

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CWP-28737-2022

Date of Decision:31.01.2023

Rahul and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Inderjit Sharma, Advocate,
for the petitioners.

VINOD S. BHARDWAJ , J.(Oral)

The instant petition has been filed for seeking issuance of directions to the respondent Nos.1 and 3 to 10 to register a criminal case against the erring, negligent and careless officials/concerned Medical Staff of Central Jail, Gurdaspur, who were alleged to be responsible for the untimely death of Kuldeep Kumar son of Tilak Raj, resident of Mohalla Onkar Nagar, Gurdaspur, District Gurdaspur while in judicial custody at the Central Jail, Gurdaspur as an undertrial.

Briefly summarized the facts of the present case are that the deceased Kuldeep Kumar son of Tilak Raj, father of the petitioners, was arrested by the police in case FIR No.200 dated 19.10.2010 under Section 420 IPC read with Section 13A/3/67 of The Punjab Gambling Act, 1867, registered at Police Station City Gurdaspur. Upon his formal arrest on 19.10.2010, he was sent to the Central Jail, Gurdaspur on 20.10.2010. The deceased Kuldeep Kumar was medically examined by the Jail Medical

Officer and his health was found to be stable. It is submitted that on the next day i.e. 21.10.2010, one Tara Chand Verma son of Ram Singh, resident of Onkar Nagar Mohalla, Gurdaspur brought medicine for diabetes/sugar for the deceased Kuldeep Kumar as he was suffering from the same. The jail authorities/medical staff, however, did not allow supply of the aforesaid medicines and informed that all medicines are provided to the prisoners by the jail doctors.

On the intervening night of 21/22.10.2010, Kuldeep Kumar complained of abdominal pain and generalized uneasiness to the official of the jail who were on duty on the said day. It is alleged that the Jail Authorities did not act promptly and the medical officer of the Central Jail, Gurdaspur was called around 01.30 AM. Deceased Kuldeep Kumar had already suffered acute abdominal pain for about two hours by then. Necessary and appropriate medical facilities/treatment was not provided to the deceased Kuldeep Kumar despite it being known that he was a chronic patient of Diabetes mellitus. After the condition of Kuldeep Kumar became critical, he was referred to the Civil Hospital, Gurdaspur for treatment at about 06.00 AM on 22.10.2010 i.e. after a delay of about seven hours after the pain was reported. He was even though admitted in the emergency ward of the Civil Hospital, Gurdaspur, however, on account of an inordinate delay the condition of Kuldeep Kumar deteriorated from bad to worse. He was thereafter referred to Guru Nanak Dev Hospital, Amritsar from the Civil Hospital and that too without providing appropriate timely medical treatment. The deceased was then got admitted in Guru Nanak Dev Hospital, Amritsar, however, the ailment in question was incurable by that time. Kuldeep Kumar passed away on 22.10.2010 at 11.50 PM in Guru

Nanak Dev Hospital, Amritsar.

Smt. Reena Devi-widow of the deceased Kuldeep Kumar filed a complaint to respondent No.2-Punjab State Human Rights Commission, Chandigarh to conduct an enquiry and to take action against the erring officials so that justice could be extended to the family. The said complaint was registered as Complaint No.15912/2010 and 19038/6/2010 in the Punjab State Human Rights Commission, Chandigarh and an enquiry was ordered to be conducted by the ADGP (Jails). Statements of Tara Chand Verma, Reena Devi-widow of Kuldeep Kumar and Rahul Kumar (petitioner No.1) son of Kuldeep Kumar were also recorded during the enquiry by the DSP City, Gurdaspur on 10.09.2014. Similarly, statement of Dr. Sanjeev Kumar, Medical Officer, Central Jail, Gurdaspur was also recorded. The report was submitted by the Enquiry Officer to the Punjab State Human Rights Commission on 10.10.2014 concluding that the prisoner-Kuldeep Kumar had died due to illness as he was a diagnosed patient of Type 2 DM with IHD with Septicemia with Ketoacidosis. It was also recorded that the medical staff/officials of the Jail had provided necessary treatment to the deceased prisoner in time and there was no negligence and carelessness on the part of the staff and none of the employees and jail officials were held responsible for the death of the prisoner-Kuldeep Kumar. A copy of the aforesaid enquiry report was furnished to the complainant i.e. mother of the petitioners for submission of any response/objections therein. No response/objection was filed. The matter was finally considered by the Punjab State Human Rights Commission vide its order dated 29.04.2015 and the complaint was then closed.

Learned counsel for the petitioners contends that Reena Devi-

widow of deceased Kuldeep Kumar submitted a representation to the Punjab State Human Rights Commission on 10.08.2017 requesting for grant of an opportunity to explain the entire matter in detail. The said representation had remained pending with the Punjab State Human Rights Commission and no response had been received from them. The present petition has now been filed after a gap of seven years of the passing of the order of Punjab Human Rights Commission before this Court seeking issuance of directions to the respondents-authorities to register a criminal case against the erring officials/negligent officials and also to seek compensation on account of custodial death of deceased Kuldeep Kumar.

I have heard learned counsel for the petitioners and have gone through the record available with the file.

The facts noticed above show that the deceased Kuldeep Kumar was sent to Central Jail, Gurdaspur on 20.10.2010 and on the intervening night of 21/22.10.2010 i.e. the very next day, he had reported abdominal pain and was referred to the Civil Hospital, Gurdaspur from where he was referred to Guru Nanak Dev Hospital, Amritsar.

Even though learned counsel appearing on behalf of the petitioners has vehemently argued that the deceased Kuldeep Kumar was a chronic patient of Diabetes mellitus and adequate care had not been given to him, however, it has nowhere come-forth that death of deceased Kuldeep Kumar was caused on account of any medical negligence or failure to provide medicines for Diabetes mellitus. The finding recorded by the Enquiry Officer in his report dated 07.10.2014 is that Kuldeep Kumar had died on account of Septicemia with Ketoacidosis. There was no occasion or reason for the authorities to be aware of any disease the deceased was

suffering from prior to his reporting about the abdominal infection on the same night. It is also not the case of the petitioners that the deceased had earlier been diagnosed with Septicemia with Ketoacidosis and was undergoing medication for the same. There is also no allegation that the jail authorities were informed about the abdominal infection. It is also not the case that the medical treatment extended to the deceased was inept or inappropriate or even that the treatment given was wrong. In any case, the allegations well enquired into.

The findings recorded by the Enquiry Officer and also noticed by the Punjab State Human Rights Commission clearly show that the matter was enquired into twice. First enquiry was got conducted by the SSP, Gurdaspur and statements of all person and witnesses were duly recorded. The report was also obtained from an Executive Magistrate, Amritsar as per which no official was found guilty or negligent for the death of deceased Kuldeep Kumar. A copy of the aforesaid report was also supplied to Smt. Reena Devi-widow of Kuldeep Kumar on 05.09.2013 for filing an objection/response. She submitted her response on 06.03.2014 stating that her neighbour namely Tara Chand Verma had taken the medicines of Diabetes mellitus for the deceased Kuldeep Kumar, however, the doctor returned the said medicines on the pretext that all the medicines would be supplied to the prisoners from the jail itself. She further stated that she was not satisfied with the report submitted by the police and the SSP, Gurdaspur had favoured his staff members. The said objection however does not indicate any lapse or carelessness.

A fresh enquiry was thereafter ordered to be got conducted through the DGP(Prisons), Punjab, Chandigarh. The said enquiry dated

07.10.2014 was thereafter submitted. The same was also sent to Smt. Reena Devi on 21.10.2014 for information and for filing her necessary response or objections. However, despite granting several opportunities, Smt. Reena Devi chose not to file her response or objections to the same. Noticing the fact that the matter had been examined twice and the cause of death was on account of Septicemia with Ketoacidosis and that the necessary medical treatment had been duly provided by the jail/hospital officials in time and also that no official/officer of the jail or medical staff was negligent, the complaint in question was closed by the Punjab State Human Rights Commission. A copy of the said order was also sent to Smt. Reena Devi-widow of deceased Kuldeep Kumar for information. The first response/objection allegedly submitted by Smt. Reena Devi was on 10.08.2017 and that no response was filed for a period of merely two years. Even in the said response, there is nothing on record to impugn the findings recorded by the Enquiry Officer concurrently and the enquiry was concluded after examination of the entire record.

It is evident that an enquiry by Magistrate was also conducted into the incident, followed by the enquiry by the SSP. Copy of the said enquiry was furnished to the family of deceased in the year 2013, but the same was never challenged. A second enquiry report was also supplied to the petitioners in the year 2014 without any challenge for nearly 8 years. Even now, other than the fact that the deceased died while in custody and that he suffered from diabetes, there is no other allegation. Such stand-alone allegation, when cause of death is not due to failure to provide medicine for diabetes, is insufficient to conclude criminal medical negligence.

Merely because a person has died does not *ipso facto* lead to a

conclusion that such death has occasioned as a result of negligence and carelessness of the officials deployed therein. The same is a finding of fact and is required to be established on the strength of evidence brought on record. Undisputedly, the cause of death was on account of Septicemia with Ketoacidosis and not on account of lack of providing medicines for Diabetes mellitus. It must also be kept in mind that the deceased was sent to the Central Jail on 20.10.2010 and had reported abdominal pain on the intervening night of 21/22.10.2010 and the jail authorities/hospital staff cannot be presumed to be knowing of his medical history. There is also nothing on record to suggest that any complaint with respect to abdominal pain was made at any point prior thereto and that the deceased was earlier taking medicines for the said disease and he had duly apprised the hospital staff of his ongoing treatment for diagnosed disease of Septicemia with Ketoacidosis.

Negligence is a question of fact required to be established on the basis of the evidence brought on record unless negligence can be assumed on the principals of *res ipsa loquitur*. However, the aforesaid circumstances do not exist in the present case. The allegations rendering do not *ex facie* reflect any negligence or carelessness on the part of the staff and there is nothing on record to suggest that timely treatment had not been given to the deceased Kuldeep Kumar. The petitioners have submitted that the jail doctor had attended the deceased Kuldeep Kumar at 01.00 AM and he was referred to the Civil Hospital, Gurdaspur and thereafter he was referred to Guru Nanak Dev Hospital, Amritsar at 06.00 AM in the morning.

Even though the incident resulted into the death of Kuldeep Kumar, however, the same is not sufficient to fasten a liability on the

sovereign and/or seeking a criminal prosecution of the jail officers/staff.

The matter having been enquired twice over and there being no incriminating evidence to link any negligence or dereliction on the officials concerned, there is no occasion for this Court to re-examine the said factual issue afresh after more than a decade of the incident. Moreover, the petitioners have remained silent on the issue after 2015 and it is not the case that they were not aware of the proceedings. They chose to remain silent for a period of more than seven years before approaching this Court. It seems that the present petition is just an attempt to reopen the said issue that has already been closed. I find no reason for issuance of any directions as prayed for.

The present petition is dismissed in *limine*.

The petitioners may however take recourse to the alternative remedies available to them in accordance with law.

January 31, 2023
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No