

(2003) 06 OHC CK 0062

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6776 of 1998

Manibhadra Biswal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227, 32

Citation : (2004) 2 ACC 728 : (2003) 96 CLT 261 : (2003) 26 OCR 34 : (2003) 2 OLR 151

Hon'ble Judges : P.K. Misra, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : D.N. Lenka and N.P. Ray, for the Appellant; D.K. Nanda, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The case of the petitioner in this writ petition is that on 22.3.1997 at about 9.00 A.M. in the morning, he went to the Soro Police Station to lodge First Information Report against Shri Baidhar Khatua and his two sons, namely, Prafulla Khatua and Prasanna Khatua who were illegally felling trees and bamboos from a disputed land of Satyabhama Pattnaik of village Sultanpur of which the petitioner was one of the custodians. He handed over a written FIR to the Officer-in-Charge of Soro Police Station and requested him to investigate into the matter, The Officer-in-Charge of Soro Police Station after going through the contents of the FIR scolded the petitioner in filthy language and directed a constable to put him in the lock-up. The petitioner was then kept in the police lock-up and was assaulted mercilessly with lathi and kicks by the Officer-in-Charge of Soro Police Station and one Shri Behera. The petitioner was asked by them to produce his son, Manoranjan Biswal, who was alleged to be involved in the case. On 23.3. 1997 at about 2.00 P.M. the petitioner was hand-cuffed and tied with a rope and taken to the court at Balasore in a line truck and made to wait there till 4.30 P.M. Since it was a holiday, no one was present in the court

and at about 5.00 P.M. he was made to walk upto the gate of a Government quarter near the Station Square and, after sometime, he was informed by some officials that he was free and has been released in the case. Subsequently, the petitioner obtained a certified copy of the order passed by the learned Sessions Judge, Balasore in Special Case No. 23 of 1995 on 23.3.1997. In the said order, the learned Sessions Judge stated that non-bailable warrant of arrest had been issued against the accused Manoranjan Biswal and non-bailable warrant of arrest was not issued against the petitioner who was on bail and hence he was released from custody. The petitioner's grievance in this writ petition is that he was detained in police custody and was also physically assaulted and ill-treated in police custody from 22.3.1997 morning to the after-noon of 23.3.1997 without any authority of law and his fundamental right to personal liberty under Article 21 of the Constitution has been violated, and he has prayed for punishment of opp. party No. 4 and other police officials and for compensation for violation of his fundamental right under Article 21 of the Constitution.

2. Mr. D. N. Lenka, learned counsel for the petitioner submitted that it will be clear from the order dated 23.3.1997 of the learned Sessions Judge, Balasore in Special Case No. 23 of 1995, a copy of which has been annexed to the writ petition as Annexure-1, that non-bailable warrant of arrest had been issued against Manoranjan Biswal and not against the petitioner and, therefore, the police officials had no authority whatsoever under law to arrest the petitioner on 23.3.1997 and to put him under police lock-up and thereafter produce him before the court on 23.3.1997 and for such unauthorised arrest and illegal detention, the petitioner was entitled to compensation from the State for violation of his fundamental right to personal liberty under Article 21 of the Constitution. He further submitted that while the petitioner was under police lock-up he was also physically assaulted by police officials with lathi and kick blows and for such physical assaults, the petitioner was also entitled to compensation. He vehemently argued that orders should also be passed by this Court for punishing the Officer-in-Charge of Soro Police Station and other police officials of the said Police Station for the aforesaid illegal acts. Mr. Lenka cited the decisions of the Supreme Court in Rudul Sah Vs. State of Bihar and Another, Bhim Singh, MLA. v. State of J & K and Ors. AIR 1986 SC 499 and Arvinder Singh Bagga Vs. State of U.P. and Others, in support of his submission that a person whose right to personal liberty under Article 21 of the Constitution is affected by illegal arrest or detention is entitled to compensation.

3. Mr. Nanda, learned Additional Government Advocate, on the other hand, relied on the various averments made in the counter affidavit filed by the opp. parties 3 and 4 and submitted that although the petitioner was arrested on 23.3. 1997 pursuant to the non-bailable warrant of arrest issued by the learned Sessions Judge, Balasore in connection with Special Case No. 23 of 1995 and was produced before the court of learned Sessions Judge on 23.3.1997, he was not assaulted while in custody as alleged by him. According to Mr. Nanda, therefore, the petitioner was not entitled to any compensation.

4. Paragraphs 4, 5, 6 and 7 of the counter affidavit filed by the opp. parties 3 and 4 are extracted herein below :

"4. That it is respectfully submitted that upon receipt of warrant of arrest which was issued by the learned Sessions Judge, Balasore. In connection with Special Case No. 23/95 the petitioner was arrested on 22.3.97 and was forwarded to the Court on 23.3.1997. The petitioner was neither assaulted while he was in custody nor he had made any complaint of ill treatment by the Police at the time of his production before the learned Special Judge.

5. That it is respectfully submitted that upon receipt of a report from one Satyabhama Pattnaik at about 1.30. P.M. on 22.3.1997 about cutting her bamboo and taking away the same from her plot by Baidhar Khatua and Prasanna Khatua, the same was reflected on the station Diary vide entry No. 580 dated 22.3.1997. U. K. Panda, S.I. and A. C. Behera, A.S.I. were entrusted to enquire into the matter. On their way back they apprehended the petitioner on the strength of the N.B.W. issued by the learned Sessions Judge in Special Case No. 237 95 and brought him to the Police Station. The above fact has also been entered in the Station Diary entry No. 586 dt. 22.3.97 at 10.00 P.M.

6. That it is submitted with respect that since the deponent was out of Headquarter on account of Court evidence duty he returned to the Police Station at 11.00 P.M. on 22.3.97 which have been entered in the Station Diary entry No. 573 and 587 dated 22.3.97. The allegation which has been raised by the petitioner that he was scolded in filthy language by a constable and lodging of FIR is baseless and unfounded.

7. That it is respectfully submitted that on 22.3.97 the deponent was on Court duty and the other Officer of the Police Station such as U. K. Panda, S.I. and A. C. Behera, A.S.I. had left for Law and order duty with one O.S.A.P. force at 4.00 P.M. which has also been entered in the S.D. entry No. 583 dt. 22.3.97. Both of the Police. Officers returned to the Police Station with the petitioner at 10.00 P.M. Therefore, the allegation of threatening the petitioner to produce his son is incorrect since neither he was wanted in any case nor any N.B.W. was pending against him. But N.B.W. was issued against Manoranjan Biswal, son of the petitioner on 29.8.1997 by the learned Sessions Judge in Special Case No. 23/95 which was received at the Police Station on 1.10.1997. The allegation of physical assault and not intimating the grounds of his arrest is incorrect. The petitioner was provided with a meal at 11.00 P.M. Since he did not complain of his ill health it was not necessary for his medical examination. The petitioner was sent to the Court under escort of C/684 B. D. Mahakud and C/421 G. C. Mohapatra. They were issued with a pair of hand-cuff with rope and were entrusted to use them in case of necessity vide S.D. entry No. 801 dt. 23.3.97."

It will be clear from the aforesaid paragraphs of the counter affidavit that no non-bailable warrant of arrest was issued by the learned Sessions Judge in Special Case No. 23, of 1995 against the petitioner and that such non-bailable warrant of

arrest was issued against Manoranjan Biswal, the son of the petitioner and yet, on the strength of the said Non-bailable warrant of arrest, the petitioner was arrested on 23.3.1997, kept in police custody and produced before the court on 23.3.1997. This was, thus, a clear case of arrest of the petitioner and detention of the petitioner in police custody without any authority of law. Article 21 of the Constitution provides that no person shall be deprived of his personal liberty without the procedure established by law. This fundamental right of the petitioner under Article 21 of the Constitution has been violated by the police officials of Soro Police Station.

5. But from the paragraphs of the counter affidavit filed by the opp. parties 3 and 4 quoted above, it will be clear that the opp. parties 3 and 4 have denied the allegation of the petitioner that he was assaulted while in police custody. The opp. parties 3 and 4 have denied the allegation of any ill treatment towards the petitioner by the police. From the order dated 23.3.1997 of the learned Sessions Judge, Balasore in Special Case No. 23 of 1995 it also does not appear that the petitioner has complained before the court soon-after his production that he had been in any way assaulted or ill-treated by the police while in custody. It is, therefore, difficult for this Court to record a definite finding that the petitioner had, in fact, been assaulted or ill treated while he was in police custody during 22.3.1997 to 23.3.1997.

6. The next question is whether the petitioner is entitled to any compensation in this writ petition under Article 226 of the Constitution for his illegal arrest and detention in violation of his right under Article 21 of the Constitution. In *Rudul Sah v. State of Bihar and Anr.* (supra), the Supreme Court found that the petitioner in that case after his acquittal in a full dressed trial was detained in the prison for over fourteen years and held that in exercise of its jurisdiction under Article 32 of the Constitution, the Supreme Court can pass an order for payment of money in the nature of compensation consequential upon the deprivation of a fundamental right to life and liberty of a person. While rejecting the contention of the state that the only remedy in case of such violation of fundamental right under Article 21 of the Constitution is to file a suit for compensation, the Supreme Court held :

"...The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate in the absence of evidence, the precise amount which would be decreed in his favour. In these, circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to

passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield..."

7. The aforesaid decision of the Supreme Court in *Rudul Sah v. State of Bihar and Anr.* (supra) was again followed in *Bhim Singh, MLA, v. State of J & K and Ors.* (supra). In the said case of *Bhim Singh, MLA, v. State of J & K and Ors.* (supra), the Supreme Court found that Shri Bhim Singh was a Member of the Legislative Assembly of Jammu & Kashmir but was suspended from the Assembly. He challenged the suspension in the High Court of Jammu & Kashmir. The order of suspension was stayed by the High Court on 9.9.1985, On 9.9.1985 when he proceeded from Jammu to Srinagar, en-route he was arrested at about 3.00 A. M. and taken away by the police. His wife filed a writ petition before the Supreme Court for producing Shri Bhim Singh before the Court. Shri Bhim Singh was released on 16.9.1985 on bail by the learned Additional Sessions Judge of Jammu before whom he was produced. The Supreme Court observed :

"... We can only say that the Police Officers acted in a most high-handed way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals. Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct."

"... We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be . That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in *Rudul Sah Vs. State of Bihar and Another*, and *Sebastian M. Hongray v. Union of India* AIR 1984 SC 1026. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation..."

8. In *Arvinder Singh Bagga v. State of U. P. and Ors.* (supra), the Supreme Court found from the report of the District Judge of Bareilly that the S.I. had indulged

in illegal arrest and detention in arresting Charanjit Singh Bagga and Rajinder Singh Bagga and they were both tortured and were given blows in the police station and the Supreme Court directed the State of Uttar Pradesh to pay compensation of Rs. 10,000/- to two persons including Charanjit Singh Bagga and to pay Rs. 5,000/- to each of the other persons who were illegally detained and humiliated for no fault of theirs and further observed that upon such payment, it will be open for the State to recover personally the amount of compensation from the concerned police officers.

9. It will be clear from the aforesaid law as laid down by the Apex Court that a person whose right to personal liberty and life under Article 21 of the Constitution is violated, is entitled to compensation from the State and the Supreme Court can award such compensation under Article 32 of the Constitution. We have clearly held in the facts of the present case that the petitioner was illegally arrested and detained in police custody on 22.3.1997 and 23.3.1997. We have also held that no definite finding can be recorded that the petitioner was physically assaulted or was ill treated during such police custody. Since the High Court under Article 226 of the Constitution is also vested with the power to enforce fundamental rights guaranteed under Part-III of the Constitution, the High Court can also award compensation in appropriate cases to persons whose right to personal liberty or life under Article 21 of the Constitution is violated by the State or its officers.

10. We accordingly award a compensation of Rs. 7,000/- (rupees seven thousand) to the petitioner for his illegal arrest and detention and a cost of Rs. 3,000/- (rupees three thousand) for this litigation and direct that the aforesaid sum of Rs. 10,000/- will be paid by the State of Orissa to the petitioner within three months from today. The State of Orissa will, however, have a right to initiate disciplinary proceedings and recover the said amount of Rs. 10,000/- from the police personnel of Soro Police Station found guilty of such violation of the fundamental right of the petitioner under Article 21 of the Constitution. It will be open for the petitioner to file a suit for damages and establish in the civil court that he was physically assaulted or ill-treated during police custody.

11. The writ petition is allowed to the extent indicated above.

P. K. Misra, J.

I agree.