
(2003) 08 KAR CK 0081
In the Karnataka High Court
Case No : Writ Petition No. 45284 of 2002

Abdul Munaf Choudhari

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Arms Act, 1959 — Section 3, 4
Penal Code, 1860 (IPC) — Section 399, 401, 402

Citation : (2003) CriLJ 4757 : (2003) ILR (Kar) 4087 : (2003) 4 KCCR 306 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.V. Shastri, Ravi Hegde, Aswathnarayana Reddy and Chaitrika Hegde, for the Appellant; B.P. Puttasiddaiah, HCGP for R1 to 3 and 7, Basavaraj Kareddy, for R6, C.H. Jadhav, for R4, B.B. Patil and P. Suresh for R5, for the Respondent

Final Decision : Allowed

Judgement

Shylendra Kumar, J.—Petitioner is the father of one Zakir Hussain, who it is reported, died on 15.6.2002 while undergoing treatment at the Jayadeva Institute of Cardiology at Bangalore, to which place he had been taken for treatment by the respondents and was a person who was in judicial custody on being so remanded by the Judicial Magistrate First Class III Court, Hubli.

2. Petitioner is complaining that his son who was in the pink of his health and prime of his youth at 22 years, has been virtually done to death by the inhuman treatment meted out to him while he was in custody and that the respondents have sought to pass it off as an incident of natural death of his son due to a massive heart attack while he was at hospital.

3. The petitioner has sought for a writ in the nature of mandamus to direct respondent 1 to 3 State of Karnataka, The Director General and Inspector General of Police in Karnataka and Commissioner of Police, Hubli, Dharwad District respectively, to inquire into the death of his son Zakir Hussain and has

also sought for an alternative direction to be issued to the respondents for holding an enquiry/investigation through the Corps of Detectives ("C.O.D." for short) in respect of the incident of death of petitioner's son on the allegation that is an incident of lock up death and other incidental reliefs.

4. Sri S.V. Shastry, learned Counsel appearing for the petitioner has sought to submit that the petitioner's son in fact was arrested as on 1.5.2002, was kept under illegal custody all along, that the said Zakir Hussain was produced by the Police Officials of Gokul Road Police Station, Hubli only on the 19th of May, 2002 praying for a remand order; that the petitioner's son was till that time under the illegal custody of the respondents; that in this connection the petitioner had been summoned by the Police Officers of Gokul Road Police Station on the 6th May, 2002 and he had gone to the Police Station on that day and he had seen his son in Police Station in a very bad stage and that he was informed by his son that he had been subjected to torture by respondents 4 to 6 to the petition namely Sri S.M. Prathapan, Deputy Superintendent of Police, Khanapur, Belgaum District, Sri V.M. Kulkarni, Police Sub-Inspector, Gokul Road Police Station, Hubli, Dharwad District and Sri Vijaya Kumar Dambal, Police sub-Inspector, Sub-Urban Police Station, Hubli, Dharwad District and that he was also threatened by the Police Officials not to divulge this information to any one outside as otherwise he would meet with dire consequences and that his son can be implicated in cases resulting in life imprisonment for him etc.; that the petitioner not having heard about his son even five to six days thereafter, a telegram had been sent by his other son on 11.5.2002 addressed to the Chief Justice of this Court accusing the Police Officers at Gokul Road Police Station, Hubli, of keeping the petitioner's son in illegal custody from 1.5.2002. Learned Counsel submits that the respondents have suppressed these aspects and have also not investigated the cause of death of the petitioner's son while in custody in a proper manner; that the respondents are trying to hush up the whole matter and that in this regard certain news items in the News Dailies at Hubli indicate that the petitioner's son was possibly taken into custody even as on 1.5.2002 itself and that on that day an Ambassador car bearing Registration No. KA25-663 had been Intercepted and seized and that the Ambassador car linked to the arrest of the person alleged to have been made by the police only as on 19.5.2002 also bears the same number and of the same colour and this vindicates the stand of the petitioner that his son had been taken into custody even as on 1.5.2002.

5. Learned Counsel has also submitted pointing out to the discrepancies indicated in the Post Mortem report in respect of the body of the petitioner's son and particularly about certain observations contained in the case sheet of the petitioner's son maintained at Kempegowda Institute of Medical Sciences (KIMS), Hubli, wherein the petitioner's son had been admitted as an inpatient even while he was in judicial custody and subsequent to 19.5.2002. Learned Counsel pointing out to all such discrepancies submits that there has not been a proper investigation in respect of the custodial death of the petitioner's son; that the police were required to follow the guidelines which have been issued by the

Supreme Court in the case of D.K. Basu Vs. State of West Bengal, has drawn the attention of the Court to paragraphs 36 and 37 of this decision of the Supreme Court. Counsel submits that none of the requirements that are necessary to be followed by the police in incidents of custodial death have been followed in this case and on the other hand the police have tried to pass off the death as merely a natural death and attributable to a massive heart attack. This is far from truth and as such this Court should direct the respondents to conduct a proper investigation into the incident of death of petitioner's son and for further action on the same.

6. Statement of objections has been filed on behalf of respondents 1,2,3 and 7. It is inter alia pointed out that the Writ Petition is not tenable; that the relief sought for cannot be given and the incident of the petitioner visiting the Police Station at Gokul Road at Hubli on 6.5.2002 pursuant to a phone call and seeing his son in the custody of the police and having suffered torture are all denied. It is also averred that no threat had been held out to the petitioner as alleged in the Writ Petition.

7. These respondents assert that the petitioner's son Zakir Hussain and seven others were noticed to be moving around in suspicious circumstances and in the ambassador car bearing Registration No. KA 25-663 and they were so noticed when moving around in a suspicious manner near Ramalingeswarnagar, Ramlingeswar temple at Hubli on the night of 19.5.2002; that one M.V. Padesur, Assistant Sub-Inspector who was on night duty between the night of 18th and 19th and during early hours of morning, intercepted these persons and on seeking the police, except the petitioner's son by name Zakir Hussain and another person by name Fazal Ahmed, the others managed to escape under the cover of darkness; the car was seized and two persons were arrested and cases punishable under Sections 399, 401, 402 IPC and Section 3 and 4 of Indian Arms Act were registered in Cr.No. 83/02 of Gokul Road Police Station; that the persons were found in possession of two revolvers and live cartridges; that the two persons were produced before the J.M.F.C. III Court, Hubli on the same day of 19.5.2002 and the said Zakir Hussain and Fazal Ahmed were remanded to judicial custody for 14 days; that the accused persons had not complained of any ill-treatment by the police before the Magistrate; that the persons after remand were kept in Sub-Jail and the Police had no contact with them thereafter. It is also asserted that on 13.6.2002 the said Zakir Hussain was taken to Bangalore from Hubli as he had developed some heart problem and he was taken to the Jayadeva Institute of Cardiology and that he expired on 15.6.2002. The local police were not aware of these developments and the legal proceedings on the death of Zakir Hussain at Jayadeva Institute of Cardiology at Bangalore was conducted by the Police officials at the Madiwala Police Station, Bangalore City and thereafter a postmortem on the dead body of the said Zakir Hussain was conducted at the Victoria Hospital and that the police officials at Hubli came to know of such death only after 15.6.2002.

8. The post-mortem report is sought to be relied upon as indicative of the cause of death to be natural one and that the person has died of massive heart attack and not due to any external injuries or physical assault or violence. It is also asserted that the fifth respondent was not a Sub-Inspector of Police at the Gokul Road Police Station, Hubli on 19th May, 2002; that therefore there is no occasion for him to be involved in any incident of the nature alleged in the Writ Petition on the ground that he was working as Police Sub-Inspector, Sub-Urban Police Station, Hubli and that the 4th respondent was only holding additional charge of Gokul Road Police Station at that time. It is also asserted that the FIR in Cr.No. 83/02 is signed by the Police Sub-Inspector of Gokul Road Police Station one Sri M.K. Doddamani and the information had been given by the Assistant Sub-Inspector of Police M.V. Padesur of Gokul Road Police Station, who had apprehended the accused along with deadly weapons and car. It is also asserted that an enquiry was conducted by the Assistant Commissioner of Police, North Sub-Division, Hubli, in respect of allegation of the petitioner and it was found that such allegation on the part of the petitioner about ill-treatment to his son etc., are all false and that an endorsement to this effect had also been given to the petitioner. It is averred that a detailed enquiry was conducted by the Assistant Commissioner of Police and the averment in the Writ Petition that no enquiry was conducted is false and baseless. It is also averred that it is not a case of lock up death as the person was not in police custody at the time of his death; that he died while in judicial custody that too after 22 days after he had been remanded to judicial custody by the Magistrate and that he was undergoing treatment for his ailment at Hubli; that the doctor who conducted the post-mortem has opined the death to be due to natural cause and therefore it was felt that there was no need for any further enquiry. Accordingly the Writ Petition is sought to be dismissed.

9. Respondents 4 and 6 have filed their separate statements. While respondent No.4 has virtually denied by involvement in the incident, has also asserted that he had nothing to do with the activities at the Gokul Road Police Station at Hubli, being an Inspector attached to the office of Commissioner of Police Hubli and had nothing to do with the Police Station.

10. The 6th respondent in his statement of objections, as indicative the petition averments, has pointed out that he was an Inspector of Police at the Sub-Urban Police Station at Hubli; that he has nothing to do with the activities of the police officials at Gokul Road Police Station; that he has no involvement in the matter; that he had no involvement with the petitioner's son nor has he committed any acts of ill-treatment or torture in respect of petitioner's son.

11. I have heard Sri Puttasiddaiah, learned High Court Government Pleader appearing for respondents 1,2,3, and 7 and Sri C.H. Jadhav, learned Counsel appearing for the fourth respondent and Sri Basavaraj Kareddy, learned Counsel appearing for the 6th respondent. Learned High Court Government Pleader has followed on the lines indicated in the statement of objections filed on behalf of

the State and has prayed for dismissal of the Writ Petition. Counsel appearing for the 4th and 6th respondents have also submitted that the Writ Petition is not tenable; that it lacks bona fides; that in the light of the postmortem report having indicated that the cause of death is a natural one and even otherwise the Assistant Commissioner of Police having found investigated into the complaint of the petitioner and having found nothing unusual or any substance in the allegations of the petitioner, there is no scope for further enquiry to be ordered by this Court and that the Writ Petition deserves to be dismissed.

12. I have perused the pleadings of the parties and have heard the Counsel and also looked into the decision relied upon by the learned Counsel for the petitioner. It is no doubt true that death of Zakir Hussain has taken place while he was in judicial custody and as per the records he was at Jayadeva Institute of Cardiology at Bangalore to which place he was taken on the night of 13.6.2002. He was in the hospital on that day. By the following day he has died. The statement of objections filed on behalf of respondents 1,2,3 and 7 does not whisper a word about the fact of the said Zakir Hussain having been admitted to K.I.M.S. at Hubli, not on one occasion but on two occasions. It appears the deceased person was a patient at KIMS Hospital, Hubli and there are records to indicate that he was examined there on 21.5.2002 in connection with certain complaints of injuries on his person, particularly on the left thigh. He was again at the hospital on 27.5.2002 at about 5.45P.M. and the doctor has noticed that there was swelling on the left thigh that an X-Ray had been taken on 28.5.2002 and there are notings to indicate that the X-Ray showed fracture in the "neck of the femur". The patient was discharged on 3.6.2002 with certain observations which also indicate of some injuries on the body of the person. It appears he was again at the Hospital at Hubli on 12.6.2002 and was diagnosed as having Deep Vein Thrombosis with pulmonary embolism of the left leg and was discharged on 13.6.2002 and was referred to Jayadeva Institute of Cardiology for further treatment. Inexplicably these aspects are not mentioned either in the counter filed on behalf of respondents 1,2,3 and 7 or by respondents 4 and 6. No mention is made of this incident. The doctor who has prepared the post-mortem report has given his opinion as not very sure of the cause of the death and has expressed his reservations over it. These aspects, coupled with the fact that the petitioner has alleged that his son was taken into custody as on 1.5.2002 and was in illegal custody of the police officials till 19.5.2002 when he was produced before the jurisdictional Magistrate, does lead to an element of suspicion as to the real cause of death. It is not as though the petitioner's son suddenly developed some heart problem on 13.6.2002 and has been referred to a Heart Institute. There is background to that. Unfortunately the respondents have not spoken to anything about the earlier history. It leaves an impression that something is sought to be suppressed or with-held from the Court.

13. In the counters filed on behalf of the 4th and 6th respondents, they have pleaded total ignorance of the incident and total non-involvement. It is not helpful in any way in examining the allegations of the petitioner. While the 4th

respondent has totally denied any involvement and any reason for his involvement with the incident being an Inspector attached to the office of the Commissioner of Police at Hubli, the very statement of objections filed on behalf of the State and even the Commissioner of Police 3rd respondent indicates that at the relevant time this respondent had been placed in additional charge of the Gokul Road Police Station. It cannot be said that this respondent was totally non-involved in the incident or had no responsibility in respect of the incident vis-a-vis the Gokul Road Police Station, Hubli.

14. Though the learned Counsel appearing for Respondent Nos. 4 and 6 have vehemently submitted that there is absolutely no need to direct any further enquiry or investigation inasmuch as an investigation had already been conducted even on the allegations of the petitioner by the Assistant Commissioner of Police at Hubli and that a further investigation will only amount to harassment to these respondents, I am not satisfied about the tenability of the same. These respondents are Officers of the State and in the Police Department. The alleged incident is one involving the death of a person who was in custody at that time and the necessity for enquiring the circumstances under which the person might have died. The recording at the hospital at Hubli does indicate that all was not well and that the deceased person had suffered some physical violence. The investigation that is sought for is in the context of the complaint by the father of the deceased person and in the light of maintaining a proper investigative procedure and ensuring safeguarding the rights of the citizens in the course of investigations. It is not aimed at any individual much less either the 4th respondent or the 6th respondent. These respondents also cannot complain of any personal harassment or hardship or difficulty being officers under the State and who are required to discharge their functions. It is not involving any rights of these respondents, but on the other hand the right of the petitioner and the circumstances of the death of a citizen of the country is involved. The submission on behalf of these respondents for rejecting the petitions as not one needed for a further investigation, cannot be accepted.

15. Though the respondents have asserted that the death was not the case of lock up death or while in police custody, a death while in custody is a matter of grave concern and requires a proper investigation into the circumstances leading to death. Though in the present case the deceased person was in judicial custody, nevertheless the person was in jail and moved about by police officials. It is only the police officials who have access or privy to the person. The deceased person was a healthy youth of 22 years of age and until and unless he had been subjected to other physical trauma, it cannot be readily inferred that such a healthy person suddenly suffered a massive heart attack and died and that death is attributable only due to such natural cause and nothing else.

16. In the circumstances, I am of the clear view that the matter calls for a proper and impartial investigation and necessary follow up action taken on the same. Learned Counsel for Respondent Nos. 4 and 6 have expressed their apprehension

about the matter being referred to an enquiry by the C.O.D. authorities as the investigation will again be by Inspectors who are of their coordinate ranks and submits that an investigation can be at a higher level.

17. The prayer of the petitioner is for directing the respondents to hold a proper investigation/enquiry. In the circumstances, I deem it proper to direct the Commissioner of Police, Hubli, the third respondent himself to hold an investigation into the incident of death of the said Zakir Hussain who died on 15.6.2002 and the background leading to the same. Such investigation shall be completed by the third respondent as expeditiously as possible and a report in this regard submitted to the respondents 1 and 2. The third respondent is also directed to take necessary follow up action by himself in respect of the incident that is required to be taken as per law.

18. The petition is allowed and a Writ of mandamus is issued as above.