
(2007) 09 PAT CK 0084
In the Patna High Court
Case No : C.W.J.C. No. 1235 of 2003

Mahesh Ram, Ganesh Ram and Chandradeo Ram	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Citation : (2009) 5 RCR(Criminal) 126

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The present writ application had been filed by the three petitioners-Mahesh Ram, Ganesh Ram and Chandradeo Ram. It may be mentioned that Mahesh Ram (petitioner No. 7) died during the pendency of this writ application and has been substituted by his mother (Bachhi Devi), his father already having pre- deceased, brother Ganesh Ram being on record already. The three petitioners were made accused in Matihani P.S. Case No. 59 of 2000, which was instituted on 9.10.2000 under Sections 302, 201, 307 and 353/34 IPC instituted against unknown. They were arrested, chargesheeted but later, after eight months released and later discharged as no offence at all was committed.

2. The FIR having beer registered on self statement by Shri Pramod Kunar Jha, who was the officer incharge of Matihani police station, immediately endorsing the investigation to Rajendra Prasad Mahto, A.S.I., Mithani police station for investigation. All these people including the Superintendent of Police and Deputy Superintendent of Police, Begusarai have been made parties to the present writ application by name. The then Superintendent of Police is respondent No. 2 and the investigating officer is respondent No. 5.

3. Counter affidavit has seen filed on behalf of respondent Nos. 1, 2, 3 and 4 i.e. Superintendent of Police, Deputy Superintendent of Police and A.S.I, who recorded the FIR. A separate counter affidavit has been filed by Rajendra Prasad (respondent No. 5), who was the investigating officer.

4. Notices had been issued to the informant side and respondent No. 8 has

appeared Respondent No. 8 happens to be the mother of the girl, in question, who was the centre off all problems. The girl was noticed but she has chosen not to appear. She is respondent No. 6, Ranju Devi.

5. The writ petition has been filed claiming compensation for malicious prosecution and rank illegal and unlawful detention. The petitioners were arrested for a crime, which they did not commit and what is more important, for a crime which was never committed. They petitioned this Court that their right to life and liberty under Article 21 of the Constitution has been deliberately, flagrantly and with impunity violated by the State and they have a right to maintain this writ petition for the said relief.

6. Learned Additional Advocate General No. 3 appeared to defend the State and its officials.

7. With reference to the counter affidavits filed, he submitted that the petitioners were arrested on a wrong information given by the girl's (Ranju Devi) parents (respondent Nos. 7 and 8). The police officials acted bonafidely and became unsuspecting victims of their zeal to perform official duty and if anything wrong happened they cannot be proceeded against. With due respect to the learned, senior counsel, as the facts would disclose from the very initial stage, it was the police officials who orchestrated a false case and falsely got the persons detained. The petitioners remained in custody for almost eight months. Their properties were seized only to be discharged in course of sessions trial as they were found to have committed no offence as no offence has been committed.

8. I cannot accept any part of the submission on behalf of the State. Learned AAG-3 submits that in such a situation no compensation is due. The submission is noted to be rejected. I will deal it later on. In my view there is no controversy of fact. While submitting that the police is innocent, learned AAG-3 probably did not take into account that in a departmental proceeding in relation to this very matter the same Superintendent of Police, Begusarai found the investigating officer guilty and imposed a "flee bit punishment" which shocks the conscience of this Court. For falsely implicating persons in a crime in which they could be sentenced to death, the punishment was stoppage of increments for two years. The Superintendent of police could well have merely exonerated him (respondent No. 5) being totally insensitive and not alive to the constitutional obligation and left a person like respondent No. 5 to run amok and harass the citizens exercising power of police officer investigating crimes.

9. If such persons are permitted to continue in service then no citizen can be free. The persons who are to investigate crime are clearly themselves creating crime and implicating innocent citizen and yet Superintendent of Police considered it a small dereliction in duty with-holding increments for two years only. I will deal it later on. This is shocking.

10. On 9.10.2000 the Mithani police was informed that some people had thrown a mutilated dead body of a lady. Police along with others reached the spot and

when they tried to recover the dead body some people from a distance started firing on the police. Police party also fired in retaliation and injured no one and those persons escaped leaving behind only the dead body. The dead body was then deposited in the Sadar Hospital, Morgue. This was the self statement of Pramod Kumar Jha. A.S.I., Officer Incharge, Matihani Police Station Begusarai. The FIR so recorded has been appended as Annexure 1 to the writ petition. He immediately endorsed the investigation to respondent No. 5, Rajendra Prasad. A.S.I. Matihani police station, Begusarai. Now starts the police action. It is now said that on 11.10.2000 the parents of Ranju Devi (respondent No. 6). Coming to know that a dead body of a lady was in the morgue, they rushed there. They identified the said dead body on 11.10.2000 as that of their daughter Ranju Devi. I may note here that the dead body was of a lady of about 31 years old, who used to dye her hairs. The daughter of respondent Nos. 7 and 8 i.e. Ranju Devi (respondent No. 6) was only about 19-20 years old, yet the dead body was identified and immediately they made a statement before the investigating officer, respondent No. 5, stating that their daughter Ranju Devi was married to petitioner No. 1 three months back, who had been mistreating her and who had informed them that a few days back their daughter had run away and as such it appears that he Petitioner No. 1) had murdered their daughter and tried to dispose of the body. All this is supposed to be the happening of 11.10.2000. On 11.10.2000 a confessional statement was recorded by the investigating officer of petitioner No. 1, the husband of Ranju Devi, who is said to have been arrested pursuant to disclosure made by the parents of the alleged deceased girl. Certified copy of the confessional statement has been annexed to the writ petition as Annexure 3 to the writ petition. Photo copies of the confession from the original record of police have been filed by respondent Nos. 1 to 4 as Annexure B series. In fact, the confessional statement is shown to have been recorded on 11.10.2000 by the investigating officer, respondent No. 5 at 9 a.m. (clearly visible in Annexure B to the counter affidavit of respondent Nos. 1 to 4). The same has been interpolated when the same is sent to the court "9 a.m" is changed to "19.00 p.m.". Reason is obvious. The identification of dead body was in course of the day (11.10.2000) and as such petitioner No. 1 could not have been arrested in the morning even though the confessional statement itself says that he was arrested in the night before by the police. All this remained unexplained by the police or by the investigating officer, who recorded his confession and who has chosen to appear and file counter affidavit in this regard.

11. What is most important is that the confessional statement is recorded by the investigating officer and signed by petitioner No. 1. This confessional statement first admits that petitioner No. 1 was married to Ranju Devi about three months back but she had refused to consummate the marriage. She used to colour her hairs. Being fed up petitioner No. 1 with petitioner No. 2, his own brother and friend (petitioner No. 3) conspired to kill her and he admits that with the help of the other two, he killed her and could not dispose of the dead body which was recovered by the police. Thus, this confessional statement though made before a

police officer in terms of Section 161 Cr.P.C. is a fully inculpatory confession. This confession became the gravamen of charge against the three petitioners. They were all arrested and remanded to custody on 11.10.2000. The so called confessional statement appended to the counter affidavit also shows that the Superintendent of Police was fully aware of the confession. His personal endorsement apart from endorsement of respondent No. 5 was also found there. The Superintendent of Police also supervised the investigation.

12. I may mention here that the dead body was of a lady about 31 years old and her hairs were dyed (coloured). The police being aware of this noted it in confession so recorded that Ranju Devi used to dye her hairs, even though she was just 19-20 years of age. This clearly shows police anxiety to implicate petitioners falsely.

13. On 17.10.2000 the mother and the father of the deceased gave statements in terms of Section 164 Cr.P.C.. In substance they admitted identifying the dead body as the body of their daughter and mentioned that it was her husband who was responsible for her death. The case was then supervised by Subdivisional Police Officer and then by the Superintendent of Police, Begusarai (Rajesh Chandra) himself. On 31.12.2000 in view of the confession, as recorded by the investigating officer and in view of the statement of the parents of the girl, the Superintendent of Police directed for filing the chargesheet. It may be mentioned that in between the police came to know that the petitioner runs a taxi on hire. Immediately the investigating officer requisitioned the court and took warrants to seize the vehicle. The said vehicle was also seized and placed in Thana.

14. Immediately, on 31.12.2000 pursuant to orders of the Superintendent of Police to file chargesheet, chargesheet was drawn up on the same very day and sent to the court of learned Chief Judicial Magistrate where the case was pending.

15. On 2.1.2001 on behalf of petitioner No. 2 a petition was filed before the Chief Judicial Magistrate (chargesheet had not been received on record) that the girl in question was alive and living at Asansol to the knowledge of her parents. The ordersheet of the court would show that immediately learned Chief Judicial Magistrate forwarded the copy of the said application to the Superintendent of Police. It is admitted by the Superintendent of Police that the same was received immediately and on 8th of January, 2001 he directed the investigating officer to look into the matter and report immediately.

16. On 12.1.2001 an application for bail was moved in view of Section 167(2) Cr.P.C. The chargesheet appeared on the record. The bail application was rejected as on that day chargesheet was filed. Petitioner No. 1 was arrested on 11.10.2000 and the period of 90 days would have expired on 10th of January, 2001 and as such the application was made but before it could be taken up, chargesheet was received.

17. It would thus be seen that even though before the Chief Judicial Magistrate it had been specifically urged on the 2nd of January, 2001 that the alleged

deceased girl was alive. S.P. informed the investigating officer on 8.1.2001, yet chargesheet dated 31.12.2000 was received in court and acted upon by the court on 12.1.2001. The chargesheet was neither withdrawn or anything was done and the petitioners were remanded to judicial custody. Every one went in deep slumber consigning the rights of the citizen to cold storage. Nothing happened thereafter.

18. When petitioner No. 2, the brother of petitioner No. 1, was released by orders of this Court on 26.2.2001 he immediately made enquiry and proceeded to Delhi. He traced out the girl Ranju Devi, informed the police in Delhi that persons are being tried in Begusarai for having killed a girl who is living with another man at Delhi. Police in Delhi immediately acted. They arrested Ranju Devi and her so called second husband Rajesh and they were remanded to Tihar jail in a case instituted against them for contracting the second marriage, giving false information and on other charges. D.C.P., Delhi also took pains who personally phone the Superintendent of Police, Begusarai and inform him about this. This was followed by fax message by D.C.P., Delhi to superintendent of Police, Begusarai, which was received by the S.P., Begusarai on 15th of March, 2001, S.P., Begusarai then asked the investigating officer to enquire into the matter and then asked to go to Delhi and get the girl. The said girl and the boy were brought to Begusarai. Her statement was recorded u/s 164 Cr.P.C. on 30.3.2001 (Annexure 7). In her statement u/s 164 Cr.P.C., she has categorically stated that having been married she was not happy. She left her sasural and went to Asansol. She stayed with her relatives. They brought her back to Begusarai. Her relatives took initiative and got her married again at Begusarai to Rajesh and then with the knowledge of her relatives she and Rajesh came to Delhi where Rajesh worked. She does not whisper of any attempt to kill her being made by any person.

19. Now, on 31.3.2001, the S.P. Begusarai told the investigating officer to inform the court concerned and the learned A.P.P. concerned. It is stated that information was sent. In fact, information was given in the court of C.J.M. whereas by then to the knowledge of every body the case had already been committed to the court of Sessions and was not before the C.J.M.. However, by the time these materials reached the committal court where the matter was pending, remaining two petitioners, who were in custody, filed bail application. They specifically brought to the notice of the court about recovery of the girl, who was supposed to have been murdered by them and her statement u/s 164 Cr.P.C. but the learned A.P.P. vehemently opposed the bail application saying that they were guilty of serious crime committed and the committal court persuaded by the A.P.P., rejected the bail petition. Fortunately, they immediately moved the Sessions Judge and the Sessions Judge, Begusarai by his order dated 1.6.2001 noting the aforesaid facts granted bail. Subsequently court took cognizance of the events and discharged the petitioners.

20. Thus, the petitioners were in custody over six months on a trumped up

charge, the gravaman whereof was the confessional statement recorded by the investigating officer giving details as to how Rajnu Devi was killed by the three petitioners and attempt to dispose of the body failed because of police intervention.

21. I am not persuaded by the learned AAG-3 to hold that the confessional statement was bonafidely recorded by the investigating officer. I am asked to accept that confession was bonafidely recorded of a crime by and what is more important is that such a crime had never been committed. No sane man would ever admit a crime not committed by him, more so, a crime which was never committed and to ask any one to accept or believe, it would be absurd on the face of it. This confession has been recorded by the investigating officer which roped in three petitioners and the court is said to take solace from the fact that increments for two years have been with-held, which is sufficient punishment for the gravity of the offence he has committed.

22. Now a second chapter starts- the case against the parents of the girl. They are taken into custody and chargesheeted. Again curiously though they should have been charged u/s 182 read with Section 211 IPC which I am sure the police officer including the S.P. and the investigating officer are awards of., they are not so chargesheeted. They are chargesheeted u/s 420 read with Section 120B IPC and what is more curious is that even though the S.P. was sanguine that it is on basis of false confession recorded by I.O. that all this happened, still the investigating officer was not prosecuted for giving false information and recording a false confession knowing fully well that it could end in death sentence. The court and the citizen are supposed to be satisfied with the action taken by the S.P., Begusarai.

23. It is submitted by the learned AAG-3 that no right, much less, fundamental right, much less, right to life and liberty has been infringed by this action. The petitioners were arrested in execution of due process of law. Their properties were seized in due implementation of law and they cannot later make grievance even though it was found that they were innocent. In my view this is putting things very simply. It was not that a false information was lodged and accusation was found to be false, here records were interpolated, false confession was recorded implicating people who had nothing to do with the occurrence. No offence was committed, as alleged and yet police drew up a confessional statement in respect thereof. The confession was false to the knowledge of all concerned. This, in my view, is a clear case of abuse of official position, violating petitioner's constitutional and fundamental right for which there can be no excuse, much less any explanation. Petitioners suffered imprisonment because of false and concocted confession recorded by I.O. of a crime never committed.

24. Now, having found that there was deliberate and flagrant violation, as a matter of fact, of the constitutional protection available to a citizen, what is the consequences? Learned AAG submits that the consequence is nothing. I am afraid much water has flown down to the Ganges. Not only that the citizen will

not and should not sleep over the matter, it is the constitutional obligation of this Court to intervene and grant compensation and damages. State and its officials are answerable for their actions or inactions. This has been settled over a decade back in the judgment of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, wherein the Apex Court reviewed the cases starting from Rudul Sah v. State of Bihar to Bhagalpur Blinding Case including Bhim Singh v. State of J & K. I will advert to it later on. As held in the words of DR. A.S. Anand, J, (as he then was) concurring with Justice J.S. Verma (as he then was) in the case of Smt. N. Nilabati Behera (supra):

This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law- through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case is possible.

25. This decision establishes not only the jurisdiction of this Court under Article 226 but the constitutional obligation of this Court as well.

26. The next decision that I would like to refer is the case of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, . In this case a citizen, who happened to be the member of Legislative Assembly was arrested while on route to assembly. The Apex Court considered the matter and held that a police officer who is the custodian of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stopping to bizarre acts of lawlessness. The Apex Court in the said case (Bhim Singh) held that such cases are fit cases in which compensation has to be awarded by the courts. That case arose out of a writ petition filed in the Supreme Court directly. In the present case it is worse where the police connived to virtually send persons to gallows on a totally trumped up charge, which was fabricated by them.

27. The next submission of learned AAG - 3 is that neither the police officials can be held guilty and proceeded against nor can the State be held liable for damages and/or compensation on the strength of the case of Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, as they have a sovereign immunity. This argument is only noted to be rejected. The said decision has been the subject matter of consideration by the Apex Court several times since then and stands clearly disapproved. [See Smt. Nilabati Behera alias Lalita Behera Vs. State of

Orissa and others, N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, and The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, . Sovereign immunity does not absolve State from its liability to pay damages if it infringes the fundamental right of a citizen.

28. In the case of N. Nagendra Rao and Co. v. State of A.P. (supra) the State was held liable to account for and pay damages in respect of fertilizers which were seized in purported exercise of statutory power but could not be returned to the rightful owner. It was not disputed that the same was seized pursuant to the exercise of statutory power but still the State was liable to pay.

29. In the case of Chairman, Railway Board (supra) the Apex Court had the occasion to consider the case of a Bangladeshi lady, who was raped at the Howrah railway station by the railway employees. All defence of the State were rejected and the State was held liable to compensate the lady, in question. The defence that it was individual action of the individual was also rejected. One may usefully refer the two other cases of Bhagalpur blinding decided by the Apex Court in 1981 for this matter.

30. Thus, here what has been found by this Court is that on a wrong identification of dead body the police became active. Then they drew up a false concocted confession of a crime which not only the petitioners never committed but confessed to a crime, which was never committed. No reasonable man will ever accept a person making such a confession. The S.P. having come to know of the girl's recovery, which falsified the entire investigation and the chargesheet, merely sent information to the I.O. regarding that. Two months thereafter the petitioners were released on bail. This establishes flagrant disregard to the constitution and the constitutional safe guard. It shocks this Court. State failed to protect the rights of its citizens. This is a fit case in which damages are to be awarded. The question is what sort of damage and to what extent? In my view, this case calls for damages and in addition thereto exemplary damages. "Exemplary damages" have been explained by Krishna Iyer, J in the case of Organo Chemical Industries and Anr. v. Union of India and Ors. since reported in AIR 1979 SC 1803:

For instance, "exemplary damages" are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behaviour or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindicate" damages, and (vulgarly) "smart- money".

31. The damages are of two types. One to compensate for the loss suffered and second, as a matter of deterrent to a person causing damage. The later is what is

known as exemplary damages. In the facts of the present case it is clear that not only the State is liable for damages but it is liable for exemplary damages lest citizens receive similar treatment in future at the hands of police. State and its officers are answerable for this action and/or inactions. The malady has to be ripped at the bud. Complacent attitude will encourage lawlessness to the detriment of citizens whose rights have to be safeguarded by all including this Court.

32. Original petitioner No. 1, the husband of the lady, who is supposed to have been killed but has been substituted by his mother, petitioner No. 2 is his brother and petitioner No. 3 is a friend. They used to run a tax on hire, the same was also seized and detained in the police station. The family suffered with the bread earner being locked up for about 8 months for a crime that was never committed.

33. Considering the aforesaid facts, as also the facts that even two months after one was satisfied that they had committed no crime rather the crime with which they have been chargesheeted not committed at all, they were still left languishing in jail, I think it is a fit case in which State is liable to pay compensation of Rs. one lakh to each of the petitioners to be paid within one month from today. Of course, as held by the Apex Court in Jagpati Vs. State of Madhya Pradesh, the State would be at liberty to realise the same from the erring officer.

34. Unfortunate result of this has been that the true crime that was committed i.e killing of a 31 years old lady and dumping her body was never investigated. We will never know who she was nor who killed her. In anxiety to dispose of the case a wrong persons were charged. Case closed but the true case was never taken up. Statistics showed that an investigation was successfully over guilty person charged and sent to stand trial but the truth is that there was total failure of law and law became the biggest victim.

35. The next question is to be considered as to what has to be done with the investigating officer. He has appeared and supported his action. He has recorded the confessional statement of a crime not committed by the petitioners and a crime not committed at all. Opinion of this Court is that the confession was trumped up document created by the investigating officer to which the S.P., Begusarai and other lent their creditability. The investigating officer was found guilty of recording a wrong confession by the S.P., Begusarai in the departmental proceedings, yet he was let off with a "flee bit" punishment of stoppage of two increments for the next two years. This shocks the conscience of this Court. A person, who has been charged with such a serious offence, which if he succeeded could have led to three persons being hanged to death is to be let of in such a cheap manner. Apart from other this shows that the S.P., Begusarai did not have the courage to take proper suitable action against the erring investigating officer as he was apprehensive of getting himself embroiled in this case as he had personally supervised the case. This shows total lack of officer like quality of S.P., Begusarai. Both these matters require examination at the governmental level for

appropriate action. I accordingly direct the Chief Secretary, the Home Secretary, the Secretary Personnel, and D.G.P., Govt. of Bihar, to look into the matter and take appropriate action in accordance with law against the officials concerned, so that such sorry state of affairs do not occur again.

36. Let copies of this order be sent to them and let them report to this Court the action taken within two months from today.

37. Lastly, before parting I would only observe the wisdom of the authors of Indian Evidence Act who provided that no confession made to a police officer could ever be used against an accused. The reason is obvious and illustrated in this case.

38. With the above observation and direction, this writ petition is allowed.