
(2015) 07 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition No. 8925 (W) of 2009

Nirmala Chakraborty

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 357, 357-A
Penal Code, 1860 (IPC) — Section 302, 304
Protection of Human Rights Act, 1993 — Section 2

Citation : (2016) 1 CALLT 89 : (2015) 5 CHN 40

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Raghunath Chakraborty, for the Appellant; Animesh Kanti Ghoshal and Shyamal Kumar Sanyal, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Tapabrata Chakraborty, J—The instant writ application has been preferred challenging inter alia the denial of the respondents to grant compensation to the petitioner for the loss suffered by her due to the murder of her son.

2. Shorn of unnecessary details, the facts are that Sanjoy Chakraborty, the son of the petitioner and his two friends, namely, Radha Mohan Mali and Samiran Ghosh were returning from Serampore to Belur through G.T. Road at midnight on 3rd September, 2003, at about 12:30 a.m., when they were flagged down for checking by three men who identified themselves as police officers. The two friends of the victim accordingly stopped for such checking which was conducted by one Santanu Chakraborty, one Swapan Sengupta and one Jahar Modak but the victim did not stop and proceeded further riding his motor bike and accordingly the said Swapan Sengupta contacted one Purnendu Samanta, police constable, over mobile phone and informed him that the victim had defied their signal to stop. The said Swapan Sengupta and Santanu Chakraborty chased the said victim on a scooter up to Bally Khal College and upon reaching the said site

they found the victim lying next to his motor bike but Purnendu Samanta was not found. They immediately took the victim to the hospital where it was certified that the victim was brought dead. The complaint as regards the said incident was lodged on 4th September, 2003 at 5:30 a.m. by one Samiran Ghosh and on the basis of the same the Uttarpara P.S. Case No. 128/03 dated 4th September, 2003 under Section 304 of the Indian Penal Code (hereinafter referred to as IPC) was registered and after investigation the charge sheet under Section 302 of IPC was submitted against Purnendu Samanta and thereafter a supplementary charge sheet was submitted on 5th May, 2004. During pendency of the trial the respondent No. 2 by a memorandum dated 4th July, 2006 appointed the Deputy Magistrate and Deputy Collector, Serampore, Hooghly to hold an executive enquiry into the police firing at Uttarpara near Bally Khal on 4th September, 2003 and the Inspector-in-Charge, Uttarpara P.S., namely, Shri Prabir Roy, I.C. was appointed as associate officer by the Superintendent of Police in Hooghly vide memorandum dated 21st May, 2007. Accordingly, such executive enquiry into the incident of police firing under Regulation 157 of the Police Regulations of Bengal, 1953, was conducted and the report was forwarded to the respondent No. 2 vide memorandum dated 4th February, 2008 but thereafter no follow up action was taken by the respondents.

3. The charge under Section 302 of the IPC was framed against the accused, namely, Purnendu Samanta to which he pleaded not guilty and as such the trial commenced and almost 5 years thereafter the judgment was delivered on 18th April, 2008 in S.T. No. 2/2006/S.C. No. 204/05 and the learned Court sentenced Purnendu Samanta to suffer rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for 2 more years. Subsequent thereto, on 3rd December, 2008 the petitioner made a representation to the respondent No. 2 demanding compensation for the murder of her son but the same was not responded to. Espousing the cause of the petitioner a representation was also made by the President of the Association for Protection of Democratic Rights (hereinafter referred to as the said Association) to the respondent No. 2 on 3rd December, 2008 but the said representations were not responded to and accordingly the petitioner approached this Court through the instant application under Article 226 of the Constitution of India on 11th May, 2009.

4. Records reveal that the writ application was admitted by an order dated 21st July, 2009 with a direction towards exchange of affidavits. But in spite of such direction no affidavit-in-opposition was filed by the respondents and no extension of time to file such opposition was sought for. By an order dated 17th February, 2015 the respondent No. 2 was directed to file a substantive report as regards the steps taken by the respondents relating to the petitioner's claim accompanied with the executive enquiry report as referred to in the document dated 3rd December, 2008 at page 92 of the writ application, within a period of 4 weeks from the date of the communication of the order.

5. Pursuant to such direction a report was communicated to the petitioner by the respondent No. 2 and the same along with the executive enquiry report was produced before this Court on 24th April, 2015.

6. Mr. Raghunath Chakraborty, learned advocate appearing for the petitioner submits that relief in exercise of power under Article 226 of the Constitution would be granted once it is established that there has been an infringement of fundamental rights of the citizens. In the instant case it stands established from the judgment delivered in the Sessions Trial that the petitioner's son was brutally murdered by one Purnendu Samanta, a police constable attached to the Uttarpara Police Station. Oblivious of the constitutional guarantee provided under Article 21 of the Constitution, a police constable brutally murdered the petitioner's son and for such admitted infringement of fundamental right the State authorities are under an obligation to disburse compensation in favour of the petitioner. As regards determination of the quantum of compensation reliance has been placed upon the averments made in paragraph 5 and to the documents in annexure "P2" of the writ application.

7. He further submits that Section 357 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) also provides for payment of compensation to the person who suffered loss caused by the offence and that by way of amendment, Section 357-A was inserted proposing, inter alia, for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependants, who had suffered loss or injury, as a result of a crime but no such relief was granted to the petitioner in the sessions trial though even on its own motion the Court could have granted such compensation irrespective of any application made to that effect.

8. He further submits that in terms of the provisions of Protection of Human Rights Act, 1993 and International Covenants, the petitioner is entitled to compensation for violation of the basic human rights. In support of such contention, he has drawn the attention of this Court to Section 2 of the Act in which "human rights" are defined as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.

9. Drawing the attention of this Court to the impugned report filed by the respondent No. 2 and the corrigendum as issued, Mr. Chakraborty submits that the said order is a cryptic one and the same do not reflect any independent application of mind and in a most casual manner the petitioner's claim has been rejected without even considering the contents of the executive enquiry report and accordingly the said order is not sustainable in law.

10. In support of his arguments, Mr. Chakraborty has placed reliance upon the following judgments:

a) Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, (1993) ACJ 787 : AIR 1993 SC 1960 : (1993) 76 CLT 98 : (1993) CriLJ 2899 :

- (1993) 2 JT 503 : (1993) 2 SCALE 309 : (1993) 2 SCC 746 : (1993) 2 SCR 581 .
- b) Rudul Sah Vs. State of Bihar and Another, AIR 1983 SC 1086 : (1983) CriLJ 1644 : (1983) 2 SCALE 103 : (1983) 4 SCC 141 : (1983) 3 SCR 508 .
- c) Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, AIR 1965 SC 1039 : (1966) 2 LLJ 583 : (1965) 1 SCR 375 .
- d) Chairman, Railway Board & Others -vs- Chandra Das (Mrs.) & Others, reported in AIR 2000 (2) SC 465.
- e) Suresh Vs. State of Haryana, (2014) 4 CCR 559 : (2014) 4 Crimes 363 : (2015) 1 RCR(Criminal) 148 : (2015) 1 SCJ 527 .
- f) Rubabbuddin Sheik -vs- State of Gujarat & Ors., reported in 2009 (17) SCC 653.
- g) Sri Satya Gopal Mishra -vs- State of West Bengal, reported in 2011 (2) WBLR (Cal) 757.
- h) Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, AIR 2010 SC 3745 : (2010) 9 JT 382 : (2011) 1 RCR(Civil) 216 : (2010) 9 SCC 437 : (2010) 10 SCR 971 .
- i) D.K. Basu Vs. State of West Bengal, AIR 1997 SC 610 : (1997) CriLJ 743 : (1996) 4 Crimes 233 : (1997) 1 JT 1 : (1996) 9 SCALE 298 : (1997) 1 SCC 416 : (1996) 10 SCR 284 Supp : (1997) AIRSCW 233 : (1996) 8 Supreme 581 .
- j) M.S. Grewal and Another Vs. Deep Chand Sood and Others, (2001) 2 ACC 540 : (2001) ACJ 1719 : AIR 2001 SC 3660 : (2001) 7 JT 159 : (2001) 5 SCALE 610 : (2001) 8 SCC 151 : (2001) AIRSCW 3430 : (2001) AIRSCW 4075 : (2001) 6 Supreme 655 : (2001) 7 Supreme 341 .
- k) Shalimar Gas and Others Vs. India Oil Corpn. Ltd and Another, (2011) 111 CLT 769 : (2010) 13 SCC 760 .
- l) M.C. Mehta and another Vs. Union of India and others, (1987) 1 ACC 157 : (1987) ACJ 386 : AIR 1987 SC 1086 : (1987) 1 ComplJ 99 : (1987) 1 JT 1 : (1986) 2 SCALE 1188 : (1987) 1 SCC 395 : (1986) 1 SCC 562 Supp : (1987) 1 SCR 819 .

11. Reference to the following observation of the Hon"ble Supreme Court in the case of Nilabati Behera (Supra) would serve as a conspectus of the principles involved in the judgments cited by the petitioner:

"that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence

in private law in an action based on tort. "A claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226, for contravention of fundamental rights. Certain further observations in Rudul Sah which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of the Supreme Court in Rudul Sah and others in that line have to be understood and Kasturilal distinguished therefrom".

12. Mr. Ghoshal, learned senior advocate appearing for the State respondents submits that the arguments advanced by Mr. Chakraborty do not stand supported through appropriate pleadings in the writ application.

13. He further submits that the petitioner has lost his right to avail compensation having not preferred any appeal against the judgment delivered on 18th April, 2008 wherein the learned Court did not issue any direction upon the accused person to pay by way of compensation to any person for any loss or injury caused by the offence.

14. According to Mr. Ghoshal, regarding compensation as per the new amended Section 357-A of Cr.P.C., the recommendation of the learned Trial Court was required and only in the event of such recommendation, the matter is required to be placed before the District Legal Services Authority for deciding the quantum of compensation and that for non-impleadment of the District Legal Services Authority, the writ application is liable to be dismissed on the ground of non-joinder of necessary party.

15. He further submits that the petitioner's son was not the sole bread earner of the family and the compensation as prayed in the writ application is totally absurd and the writ court cannot calculate the actual amount of loss suffered by the petitioner and that in terms of the provisions of the said scheme, the petitioner ought to have approached the District Legal Services Authority. The petitioner is not entitled to any compensation since he had not approached the appropriate authority under the said scheme.

16. According to Mr. Ghoshal, the judgments delivered in the case of Lilabati

Behera (Supra), Kasturilal (Supra), D.K. Basu (Supra) have got no applicability in the instant case since the said judgments were delivered in the backdrop of custodial death.

17. In reply, Mr. Chakraborty submits that the petitioner seeks relief of mandatory compensation as exemplary damages in the instant application under Article 226 of the Constitution for established infringement of fundamental right under Article 21 of the Constitution of India, being a remedy available in public law.

18. He further submits that the writ application has been preferred admittedly prior to promulgation of the said scheme and prior to the insertion of Section 357-A in Cr.P.C. vide notification dated 30th December, 2009. The said amendment was brought about by the Code of Criminal Procedure, (Amendment Act), 2008 with effect from 31st December, 2009 vide notification dated 30th December, 2009 and almost 3 years thereafter, in exercise of power conferred by Section 357-A of Cr.P.C., the West Bengal Victim Compensation Scheme for providing compensation was framed and notified vide notification dated 1st November, 2012 and in the backdrop of the facts pertaining to amendment of Cr.P.C. and promulgation of the said scheme, question of relegation of the matter to the District Legal Services Authority does not occasion.

19. I have heard Mr. Chakraborty, learned advocate appearing for the petitioner and Mr. Ghoshal, learned senior advocate appearing for the respondents and I have considered the materials on record.

20. The undisputed facts that the petitioner's son was murdered on 4th September, 2003 and for such murder, the accused, namely, Purnendu Samanta, a police constable, has been found guilty and has been sentenced to rigorous imprisonment for life and a fine of Rs. 10,000/- by the judgment dated 18th April, 2008 passed by the learned District and Sessions Judge, 2nd Fast Track Court, Hooghly in S.T. No. 2/2006/S.C. No. 204/05 and the said Purnendu Samanta is in custody till date. During pendency of the trial, an executive enquiry was directed to be held by the respondent No. 2 and that the said enquiry report dated 4th February, 2008 was forwarded to the respondent No. 2 by a memorandum dated 4th February, 2008. The insertion of Section 357-A in Cr.P.C. was by way of an amendment with effect from 31st December, 2009 and that the said scheme was promulgated on 1st November, 2012 both subsequent to preference of the writ application on 11th May, 2009.

21. Upon conducting a full-fledged enquiry, the Deputy Magistrate arrived at the following findings on 4th February, 2008:

"1) It has established that Sanjoy Chakraborty died due to firing and fired by C-1172 Purnendu Samanta from his service revolver.

2) It has been established that deceased Sanjoy Chakraborty was a common man, not a criminal. The riders of 2nd bike were released from detention finding

no guilty. Samiran Ghosh was one of the rider who lodged F.I.R. bearing No. 128/03 dt. 04.09.03.

- 3) It has not been established that police was attacked with gun shot.
- 4) Firing was not controlled rather with the intention to cause death.
- 5) Question of private defence to person and property has not been established.
- 6) The use of firearm was excessive.
- 7) It has been established the gunshot injury of C-1172 Purnendu Samanta was self inflicted and was a fabricated fire arm injury to establish a false story of being hit by a bullet from an assailant."

22. The said enquiry officer upon considering the evidence on record and upon arriving at the findings stated above concluded as follows:

"I, on the score, am not at all satisfied from the consequences of happenings that C-1172 Purnendu Samanta used arms knowingly that it would cause death and firing was not made within the purview of regulation 153 to 157 of P.R.B. 1943, Vol-1. Therefore, I conclude that the act of C-1172 Purnendu Samanta was not justified in firing in exercise of the right of private defence of person & property".

23. The order of the respondent No. 2 and the corrigendum issued vide memorandum dated 20th March, 2015 reveal that the said respondent No. 2 has dealt with the petitioner's claim in a slip shod manner and without any application of mind. The said order also does not reveal that the respondent No. 2 took into consideration the executive enquiry report in which the concerned officer arrived at a categoric finding to the effect that the said Purnendu Samanta used arms knowingly that it would cause death.

24. The contention of Mr. Ghoshal that the petitioners ought to have approached the civil court for damages cannot be accepted since in the facts of the instant case public functionaries are involved and the matter relates violation of fundamental right. The mandate of Article 21 should be complied with to mulct its violators in the payment of monetary compensation. Therefore, the State is under an obligation to repair the damages done by the employees of the State to the petitioner's right.

25. On being satisfied on its own motion, the learned Session Judge in the concerned proceedings ought to have directed grant of interim compensation subject to final compensation being determined later. Such duties continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim or his family members and that as such it is preposterous to suggest that by not assailing the judgment delivered in the sessions trial pertaining to non-recommendation towards payment of compensation, the petitioner would lose her right to claim compensation before the writ court for admitted violation of fundamental right.

26. Compensation is one of the methods of protection of the victims and such compensation is to be paid in public law remedy with reference to Article 21 and that such public law remedy is available to the kith and kin of the victim irrespective of the result of criminal prosecution. Thus, the non-issuance of an order under Section 357-A does not debar the petitioner from approaching the writ court under the provisions of Article 226 of the Constitution of India when the fact of violation of Article 21 of the Constitution stands established.

27. I do not find any substance in the argument of Mr. Ghoshal that the arguments of Mr. Chakraborty do not stand supported with appropriate pleading. The factum of violation of a fundamental right has been pleaded in the writ application and on the rudiments of the same compensation has been prayed for. Furthermore, the Court's discretion to grant any relief or to deny relief is not totally dependent on as to whether such point has been specifically averred in the writ application or not, moreso when, the allegation is of violation of fundamental rights.

28. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens under public law jurisdiction, is, thus, in addition to the traditional remedies and not in derogation to the same. It is an accepted proposition of law that in a situation like the present one, the State Government is legally responsible to pay compensation since the State cannot evade its liability to pay compensation for the death of a citizen due to the action of a police constable. In the instant case, the infringement of fundamental right stands established inasmuch as the petitioner's son has been murdered by a police personnel and the same stands proved through the verdict given by the competent criminal forum and furthermore in the instant case the sufferings of the petitioner has assumed more gruesome dimension since the perpetrator of the crime is a "man in uniform". Such act constitutes a brutal denial of fundamental right to life and right to access to justice to the mother of the deceased, who (Sanjoy Chakraborty) has suffered an untimely death due to abrupt termination of his life and the State would connive to such gross infraction of rule of law by failing to ensure and grant appropriate compensation to the petitioner.

29. The quantum of compensation would depend upon the peculiar facts of each case and no strait-jacket formula can be evolved. This Court is conscious that in this proceeding the actual amount of loss suffered by the petitioner cannot be calculated minutely and that the only endeavour should be to "apply balm on the wound" of the mother of the victim. Considering that the petitioner lost her son, who was only 35 years of age and the petitioner has suffered the vagaries of life for a long period of more than 14 years till date and the petitioner is presently more than 64 years of age and is suffering from various ailments, I am of the view that ends of justice will be met if the State Government is directed to pay a lump sum of Rs. 3 lakh to the petitioner.

30. Accordingly, this Court directs the State respondents to make the said

payment of Rs. 3 lakh to the petitioner within a period of 8 weeks from the date of communication of this order.

31. With such observations and directions, the writ application is disposed of.

32. In the facts of the present case, there will be no order as to costs.

33. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.