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**(2006) 07 GAU CK 0043**  
**In the Gauhati High Court**

Lhingkhophal Gangte

APPELLANT

Vs

State of Manipur and Anr.

RESPONDENT

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**Date of Decision :** 24-07-2006

**Acts Referred:**

**Citation :** (2006) 07 GAU CK 0043

**Hon'ble Judges :** T.Nanda kumar Singh, J

**Bench :** Single Bench

**Advocate :** S.Nepolean Singh, L.Shashibushan Singh, Advocates appearing for Parties

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## Judgement

1. Heard Mr. L. Shashibushan Singh, learned counsel appearing on behalf of the petitioner as well as Mr. S. Nepolean Singh, learned G.A. appearing on behalf of the respondents 1 and 2.

2. The succinct fact of the petitioner's case is that the petitioner is the lawfully married wife of (L) Mr. Thangzalam Gangte of Hill Town Village, P.O. Cheengkongpang, P.S. Churachandpur. It is said that the petitioner's husband, (L) Mr. Thangzalam Gangte, was kidnapped by suspected Paite militants on the 22nd December, 1997 at about 11.45 a.m. from Thagjam Road near Mr. Dougzakais house and since then his whereabouts is not known till date. Since the petitioner's son has not come back in spite of best effort to trace him out by his family members and covillagers, the Officer in Charge of the Churachandpur Police Station basing on a telephonic conversation had registered a suomoto case being FIR No.494(12) 97 CCPS U/S 121/121 A/365/34 IPC stating that the petitioner's husband Mr. Thangzalam Gangte S/o (L) Thangpakof A/P Hill Town Village, Churachandpur Churachandpur had been kidnapped by the suspected ZRA cadre which is the militant outfits of the Paite community on 22.12.1997 at about 11.45 a.m. while he was walking on the Thangjam Road, near Mr. Dongzakal's residence, a copy of the detailed FIR No. 494(12) 97 CCPS U/S 121/121A/365/34 IPC is available at Annexure A/1 to the present writ petition.

3. It is the admitted case of both the parties that the Govt. of Manipur issued an order being No.1(1)/26/97H(Pt.2), Imphal, the 6th August, 1998 to the effect that ex gratia of Rs.1,00,000/ shall be paid to the civilian in the event of death due to unjustified police/security force action or extremist action. For easy reference, the said order of the Govt. of Manipur dated 6.8.1998 is quoted below:

GOVERNMENT OF MANIPUR

HOME DEPARTMENT

O R D E R S

Imphal, the 6th August, 1998 No.1(1)/26/97H(Pt.2): In partial modification of the Government orders of even number dated 15.7.1996 and 2.5.1997 the Governor of Manipur is pleased to order to fix the exgratia payable to civilian in the event of death due to unjustified police/security force action or extremist action to Rs.1.00 lakh( Rupees one lakh) only and also increased the amount payable in case of grievous hurt to Rs.10,000/ (Rupees ten thousand) only and also to order that the following Sl.NO.2A shall be inserted after Sl.No.2 in the said Government orders, namely:

2A. Notwithstanding anything contained in these orders, an exgratia of Rs.1.00 lakh only shall be paid, on the recommendation of the ScreeningcumCoordination Committee constituted by the State Government in this behalf, to the next of kin of any person, found missing or lost his life in fire due to burning down of house in an ethnic/communal clash in the State.

2. This issues with the concurrence of Finance Department vide their U.O. No.2/9899/FD(7P/215) dated 3.8.98.

3. This order shall be enforced w.e.f. 1st May, 1998. By orders & in the name of Governor

Sd/

(P. Bharat Singh)

Spl. Secretary (Home), Govt. of Manipur.

4. Since the whereabouts of the petitioner's husband is not known after he had been kidnapped by the suspected militants on 22.12.1997, the petitioner's husband shall be presumed to have been death. In this regard, the learned counsel for the petitioner has referred to Section 108 of the Indian Evidence Act wherein it has been mentioned that "provided that when the question is whether a man is alive or dead, and it is proved that he had not been heard of for seven years, by those who would naturally heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

5. The petitioner filed several representations to the concerned authority for payment of exgratia of Rs.1,00,000/(Rupees one lakh) under the said orders dated 6.8.1998, but till that exgratia amount of Rs.1,00,000/ is not paid.

6. The respondents also filed their affidavit in opposition. The main contention of the respondents in their affidavit in opposition is that since then 7 (seven) years as contemplated U/S 108 of the Indian Evidence Act has not been completed, ex gratia of Rs.1,00,000/ cannot be paid to the petitioner inasmuch as the petitioner's son had been kidnapped only on 22.12.1997. In this regard, the learned counsel appearing for the petitioner submits that the grounds taken by the respondents in their affidavit in opposition cannot be entertained as on date inasmuch 7(seven) years' time had already been elapsed from 22.12.1997 on which the petitioner's son had been kidnapped by the suspected militants of Paite community and since then the whereabouts of the petitioner's son is not known in spite of best efforts to trace out him by his family members and co-villagers and also the Police officially after registering the said FIR 494(12) 97 CCPS U/S 121/121A/365/34 IPC.

7. Taking into consideration of the case of the petitioner and also the said order of the Government of Manipur dated 6.8.1998 which has now been quoted above in entirety, the writ petition is disposed of by directing the respondents to pay ex gratia of Rs.1,00,000/(Rupees one lakh) to the petitioner by placing before the Screening cum Coordination Committee in terms of the order of the Govt. of the Govt. of Manipur dated 6.8.1998 for payment of ex gratia of Rs.1,00,000/ to the petitioner for the death of her husband, Mr. Thangzalem Gangte within 4(four) months from the date of receipt of the certified copy of this judgment and order. To the extent mentioned above, this writ petition is allowed.