

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No. 831 of 2021

Supratik Ghosh

Vs.

Commissioner of Police of Kolkata and others

For the petitioner	:	Mr. Tapas Dutta
For the State of West Bengal	:	Mr. Amitesh Banerjee, Ms. Ipsita Banerjee
For High Court Administration	:	Mr. Siddhartha Banerjee, Mr. Soumajit Majumder
Hearing concluded on	:	02.08.2022
Judgment on	:	11.08.2022

The Court:

1. The petitioner lodged a complaint against one Bipro Das Chatterjee and his Company, upon which a First Information Report was registered under Section 420/120B of the Indian Penal Code. Bipro Das was arrested and released on bail upon giving an undertaking that he would pay 50 per cent of the total outstanding amount claimed by the petitioner, which would not be less than Rs.6,55,000/- according to the petitioner. It is alleged that such amount was to be paid within 15 days as per the undertaking of the accused, which was allegedly not complied with by the accused.
2. The present respondent no.4 was the Investigating Officer of the case and filed an FRT on October 3, 2001 indicating that the case was civil in nature. During investigation, the respondent no.4 seized all

original documents like bills, challans, cheques, etc., by two Seizure Lists dated February 27, 2001 and April 3, 2001.

3. The petitioner thereafter filed Money Suit No.01 of 2003 before the Civil Judge, Senior Division, 8th Court at Alipore, against the said Bipro Das Chatterjee and his Company for an amount of Rs.10,58,166/-. *Ad valorem* court fees to the tune of Rs.25,550/- was paid for institution of the suit.
4. In the meantime, *vide* order dated June 25, 2008, the Chief Judicial Magistrate at Alipore directed respondent no.4 to return the original documents to the petitioner, which was not complied with according to the petitioner.
5. In evidence in connection with the Money Suit, respondent no.4 was summoned as witness and he stated that the case diary was missing and he was not in a position to produce the original seized documents.
6. The Money Suit was ultimately dismissed by the Judgment and Decree dated April 26, 2012. It is submitted that such dismissal was due to non-production of the original documents.
7. The petitioner preferred an appeal bearing FAT 386 of 2012 against the said Judgment and Decree dated April 26, 2012 but the appeal was dismissed due to non-payment of deficit court fees *vide* order dated September 9, 2013. As per the petitioner, such payment could not be made due to the petitioner's financial hardship.

8. After dismissal of the appeal, the petitioner filed a writ petition bearing WP No. 31667 (W) of 2013 on September 27, 2013 against the respondent-authorities for compensation due to loss suffered by the petitioner for the respondents' failure to hand over the original documents to petitioner, which led to the dismissal of his suit.
9. In FAT 386 of 2012, the petitioner had filed an application bearing CAN 4617 of 2016 for leave to file a review application. However, the appeal was dismissed on September 9, 2013, without such leave being granted. Consequently, the application was dismissed *vide* order dated June 23, 2016.
10. The petitioner then filed a review application in the Trial Court on June 29, 2016, which was registered as Miscellaneous Case No.8 of 2016, along with an application for condonation of delay.
11. While disposing of WP No.31667 (W) of 2013, a co-ordinate Bench, *vide* order dated June 26, 2018, observed that since the State was making over the photocopies of the documents seized by the police on that date, certifying them to be exact photocopies of the documents seized, it would be open to the petitioner to produce such documents before the appropriate authority in accordance with law. It was further held that since the petitioner, in law, was then in a position to lead secondary evidence in support of his claim before the adjudicating authorities, the claim for compensation need not be assessed on that stage.
12. However, the petitioner's review application was dismissed *vide* order dated June 15, 2019, upon refusal by the Court to condone the delay

in filing the review application. The said order of dismissal was challenged in revision, giving rise to CO No. 598 of 2020, which was also dismissed *vide* August 26, 2021 by this Court.

13. Subsequently, it is alleged, the petitioner learnt that the companies of the accused/defendant no longer exist.
14. Thus, on the allegation of having suffered losses due to purported negligent act of the respondent-authorities, particularly respondent no.4, the petitioner has preferred the instant writ petition bearing WPO No. 831 of 2021 for compensation to the tune of Rs.7,22,165/- with 16 per cent per annum interest, to the tune of Rs.1,70,30,175/-, for court fees paid to the tune of Rs.25,480/-, business loss, lawyer's fees, miscellaneous expenses, alleged mental agony, etc.
15. Learned counsel for the petitioner argues that the Money Suit was dismissed due to inability of the petitioner to produce the original documents on which he relied on as evidence in the suit, due to the respondent no.4 not handing over such originals to the petitioner. The dismissal of the appeals for non-payment of deficit court fee was due to the stringent financial condition of the petitioner. In any event, it is argued that such dismissal was on a technical ground, as was the dismissal of the review on the ground of limitation. Hence, the petitioner's claim for compensation was never turned down on merits. The affirmance of the dismissal by this Court in revision, it is argued, does not alter such scenario.
16. Learned counsel submits that the writ court can take evidence and grant compensation even if the respondents raise disputes on facts.

Such award of compensation will be on a *prima facie* notional figure, which the Court can arrive at. In case of a disputed money claim, a writ petition lies according to the petitioner.

17. In support of such propositions, learned counsel cites *Popatrao Vyankatrao Patil Vs. State of Maharashtra and others* [(2020) 19 SCC 241], *Sunil Kumar Wadhwa and another Vs. State of Punjab and others* [(2020) 19 SCC 678] and *ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Ltd. and others* [(2004) 3 SCC 553].
18. The petitioner cites *Meghashyam Sadashivrao Vadhav Vs. State of Maharashtra and others* [(2017) 13 SCC 681] and *N. Nagendra Rao & Co. Vs. State of A.P.* [(1994) 6 SCC 205] to elaborate his submissions on the scope of interference by the writ court in such cases.
19. Learned counsel for the petitioner further submits that, while dismissing the previous writ petition, the learned Single Judge had refused compensation “at that stage”, thereby keeping the question of compensation open.
20. In support of the submission that the High Court, in a writ petition, may direct the respondent-authority to pay compensation for wrongful or negligent acts done by government servants, learned counsel for the petitioner places reliance on *Meghashyam Sadashivrao Vadhav* (supra) and *N. Nagendra Rao & Co.* (supra).
21. It is next contended that the writ court has the jurisdiction to entertain a writ petition even if disputed questions of fact arise, in an

appropriate case, and award compensation. For the said proposition, learned counsel cites *Century Spinning and manufacturing Company Ltd. and another Vs. The Ulhasnagar Municipal Council and another*, reported at (1970) 1 SCC 582, *ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others*, reported at (2004) 3 SCC 533 and *Popatrao Vyankatrao Patil* (supra).

22. The next contention put forward by learned counsel for the petitioner is that a writ petition is maintainable even involving monetary claim when there is no fraud or misrepresentation, even though a suitable efficacious alternative remedy is available by way of a suit. Considering the age of the dispute, a writ petition was held to be maintainable in *ABL International Ltd.* (supra).
23. Learned counsel for the petitioner also places reliance on *ABL International Ltd.* (supra) for the proposition that a writ petition is maintainable when the impugned action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons. Lastly, learned counsel cites *Sunil Kumar Wadhwa* (supra) in support of the proposition that the High Court was held in the said case to have erred in law in relegating the appellant to the civil court with liberty to file civil suit.
24. Learned counsel appearing for the respondent nos.1 to 4 submits that the plaintiff/petitioner had available before him the option to file an application under Section 65(c), read with Section 63, of the Evidence Act for adducing copies of the documents-in-question as secondary

evidence. However, having not taken recourse to the said provisions, it does not now lie in the mouth of the petitioner to claim compensation for loss of the documents-in-question.

- 25.** In the order dated March 23, 2017 passed by a co-ordinate bench in connection with WP No.31667 (W) of 2013, with CAN 238 of 2014, it was recorded that the learned advocate for the present petitioner, who was also the petitioner therein, submitted that the original Case Diary records of the criminal proceedings have since been lost from the Court's custody and referred to the report submitted by the District Judge concerned and the Police Station concerned.
- 26.** After such admission, the present writ petition claiming damages entirely against the respondent nos.1 to 4 is not maintainable at all, it is argued. A copy of the order referred to is annexed at page 10 of the affidavit-in-opposition filed by respondent no.4 Saroj Praharaj.
- 27.** Learned counsel for the respondent nos.1 to 4 next points to the sequence of events. After dismissal of the plaintiff/petitioner's money suit, not merely on the ground of adverse inference for non-production of relevant documents but also on the ground of preponderance of probabilities, the petitioner preferred a review application, which was also dismissed for the delay in filing the same.
- 28.** An appeal was also preferred by the petitioner against the dismissal of the suit which was also dismissed on the ground of non-payment of deficit court fees by the writ petitioner himself.

- 29.** Moreover, the petitioner could easily have produced collateral evidence and/or oral or circumstantial evidence to satisfy the test of preponderance of probabilities, which was also a ground for the trial court to dismiss the suit. However, the said course of action was deliberately not adopted by the petitioner.
- 30.** It is, thus, submitted that the petitioner lost before every forum due to none else but his own laches and, as such, cannot now claim compensation from the respondent-authorities.
- 31.** That apart, it is submitted that it is beyond the scope of Article 226 of the Constitution for the Court to grant damages, particularly in view of the amount being unliquidated.
- 32.** After having failed in all forums, the petitioner has preferred the present writ petition, which is not maintainable in the eye of law, it is contended.
- 33.** Learned counsel for the High Court, while adopting the arguments of the respondent nos.1 to 4, cites the judgment reported at *P. Viswanathan Vs. Dr. A.K. Burman and another*, reported at (2002) SCC OnLine 805, to elucidate the cases in which a writ court can award cost or damages.
- 34.** In the present case, however, such tests are not fulfilled as per the learned counsel for the High Court. Upon considering the submissions of the parties and perusing the material-on-record, it is evident that the respondent nos.1 to 4 are justified in submitting that the writ petitioner could very well have resorted to provisions of

Section 65(c), read with Section 63, of the Evidence Act to adduce secondary evidence by producing copies of the documents purportedly lost. Ample scope was available in law to produce secondary evidence in the suit even if the originals were lost, which the petitioner chose not to avail. Hence, the petitioner cannot argue now, at this belated stage, that the petitioner lost his litigation due to the loss of the documents.

35. That apart, it was specifically contended on behalf of the petitioner on fact that the documents were lost from the Court's custody, which was also recorded by the co-ordinate bench in the order dated March 23, 2017 passed in WP No.31667 (W) of 2013, with CAN 238 of 2014. There is no conceivable reason as to why such admission of fact, even if made through counsel, should not bind the petitioner.
36. The said contention belies the petitioner's allegation that the respondents were responsible for the alleged loss.
37. Furthermore, the chronology of events clearly indicates that the petitioner took a chance before all possible forums and waited for the outcome thereof. Only after the litigations were all dismissed, primarily due to the petitioner's laches, the petitioner is testing his fortune by preferring the present writ petition.
38. The civil suit was dismissed, *inter alia*, on the ground of non-production of relevant documents. However, the petitioner was the *dominus litis* and it was the burden and initial onus of the petitioner, as plaintiff, to tender copies of the relevant documents as secondary evidence since Section 65(c) of the Evidence Act clearly stipulates that

in case of loss of a document, a copy thereof can be produced as secondary evidence. Having failed to adopt such course, the petitioner himself cannot turn back and claim compensation from others for such flaw on his own part.

39. That apart, none else but the petitioner is to blame for the considerable delay of more than 1300 days in filing the review application. After losing in the review application and in the revisional court, the petitioner also lost his appeal against the dismissal of his suit only on the ground of non-payment of court fees, which could be attributed only to the petitioner. Such laches are merely being sought to be covered up now by the petitioner, by filing the present writ petition for compensation against the respondents. Inasmuch as the judgments cited by the petitioner are concerned, none of those strengthen the case of the petitioner.
40. In the case of *Meghashyam Sadashivrao Vadhave* (supra), the basis of grant of the compensation was the purchase price of teak trees, which was quantifiable in nature, unlike in the present case.
41. Again, in *N. Nagendra Rao & Co.* (supra), the compensation was based on the stock value which is, by its very nature, quantifiable. Moreover, the relief was granted in the context of a suit and not a writ petition.
42. Inasmuch as *Century Spinning and Manufacturing Company Ltd. and another* (supra) is concerned, paragraph no.13 of the same lays down that the questions of fact raised therein were “elementary” in nature. In similar tune, *Popatrao Vyankatrao Patil Vs. State of Maharashtra*

and others (supra) specifically observed that disputed questions of fact can only be decided by the writ court if they do not require “elaborate evidence to be adduced” and that such plenary power is to be exercised by the High Court only in exceptional circumstances. Moreover, in the said case, the amount granted as refund was the sum which was specifically paid by one of the parties, which was clearly of quantifiable nature as well.

- 43.** The Supreme Court, in *ABL International Limited* (supra), observed that where disputed questions of fact pertaining to the interpretation/meaning of documents or parts thereof are involved, the courts can decide the objections. It was held that there does not exist any absolute bar to decide disputed questions of fact by a writ court “in an appropriate case”.
- 44.** In *ABL International Limited* (supra) it was categorically observed by the Supreme Court that the plenary right of the High Court to issue prerogative writ is not exercised normally to the exclusion of other remedies, unless the impugned action of the State or its instrumentality is arbitrary and unreasonable so as to violate Article 14 or any other legitimate right.
- 45.** Again, in the present case, the alleged negligence of the respondents is not arbitrary or unreasonable, let alone patently, as in *ABL International Limited* (supra).
- 46.** Inasmuch as civil suits are concerned, the High Court has been held to have erred in law in relegating matters to the civil court with liberty

to file civil suit only in exceptional cases, which call for decision on questions of fact, for deciding which, elaborate evidence is required.

- 47.** However, contrary thereto, in the present case, the amount of compensation/damages claimed by the petitioner is entirely unliquidated. There is no reasonable basis or yardstick disclosed in the writ petition for assessing such quantum.
- 48.** Secondly, detailed and elaborate evidence is required to be adduced and assessed for the court to come to a conclusion as regards whether compensation is actually payable to the petitioner and, if so, the quantum thereof.
- 49.** Thirdly, in view of the observations made above, the petitioner has failed to make out a strong case of violation of any fundamental or legal right and/or arbitrariness on the part of the respondent-authorities, which resulted in the petitioner's suit being dismissed and the subsequent review application, the revision therefrom as well as the appeal from the suit having all been dismissed by competent courts of law.
- 50.** After having exhausted all legal remedies, the petitioner has taken out the present writ petition in a last-ditch effort to get the relief which he failed to secure in the regular civil suit filed by him. Such attempt cannot be given a premium by the writ court, since the petitioner has come with unclean hands.
- 51.** As rightly held in *P. Viswanathan Vs. Dr. A.K. Burman and another*, reported at (2002) SCC OnLine 805, by the Division Bench of this

Court, here also it would be improper for this Court to award compensation in the writ jurisdiction where *prima facie* it is not a case of absolute breach of fundamental right or the action having been taken without any authority of law. Hence, there is no scope for granting compensation.

52. In fact, in *P. Viswanathan* (supra), cited by the State, several instances of high handed action, which called for grant of compensation by the writ court, were given. Such reasons were of a grave and serious nature, such as custodial death due to torture, abduction and killing of seven persons by high police officials, death of a child in police custody due to beating and assault by a police officer and the killing of 21 people by the police who had assembled to held a peaceful meeting at a place in Bihar and unauthorized and illegal act of police officials forcing labourers to do hard work without payment and further outraging the modesty of women labourers. Since, in the present case, the petitioner has failed to establish any such instance of arbitrary or high-handed action by the respondents and/or any negligence on the part of the respondents to justify grant of compensation in favour of the petitioner, there is no scope of interference in the present writ petition.

53. Accordingly, WPO No.831 of 2021 is dismissed on contest, without, however, any order as to costs.

- 54.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)