
(2012) 01 JH CK 0113
In the Jharkhand High Court
Case No : Criminal W.J.C. No. 184 of 1999 (R)

Malti Devi	Vs	APPELLANT
The State of Bihar (Now State of Jharkhand) and Others		RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 120(B), 302, 34

Citation : (2012) 1 JLJR 209

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsels for both the sides.

2. This writ petition has been filed by an unfortunate widow, whose husband was taken into custody in connection with a criminal case and he died in Judicial custody in unfortunate circumstances. The petitioner has claimed due compensation and a Government service for the death of her husband, who was arrested by the police on 31.5.1999 in connection with Murhu P.S. Case No. 24 of 1999, which was instituted for the offence U/Ss. 302/34/120B of the IPC and Sec. 27 of the Arms Act. The detainee Suresh Kashyap was remanded to Judicial custody on 2.6.1999 and it is alleged in the writ petition that during the period he was in police custody, he was badly assaulted by the police, due to which he sustained internal injuries. It is further alleged that while in jail custody, his condition deteriorated and when his family members came to know about his ailments, they requested the Jail Authorities on 4.6.1999 for shifting him to hospital for proper treatment. It is further stated in the writ application that on 10th June, 1999, the brother of the deceased requested the Jail Doctor to refer his brother to Rajendra Medical College Hospital, Ranchi as his condition had deteriorated a lot, but the Jail Doctor demanded three bottles of beer and

mixture as bribe and when he was provided with these articles, then only the patient was referred to Rajendra Medical College Hospital, Ranchi. In serious condition, on 10.6.1999, where he died in course of treatment on 12.6.1999.

3. Without going into the further averments of the writ application, it may be pointed out that during the pendency of this writ application, an Enquiry Report bearing letter No. 792 dated 14.6.1999, has been brought on record by the Respondent State, which was jointly submitted by the Deputy Commissioner, Ranchi and Senior Superintendent of Police, Ranchi, who had inquired into the incident. By order dated 13.7.2001, passed in this writ application, the said report has been made part of the record. From perusal of this report, it appears that the Deputy Commissioner, Ranchi and Senior Superintendent of Police, Ranchi, upon inquiry, had come to the following findings:-

(i) Suresh Kashyap was arrested on 31.5.1999 and subsequently he was remanded to the-jail custody.

(ii) Said Suresh Kashyap was not named in the FIR and he had no criminal antecedent

(iii) The people in general had complained about the behavior of the police officials who had arrested this person, that they were unnecessary harassing the people and they were in habit of misbehaving with the people.

(iv) While Suresh Kashyap was in jail custody (i.e., from 2.6.1999 to 10.6.1999), the conducts of the Superintendent of Jail and the Medical Officer of the jail were highly dis-satisfactory.

(v) Upon inquiry, it was found that (he Medical Officer of the jail had made false attendance from 5.6.1999 to 10.6.1999, even though, during this period he was absent from duty.

(vi) On 10.6.1999, when the family members of Suresh Kashyap requested the Medical Officer to refer the detainee to RMCH, Ranchi for necessary treatment, the Doctor demanded three bottles of beer and mixture and only after the demand was fulfilled, the Doctor, referred the detainee to RMCH Ranchi and at that time, the Jail Superintendent was also present (meaning thereby that the demand and supply of bottles of beer and mixture had taken place in the presence of the Jail Superintendent) and the said articles were accepted by one Suresh Thakur, who was an employee in the jail, under the pressure of these officials

4. Needless to say that while forwarding this report actions were recommended to be taken against these officials by the Deputy Commissioner, Ranchi as also the Senior Superintendent of Police, Ranchi Counter affidavits have been filed on behalf of the State Officials in different sets, but there is no denial to this report in other of the counter affidavits

5. It may also be pointed out that in paragraph 11 of the writ application the

allegation has been made against the Doctor for demand of three bottles of beer and mixture. This paragraph has been replied by the State Respondents in the counter affidavits stating that the answering respondents had nothing to do with that. Even in the counter affidavit, filed on behalf of the Respondent No 5, the Superintendent Sub-Jail, Khunti, the said statement has been replied in the same terms as follows -

24 That with regard to the statement made in paragraph 10, 11 and 12 of the writ application it is humbly stated and submitted that the averments made in this paragraphs have nothing to do with the Answering Respondents and as such the same requires no comment from the Answering Respondents

6. This reply given by the Jail Superintendent is clearly in the teeth of the joint report of the Deputy Commissioner and Senior Superintendent of Police, Ranchi, who upon inquiry had found that all these things had happened in presence of the Jail Superintendent

7. It may further be pointed out that though in their counter affidavits, the State Officials have squarely denied the allegation of any assault to the detenue during the police custody and they have brought on record the report of the Medical officer as well as the Post Mortem report of the deceased to deny this allegation, one such report is dated 3.5.2000 which is submitted by Associate Professor of Medicine of RMCH, Ranchi and forwarded to the Superintendent RMCH, Ranchi and has been brought on record as Annexure - R-2/A along with the counter affidavit filed on behalf of the Respondent No. 2, This report shows that that patient Suresh Kacchap aged about 35 years, was referred from Khunti Jail, brought by police at 4:30 PM on 10.6.1999 in a very serious condition and he complained that he was suffering from high fever, haemateria (blood in urine) and loose motions with blood mixed stool for the past ten days prior to his admission. As per the history, the patient was alcoholic also. His treatment was started immediately, but as the patient was suffering with Acute Renal Failure, he could not be saved in spite of all life saving measures taken in the hospital and the patient died at 2:30 PM on 12.6.1999. The post mortem report has also been brought on record by the Respondent-State Which is at Annexure R-2/C which shows that there was no mechanical injury either external or internal over the dead body, but there was presence of pus in the internal organ and the death was caused due to disease of kidney, lungs, spleen and brain.

8. Learned counsel for the petitioner submitted that this is a case in which the petitioner's husband was brutally assaulted and subjected to 3rd degree method by the police due to which his condition had deteriorated in jail and he was not given proper treatment by the jail authorities, rather he was referred to the hospital for treatment only after the condition of the petitioner's husband deteriorated and that too, after taking three bottles of beer and mixture in bribe. Learned counsel for the petitioner accordingly, submitted that this is a case in which the State cannot escape the liability of providing appropriate compensation as well as the compassionate appointment to the petitioner.

9. Learned counsel appearing on behalf of the State on the other hand submitted that from the documents brought on the record, it would be apparent that the allegation of assaulting the petitioner's husband during police custody is absolutely false, in as much as no mechanical injury either external or internal, was found on the dead body of the deceased. It has been submitted by the learned counsel for the State that this false allegation has been made against the State Officials only in order to gain undue sympathy and to get the monetary compensation as well as the Government job, to which the petitioner is not at all entitled. It is submitted that the detainee, while he was in jail custody, was quite hale and hearty, as would be apparent from the statements of the co-prisoners recorded by a Magistrate, which have also been brought on record as annexures. Learned counsel for the State submitted that it was only on 8.6.1999, the petitioner's husband became ill in jail and he was given proper medicines by the Jail Doctor, as is apparent from the jail record and when his condition deteriorated he was shifted to hospital for his appropriate treatment and the patient died due to ailments during treatment in the hospital. Learned counsel for the State, accordingly, submitted that this writ application is only fit to be dismissed.

10. Having heard learned counsels for both the sides and upon going through the record. I find that even though there is nothing on the record for establishing the fact that the deceased was assaulted while in police custody, but the fact remains that from the documents brought on the record by the State Officials themselves, it is apparent that the deceased was seriously ill while he was in custody Annexure R-2/A clearly shows that on 10.6.1999, when the detainee was brought to the hospital, he was in a very serious condition with the blood coming in urine as well as in the stool for the past ten days. Thus, on the basis of this document, it is apparent that the claim of the Respondent State that the detainee, while he was in jail custody, was quite hale and hearty, he became ill only on 8.6.1999 when he was provided medical aid in the jail, cannot be relied upon. This apart, the post mortem report, which has also been brought on record, clearly shows that the deceased was suffering with serious ailments due to which he died. If the detainee was taken into custody with such serious ailments, it was clearly the responsibility of the State to provide him with proper and adequate medical facilities and that too, well within time.

11. This apart, even the allegation of (he petitioner that when the condition of her husband deteriorated, he was referred to the hospital only after accepting three bottles of beers and mixtures in bribe by the Jail Doctor, is fully corroborated by the joint inquiry report of the Deputy Commissioner, Ranchi and Senior Superintendent of Police, Ranchi, which has also been brought on record by the State Officials themselves. There is no reply to this report by any State Officials, and even learned counsel for the State felt a little helpless when confronted with this report during arguments.

12. Though the joint inquiry report of the Deputy. Commissioner, Ranchi and

Senior Superintendent of Police, Ranchi clearly shows that the allegation of accepting the bottles of beers and mixtures as bribe was found to be true upon inquiry and these demands were made and accepted in the presence of the Superintendent of Jail, but the Superintendent of Jail, who has filed his counter affidavit has only denied this statement stating that he had no concern with the same. Needless to say that this statement of the jail Superintendent cannot be accepted and he has to be held responsible for any such kind of omission and commission which was done in his jail and that too, in his presence, as per the report

13. In these facts and circumstances, I am of the considered view that even if the petitioner has not been able to establish her case that her husband was badly assaulted in police custody, the State cannot escape the responsibility of the unfortunate death of the petitioner's husband while he was in jail custody, as there were serious omissions and commissions on part of the State Officials in providing timely and adequate medical aid to the petitioner's husband while he was in jail custody. The allegations which have been found true by the Deputy Commissioner, Ranchi and Senior Superintendent of Police, Ranchi are only shocking and sufficient to shake the humane conscience.

14. For the foregoing reasons, though it is for the State government to take appropriate departmental action against the erring officials, but it is the responsibility of the State Government also to duly compensate the petitioner for the death of her husband in the aforesaid circumstances. Taking into consideration of the fact that the petitioner's husband died in the year 1999 itself and in view of the admitted report of the Deputy Commissioner, Ranchi and Senior Superintendent of Police, Ranchi, adequate compensation ought to have been provided by the State Government to the petitioner well within a reasonable time, I am of the considered, view that in the facts and the circumstances of this case, the compensation quantified at Rs. 5,00,000/- (Rupees five lacs only) as on today, shall be an adequate compensation taking into the consideration the price index of the year 1999 and the amount of interest for the delayed payment.

15. So far as the claim of the petitioner for compassionate appointment is concerned, this prayer cannot exceed to in the writ jurisdiction and it would be open to the State Government to consider the same in accordance with law, if permissible.

16. It is also made clear that it shall be open to the State Government to fix the responsibility upon the erring officials and to realize the amount of compensation from them in accordance with law, which may be in addition to any punishment in departmental proceeding against them, if any.

17. Accordingly, the State Government is directed to make the payment of compensation of Rs. 5,00,000/- (Rupees five lacs only) to the petitioner positively within the period of two months from the date of the communication of

this order, failing which this amount of compensation shall attract a penal interest at the rate of 10% per annum until the payment is actually made.

18. This writ application is, accordingly, allowed with the above directions.