
(2015) 02 JH CK 0007
In the Jharkhand High Court
Case No : W.P. (C) No. 3966 of 2013

Anita Devi

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Penal Code, 1860 (IPC) — Section 224, 306, 330, 342, 379

Citation : (2015) 4 AJR 4

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : M.K. Dey, Senior Advocate, for the Appellant; Aprajita Bhardwaj and Soumitra Baroi, J. C. to G.P.-VI, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—In the writ petition the petitioner has made the following prayers:

(i) An appropriate writ, order or direction, holding the concerned respondents authorities guilty as due to their negligence and having violated the right to life, dignity and equality which ultimately led to death in judicial custody of late Basudeo Yadav;

(ii) An appropriate writ, order or direction commanding upon the respondents to take suitable action against the negligent officials/employees of the respondents due to which late Basudeo Yadav lost his life.

(iii) A further writ, order or direction, commanding upon the respondents to pay exemplary compensation to the petitioner taking into consideration the fact that the husband while in custody of the respondents had lost his life.

(iv) Any other appropriate writ(s) be issued, order(s) be passed or direction(s) be made as may be deemed fit and proper for doing conscionable justice to the petitioner.

The brief facts stated in the writ petition are summarized thus;

The husband of the petitioner namely, late Basudeo Yadav was appointed as constable in the Jharkhand police in the month of April, 2005. While on duty, the husband of the petitioner was arrested on 26.12.2011 and he was sent to judicial custody in connection with Bokaro Steel City P.S. Case No. 492 of 2011 registered under Section 392 of the Indian Penal Code and he was placed under suspension vide order dated 01.02.2012. It is stated that the husband of the petitioner was implicated in several other cases being Bokaro Steel City P.S. Case No. 455 of 2010, Bokaro Steel City P.S. Case No. 424 of 2011, Bokaro Steel City P.S. Case No. 427 of 2011, Bokaro Steel City P.S. Case No. 491 of 2011, Bokaro Steel City P.S. Case No. 494 of 2011, Chas P.S. Case No. 215 of 2011 and Bokaro Steel City PS. Case No. 438 of 2011, all registered for various offences including offences under Sections 419 , 420 , 379 , 392 etc. of the Indian Penal Code. Subsequently, a departmental proceeding was initiated against the husband of the petitioner in which the order of dismissal from service was passed on 30.04.2012. It is stated that while in judicial custody, the husband of the petitioner suffered depression on account of his false implication in criminal cases and at the request of the jail authorities, he was sent for treatment to the RINPAS, Ranchi. The husband of the petitioner was admitted in RINPAS, Ranchi on 17.04.2012 where two constables namely, Dinanath Pandey and Sanjay Kumar Singh were deputed for custody of the husband of the petitioner. On 29.06.2012 when both the constables were absent from duty, the husband of the petitioner escaped from hospital and Kanke P.S. Case No. 108 of 2012 was registered under Section 224 of the Indian Penal Code on 29.06.2012 in this connection. The dead body of the husband of the petitioner was found on the railway track at Bokaro on 29.06.2012. An U.D. Case No. 06 of 2012 was registered on 30.06.2012. On account of their negligence, both the constables were placed under suspension vide order dated 05.07.2012. It is stated that it is a matter of record that the husband of the petitioner was suffering from "psychotic depression" and after the death of her husband, the petitioner found it difficult to maintain herself and her two children. It is stated that the State is under constitutional and legal obligation under Article 21 of the Constitution to protect life and liberty of every inmate in prison. The husband of the petitioner died in lawful judicial custody due to negligence on the part of the respondents and their employees and therefore, the respondents are liable to pay exemplary compensation to the petitioner.

2. When the matter was listed on 06.01.2015, I.A. No. 8129 of 2013 was pressed which was allowed and the typographical error in the Memo of parties, that is, description of respondent No. 4 was permitted to be corrected. The petitioner was directed to produce a copy of post-mortem examination report of the deceased, which has been placed on record with the supplementary affidavit dated 23.01.2015.

3. Heard the learned counsel for the parties.

4. Relying on various decisions of different High Courts Mr. M.K. Dey, the learned senior counsel for the petitioner submits that admittedly, the husband of the petitioner was in judicial custody who escaped from the hospital due to negligence on the part of the two constables namely, Dinanath Pandey and Sanjay Kumar Singh and he was found dead and thus, it requires no further proof that the respondent-State has failed to protect the life of the husband of the petitioner. Since, it is a constitutional obligation of the respondent-State to protect the life and liberty of every citizen including, an inmate in a jail, the State is liable to compensate for the loss of life of the husband of the petitioner. It is further submitted that it is not necessary that compensation can be awarded in cases of custodial deaths only rather, once it is found that death has occurred in custody either police or judicial and whether the death is suicidal or homicidal, the State is liable to pay compensation to the family of the victim. The learned senior counsel relied on the decisions in Ramesh Das and Another Vs. State of Orissa and Others, , K. Kabali @ Kabalesswaran Vs. State of Tamil Nadu, "Sarla Devi v. The State of Haryana and others" [C.W.P. No. 14953 of 2001 (Punjab & Haryana High Court)], Hawa Singh and Another Vs. State of Haryana and Others, , Smt. Parvathamma Vs. The Chief Secretary and others, , Munni Devi Vs. State of Bihar and Others--> and Jahira Nessa Bewa Vs. State of Assam and Others, .

5. The learned counsel for the respondent-State of Jharkhand raises a preliminary objection and submits that the matter involves disputed questions of fact which cannot be adjudicated in the writ proceeding. Whether the husband of the petitioner died due to negligence on the part of the two constables, is a question which can be decided in appropriate proceeding. It is further submitted that whether for the negligence on the part of the constables, the State would be liable to pay compensation or not, is also a matter which has to be adjudicated in a proper proceeding. Since, there is no finding, judicial or administrative that due to negligence on the part of the constables, the husband of the petitioner died, in the present proceeding no compensation can be awarded to the petitioner nor appointment on compassionate ground can be given to her.

6. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

7. Before dealing with the present case, judgments cited by the learned senior counsel for the petitioner and the law laid down by the Hon''ble Supreme Court may usefully be noticed. In Jahira Nessa Bewa Vs. State of Assam and Others, , the husband of the said petitioner died in police lockup due to police torture. In Munni Devi case, the accused Arbind Singh alias Arbind Kumar Singh who was suffering from hypertension, renal failure etc. was referred to IGIMS, Patna however, on account of negligence on the part of the authorities, the accused was neither shifted nor any step was taken for his treatment which resulted in his death. In Parvathamma case, the accused died in police custody on account of police atrocities however, an enquiry was conducted by the Chief Metropolitan

Magistrate and a report was submitted that the deceased committed suicide. The High Court disbelieved the report of the Chief Metropolitan Magistrate. The accused at the relevant time was in police custody. In *Hawa Singh and Another Vs. State of Haryana and Others*, , the accused died due to consuming some tablets while he was in police custody. In *Sarla Devi* case, it was found that the accused committed suicide due to illegal detention and merciless beating by the police. In *K. Kabali @ Kabalesswaran Vs. State of Tamil Nadu*, , a Commission of enquiry was instituted and accepting the finding of the Commission, compensation was granted to the family of the deceased. It appears that a finding was recorded that if the deceased was not allowed to escape and was taken to the police station safely, chance of his drowning in the canal and meeting with death might not have occurred. Similarly, in *Ramesh Das* case, the accused jumped from the running train and met with death and therefore, compensation was granted to the family of the deceased holding that the deceased was in custody of police personnel who were under a duty to keep him in safe custody till, he was reported to the Observation Home, Behrampur and only because the constables were negligent in their duties, the deceased could escape which resulted in his death. In the above facts compensation was awarded to the family of the victim.

8. From the aforesaid, I find that the decisions in above cases have been rendered in peculiar facts of the cases. In cases referred above, I find that it has not been laid down as a proposition of law that in every case where death occurs in police custody or judicial custody, compensation must be awarded to the family of the deceased. It is well settled that a decision is an authority what it decides. In *Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and Others*, , the Hon"ble Supreme Court has observed thus.

28. ".....A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the Judges, and inferring from it a proposition of law which the Judges have not specifically laid down in the pronouncement....."

9. In *Ambica Quarry Works Vs. State of Gujarat and Others*, , it has been held that a decision must be understood in the background of the facts of that case. The Hon"ble Supreme Court has held thus,

18. ".....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it....."

10. The learned senior counsel for the petitioner has relied on the decision in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, . In the said case the deceased was taken into police custody in connection with offence of theft. He was handcuffed and kept in custody in police station. Subsequently, his dead body with handcuff and multiple injuries, was found lying on the railway

track. The mother of the deceased alleged custodial death and claimed compensation. In view of controversies relating to the cause of death, the Hon''ble Supreme Court directed the District Magistrate to hold an enquiry and submit report. Accordingly, the District Magistrate submitted the report finding that the deceased died on account of multiple injuries inflicted on him while in police custody. After hearing the objection to the said report, the Hon''ble Supreme Court finally concluded that it was a custodial death. The present is not a case of custodial death. There is no judicial finding that the husband of the petitioner died due to negligence on the part of the two constables named above.

11. In Dalbir Singh Vs. State of U.P. and Others, , the police alleged suicide in the lockup by the accused however, subsequently, a First Information Report was registered against the police officers for the offences under Sections 330 , 342 , 306 of the Indian Penal Code and sanction for prosecution was given. A charge-sheet was filed in the said case and cognizance of the offence was also taken by the Court. The Hon''ble Supreme Court held that no compensation can be granted in the absence of any adjudication on the issue whether there was a custodial death.

12. Coming to the facts of the case, I find that vide order dated 19.03.2012 in G.R. No. 1593 of 2011, the Trial Court allowed the application of the jail authority for examination of the accused Basudeo Gope by Civil Surgeon-cum-Chief Medical Officer, Bokaro and vide order dated 02.04.2012, the accused was permitted to be removed to RINPAS for his treatment. The husband of the petitioner was admitted in RINPAS on 17.04.2012 and he escaped from there on 29.06.2012. The petitioner has brought on record a copy of show-cause notice dated 05.07.2012 issued to the Constable namely, Dinanath Pandey and Hawaldar namely, Sanjay Kumar Singh whereby both were put under suspension. It is not known whether they were proceeded departmentally and if a departmental proceeding was initiated against them, what is the outcome of the proceeding. Taking note of the post-mortem examination report, police submitted Final Form dated 13.03.2013 stating that the said Basudeo Yadav died in train accident. The Sub-divisional Officer, Chas accepted the said report on 21.09.2013. Neither the Final Form dated 13.03.2013 nor the order dated 21.09.2013 passed by the Sub-divisional Officer, Chas has been challenged by the petitioner in any proceeding. It is thus, apparent that the petitioner has accepted the cause of death of her husband. From the averment in the writ petition, I gather that as many as seven criminal cases were instituted against the husband of the petitioner. It further appears that the husband of the petitioner remained in hospital from 17.04.2012 to 29.06.2012 when he escaped from the hospital. In these facts, it is difficult to conclude that due to negligence of the two constables who were deputed with the husband of the petitioner, the husband of the petitioner escaped from the hospital. There is another interesting aspect of the matter which cannot be overlooked. Though, in the writ petition the petitioner has made the prayers which are noticed above, in me synopsis, the petitioner has made the following prayers:

(i) An appropriate writ, order or direction, a declaration due to the negligence on the part of the respondent authorities they have violated the right to life, dignity and equality of late Basudeo Yadav, which ultimately laid to his death;

(ii) An appropriate writ, order or direction commanding upon the respondents to take suitable action against the negligence officials/employees of the respondents due to which late Basudeo Yadav was compelled to commit suicide.

(iii) A further writ, order or direction, commanding upon the respondents to take appropriate exemplary compensation to the petitioner taking into consideration or relevant factor.

(iv) Any other appropriate writ(s) be issued, order(s) be passed or direction(s) be made as may be deemed fit and proper for doing conscionable justice to the petitioner.

From the above, it appears that a direction has been sought upon the respondent-State for taking suitable action against the officials/employees due to the negligence of whom the husband of the petitioner was "compelled to commit suicide". The averment in the synopsis is contrary to the pleadings in the writ petition. Confronted with this, the learned senior counsel for the petitioner submits that synopsis filed along with the writ petition is not supported by affidavit and therefore, it cannot be considered. I am of the view that the statement made in the writ petition cannot be ignored. If a statement has been made in the synopsis which according to the Senior Counsel is not supported by the affidavit of the petitioner, in that event, the counsels appearing for the petitioner are required to explain under what circumstance and on the basis of which material the averment in the synopsis has been drawn. I find that the petitioner is not conversant with English. She has signed the affidavit in Hindi. There is no statement in the affidavit that contains a statement that the contents of the writ petition were read over to the petitioner and after having understood the same, she put her signature on the affidavit. The signature of the petitioner has been identified by one Mithilesh Prasad, J.C. to Mr. M.K. Dey, senior counsel. Though, an application was filed seeking permission to correct the typographical error in the memo of parties, no application has been filed for correcting and reconciling the stand taken in the synopsis and the writ petition. Leaving aside the above discrepancy in the case of the petitioner, from the facts noticed above, I do not find a prima facie case for entertaining the writ petition and accordingly, the writ petition is dismissed.