

(2016) 01 OHC CK 0076

In the Orissa High Court

Case No : Writ Petition (Civil) No. 13941 of 2012

Rabindranath Mohapatra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 121 CutLT 890 : (2016) 1 ILRCuttack 553

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : M/s. Ranjit Mohanty, C.K. Pradhan, S. Parida, Advocates, for the Petitioners; Mr. A.K. Mishra, Addl. Govt. Advocate, Mr. S.K. Padhi, Senior Advocate, for the Opp. Parties

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—The petitioner has filed this application for making a probe into the death of his son, namely, Kuldeep Mohapatra and seeks for payment of Rs. 20 lakhs as compensation due to death of his son in Saheed Nagar Police Station at Bhubaneswar.

2. The factual matrix of the case in hand is that on 5.6.2012 at about 8.00 A.M. one Basanta Kumar Sahu was proceeding through Vani Vihar square on the National Highway by driving his vehicle TATA ACE bearing Regd. No. OR-02-AQ-2833 loaded with centring wood planks. At Sani Mandir on the National Highway, one Kuldeep Mohapatra @ Pigi (deceased) overtook his vehicle by riding a Bajaj Discover Motorcycle and stopped the TATA ACE vehicle and identified himself as Special Squad Inspector to the driver of the TATA ACE and asked for documents of the vehicle and the loaded articles. The driver, Basanta failed to produce the documents, for which Kuldeep Mohapatra @ Pigi snatched Rs. 2900/- from the money purse of Basanta and slapped him. Then, Basanta came out of the vehicle and there was tussle between Basanta and Kuldeep. Basanta called the passers-by and the outsiders gathered at the spot and when

the public asked about the matter, Kuldeep abused them in obscene language and the public assaulted Kuldeep by fist blows, kick blows by bamboo lathis and plastic pipes. Few people intervened and took both Kuldeep and Basanta to Saheed Nagar Police Station. At the police station, Basanta Sahu lodged a written report before the IIC, which was registered as P.S. Case No. 146 of 2012 and directed the A.S.I. Banamali Das to take up investigation. During investigation, the I.O. visited the spot with the informant, accused and other police staffs, where he seized the motorcycle, bamboo lathis and pipes and also arrested the accused at the spot and returned to police station. Since the accused, Kuldeep Mohapatra was assaulted by the public, the I.O. also lodged the F.I.R. against the public, which was registered as P.S. Case No. 147 of 2012. In the police station at about 2.05 P.M., accused Kuldeep Mohapatra complained of pain in his chest and abdomen and then he was shifted to Capital Hospital, Bhubaneswar, but he was declared dead. Since the accused Kuldeep Mohapatra died in police custody, this writ petition has been filed.

3. On the oral prayer made by learned counsel for the petitioner, vide order dated 18.08.2014, he has been permitted to add Superintendent of Police, C.B.I., Bhubaneswar as opposite party no.4 to the writ petition. Consequentially, C.B.I. caused an inquiry and submitted its report, which has been recorded by order dated 23.04.2015 in the present proceeding. After causing inquiry, on the basis of the evidence adduced in such inquiry proceeding, the C.B.I. authority has come to a finding, paragraphs-5.9 and 5.10 of which read as follows:-

"5.9 Prima facie negligence on the part of suspect Shri Alok Jena, IIC and other police officers for not timely sending the deceased Shri Kuldeep Mahapatra for medical examination and mishandling of the deceased Sri Kuldeep Mahapatra in police custody is clearly made out in the enquiry. There are several facts suggesting towards the custodial violence and death of the deceased Kuldeep Mahapatra in police custody at Saheed Nagar Police Station but the same are not conclusive in nature.

5.10 Magisterial enquiry for this custodial death of deceased Shri Kuldeep Mahapatra is also going on and is not yet complete."

4. As per the report of the C.B.I. in paragraph-10, since the Magisterial enquiry for the custodial death of the deceased Kuldeep Mahapatra was going on and was not completed by the time the report of the C.B.I. was received, this Court vide order dated 30.10.2015 directed the State Counsel to produce the Magisterial enquiry report before this Court for just and proper adjudication of the matter. In compliance to the same, on 27.11.2015, learned Addl. Govt. Advocate filed a memo annexing a sealed cover document incorporating the magisterial inquiry report of the custodial death of Kuldeep Mahapatra. The finding arrived at by the Magistrate reads as follows:

".... From the statement of the witnesses and on verification of documents produced in this case, I am of the opinion that the deceased-accused was

assaulted by the public while he was committing crime. It is clear that the deceased-accused died while he was being sent to medical for medical examination by the police. So there is no doubt that the deceased-accused died while he was in police custody."

Further, at the end of the said report, the Magistrate has come to a definite finding to the following effect:

"..... I found that both the I.O. and the then IIC have not tried to save the life of the deceased-accused by providing him timely and effective medical care. Hence, I am of the opinion that both the I.O., Banamali Das and the then IIC, Alok Kumar Jena are negligent in the discharge of their duty."

5. On perusal of both the reports which have been submitted by the C.B.I. as well as the Magistrate as mentioned above, both have found that due to negligence of the police authority, Kuldeep Mohapatra @ Pigi (deceased) died in the police station while he was in custody and while he complained pain in his body, he was carried to hospital where he was received dead. Therefore, the inevitable conclusion is that due to negligent on the part of the police authority, Kuldeep Mohapatra @ Pigi (deceased) died while remaining in police custody. If public have assaulted, to save Kuldeep Mohapatra @ Pigi, he was brought to the police station, immediately police should have sent him to hospital for treatment. Instead of sending him to hospital, police registered a P.S. case on the basis of the F.I.R. lodged by Basanta Kumar Sahoo and took up investigation by appointing an inquiry officer and that investigation continued for some time.

Thereby, no attention has been given to Kuldeep Mohapatra @ Pigi (deceased), who had sustained bodily injury by the public when he was brought to the police station. More so, the conduct of the police authority is not free from doubts in view of the fact that had action been taken in due time, the life of the deceased could have been saved the death occurred due to sheer negligence on the part of the police authority.

6. In *Cooke v. Midland Great Western Railway*, 1909 AC 229 and *Glasgow Corporation v. Taylor*, (1922) 1 AC 44, the meaning of word "Negligence" is stated as follows:

"Acting carelessly, a question of law or fact or of mixed fact and law, depending entirely upon the nature of a duty, which the person charged with negligence has failed to comply with or perform in the particular circumstance of each case. A very convenient classification has been formulated corresponding to the degree of negligence entailing liability measured by the degree of care undertaken or required in each case, i.e. (1) ordinary, which is the want of ordinary diligence; (2) slight, the want of great diligence; and (3) gross, the want of slight diligence. A smaller degree of negligence will render a person liable for injury to infants than in the case of adults."

7. In *Consumer Unity & Trust Society v. Bank of Baroda*, (1995) 2 SCC 150, the

apex Court held that "Negligence" is absence of reasonable or prudent care which a reasonable person is expected to observe in a given set of circumstances.

8. In *State of Maharashtra v. Kanchanmala Vijaysing Shirke*, (1995) 5 SCC 659 : AIR 1995 SC 2499, the apex Court held that "Negligence" is the omission to do something which a reasonable man is expected to do or a prudent man is expected to do.

9. In *Poonam Verma v. Ashwin Patel*, AIR 1996 SC 2111 : (1996) 4 SCC 332, the apex Court a tort is the breach of a duty caused by omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do.

10. In *M.S. Greval v. Deep Chand Sood*, (2001) 8 SCC 151 : AIR 2001 SC 3660, the apex Court held as follows:

"Negligence in common parlance means and imply failure to exercise due care, expected of a reasonable prudent person. It is a breach of duty and negligence in law ranging from inadvertence to shameful disregard of safety of others. It is caused by heedlessness or inadvertence, by with the negligent party is unaware of the results which may follow from his act negligence is thus a breach of duty or lack of proper care in doing something, in short, it is want of attention and doing of something which a prudent and a reasonable man would not do.

11. In *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee*, (2009) 9 SCC 221, the apex Court held that "negligence", is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence means either subjectively a careless state of mind, or objectively careless conduct. It is not an absolute term but is a relative term. Negligence is strictly nonfeasance and not malfeasance. It is the omission to do what the law requires, or the failure to do anything in a manner prescribed by law. It is the act of which can be treated as negligence without any proof as to the surrounding circumstances, because it is in violation of statute or is contrary to the dictates of ordinary prudence.

12. In *Kusum Sharma v. Batra Hospital*, (2010) 3 SCC 480, the apex Court held that negligence is the breach of a duty exercised by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

13. This being the meaning attached to the word "negligence" as held by the apex Court time and again. Applying the same to the present context, it is made clear that the police has acted in breach of his duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do. Thereby negligence in

common parlance means and imply failure to exercise due care, expected of a reasonable prudent person.

14. Admittedly, Kuldeep Mohapatra @ Pigi (deceased) while under the custody of the police complained of pain in his body and while he was carried to hospital, he was received dead. Thereby, the petitioner who is the father of Kuldeep Mohapatra @ Pigi (deceased) aged about 27 years claims compensation due to death in police custody and filed this writ petition under Article 226 of the Constitution of India claiming compensation of Rs. 20 lakhs for death of his son.

15. In *Smt. Nilabati Behera & Lalita Behera v. State of Orissa*, AIR 1993 SC 1960, the apex Court held as follows:

"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 remedy for enforcement and protection of such rights, and such a claim based 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 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 enforcement of the fundamental right is claimed by resort to the remedy in public law under Constitution by recourse to Articles 32 and 226 of the Constitution."

16. In *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610, it has been held by the apex Court that compensation can be granted under the public law by the Supreme Court and the High Court in addition to private law remedy for tortious action and punishment to wrong doers under criminal law for established breach of fundamental rights.

17. Right to life being a fundamental right enshrined under Article 21 of the Constitution of India clearly indicates that right to live with dignity does not mean a mere animal existence. Therefore, right to life includes the right to medical care. In view of such position, if Kuldeep Mohapatra @ Pigi (deceased) was in custody of the police, may be manhandled by the public, but the duty cast on the police officials was to send him immediately for medical care. Allowing Kuldeep Mohapatra @ Pigi (deceased) to remain in police station and directing for investigation without taking proper care of the injured Kuldeep Mohapatra @ Pigi itself indicates that due care has not been taken by the police authority causing negligence in their duty. Therefore, failure to provide timely medical treatment amounts to breach of right to life. Consequentially, the State is liable to pay the compensation to the dependents of the deceased. On the basis of the materials available on record, it appears that by the time Kuldeep Mohapatra @ Pigi (deceased) expired, he was 27 years old and was survived by his wife and

father.

18. In that view of the matter, this Court is of the considered view that the police authority, who were working under the State are liable to pay the compensation for their negligence causing death of Kuldeep Mohapatra @ Pigi (deceased) in custody. In absence of cogent materials to indicate the contribution made by the petitioner for maintenance of his family, this Court thinks it proper that the State is liable to pay a compensation of Rs. 5,00,000/- (Rupees five lakhs) to the dependant of the deceased, which shall be recovered from the erring officers, namely, Alok Kumar Jena, the then I.I.C., Saheed Nagar Police Station and Banamali Das, I.O. of Saheed Nagar Police Station. The entire exercise shall be completed within a period of four months from the date of passing of this judgment.

19. The writ petition is accordingly disposed of. However, there would be no order as to costs.