

(2016) 10 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : CWPII No. 16 of 2016

Court on its own motion

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2016) LatestHLJ(HP) 1564

Hon'ble Judges : Mr. Mansoor Ahmad Mir, C.J. and Mr. Sandeep Sharma, J.

Bench : Division Bench

Advocate : Ms. Jyotsna Rewal Dua, Senior Advocate, as Amicus Curiae, with Ms. Shalini Thakur, Advocate, for the Petitioner; Mr. M.A. Khan, Mr. Anup Rattan and Mr. Varun Chandel, Additional Advocate Generals and Kush Sharma, Deputy Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - The Secretariat of the Chief Justice had received a letter/complaint on 2nd August, 2016, from Shri Javier Topo, father of eight years" old boy, namely Master Praveen Topo, with the allegations that on 24th July, 2016, his son, Master Praveen Topo, was collecting logs alongside Sutlej River, but, unfortunately, he swept away with the high flow of water, which was released by respondent No. 3-authorities and thereafter his body was not recovered.

2. After noticing the said complaint, it was ordered to be diarized as Public Interest Litigation and Ms. Jyotsna Rewal Dua, learned Senior Counsel, was requested to assist the Court as Amicus Curiae.

3. The respondents were directed to file status reports. Respondents No. 1, 2, 4 and 5 have filed reply and status report. In para 1 of the reply filed by respondents No. 1, 2, 4 and 5, it has been admitted that on 24th July, 2016, Master Parveen Topo, aged 8 years and Master Parmveer aged about 10 years had gone alongside River Sutlej and at that time water was suddenly released

from Karchham Dam and Parveen Topo was swept away with the high current of water. Thus, there is admission on the part of respondents No. 1, 2, 4 and 5 qua cause of the death of Master Praveen Topo.

4. It is also stated that they have taken all steps to recover the body, but the same has not been recovered so far despite the fact that they have taken the assistance of a dog handler along with a tracker dog of State CID.

5. The Investigating Officer is directed to take the investigation to its logical end as early as possible and to file fresh status report within four weeks.

6. It is apt to record herein that prima facie, it is established that the occurrence is outcome of rashness and negligence of the employees of respondent No. 3. Thus, keeping in view the fact that the parents have lost their eight years" old budding son, which is so painful and cannot be redressed by any relief, rather no substitute is available, we deem it proper to exercise inherent powers to grant interim relief to the unfortunate parents, who are hapless, helpless, are broken and shaken. They are on thorns and the said incident is pricking them every second. We are conscious that money is not a substitute, but may be just to ameliorate their pains and sufferings.

7. The cases relating to liability to pay compensation is the realm of Common Law based on proof of negligence.

8. The question is ? whether the interim compensation can be granted, at this stage? The answer is in the affirmative for the following reasons:

9. The introduction of the concept of grant of interim compensation based on no fault liability is outcome of the pronouncements of judgments made by the Apex Court. The purpose is to offer prompt financial relief to the sufferers. The niceties of law and facts have no role to play.

10. It is the duty of the Courts to make such interim orders which are required at the relevant point of time in view of the facts and circumstances of the case read with development of law from time to time.

11. In order to achieve the purpose of grant of interim or final relief promptly and spurn any attempt at procrastination in view of the facts and circumstances of the case, which are crying for the same, the Courts should not succumb to niceties, technicalities and mystic maybes.

12. We are of the considered view that the Writ Court can exercise powers in terms of the mandate of the Constitution read with the inherent powers and can grant interim relief, even though it is not specifically provided for.

13. Our this view is fortified by the judgment rendered by the Apex Court in Civil Appeal No. 11466 of 2014, titled as Raman v. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., decided on 17.12.2014, wherein the Apex Court has laid down guidelines how to assess and grant compensation in such like cases. One of us (Justice Mansoor Ahmad Mir, Chief Justice), the then Judge of Jammu and

Kashmir High Court, has also dealt with such an issue in a case titled as Chief Engineer & Ors. v. Mst. Zeba, reported in (2005) II ACC 705.

14. This Court has also dealt with the similar issue in a public interest litigation, being CWPIIL No. 7 of 2014, titled as Court on its own motion v. State of Himachal Pradesh and others, wherein interim compensation to the tune of Rs. 5.00 lacs, to each of the victims, was granted. It is apt to reproduce paragraphs 20 to 22 of the order, dated 25.06.2014, herein:

"20. In order to achieve the purpose of grant of interim or final relief promptly and spurn any attempt at procrastination in view of the facts and circumstances of the case, which are crying for the same, the Courts should not succumb to niceties, technicalities and mystic maybe"s.

21. We are of the considered view that the Writ Court can exercise powers in terms of the mandate of the Constitution read with the inherent powers and can grant interim relief, even though it is not specifically provided for.

22. We have laid our hands on a judgment which is delivered by one of us (Justice Mansoor Ahmad Mir, Chief Justice) as a Judge of Jammu and Kashmir High Court, wherein interim compensation was granted in a First Civil Appeal, titled as Chief Engineer & Ors. v. Mst. Zeba, reported in (2005) II ACC 705. It is apt to reproduce paras 10 to 17 of the said judgment herein:

"10. While going through the provisions of Section 151, C.P.C., this Court can exercise inherent powers in order to do justice in between the parties and can pass such orders which are warranted in the interests of justice.

11. Section 140 of Motor Vehicles Act mandates how to grant interim compensation. This remedy stands introduced in terms of the recommendations made by the Apex Court in the judgments reported in 1977 ACJ 134 (SC), 1980 ACJ 435 (SC) and 1981 ACJ 507 (SC). In terms of the said judgments the legislation was made. The aim and object of the said provision is to save the victims/sufferers from starvation, destitution and from other social evils. It is just to ameliorate the sufferings of the victims.

12. The Apex Court has passed a judgment reported in AIR 1996 SC 922, titled Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty, wherein Their Lordships have granted interim compensation to the victims of a rape case. In terms of the said judgment the Court is not powerless to come to the rescue of victims and save them from social evils as discussed above. It is profitable to reproduce para-18 of the said judgment herein:

"18. This decision recognises the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the offender subject to the finalisation of scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the scheme. On the basis of

principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life."

13. The Apex Court has also held in the judgment reported in AIR 1986 SC 984, Smt. Savitri v. Govind Singh Rawat, that the Courts can grant interim maintenance in the proceedings under Section 488 (Section 125, Cr.P.C.), Cr.P.C. It is profitable to reproduce relevant portion of para-6 herein:

"?...if a Civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under Section 125 of the Code, we feel that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the pending final disposal of the application. In taking this view we have also taken note of the provisions of Section 7(2)(a) of the Family Courts Act, 1984 (Act No. 66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under Section 125 of the Code to the Family Court constituted under the said Act."

14. While going through the said provisions of law and while keeping in view of the above discussion, I am of the considered view that Civil Court can exercise inherent powers and can grant interim compensation at any stage even though not provided by any other provision of law. It is profitable to reproduce relevant portion of para-4 of the judgment of Apex Court reported in AIR 1995 SC 350, State of Maharashtra and others v. Admane Anita Moti and Others.

"...Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated upon. Even where it is not provided in the statute this Court has held that the Courts have inherent power to grant it..."

15. It is also profitable to reproduce paras 9 & 10 of the Apex Court judgment reported in AIR 2004 SC 3992, Vareed Jacob v. Sosamma Geevarghese and Others, herein:

"9. In the case of M/s. Ram Chand and Sons Sugar Mills Pvt. Ltd. v. Kanhayalal Bhargava, reported in AIR 1966 SC 1899, it has been held by this Court that the inherent power of the Court under Section 151 C.P.C. is in addition to and complimentary to the powers expressly conferred under C.P.C., but that power

will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of C.P.C. If there is express provision covering a particular topic, then Section 151, C.P.C. cannot be applied. Therefore, Section 151, C.P.C. recognises inherent power of the Court by virtue of its duty to do justice and which inherent power is in addition to and complimentary to powers conferred under C.P.C. expressly or by implication.

10. In the case of Jagjit Singh Khanna v. Rakhal Das Mullick, reported in AIR 1988 Cal. 95, it has been held that temporary injunction may be granted under Section 94(c) only if a case satisfies Order 39, Rule 1 and Rule 2. It is not correct to say that the Court has two powers, one to grant temporary injunction under Section 94 (c) and the other under Order 39, Rule 1 and Rule 2. That Section 94 (C), C.P.C. shows that the Court may grant a temporary injunction thereunder only if it is so prescribed by Rule 1 and Rule 2 Order 39. The Court can also grant temporary injunction in exercise of its inherent powers under Section 151, but in that case, it does not grant temporary injunction under any of the powers conferred by C.P.C. but under powers inherent in the constitution of the Court, which is saved by Section 151, C.P.C."

16. In terms of the said judgments, the Civil Court can exercise inherent powers and grant interim compensation in order to do justice, save victims from social evils and just to ameliorate their sufferings.

17. Thus, I am of the considered view that Civil Court can grant interim compensation in the cases, where the claimants/plaintiffs have lost their bread earner, son or daughter due to the negligence of the defendant/s and even in the cases where the plaintiff has sustained injuries due to the negligence of the defendant/s which has rendered the plaintiff permanently disabled."

15. Keeping in view the discussions made herein above, we deem it proper to award, by way of interim measure, 2,00, 000/- in favour of the parents of Master Praveen Topo, which shall be borne by respondent No. 3. The amount be deposited before the Registry of this Court within four weeks.

16. List on 9th November, 2016.