीता नोंद

sd/-

(PSI श्री. पाटिल.)

On the given time, one Raju Pochanna S/o Pochanna, aged 27 years, Occu. Private job, R/o. Tanaji Nagar, lodged written complaint in person that, the staff of the One Town Police Station of Karim Nagar came to his house at 0400 Hrs. of 23.01.1998 and took his brother with them namely Suresh Pochanna Kurollu in Crime No. 496 despite his brother was not named in the crime. They did not take assistance of local police. Hence this entry.

Signed
PSI, Patil

(translated by official translator of this Bench)

15. Though respondent no. 8 is no more, however, during his lifetime, he filed an affidavit-in-reply wherein he admitted about registration of crime at Karimnagar I-Town Police Station on the basis of the complaint lodged by one Saritha for the offence punishable under Sections 498-A of IPC. He registered the said complaint and transferred the same to woman police station, Karimnagar for further investigation. According to him, he has not investigated in the crime, nor recorded the statement of the witnesses and also not effected arrest of any of the accused persons in the above crime.

16. It is the case of the petitioner that respondent no.6 kept the him illegally in his custody for eight days without producing him before the Judicial Magistrate of Karimnagar and also without giving any information to the relatives of the petitioner about his arrest. The petitioner suffered mentally and physically due to the said harassment.

17. We have carefully gone through the correspondence made by the petitioner and his family members. It appears that the petitioner and his family members sent communication in writing

to the Collector of Nanded, the Chief Minister, the MLA and also to respondent nos. 2 and 3 referring about the illegal arrest and detention of the petitioner in connection with the said crime by Karimnagar Police Station. The petitioner specifically alleged that when he was taken to the Karimnagar I-Town Police Station, he was confined from 23.01.1998 to 30.01.1998 without any reasonable cause. On 23.01.1998, the petitioner's brother, namely, K. Raju moved an application to the Superintendent of Police, Nanded narrating therein the above incident, but the Superintendent of Police, Nanded had also not taken any cognizance.

18. In *D. K. Basu* (supra) relied upon by learned counsel for the petitioner, the Supreme Court in para 36 of the Judgment, has considered it appropriate to issue the requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures. Para 36 is reproduced herein below:

“ 36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in

that behalf as preventive measures :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of

an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the

panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the (sic) Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

19. In ***The State of Maharashtra v. Shri. Sagar Balu Ubhe*** (supra) relied upon by learned counsel for the petitioner, the Division Bench of this Court by referring the principles evolved in ***D.K. Basu's*** case and also by referring other cases wherein the principles laid down in ***D. K. Basu's*** case are followed, in para 28 has made the following observations:

“28. The principles evolved in D.K. Basu have been followed ever since: Mehboob Batch v State, (2011) 7 SCC 45, Haricharan v State of MP, (2011) 4 SCC 159 and Sube Singh v State of Haryana (2006) 3 SCC 178 among them. But D.K. Basu also enunciated the principle of monetary or pecuniary compensation as an appropriate and "indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the right to life of a citizen by public servants." The State is vicariously liable for their acts. The objective is to provide a balm for State-inflicted wounds, not to punish the transgressor or offender. In this case, once the infringement of right to liberty has been established, it remains to determine the quantum of appropriate compensation. In S.P.S. Rathore v State of Haryana, (2005) 10 SCC 1 while following D.K.Basu, the Supreme Court held that compensation can be awarded, but this is not jurisdiction that a court should lightly exercise under either Article 32 or Article 226 of the Constitution of India. The courts have consistently permitted monetary compensation consequential upon the deprivation of a fundamental right, the Supreme Court held in S.P.S. Rathore, noting a very large number of cases where this principle has been followed. [Para 10 of the SCC report]. No particular amount has been sought as compensation in the prayers in this writ petition, and, in our view, rightly, for this is a matter ever in the discretion of the

court. That some compensation must be ordered to be paid is, in our view, an inescapable conclusion. What are the considerations we should bear in mind while assessing the quantum? The petitioner's antecedents are, we believe, entirely irrelevant and cannot be a mitigating circumstance in favour of the respondent; every person is entitled to the protection of the law, even every recidivist. Should compensation be adjusted according to the social station of the victim? We think not. The only gauge, as we see it, is an assessment of the conduct of the public servants. Where we find their conduct wanting, compensation must follow without regard to the status of the victim. Having regard to the facts of the case, the nature of the testimony and the conduct of the parties, it is our view that an amount of Rs.5 lakhs is just compensation payable to the petitioner by the 1st respondent. In our view, this cannot be said to be an exorbitant sum, bearing in mind that the State Government has resisted and opposed the enquiry and has not once, but twice applied before us to have the enquiry report quashed. A very considerable amount of judicial time has been thus expended on this matter in one forum or the other. Even otherwise, by present-day standards, we do not think that the compensation we have in mind can at all be considered to be unreasonably high. Needless to add, this amount of compensation is entirely without prejudice to the civil remedies, if any, available to the petitioner.”

20. In the case of ***Laxman Dattatraya Dahiphale*** (supra) relied upon by learned counsel for the petitioner, in identical facts, the Division Bench of this Court has considered the illegal arrest and detention of the petitioner therein and further held that the State is liable to pay compensation of Rs.1,25,000/-

21. In ***Vachhalabai w/o Bharat Shinde v. The State of Maharashtra and Ors.*** (supra), relied upon by learned counsel for the petitioner, the Division Bench of this Court had an occasion to consider the illegal arrest and detention. By referring Articles 21 and 22 of the Constitution of India about fundamental rights and safeguards for protection of those rights and also referring various provisions of the Code of Criminal Procedure, the Division Bench of this Court held that ‘when there is a breach of fundamental right, liability to pay compensation is absolute and so the respondents cannot escape from such liability under any ground’.

22. It is necessary to mention here that Chapter V of Cr.P.C. which pertains to ‘arrest of persons’ has been substantially amended by insertion of Section 50-A vide Act 25 of 2005 (w.e.f.

23.06.2006) and by insertion of Sections 41-A to 41-D vide Act 5 of 2009 (w.e.f. 01.11.2010). Section 56 of Cr.P.C. mandates that a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

23. Thus, there is evidence in the form of entries recorded in the station diary of Bhagyanagar Police Station, Nanded and the copy of the FIR placed on record that despite knowing that the petitioner was not an accused in connection with crime no. 496/1997, the police constables of Karimnagar I-Town Police Station, Andhra Pradesh had effected arrest of the petitioner. It is also a fact that the petitioner, after his so-called arrest, was not produced before the concerned Magistrate at Nanded for his transit remand. The petitioner was not the person implicated in connection with the said crime as an accused and if he would have been produced before the Magistrate at Nanded for transit remand, the Magistrate at Nanded would not have remanded him. It thus appears that knowing it well, the police constables of Karimnagar I -Town Police

Station had not produced the petitioner for his transit remand before the Magistrate at Nanded. We are of the considered opinion that the arrest of the petitioner in connection with the said crime was illegal. It was done with some malicious intention. The petitioner was deprived of his personal liberty owing to his illegal arrest and further wrongful detention in connection with the crime for which he was not arraigned as an accused person.

24. Respondent nos. 2, 6, 7 and 9 have not contested this petition by filing any reply.

25. So far as the role of Maharashtra Police is concerned, after referring the initial correspondence it appears that immediately after the illegal arrest of the petitioner by Karimnagar Police Station in connection with crime no. 496/97, the allegations have been made against the police personnel of Karimnagar Police Station. In the complaint dated 23.01.1998 filed before the Superintendent of Police Nanded, so also in the concerned Police Station by the brother of the petitioner, namely, K. Raju, the allegations have been made only against Karimnagar Police constables. It has been specifically alleged that on 23.01.1998 in

the early morning, the police from Karimnagar I-Town Police Station had been to the house of the petitioner, arrested him and took him with them to Karimnagar I-Town Police Station. However, in the complaint dated 10.08.1998 filed by the father of the petitioner in the Police Station at Bhagyanagar, Nanded, for the first time the allegations have been made against the P.S.O. and the other Constable of Bhagyanagar Police Station, Nanded. There is a reference that the petitioner was subjected to beating by the said two constables of Bhagyanagar Police Station. However, after much gap, i.e. almost in the year 2001, the petitioner and his family members have made the allegations that the said police constables of Karimnagar I – Town Police Station with the help of the police of Bhagyanagar Police Station, namely, Hanmantrao Banduke, Head Constable (B. No.1049) and Laxman Doiwad, Constable (B.No.1673) arrested the petitioner at his house and at that time, Police Constable Laxman Doiwad (B.No.1673) of Bhagyanagar Police Station extended beating to the petitioner and forcibly took him in a private jeep. In the earlier correspondence and even the earlier complaints filed before the Superintendent of Police and the concerned Police Station, there are no allegations against these Police Constables of Bhagyanagar Police Station.

26. Learned APP has placed reliance in the case of ***Sandeep Kumar v. The State (Govt. of NCT Delhi)*** (supra), wherein, the Delhi High Court has dealt with the questions regarding the procedure to be followed by the police of one State, when they go to some other State or Union Territory, to effect an arrest while investigating a complaint or a First Information Report disclosing a cognizable offence. In the habeas corpus petition, the Delhi High Court decided to constitute a Committee to conduct an enquiry into the matter and in particular the legality of the actions of the police attached to certain police stations. In para 15, the Delhi High Court has referred the suggestions given by the said Committee. Para 15 to the extent of the clauses which are relevant for the present discussion are reproduced herein below:

“15. The Committee has, after examining all of the above material in detail, given detailed suggestions as to the protocol to be followed by the police in the event of inter-state arrest. These read as under :

1.

2. In a case when the police officer decides to effect an arrest, he must set out the facts and record reasons in writing disclosing the satisfaction that

arrest is necessary for the purpose of investigation. At first instance, he should move the Jurisdictional Magistrate to seek arrest/search warrants under Section 78 and 79 Cr.PC. except in emergent cases when the time taken is likely to result in escape of the accused or disappearance of incriminating evidence or the procurement of arrest/search warrant would defeat the purpose. The Police Officer must record reasons as to what were the compelling reasons to visit other State without getting arrest/search warrants.

3.

4.

5. *Before visiting the other State, the Police Officer must endeavour to establish contact with the local Police Station in whose jurisdiction he is to conduct the investigation. He must carry with him the translated copies of the Complaint/FIR and other documents in the language of the State which he intends to visit.*

6. *After reaching the destination, first of all, he should inform the concerned police station of the purpose of his visit to seek assistance and co-operation. The concerned SHO should provide/render all legal assistance to him. Entry to this effect must be made at the said police station.*

7. *After reaching the spot of investigation, search, if any should be strictly conducted in compliance of the procedure laid down u/s 100 Cr.P.C. All endeavour should be made to join independent public witnesses from the neighbourhood. In case of arrest, the police officer must follow the procedure u/s. 41 A and 41 B and Section 50 and 51 Cr.P.C. The process of arrest carried out by the police must be in compliance with the guidelines given in DK Basu case (Supra) and the provisions of Cr.P.C.*

8. *The arrested person must be given an opportunity to consult his lawyer before he is taken out of State.*

9. *While returning, the police officer must visit the local police station and cause an entry made in the Daily Diary specifying the name and address of the person(s) being taken out of the State; articles if any, recovered. The victim's name be also indicated.*

10. *Endeavor should be made to obtain transit remand after producing the arrestee before the nearest Magistrate unless exigencies of the situation warrant otherwise and the person can be produced before the Magistrate having jurisdiction of the case without infringing the mandate of S. 56 and 57 of Cr.P.C. within 24 hours.*

11 to 14

15. Since the arrestee is to be taken out of his State to a place away where he may not have any acquaintance, he may be permitted to take along with him (if possible), his family member/acquaintance to remain with him till he is produced before the jurisdictional Magistrate. Such family member would be able to arrange legal assistance for him.”

27. The Delhi High Court disposed off the petition by issuing directions as per para 24 of the judgment. Para 24 is reproduced herein below:

“24. The petition is disposed of with the following directions:

(i) A copy of the report of the Committee be immediately forwarded both to the CP, Delhi and the DGP, Uttar Pradesh for appropriate disciplinary action to be initiated on the basis of the said report against the police officials under their respective control and supervision as directed in para 10 of this judgment.

(ii) The disciplinary inquiry in each case will be held by a senior level official, strictly in accordance with the procedures prescribed, and will be completed not later than six months from the date of receipt respectively by the CP, Delhi and the DGP, Uttar Pradesh respectively of the copy of the report of the Committee together with the certified copy of this order.

(iii) The suggestions of the Committee as set out in paras 15 and 16 of this judgment are directed to be adopted for implementation both by the Delhi Police and the police in the State of Uttar Pradesh. Orders to this effect shall be issued by the DGP, Uttar Pradesh and the CP Delhi within two weeks.

(iv) A certified copy of this judgment together with a complete copy of the report of the Committee (together with its annexures) will be delivered forthwith to the CP, Delhi by a Special Messenger. Likewise copy of this judgment together with a complete copy of the report of the Committee (together with its annexures) will be delivered forthwith to the DGP, Uttar Pradesh by an approved courier and the tracking report of proof of delivery shall be kept in the file.

(v) Compensation of Rs.50,000/- each to both Sandeep and Nisha shall be paid by the State of Uttar

Pradesh for their illegal detention by the UP police which stands established prima facie by the report of the Committee. The amounts should be paid within a period of four weeks along with a letter written to each of them personally by the Director General of Police of Uttar Pradesh himself, apologizing to each of them for the conduct of his police officials.

(vi) The CP, Delhi and the DGP, Uttar Pradesh will file compliance reports in this Court within six months and in any event not later than 30th June 2020. The Registry will place the petition for this purpose before the Court immediately after the Court reopens i.e. 6th July 2020.”

28. In the instant case, after careful perusal of the entries taken in the station diary of Bhagyanagar Police Station, we are satisfied that the local police station has complied with its part of duty. In the result, we do not think that the Maharashtra Police are responsible for the illegal arrest and further unlawful detention of the petitioner.

29. The petitioner was a student of the law college at the relevant time. He suffered mentally and physically for his illegal arrest and unlawful detention for eight days in connection with the crime in which he was not arraigned as an accused person.

30. It is well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. In ***S. Nambi Narayanan v. Siby Mathews and Others***, reported in (2018) 10 SCC 804, by referring the ratio laid down by the three-Judge Bench in ***Sube Singh v. State of Haryana*** (2006) 3 SCC 178 and also the ratio laid down in the case of ***Hardeep Singh v. State of M.P.*** (2012) 1 SCC 748, the Supreme Court in para 41 to 43 has made the following observations:

“41. In Sube Singh v. State of Haryana, the three-Judge Bench, after referring to the earlier decisions, has opined: (SCC pp.198-99, para 38)

“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of

public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”

42. In Hardeep Singh v. State of M.P., the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted compensation of Rs.70,000/-. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

43. In the instant case, keeping in view the report of CBI and the judgment rendered by this Court in K. Chandrasekhar, suitable compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs. 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said

amount shall be paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit.”

31. in view of the above discussion and in terms of the ratio laid down by the Supreme Court and also by the Division Bench of this Court, in our considered opinion, the petitioner is entitled for compensation. The petition is pending since 2002. The petitioner is at present a practicing lawyer in Nanded District. The petitioner was a law student at the time of his illegal arrest and detention. Thus, considering the entire aspect of the case and the agony suffered by the petitioner and his family members, we quantify the compensation at Rs.2,00,000/- (Rupees two lakh only) as against respondent nos. 3, 6, 7 and 9. Hence, we proceed to pass the following order:

ORDER

- I. The petition is hereby partly allowed.
- II. The petitioner is entitled for compensation of Rs.2,00,000/- (Rupees two lakh only) for his illegal arrest and detention by Karimnagar I-Town Police Station at Karimnagar (State of Andhra Pradesh) as against respondent nos. 3, 6, 7 and 9.

- III. The amount of compensation shall be paid by respondent no.9 within three months from the date of receipt of this order and to be recovered, if necessary, from respondent nos. 3, 6 and 7.
- IV. The petition stands dismissed as against respondent nos. 1, 2, 4 and 5
- V. Rule is made absolute in the above terms with no order as to costs.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)

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