

(1996) 09 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Criminal W.P. No. 2 of 1995

Pawan Kumar

APPELLANT

Vs

The U.T. Administration and Others

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 357

Citation : (1997) 1 ShimLC 172

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Sanjay Dutt Vasudeva, for the Appellant; Rakesh Jaswal, for Respondent 1, Inder Singh, General for Respondent 2 and Rajiv Sharma, for Respondents 3 to 6, for the Respondent

Judgement

M. Srinivasan, C.J.—The Petitioner claims in this writ petition compensation of Rs. 5 lacs by way of damages for certain alleged illegal acts committed by Respondents 3 to 6. We are not now going into the merits of the allegations in view of certain circumstances which we are going to refer herein. The occurrence is said to have taken place on 13-3-1994. The Petitioner's claim is that he was tortured in the Police Station at Manimajra (Chandigarh). One Rakesh Gupta, Advocate, Punjab and Haryana High Court filed a Civil Writ Petition (PIL) No. 5260/94 in the High Court of Punjab and Haryana for direction to look into the procedural irregularities committed by the concerned Sub-Inspector and for other reliefs. The Petitioner filed an affidavit in that proceedings and took part in the same. He made a prayer for payment of compensation to him. Ultimately, the Division Bench of that Court passed order on July 4, 1994 after hearing the counsel for the parties and perusing the record, directing the Petitioner herein to initiate criminal action under the provisions of Code of Criminal Procedure against such persons against whom he has any grievance or who are alleged to have committed any offence. Pursuant thereto the Petitioner herein filed regular complaint on the file of Chief Judicial Magistrate, Shimla against Respondents 3 to 6 under Sections 200 and 202, Code of Criminal Procedure. It is referred to in

Paragraph 14 of the petition and it is said to be still pending on the file of the Chief Judicial Magistrate, Shimla. As per statement made in the petition, the matter was posted for evidence for 19-11-1994.

2. This is a matter in which there are disputed questions of fact. Even the basic allegations made by the Petitioner are contested by the contesting Respondents. It requires a lot of evidence to be recorded and considered by the Court before any conclusion is arrived at. It is not possible for any Court to give compensation to the Petitioner just on the basis of his own allegations.

3. Hence, in our opinion the matter can be disposed of satisfactorily in accordance with law by the Chief Judicial Magistrate himself as he is in a position to refer to the entire evidence which could be adduced by the parties before he comes to a proper conclusion. Interest of justice requires that proceedings before the Chief Judicial Magistrate, Shimla be disposed of at an early date as the occurrence had taken place in March 1994. Hence, we direct the Chief Judicial Magistrate, Shimla to dispose of the proceedings at an early date preferably by 30-4-1997. The Chief Judicial Magistrate shall report to this Court about the disposal.

4. In view of the above observations, the writ petition is dismissed. It is open to the Petitioner to institute civil proceedings also against such persons as he may deem fit, if so advised.

Cr. M.P. No. 220 of 1996:

5. It is not possible at this stage to order payment of compensation to the Petitioner as prayed for by him, as it will amount to granting of decree in advance and also satisfying the decree before judgment is rendered. Such a course cannot be adopted by any Court. In the circumstances, the amount which is deposited to the credit of this proceeding shall be transferred to the Court of Chief Judicial Magistrate, Shimla to be kept in deposit to the credit of the proceedings pending before him as referred in our order. The Chief Judicial Magistrate shall pass appropriate directions with regard to disbursement of the amount after the main proceedings pending before him are concluded. It is open to the Chief Judicial Magistrate to exercise powers u/s 357, Code of Criminal Procedure if he finds that the facts of the case and the conclusion thereon warrant the same. The C.M.P. is disposed of. Copy Dasti.