
(2014) 12 MAN CK 0012
In the Manipur High Court
Case No : Writ Petition (C) No. 538 of 2008

Mareum

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2015) 4 GLT 376

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J;Kh. Nobin Singh, J

Bench : Division Bench

Advocate : Mani, Advocate for the Appellant; R.S. Reisang, Sr. G.A. and S. Rupachandra, ASG, Advocate for the Respondent

Judgement

Laxmi Kanta Mohapatra, C.J.—The petitioner is the mother of deceased, Md. Qayamuddin, who is alleged to have been killed by the personnel of Central Reserve Police Force.

2. This writ application has been filed by her claiming compensation for illegal killing of her son. The petitioner claims that her son, deceased Md. Qayamuddin, was about 26 years of age at the time of his death and was working as a Peon in the Directorate of Planning, Govt. of Manipur. On 4.9.2003 at about 1 P.M. deceased, Qayamuddin, had gone to the Imphal Head Post Officer for remitting a sum of Rs. 1500/- to his younger brother who was staying in Saharanpur in the State Uttar Pradesh. When he reached the Imphal Head Post Office, he looked around for drinking water and found a drinking water bottle near a CRPF personnel who was taking his lunch on the corridor in between the old post office and new post office building. The deceased requested the said CRPF personnel to permit a glass of water from the bottle and was allowed to do so. While drinking water, the glass fell down and some water got sprinkled on the plate of the CRPF personnel. After that, it is alleged, the CRPF personnel present assaulted the deceased and dragged him towards the back of the entrance of the new Post Office building. From there, the deceased was taken to the first floor of the new post office building and was beaten severely and thereafter killed.

3. After the deceased was killed, the Assistant Commandant, lodged a false written report with the Officer in-Charge of the Imphal Police Station alleging therein that the deceased snatched away a carbine from one of the CRPF personnel who was performing frisking at another entrance of the post office building and tried to flee towards the gate. It was also alleged in the FIR that the sentry guard closed the grill of the gate and fired one round. Thereafter, the deceased bolted himself in a vacant room in the first floor but subsequently was hit by bullets and succumbed to the bullet injury. It is the case of the petitioner that such a false report was given by the Assistant Commandant in order to make out a case of an encounter though as a matter of fact her deceased son was badly assaulted by the CRPF personnel and was subsequently killed.

4. On consideration of the claim of the petitioner as well as the stand taken by the CRPF personnel, this Court directed the learned District Judge, Manipur East by order Dt. 18.5.2009 to conduct an enquiry and submit the report. In compliance of the said order, the learned District Judge conducted the enquiry and submitted his report Dt. 19.5.2012 wherein he held that the son of the petitioner was killed by the personnel of CRPF and the Manipur Police Commandos on 4.9.2003 by firing indiscriminately upon the deceased without any attempt to arrest him.

5. Mr. Kh. Mani, learned counsel appearing for the petitioner relied upon the report and submitted that without making any attempt to arrest the deceased, the CRPF personnel with the help of Manipur Police Commandos killed the deceased and therefore the petitioner is entitled to compensation.

6. Mr. RS Reisang, learned Sr. G.A. representing the State respondents and Mr. Salam Rupachandra, learned ASG appearing for the Union of India raised objection with regard to the finding arrived at by the learned District Judge in his report and submitted that the story put forward by the petitioner was never proved in course of the enquiry and the evidence on behalf of the respondents clearly indicates that the deceased son of the petitioner snatched away a carbine from the sentry who was performing duty of frisking and entered into one of the rooms in the first floor of the building and fired indiscriminately from the said carbine. In retaliation, there was firing from the CRPF personnel as well as Manipur Police Commandos and in course of exchange fire, the deceased died. It was specifically submitted by Mr. RS Reisang, Sr. G.A that the deceased was also fired upon from an adjacent building and it is not known as to whether the deceased died because of the firing from the said building personnel or from the side of the Manipur Police Commandos. Therefore, when such disputed questions of facts are involved in the case, the appropriate remedy lies in the civil Court.

7. We have carefully perused the report of the learned District Judge as well as the evidence adduced in course of the enquiry. Though the learned District Judge has come to a conclusion that no attempt was made to arrest the deceased and he was fired upon by the personnel of CRPF as well as commandos of Manipur Police, we find that such a finding is not supported by the evidence adduced

before the learned District Judge.

8. It is the case of the petitioner that on 4.9.2003 her deceased son had gone to the Head Post Office for remitting a sum of Rs. 1500/- to his younger brother. When the deceased reached the Head Post Office, he was feeling thirsty and requested one of the CRPF personnel to spare water from his bottle and in course of drinking water, the glass fell down on the ground and some water got sprinkled on the food of the said CRPF personnel. After the above incident the petitioner further alleges that her deceased son was assaulted by the CRPF personnel in the ground floor as well as in the first floor of the building and was killed. She examined herself as PW-1 in course of enquiry. There is no whisper about the above incident in her deposition. No other witness, except the Doctor who conducted the post mortem examination, has been examined on behalf of the petitioner in course of the enquiry. Therefore, the petitioner has failed to prove the allegation made by her in the writ petition with regard to the above allegation. Three witnesses have been examined on behalf of the respondents and RW-2 is the constable from whom the deceased son of the petitioner is alleged to have snatched the carbine. RW-2, in his deposition, has stated that as per the order given by his superior, he along with 4 other CRPF personnel went to the General Post Office for performing duty on 4.9.2003. He and constable Azad Singh were performing duty as security guard on the western gate, i.e. back gate of the post office. Other CRPF personnel were also performing duties at the DGM/BSNL which is located on the south-western direction of the post office. On that day he was doing frisking duty and Constable Azad Singh was standing nearby the gate as sentry in a bunker. One personnel in civil dress aged about 25 years was frisked and cleaned by him. When he was engaged in frisking another person in queue the person, who had been frisked, suddenly pounced upon him and snatched away his carbine. The carbine was having 20 rounds in its magazine. The said person started running towards the gate with the carbine. Constable Azad Singh immediately closed the grill of the gate and chased that person. Having realised that the escape route has been closed, he climbed to the first floor of the GPO building. Thereafter, he heard some sound of firing by the said person from the upstairs. Constable Azad Singh came back to his bunker. Thereafter, sound of sporadic firing both from GPO's side and from BSNL's side were heard. At that point of time Commander of CRPF came to the western gate along with 4/5 Jawans and heard of the incident. 6/7 Manipur Police commandos rushed to the place from the western gate of the post office. They decided to enter into the post office to capture the person who had snatched away the carbine. After they entered into the building, he did not hear any firing sound but found four lady employees of the post office getting down from the first floor along with the CRPF personnel. 4(four) minutes thereafter, sound of firing was again heard. Later on, he came to know that the deceased was the same person who had snatched away the carbine from him and was found in a room in the first floor of the building which had been locked from inside.

9. The evidence of RW-2 is also corroborated by RW-1 and RW-03. From the

evidence of these three witnesses, it is proved that the deceased son of the petitioner entered into the Head Post Office, was frisked by RW-2 and immediately after he was frisked, he pounced upon RW-2 and snatched away the carbine from him. After snatching away of the carbine from RW-2, he tried to run away with the weapon. When he found Exit door closed, he ran to the first floor and started firing from the carbine. There was also firing from the building of BSNL as well as from within the building of the General Post Office. In the FIR lodged by the Assistant Commandant, it is also alleged that an attempt was made to open the door in which the deceased had locked himself and there was firing from inside. Therefore, under no stretch of imagination, it could be held on the basis of such evidence that the respondents tried to make out a case of encounter. The petitioner has not been able to bring out anything in cross examination of these three witnesses examined on behalf of the respondents to disbelieve their statements. It is true that during post mortem examination, the deceased was found to have sustained bullet injuries but it is the case of the respondents that the deceased, after snatching away the carbine from RW-2, rushed to the first floor and fired from the said carbine and there was also firing from the BSNL building which is adjacent to the GPO building.

10. Under these circumstances, we are of the view that the petitioner having failed to establish her case that the deceased was assaulted by the CRPF personnel physically on the ground-floor as well as on the first floor and was subsequently killed by the CRPF personnel, her prayer for payment of compensation cannot be allowed. We, therefore, find no merit in the writ petition and dismiss the same.