

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

101

**CM-14231-CWP-2023;
CM-14499-CWP-2023;
in/and
CWP-5178-2018
Date of decision: 15.09.2023**

KAMALJEET KAUR

.....Petitioner

VERSUS

STATE OF PUNJAB & OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Naresh Kumar Manchanda, Advocate
for the petitioner-applicant.

Mr. Saurav Verma, Addl. A.G. Punjab.

None for the applicant in CM 14499-CWP-2023.

VINOD S. BHARDWAJ, J. (Oral)

CM-14499-CWP-2023

The present application has been filed for seeking restoration of the main case.

Counsel for the applicant-petitioner in CM-14231-CWP-2023 contends that he has filed the present application under due authorization from the client and the Power of Attorney from the petitioner has also been attached and the counsel representing the petitioner earlier has filed the CM-14499-CWP-2023 on the old Power of Attorney. There is no representation on behalf of the counsel in CM-14499-CWP-2023 today as well. The said application is accordingly dismissed.

CM-14231-CWP-2023

The present application has been filed for seeking restoration of the writ petition that has been dismissed for non-prosecution vide order dated 24.07.2023.

Notice of the application.

Mr. Saurav Verma, Addl. A.G. Punjab accepts notice on behalf of respondents.

For the reasons stated therein, the application is allowed. The main case is restored in its original number.

CWP-5178-2018

1. Prayer in the present writ petition is for seeking compensation for the death of Jagtar Singh @ Jagga which is alleged to have taken place in custody and on account of negligence on part of the jail authorities.

2. As per the averments contained in the writ petition, Jagtar Singh @ Jagga, husband of the petitioner was convicted by the trial Court in the case FIR No. 35 dated 28.03.2006, registered under Section 420, 467, 468, 471 and 120-B IPC at Police Station Tripadi and was sentenced to undergo sentence for 03 years. An appeal against the same had been filed before the Appellate Court. The conviction was affirmed and the appeal was dismissed on 11.08.2015. The husband of the petitioner was taken in custody on the same date. It is averred that the deceased requested the Appellate Court that he was not feeling well and needed treatment whereupon the appellate Court asked the police personnel to accompany the husband of the petitioner for medical check

up before taking him to Central Jail, Patiala, however, the police officials did not take him for medical examination and got him lodged at the Patiala Central Jail. It has also been averred that the deceased also informed the Jail authorities that he was not feeling well, however, the said request was not considered by the Jail authorities. On the next day i.e. 12.08.2015, Jagtar Singh @ Jagga passed away.

3. It has been alleged that the death of Jagtar Singh @ Jagga occurred on account of negligence of the Jail staff as well as the police authorities who failed to provide immediate medical treatment to the deceased despite him complaining of ill health. The medical examination was not conducted despite the directions of the Additional Sessions Judge, Patiala and even the jail authorities did not provide medical support or take adequate steps for ensuring medical examination & treatment of the deceased. He was admitted to the Rajindra Hospital, Patiala at 3:30 P.M on 12.08.2015 where the doctors declared him as brought dead. It is averred that the deceased was 34 years of age and was a Driver by profession. He owned an Innova Car which was being plied as a Taxi and being the only earning member of the family comprising three children, the petitioners are entitled to compensation on account of custodial death.

4. Reply by way of affidavit of Rajan Kapur, Superintendent, Central Jail, Patiala dated 13.07.2018 had been filed. Copy of the said reply had been duly furnished to the counsel representing the petitioner. In the above said reply, it was submitted that the deceased Jagtar Singh had been readmitted in the Jail on 11.08.2015, after dismissal of his

appeal by the Additional Sessions Judge, Patiala. The medical examination of deceased Jagtar Singh was done by the Medical Officer of the Central Jail, Patiala on the next day i.e. 12.08.2015 wherein he revealed that he was an opium addict and also complained of vertigo i.e a sudden internal or external spinning sensation. He was immediately sent to the Jail hospital and was kept under observation. The vitals of the deceased was duly recorded by the Medical Officer and the treatment was prescribed. As the health condition failed to show signs of recovery and the deceased Jatar Singh @ Jagga felt unconscious, he was extended emergency treatment and was immediately shifted to the emergency department of Rajindra Hospital, Patiala at 2:45 p.m. for further treatment. He was declared as dead at 3:30 p.m. on 12.08.2015 by the Rajendra Hospital. Inquest proceedings relating to the said death was conducted by the Judicial Magistrate, First Class, Patiala. There was no suspicion recorded by the Judicial Magistrate regarding any foul play and/or negligence on the part of the Jail authorities. It is contended that death in question took place on account of natural reasons and not on account of any negligence or default and/or any foul play on the part of the jail authorities.

5. Even though the said reply had been filed in the year 2018, however, no rejoinder/replication controverting the facts pleaded has been filed by the petitioner even though the writ petition has remained pending for nearly 05 years after the filing of the reply.

6. Counsel for the petitioner has argued that even though there is a reference made by the respondents to the inquest proceedings

conducted, however, no such documents had been appended by the respondents alongwith the present petition. The petitioner cannot be said to be in possession of the same as the same are part of the record maintained by the respondent officials. He further argues that the death having taken place in the jail premises is *ipso facto* a proof of negligence and that the respondent State becomes liable to compensate the petitioner for the eventuality that took place while the deceased Jagtar Singh @ Jagga was lodged in Jail.

7. Controverting the same, learned State Counsel has argued that the claim for compensation cannot be entertained at this stage since there is no evidence on record to suggest that there was any negligence on part of the Jail authorities or that they displayed any laxity in discharge of their duties. The deceased was re-admitted to the Jail premises only on 11.08.2015 and his medical examination was conducted on 12.08.2015 and noticing the complaint of vertigo as well opium addiction of the deceased, he was immediately administered medication and all necessary steps for providing the treatment were taken. The death was natural and not on account of any default on the part of the Jail authorities or due to acts/omission conducted whilst deceased was in custody. It is also not the case of the petitioner that the treatment extended to the deceased was not in accordance with the necessary medical protocols. An occurrence of death in the Jail premises cannot *ipso facto* be construed as a case of proven negligence. The same is required to be established by leading evidence. A mere sweeping denial of all the proceedings that have taken place, including

the inquest proceedings, cannot be examined at this stage. The contentions raised by the petitioner are at best disputed question of fact which can only be examined by a competent Court.

8. Having heard learned counsel appearing on behalf of the respective parties and on going through the documents appended alongwith the present petition as also the fact that the stand of the State was never countered, I do not find that sufficient grounds exist for doubting the veracity, validity or admissibility of the stand of the respondents at this stage. The factual aspect having not been disputed by the petitioner, the case is based, at best, on oral assertions and seeks this Court to draw an inference that an occurrence of death while in custody, notwithstanding the circumstances under which the same has occurred, would fasten a liability on the State agencies and draw an inference of the State being lax or negligent in discharge of its duties.

9. During the course of arguments, a reference had been made by the counsel for the petitioner to the judgment of Hon'ble Supreme Court in the matter of "*Ajab Singh versus State of Uttar Pradesh*" reported as **2000 (2) R.C.R. (Criminal) 250** wherein the State had been directed to pay compensation of Rs. 5 lakhs to the children of the deceased. The above said judgement is not applicable to the facts of the present case. In the said case, the Hon'ble Supreme Court recorded a finding that the documents appended alongwith the report including the postmortem examination of the deceased therein showed ante mortem injuries. There had been a cover up operation and suspicions were recorded by the Hon'ble Supreme Court. The documents being

contradictory, the version of the State was disbelieved. A compensation was thus directed under the said circumstances. No such material has been placed on record of the present case on the basis whereof the stand of the State could be contradicted and/or doubted in any manner.

10. A further reference has also been made to a Division Bench judgement of this Court in the matter of ***Civil Writ Petition No. 11943 of 2007*** titled as ***“Phoolwati versus State (Union Territory of Chandigarh) and others”***. The facts of the aforesaid case also reflected that there were ante mortem injuries on the deceased while having been lodged in Jail. Further, there was a discrepancy noticed in the statements of the Sub Inspector Narinder Singh as well as Constable Harpinder Singh and witness Brahm Pal. The CCTV footage/evidence reflected severe discrepancies in the version of the State. Hence, the said stand was disbelieved. The compensation was accordingly awarded in the said case. The factual matrix of the above said case is not at par with the facts involved in the present case. The case of the petitioner herein itself has been that the deceased complained of not feeling well when he was admitted. There was no ante mortem injuries and/or allegation of any injuries having been caused on the deceased while in custody. Further, the specific case of the respondent is that the deceased was an opium addict.

11. Reference was also made to a Division Bench judgment in the matter of ***“Radhakanta Majhi and others versus State of Orissa and others”*** reported as ***2014 (72) RCR (Civil) 761***. In that case State had been held liable on account of death of an inmate while in judicial

custody due to callousness and negligence on the part of the Jail authorities. In the said case, a Magisterial inquiry had been conducted by the Sub Divisional Magistrate, Nayagarh and a report was submitted by him that the Jail administration and the authorities thereunder had shown slackness and there was negligence on part of Pharmacist as well as Jail Medical Officer which caused the death of the inmate. No such circumstances exist in the present case and no foul play, laxity, negligence or delay has been reported by the Judicial Magistrate in the inquest proceedings. The judgments cited by the petitioner are thus not applicable to the facts involved in the present case. The case of the petitioner thus would not draw any support from the above stated judgments.

12. Assuming that the petitioner may still be not satisfied, yet, it needs to be kept in mind that the deceased himself was a drug addict and would have harmed himself enough. There is also nothing to suggest that the prescribed medical protocols were not followed or that the medicine administered was improper. There is no allegation of any foul play or ante-mortem injuries. The magisterial enquiry found that there no lapse on the part of the deceased. His income, dependency as well apportionment would also arise for consideration. The same are all questions of fact to be decided after examining the evidence.

13. Taking into consideration, the aspects noticed above, I am of the opinion that the case of the petitioner raises an issue which are disputed questions of fact and the same cannot be examined by this Court in a writ jurisdiction.

14. The present petition is accordingly dismissed at this stage with liberty to the petitioner to take recourse to the alternative remedies available to her in accordance with the law.
15. The observations recorded above should not be construed as an expression on merits of the case and are relevant only for the purposes of adjudication of the present writ petition.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 15, 2023

Vishal sharma

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