

(2001) 09 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 11925 of 1996

Mamata Mohanty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 26
Constitution of India, 1950 — Article 226

Citation : (2001) 92 CLT 791

Hon'ble Judges : R.K. Patra, J;P.K. Misra, J

Bench : Division Bench

Advocate : S.N. Kar, A.K. Rath and S.C. Mishra, for the Appellant; U.K. Samal, Addl. S.C. (Central) and Sanjit Mohanty, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The petitioner is the widow of one Debakalyan Mohanty who was at the relevant time working as Senior Class-I Mining Engineer in Gevra Colliery Project in the State of Madhya Pradesh under the South Eastern Coalfields Limited (in brief "S. E. C. L."). In this petition under Article 226 of the Constitution of India, she prays for a direction to the Central Bureau of Investigation (hereinafter referred to as "the C B I.") to investigate the circumstances in which her husband-Debakalyan Mohanty was found dead on 30-12-1995 at Gevra, She suspects that her husband was murdered at the instance of hight officials of the S. E. C. L. because of his opposition to them for commission of different kinds of corruption in the Colliery and the so-called investigation made by the police of Bilaspur (of erstwhile Madhya Pradesh), is not fair, perfunctory and tainted.

2. The case of the petitioner is that her husband-Debakalyan Mohanty first joined as Junior Executive Trainee Engineer at Moira Colliery of Eastern Coalfields Limited. On" successful completion of the training period, he came to be appointed as Second Class Mining Engineer and was placed at Moira Colliery,

Assansol where he continued as a Mining Engineer till 1982. In due course, because of his exceptional merit and competency he came to occupy the post of Senior Class-I Mining Engineer under S. E. C. L. at Gevra (Gevra Colliery Project). Her late husband was honest, upright and was totally against any corrupt practice committed by Officers in Coal mining operations. For this, he became eyesore and earned wrath of the high officials. In order to wreak vengeance a conspiracy was hatched. Initially attempts were made through the Medical Superintendent of N. C. Hospital, Gevra to medically declare him as an insane person. When that attempt failed, a plan, was made to get rid of him from the world. Therefore, within a month of his joining at Gevra, he was assigned night Shift duty in a distant Mining area. He was given the assignment of looking after the blasting operations of the Mines which involved a lot of corruption by private contractors in collusion with high officials of the S. E. C. L. One blasting contractor even, approached her husband with money, but as he was an honest and upright man he refused to oblige him for doing illegal and unlawful acts. While the matter stood thus, on 30-12-1995 at about 5.30 p. m. the petitioner got a telephone call from Dr. Pradhan, the Medical Superintendent, Gevra Colliery Project, that, her husband, committed suicide by hanging himself on the hook of a fan. At about 7.30 p. m. another telephone call was received by her from one Dr. D.K. Dey, Deputy Chief Electrical Engineer, Gevra, Project that a vehicle would be awaiting at Champa Station to carry them to Gevra. The news was unexpected inasmuch as there was no occasion for her husband to commit suicide. She became suspicious and doubted the cause of the death. She immediately rushed to Gevra and on reaching at the residence on 31-12-1995 at 4.30 p.m. found the dead-body of her husband lying in a pool of blood. She noticed dry blood stains in the walls of the store room. There was dry blood in the drain in the back side of the bed-room. She noticed presence of blood stained prints of fingers on the wall besides dried clots of blood on sunmica seat of a chair. The suit cases in the house were lying scattered and the entire household had been ransacked. Within 10 to 15 minutes of their arrival, the dead-body was removed in a mini truck, which was already standing, to the cremation ground. At about 9 p. m. the dead-body was consigned to flames by her son. Death certificate and post-mortem report were not immediately made available. The local police with the connivance of the officials of the S. E. C. L. did not investigate the case and reported to be a case of suicide. The post-mortem report which was later made available indicates that there was lacerated injury on the occipital region which was antemortem in nature. Had it been a case of suicide, there would not have been any lacerated injury. There is further noting in the post-mortem report as "tongue drawn in" which negatives the concocted story of suicide because in a case of suicide tongue protrudes out.

3. On careful consideration of the facts mentioned above, we are inclined to hold that the investigation made by the local police is perfunctory, tainted and prima-facie it appears to be a case of murder. Therefore, the petitioner has been able to make out a case for re-investigation to be conducted by an independent agency

like the C.B.I.

4. The crucial question, however, is whether any cause of action has arisen within the jurisdiction of this Court for issuing any direction in this regard. The expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. For determining the question of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration. The meaning of "cause of action" vis-a-vis the writ jurisdiction came up for consideration recently before the Supreme Court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, In the said case, Hon"ble Mr. Justice Thomas in his separate opinion held as follows:--

"The power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territorial within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limit of the jurisdiction of that High Court. The amendment by which Clause (2) is inserted is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."

"Cause of action" is a phenomenon well understood in legal parlance. The collocation of the words "cause of action wholly or in part arises" seems to have been lifted from Section 26 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the Courts. As per that section the suit could be instituted in a Court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean the bundle of facts which it would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the Court."

D. P. Mohapatra in a separate judgment held as follows :

"In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person."

5. Keeping the aforesaid legal position in view, let us examine if any cause of action has arisen within the territorial jurisdiction of this Court. Although the death of Debakalyan Mohanty was in Madhya Pradesh, the investigation concerning his death spread to Orissa inasmuch as the Madhya Pradesh police came to the residential house of the petitioner at Cuttack and after examining took her statement. Therefore, in our opinion, a part of the cause of action has arisen within the territorial jurisdiction of this Court. In the circumstances, this Court would be within its limit to pass appropriate orders on the grievance made

by the petitioner.

6. In view of our finding that the investigation conducted by the Madhya Pradesh police with regard to the cause of death of Debakalyan Mohanty was tainted and perfunctory, we direct the Director, Central Bureau of Investigation, New Delhi to get the matter investigated by deputing officers of his choice in the interest of justice. The local police at Madhya Pradesh the conducted investigation is directed to handover necessary papers to the Central Bureau of Investigation forthwith and render all kinds of assistance as and when required by it.

In the result, the writ petition is allowed.

Registry is directed to send copy of this judgment to the Director, Central Bureau of Investigation, New Delhi.

Ch. P.K. Misra, J.

7. I agree.

8. Writ petition allowed.