

(2011) 01 P&H CK 0468
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11653 of 2008

Hawa Singh and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 176(1A)
Penal Code, 1860 (IPC) — Section 302, 307, 309, 34, 392

Citation : (2011) 1 ILR (P&H) 827

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—Two Civil Writ Petition Nos. 11653 of 2008 (Hawa Singh and another versus The State of Haryana and others) and 65 of 2010 (Geeta versus State of Haryana and others), have been filed to claim compensation for custodial death of two persons taken in custody by police together. They both have died while in custody and accordingly parents of the deceased in one case and widow of the second deceased have approached this Court not only for seeking investigating of these custodial deaths but also for grant of compensation.

2. The issue of award of compensation by public law proceedings, thus, would arise in these cases.

3. Virender Kumar aged 16 years son of the petitioners (in Civil Writ Petition No. 11653 of 2008) was statedly an artist working in Haryana movies. As per the allegation, Virender Kumar was illegally picked up at 11.30 A.M. on 11th August, 2007. He expired at P.G.I., Chandigarh, on 13th August, 2007. As per post mortem report, the cause of his death was due to consumption of "CELPHOS".

4. No intimation was given to the petitioners about the arrest of their son. Petitioner No. 1 learnt about the same on 15th August, 2007. He then visited the office of the then A.D.C., Kaithal on 16th August, 2007 and learnt that his son

had expired in P.G.I. on 13th August, 2007. The petitioners prayed for investigating the case to ascertain the cause of death and visited the office of respondent No. 2 on 10th September, 2007. The petitioners would complain that their request for investigation into this custodial death was not properly attended to. Rather, no action was taken in this regard.

5. The petitioners have not properly averred facts leading to the death of their son. May be, it is the counsel who could have been little elaborate in this regard. Some details, however, would emerge from the contents of the reply, which is filed in response to notice of motion issued on 10th July, 2008. Of course, these details are projected from police angle. In the reply, reference is made to the enquiry conducted by Additional Deputy Commissioner, Kaithal and the report submitted by him to the Deputy Commissioner on 8th August, 2008. This report was placed on record on directions issued by this Court. Apparently, this Court had noticed from the enquiry that petitioners son was given merciless beatings by the police for two days and he died on 13th August, 2007, when he was in police custody. After referring to Section 176(1A) of the Code of Criminal Procedure inserted in the Act in 2005, this Court had noticed the legal requirement about holding of an inquiry upon death of a person in police custody by a Judicial Magistrate or a Metropolitan Magistrate within whose local jurisdiction the offence has been committed. Finding that no such enquiry was held, the Court thought it appropriate to direct Sessions Judge, Kaithal to get an enquiry conducted from a Judicial Magistrate and to submit his report. The Court passed the following order in this regard on 12th November, 2008 :

The petitioners are parents of one Varinder Kumar who was arrested on 1st August, 2007. It is the case of the petitioner that son of the petitioners were given merciless beatings by the police for two days and he died on 13th August, 2007, when in Police custody. As per the respondents, the son of the petitioner died having consumed Celphos tablets, but it is not denied that Varinder Singh was in custody of Police, when he died.

In terms of Section 176(1A) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr. P.C., inserted in the Act No. 25 of 2005, in case any person dies in the custody of the police under the order of the Court, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate within whose local jurisdiction the offence has been committed. Admittedly, an inquiry in terms of the Section 176(1A) of Cr. P.C. has not been conducted by the Judicial Magistrate. Therefore, before we proceed further, we deem it appropriate to direct learned Sessions Judge, Kaithal, in whose jurisdiction, the deceased was kept in custody, to get an inquiry conducted from a Judicial Magistrate into the matter and submit his report.

The learned Sessions Judge shall mark the inquiry to any Judicial Magistrate within his jurisdiction. Parties to appear before learned Sessions Judge on 12th January, 2009 for further proceedings.

Hearing of the case is adjourned sine die. To be listed for hearing after submission of the report by the Judicial Magistrate.

6. The enquiry report duly sealed was submitted on 28th April, 2010. Copies thereof were supplied to the counsel and the counsel for the parties have been heard.

7. Civil Writ Petition No. 65 of 2010 has been filed by Geeta whose husband was picked up by the police on 13th August, 2007. Late husband of Geeta and late Virender Singh (son of the petitioners in Civil Writ Petition No. 11653 of 2008) have died while they were in the custody of police. Petitioner, Geeta, would aver that the police, in order to hide their illegal action, had registered a case against her husband and Virender Singh in the form of FIR No. 184, dated 10th August, 2007 under Sections 392/34, IPC. In this FIR, allegation of snatching of Rs. 7,000 was made against unidentified persons. The police in order to cover up their action had registered another FIR on 13th August, 2007 under Sections 307, 309 IPC with the allegation that the husband of the petitioner and Virender Singh had administered poisonous substance to each other while in police custody. Reference is made to an enquiry, which was instituted by the Government, when the residents of the area protested. This is an enquiry held by the Additional Deputy Commissioner, who has given a report, implicating the police officials for custodial deaths of the husband of the petitioner and that of Virender Singh. When no action was taken, the petitioner has filed this writ petition to seek compensation for custodial death of her husband and has prayed for direction to register a case u/s 302 IPC against the guilty police officials.

8. Since the common question of fact and law are arising in these two writ petitions, the same were ordered to be heard together and are being disposed of through this common order.

9. The stand of the respondents noticed from reply in Civil Writ Petition No. 11653 of 2008 is that son of the petitioners was involved in FIR No. 184, dated 10th August, 2007 under Sections 392/34 IPC and under the provisions of the Arms Act. He was arrested by SHO Dharam Singh on 13th August, 2007. Kuldeep Singh son of Hawa Singh was informed about the arrest. Deceased, Virender Singh, was interrogated at village Manana, when he allegedly made a disclosure statement. Late Virender Singh was then brought to Police Station, Pundri. Entries to this effect were also made in Daily Diary Register and Virender Singh was put up in police lock up. It is then disclosed that there is only one lock up meant for men in police station. One Satnam was also locked up alongwith Virender Singh. At 9 A.M., Virender Singh and Satnam, both started vomiting. A DDR was also recorded in this regard. They were immediately removed from lock up and moved to a private hospital Shah at Kaithal. Doctor, who attended the patients in this private hospital, advised that condition of Virender and Satnam was serious. SHO Dharam Singh moved an application before the Illaqa Magistrate for recording the statement of Virender, which was done. Virender is alleged to have stated before the Magistrate that he was implicated in this case

by one Lada, who had made him consume one and a half tablets. Satnam was found unfit to make any statement. Both were referred to P.G.I., where Virender Singh died at 4.40 P.M. It is accordingly stated that death of said Virender Singh and Satnam is not due to any negligence or torture on the part of the police.

10. As already noticed, two enquiries have been conducted in this case. A perusal of the enquiry conducted by A.D.C. would show that he had summoned the record of the police station and had recorded the statements of various police officials, who were found involved in this case. Having made mention to the FIR, in which the deceased were arrested, the A.D.C. has concluded that deaths of Satnam and Virender Singh were custodial deaths. While commenting on the story as projected that these tablets were given to Virender Singh by Satnam, the enquiry has noticed that Satnam was arrested by ASI Wazir Singh and some other Constables, who had lodged him in the lock up after taking his search. A.D.C. has thus, rightly questioned as to from where these tablets had, thus, appeared. He has, therefore, held that either the search was not taken properly or the tablets were given to the accused by some outsider. A.D.C. has, thus, held all the members responsible for negligence while performing their duties. Dharam Singh, SHO, was also found to have misled the system by showing arrest of Virender Singh at 2.15 A.M. on 13th August, 2007. As per record, Virender Singh was shown to have been lodged in the lock up after his search at 7.00 A.M. The raiding party had then proceeded to investigate accused Satnam at 4-5 A.M., whereas version of the relatives of Virender Singh is that he was produced in the Police Station on 11st August, 2007. It is noticed that return of the raiding party at 7.00 A.M. and departure of second party at 4-5 A.M. cannot be reconciled.

11. Then had followed the judicial enquiry under the orders of this Court. 17 witnesses were examined by the Judicial Magistrate on behalf of the complainant Hawa Singh. Petitioner, Hawa Singh, has given the detailed background, how the police officials had come to his residence on 2nd August, 2007 and had enquired about a motorcycle. The police had asked Hawa Singh to produce his son, Virender. On 8th August, 2007, Sarpanch of the village, Hari Ram, Leela and another person, whose vehicle was hired, again met Dharam Singh, who threatened the complainant and in this background, he had produced his son on 11th August, 2007, when he was accompanied by Hari Ram, Sarpanch and Leela. As per the allegation, the SHO demanded a sum of Rs. 20,000 for letting off Virender Singh. Thereafter, petitioner No. 1 stated to have learnt on 13th August, 2007 that his son was admitted in PGI, Chandigarh, about which he enquired from Dharam Singh, whose telephone number he already had. The complainant then came to Chandigarh and learnt that his son had already died. Another fact of significance is that during post mortem, following injuries were noticed on the body of Virender :

1. Abrasion with reddish scab with faded area in between of the size 2.1 x 0.8 cm was present over the inner and upper aspect of lower lip in the midline.

2. Abrasion with reddish scap of the size 1 x 0.6 cm over the chin 1 cm right lateral to the tip of chin in the midline.
3. A linear abrasion with reddish scap of the size 1.8 x 0.1 cm was seen, 0.4 cm below and 0.2 cm outer to the injury No. 2.
4. Reddish contusion with faded area in between of the size 6 x 4 cm was present over the posterior end of left sole in the midline.
5. Reddish contusion with faded area in between of the size 6 x 4.6 cm was present over the posterior end of right sole in the midline.
6. Reddish contusion of the size 1.9 x 0.9 cm was present over the inner aspect of distal end of right thumb.
7. Reddish contusion of the size 1.3 x 0.8 cm was present over the inner aspect of distal end of right little finger.

12. The Magistrate had accordingly analyzed the versions of various witnesses that he examined and the material that was placed on record and found that the version of police witnesses about the search of Satnam before putting him in Hawalat is self contradictory. As per the enquiry record, ASI Wazir Singh has allowed private meeting of two outsiders with Satnam, but the police could not specify the purpose for which this meeting was arranged. Is it a fact or a ploy to mislead enquiry ? No efforts seem to have been made to ascertain the same. In any case, this was found to be an act of gross negligence on the part of police officials. The police accordingly was found to have utterly failed in their duties to take care of detainees, which had resulted in their deaths.

13. The Magistrate also found fault with the action of the police in showing the arrest of late Virender at 2.15 A.M. on 13th August, 2007, whereas he was shown to have been lodged in the lock up at 7 A.M. The SHO alongwith the raiding party had proceeded to arrest accused Satnam at 4/5 A.M., which fact was found to be of doubtful in nature. The timing of the return to police station of the first party and leaving of the police station by the second party is not found tallying. Then there is a clear version that late Virender was produced in the police station on 11th August, 2007. Dharam Singh, SHO, was, thus, found to be misleading the system and he has been found responsible for that.

14. From the factual position, as it would emerge from both the enquiries and also from the stand of the respondents, it is clearly established that both the persons died while they were in police custody. This was, therefore, not seriously disputed or debated before me in any manner. Once the deceased were taken into custody by police to keep them safely was the responsibility of the police. They both have died because of poisoning, which is being attributed to the deceased persons only. Still, the police can not be allowed to escape responsibility for acting in a most casual and negligent manner. No doubt, the death of both the deceased may seem to be due to consuming of some tablets supplied by one of the deceased but how he could get these, has not been

explained in any manner. A serious poser will beg an answer as to from where these detainees got these tablets. Upon that would depend whether it is a suicide or a homicidal death. Whatever be a case, the police cannot be allowed to escape responsibility for their negligence. Two persons have died while in police custody. To keep them safe and to safeguard their lives was the responsibility of the police. The police officials are, therefore, liable.

15. Next question would be to see if the compensation can be awarded for these custodial deaths. That award of compensation by Supreme Court in proceedings under Article 32 of the Constitution or by the High Court in proceedings under Article 226 of the Constitution is a remedy available in public law based on strict liability is by now fairly settled. As observed in Nilabati Behera (Smt.) alias Lalita Behera (through the Supreme Court Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the object of compensation in public law proceedings is different from the compensation in private tort law action. In case of violation of any fundamental right of an individual by State's instrumentalities or by its servants, the Court can direct the State to pay compensation to the victim or to his heirs by way of monetary amends and redressals. It is observed that the principle of sovereign immunity is inapplicable in such cases and that this remedy is apart from the private law remedy. Once the custodial death is established, then having regard to the age of the deceased and his monthly income, the State can be directed to pay compensation by adopting some parameters and these may be available as are applied under Motor Vehicles Act.

16. It can be noticed that under public law proceedings, Court can evolve new tools and mould remedy to provide redressal in case of deprivation of fundamental rights like the right under Article 21 of the Constitution of India. The public law proceedings are different from private law proceedings and award of compensation in proceedings for enforcement of fundamental rights under Articles 32 and 226 of the Constitution of India is a remedy available in public law. The convicts, prisoners and under trials have a right under Article 21 of the Constitution and the State has a strict duty to ensure that a citizen in custody of the police or prison is not deprived of his right under Article 21. except in accordance with law. Once a person is taken in police custody and he dies, the burden is always on the State to explain how he died and what is the cause of his death. The Court has observed that enforcement of constitutional right and grant of redress embraces award of compensation as part of legal consequences of its contravention. Award of compensation under Articles 32 and 226 of the Constitution is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law on an action based on tort. Thus, a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledge remedy for enforcement and protection of such rights. Such a claim based on strict liability made by resorting to constitutional remedy provided for enforcement of

fundamental rights is distinct from and in addition to the remedy in private law for damages for tort, resulting from contravention of the fundamental rights.

17. In *Rudul Sah Vs. State of Bihar and Another*, , it was held that in a petition under Article 32 of the Constitution, the Supreme Court can grant compensation for deprivation of fundamental rights. Having observed that Art 32 cannot be a substitute for enforcement of rights and obligations which can be enforced through the ordinary process of courts, civil or criminal. Hon''ble Supreme Court went on to hold that the refusal to pass an order of compensation in favour of the person will be doing lipservice to his fundamental right to liberty, which the State Government has so grossly violated. As per the Hon''ble Supreme Court. Art 21 which guarantees the right to life and liberty will be denuded of its significant contents if the powers of the Court, were limited to passing the orders to release from illegal detention. As observed, one of the telling ways in which the violation of the right can reasonably be prevented and due compliance of the mandate of the Art secured, is to mould its violators in the payment of compensation.

18. Catena of decisions in this regard recognizing the right to receive compensation in public law proceedings can be noticed. This was so held in *Sebastian M. Hongray Vs. Union of India (UOI) and Others*, , *Sebastian M. Hongray versus Union of India (II)* (19X4) 3 S.C.C. 82 , *Bhim Singh Vs. State of Jammu & Kashmir*, , *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, and *State of Maharashtra and Others Vs. Ravikant S. Patil*, .

19. In *Sebastian M. Hongray (I)*'s case (supra), it was indicated that in a petition for writ of habeas corpus, the burden was obviously on the respondents to make good the positive stand of the respondents in response to the notice issued by the Court by offering proof of the stand taken, when it is shown that the person detained was last seen alive under the surveillance, control and command of the detaining authority. In *Sebastian M. Hongry (II)*'s ease (supra), exemplary costs were awarded on failure of the detaining authority to produce the missing persons on the conclusion that they were not alive and had met with an unnatural death. In *Bhim Singh's* ease (supra), illegal detention in police custody was held to constitute violation of rights under Articles 21 and 22 of the Constitution and the Hon''ble Supreme Court had awarded compensation, directing the State to Pay monetary compensation by way of exemplary costs. In *Saheli's* case (supra), the State was held liable to pay compensation to the mother of the deceased, who died as a result of beating and assault by police. The principle indicated therein was that the State was responsible for tortious act of its employees. In *Ravikant S. Patil's* case (supra). High Court has awarded compensation for violation of fundamental rights under Article 21 of an under trial prisoner, who was handcuffed and taken through the streets in procession by police during investigation.

20. Similar issue arose and was decided in *Maharaj versus Attorney General of*

Trinidad and Tobago, (1978) 2 All E.R. 670. This case related to Section 6 of the Constitution of Trinidad and Tobago. 1962, in Chapter pertaining to human rights and fundamental freedoms. Section 6 provided for an application to the High Court for redress. The question was whether the provision permitted an order of monetary compensation. A contention was raised that an order for payment of compensation did not amount to enforcement of right that had been contravened. This was expressly rejected. It was held that an order of payment of compensation, when a right protected has been contravened is clearly a form of redress, which a person was entitled to claim u/s 6 and may well be the only practicable form of redress. Lord Diplock delivering the majority judgements, held that the jurisdiction to make such an order is conferred on the High Court, viz jurisdiction to hear and determine any application made by any person in pursuance of sub-section (1) of Section 6 and that the very wide power to make orders, issue writs and give directions are ancillary to this. Lord Diplock further spoke as under :

finally, their Lordships would say something about the measure of monetary compensation recoverable u/s 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment, under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone.

21. This approach would find clear support from the decision of the Hon'ble Supreme Court in Bhagalpur Blinding cases : Khatri and Others Vs. State of Bihar and Others, . The Court in this case has observed that it would not be helpless to grant relief in cases of violation of right to life and personal liberty and it should be prepared to forge new tools and device new remedies for purpose of vindicating these precious fundamental rights. It was also indicated that procedure suitable in the facts of the case must be adopted for conducting enquiry needed to ascertain the necessary facts for granting the relief as the available mode of redress for enforcement of guaranteed fundamental rights. This apparently is taken care of in the present case. Two enquiries have been held, from which the factual position can clearly be ascertained. Both the enquiries have held the police to be negligent, leading to loss of two human lives, which would reveal gross violation of rights of life guaranteed to every human being. In Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., also, it is observed that Courts have to develop own law and if the Courts find that it is necessary to construct a new principle of liability to deal with unusual situation, which has arisen and which is likely to arise in future, then there is no reason why the Court should hesitate to evolve such principle of liability.

22. Article 9(5) of International Covenant on Civil and Political Rights, 1966, would also show that an enforceable right to compensation is not alien to concept of enforcement of guaranteed right. This Article says "anyone who has

been victim of unlawful arrest or detention, shall have an enforceable right to compensation. "

23. The facts in the case of Ajab Singh and Another Vs. State of Uttar Pradesh and Others, , would appear nearer to the facts in the present case. This was a case where deceased was lodged in jail and was remanded in judicial custody. While in jail, he was removed to hospital, where he died. The cause of death was shock and hemorrhage, but the jail and police authority had put forth concocted explanation. C.B.I. was not only directed to register a case and conduct investigation but the State Government was held responsible in law for death of the deceased and was, thus, found liable to pay compensation to the petitioners for the same. A sum of Rs. five lacs was directed to be paid as compensation and this was without prejudice to the rights of the T. Rs. to claim compensation in private law proceedings, if so entitled to.

24. Compensation for custodial death, on the basis of a report received from Additional District Judge, not only led to direction to CBI to initiate criminal proceedings in the case of Death of Sawinder Singh Grover In re: , but the Court also directed payment of Rs. two lacs to the widow by way of ex-gratia payment. It is, thus, fair to conclude that compensation by way of public law proceedings is clearly available and can be so directed.

25. The next question now is to the quantum of compensation. The Division Bench of this Court Phoolwati versus State (Union Territory of Chandigarh) and others, 2008 (1) R.C.R. (Civil) 130, has adopted a method of multiplier as provided in Motor Vehicle Act and applied the same for assessing and awarding the compensation for custodial death. In Mrs. Sudha Rasheed and others versus Union of India and others, 1995 (1) Scale 77, multiplier system was applied for assessing compensation. That being the position, this method can fairly be adopted to assess the compensation in this regard.

26. The counsel for the petitioners has pointed out that the deceased, being of young age and being not working anywhere, could be taken to be earning minimum wages as a daily wager. As per the counsel, Rs. 3,700 is the minimum wages for a daily wager and multiplier of 17 could be applied, considering the age of both the deceased. By taking into account the dependency and excluding 1 /3rd towards personal expenses, the monthly income of the deceased can be assessed as Rs. 2,500 approximately. The compensation, thus, would roughly work out to be Rs. 5,00,000 in each case. Accordingly, a sum of Rs. 5,00,000 is awarded to the petitioners in each case to achieve the ends of justice. The members of the deceased families, i.e. the petitioners would be entitled to get this compensation, which shall be paid by the respondent State within a period of three months from the date of receipt of copy of this order.

27. Both the writ petitions are, thus, disposed of in the above terms.