
(2019) 12 JH CK 0192
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2392 Of 2009

Bindita @ Bindikta Devi

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173
Indian Penal Code, 1860 — Section 120B, 304, 323, 343
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 JH CK 0192

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Binod Singh, Nipun Bakshi, S. Bhounik

Final Decision : Dismissed

Judgement

1. The present writ petition is under Article 226 of the Constitution of India wherein writ in the nature of mandamus commanding upon the respondent-

State to forthwith pay an amount of Rs.50,00,000/-towards compensation against admitted custodial death of Manraj Tirkey has been sought for.

2. The brief facts of the case as per pleading made in the writ petition is that the petitioner happens to be the mother of late Manraj Tirkey who had

been arrested at about 8:00 a.m. on 22.12.2005, apart from five others, by Deputy S.P., namely, Mand Sandhya Rani Mehta and taken to Sector-XII

police station in the district of Bokaro.

3. According to the petitioner, they were kept in illegal confinement and not only that, Manraj Tirkey was brutally assaulted by the police while in

custody by keeping them in illegal detention till 27.12.2005 and finally on 28.12.2005, Manraj Tirkey was sent to Bokaro General Hospital at about 6:45

a.m. where he succumbed to injury.

4. The matter about illegal confinement as also the custodial death on 02.01.2006 travelled to the National Human Rights Commission as also writ

petition in the nature of Public Interest Litigation had been filed and finally the investigation about alleged custodial death has been referred to Central

Bureau of Investigation. The Central Bureau of Investigation has submitted the final report (charge-sheet) under Section 173 of the Code of Criminal

Procedure on 16.10.2008 whereby and whereunder the illegal detention from 22.12.2005 to 28.12.2005 had been corroborated. The fact about assault

has also been corroborated in course of investigation. Finally the charge-sheet had been submitted for commission of offence punishable under

Sections 120-B read with Sections 323 & 343 of Indian Penal Code.

5. The protest has been filed before the competent court of criminal jurisdiction against the submission of charge-sheet by raising the protest by

dropping the commission of offence under Section 304 which was dealt with by the competent court and disposed of vide order dated 09.02.2009

whereby and whereunder the cognizance for the commission of offence under Sections 120-B, 323, 304 & 343 of Indian Penal Code against the two

police officials had been taken.

6. The case of the petitioner is that while the matter was being investigated, the State of Jharkhand paid a sum of Rs.5,00,000/- on the intervention of

the National Human Rights Commission and therefore, it is the admitted case of the custodial death, hence, the petitioner, being the mother of the

deceased Manraj Tirkey is entitled to be compensated by directing the State of Jharkhand to compensate the petitioner to the tune of Rs.50,00,000/-.

7. Mr. Binod Singh, learned counsel for the petitioner has argued with vehemence that it is the admitted case of the custodial death which has been

proved from the charge-sheet wherein the Central Bureau of Investigation has also come to the conclusion of illegal detention, reference of the

deceased to the Bokaro General Hospital and ultimately his death in the hospital, therefore, the death in custody cannot be disputed and it is settled by

the Honâ??ble Apex Court that if there is any death in custody, the same although cannot be compensated but at least if the exemplary cost would

be directed to be paid, it will be by way of deterrent measure.

8. The respondent-State of Jharkhand has filed counter affidavit and contested

the case by taking the stand inter alia that in pursuance to the order taking cognizance dated 09.02.2009, the charges have been framed under Sections 120-B, 323 and 304 of Indian Penal Code and subsequently the charges has already been framed under Sections 304, 323, 343 and 120-B of Indian Penal Code.

9. The criminal case after its commitment has been forwarded to the court of session for trial being Sessions Trial No.299 of 2010 wherein the judgment has been pronounced holding the accused, namely, Upendra Narayan Singh as well as Rukhsar Ahmad guilty of the charges punishable under Sections 120-B, 323 and 343 of Indian Penal Code and accordingly, they have been convicted under these sections but on the other hand, they were not found guilty of the charge punishable under Section 304 of Indian Penal Code, and as such acquitted of the charge punishable under Section 304 of the Indian Penal Code.

In such a circumstance, the learned counsel for the State has submitted that since the commission of offence under Section 304 has not been proved in course of the trial, hence, it cannot be said to be a case of custodial death, therefore, there is no question of compensating the petitioner in that regard.

10. This Court has heard the learned counsel for the parties and gone across the respective affidavits including the annexures and has found therefrom some undisputed fact that the son of the petitioner, namely, Manraj Tirkey along with five others have been arrested by the police on 22.12.2005 and kept them in custody till 28.12.2005 and referred late Manraj Tirkey to the Bokaro General Hospital on 28.12.2005. The confinement from 22.12.2005 to 28.12.2005 is an admission as per the charge-sheet submitted by the Central Bureau of Investigation, earlier to the C.B.I., FIR had been instituted before the district police but a writ petition in the nature of Public Interest Litigation has been filed being W.P.(PIL) No.1654 of 2006 relating to custodial death of Manraj Tirkey wherein ultimately the Division Bench of this Court has passed an order on 22.12.2006 handing over the investigation to Central Bureau of Investigation. The charge-sheet submitted by the Central Bureau of Investigation under Section 173 of Code of Criminal Procedure has been annexed as Annexure-22 to the writ petition.

It is evident from the charge-sheet that late Manraj Tirkey was found to be in

illegal detention from 22.12.2005 to 28.12.2005, the day when he had been admitted to Bokaro General Hospital by Mr. Upendra Narayan Singh, Assistant Sub-Inspector, investigating officer of the case.

The aforesaid detention for the period from 22.12.2005 to 28.12.2005 has also been corroborated in the lie detection test. The charge sheet has

been submitted under Section 120-B read with Sections 323 & 343 of the Indian Penal Code against accused Upendra Narayan Singh and Rukhsar

Ahmad but sufficient evidence was not found to attribute any criminality on the part of Sandhya Rani Mehta, City Dy. S.P. Bokaro. One Mukti Turkey

has filed objection against the final report submitted by the C.B.I. which had been dealt with by the competent court of criminal jurisdiction by

disposing of the same vide order dated 09.02.2009 which is at Annexure-23 to the writ petition, whereby and whereunder, the cognizance has been

taken against the accused persons under Section 120-B, 323, 304 & 343 of the Indian Penal Code.

After insertion of the offence said to have committed under Section 304 of Indian Penal Code, the case was committed to the Court of Session for

trial.

The judgment has been pronounced in the aforesaid session trial being Sessions Trial No.299 of 2010 on 10th May, 2019.

It is evident from the aforesaid judgment that the trial court has not found ingredient of murder as defined under Section 304 of Indian Penal Code,

established against the accused persons, as would be evident from paragraph 25 of the judgment of the trial court available in the supplementary

affidavit on behalf of the State of Jharkhand.

It is further evident that the trial court has found the sufficient ingredient/material about commission of offence punishable under Sections 343, 323 &

120-B of the Indian Penal Code, accordingly, the accused persons have been convicted under Sections 323, 343 & 120-B of the Indian Penal Code

and not found guilty of charge punishable under section 304 of Indian Penal Code and so the accused have been acquitted of the charge punishable

under Section 304 of the Indian Penal Code.

11. Learned counsel for the petitioner is harping upon the circumstances by agitating the issue of custodial death, the order taking cognizance upon

protest and the payment of an amount of Rs.5,00,000/- on behest of National

Human Rights Commission holding the death as custodial death and directing the respondent-State to make payment of the exemplary compensation in lieu thereof.

12. The question herein is that the documents, i.e., charge-sheet submitted by the C.B.I. holding Manraj Tirkey as under illegal detention ultimately death in the hospital, the order taking cognizance on protest wherein the cognizance has been taken even under Section 304 of Indian Penal Code as also the amount of compensation to the tune of Rs.5,00,000/- paid by the State of Jharkhand on the behest of the National Human Rights Commission can prevail upon the judgment rendered by the competent court of criminal jurisdiction after dealing with the evidence by coming to a conclusive finding about having no ingredient of commission of offence under Section 304 of Indian Penal Code.

The case of the petitioner is that it is a case of custodial death and as such, the amount of compensation is to be paid by the State of Jharkhand in favour of the petitioner who happens to be the mother of late Manraj Tirkey (deceased).

13. The custodial death which is coming under the fold of offence under Section 304 of Indian Penal Code has found not to be established in course of trial and therefore, the session court has acquitted the accused persons from the commission of offence under Section 304 of Indian Penal Code and as such, at this stage, it cannot be said to be a case of custodial death on the basis of the conclusive finding recorded by the competent court of criminal jurisdiction.

14. Learned counsel for the petitioner has submitted that appeal against the judgment dated 10.05.2019 passed in Session Trial No.299 of 2010 has been filed before this Court and as such it cannot be said that the judgment has been accepted by the informant and in view thereof, this Court sitting under Article 226 of the Constitution of India, which is an extraordinary jurisdiction, is within its domain to pass such direction.

15. This Court, is of the view with respect to such submission advanced on behalf of the learned counsel for the petitioner that the writ court, while exercising the power under Article 226 of the Constitution of India, although, is having extraordinary jurisdiction, but the same is to be exercised only upon the admitted documents without travelling with the controversial facts and

if there is controversy on facts which requires adjudication, the writ court is to refrain itself in exercising extraordinary jurisdiction conferred under Article 226 of the Constitution of India.

16. Accordingly, on account of the fact that the appeal has been preferred against the judgment dated 10.05.2019 passed in Session Trial No.299 of 2010, it cannot be construed to be replacement of the judgment passed by the trial court unless the judgment passed by the trial court would be reversed with conclusive finding about commission of offence under Section 304 of Indian Penal Code but on presumption that the petitioner has a case on merit of custodial death, no such direction can be passed by the High Court under its extraordinary jurisdiction on the ground of pendency of appeal.

17. Although, a sum of Rs.5,00,000/- has been paid by the State of Jharkhand on behest of the interference of National Human Rights Commission but that will not give any aid to the petitioner's grievance at this stage in view of the judgment pronounced by the trial court wherein no ingredient of commission of offence under Section 304 of the Indian Penal Code has been found.

18. This Court, in the entirety of facts and circumstances and the detailed discussion made hereinabove, is of the view that at this stage no direction can be passed upon the respondent-State for making payment of compensation holding it a custodial death.

19. Accordingly, the writ petition fails and is dismissed.

20. However, it is open for the petitioner to re-agitate the grievance depending upon the outcome of the appeal preferred against the judgment dated 10.05.2019 passed in Session Trial No.299 of 2010.