
(2000) 03 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1263 of 1996

Rajwant Kaur and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Citation : (2000) 2 RCR(Criminal) 560

Hon'ble Judges : K.S.Kumaran, J

Advocate : Mr. S.K. Garg, Advocate.Mr. K.S. Pawar, DAG, Haryana. Mr. Baldev Singh, Sr. Advocate and Mr. Amendeep Singh, Advocate., Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. Petitioners (1) Rajwant Kaur (2) Dilbag Singh (3) Jarnail Singh, who are widow and children respectively of Jassa Singh, have approached this Court under Articles 226/227 of the Constitution of India, for directing the firstrespondentState of Haryana, to pay Rs. 10 lakhs as compensation to them for the murder of Jassa Singh in custody of police, at Police Station Sadar Narwana, for directing the first respondent to provide suitable jobs to the petitioners 2 and 3 and directing the respondents 2 to 4 to pay Rs. 10,000/ every month.

2. The material allegations found in the petition are as follows:

3. Jassa Singh was administered poison and murdered while in police custody at Police Station Sadar, Narwana, during the night between 2829.7.1996. The petitioners were not even informed of his death before the post mortem examination. Jassa Singh used to cultivate 6.5 killas of land of his share and 4.5 killas land of his father who is very old. Jassa Singh was also running a buffalo dairy. His total income was more than Rs. 10,000/ p.m. There are six sisters, a daughter and two minor sons, who were taken care of by Jassa Singh. Jassa Singh was 41 years old at the time of his death.

4. On 28.7.1996 Jassa Singh left the house for purchase of buffalo but did not return back since, he was arrested by the respondents in a false case under Section 61/1/14 of the Exercise Act. In the F.I.R. Jassa Singh was shown to have been arrested from village Mohal Khera, which falls within jurisdiction of Police Station Sadar Narwana, while in fact he was arrested from village Datta Singh Wala, which comes under the jurisdiction of Police Station Garhi. The post mortem report shows that Jassa Singh died due to aluminium phosphide poisoning, which is ante mortem in nature. The opinion of the Doctors is based upon the report of the Forensic Science Laboratory.

5. The F.I.R. (annexure P1) reads that a sealed bottle of alcohol was recovered out of the possession of Jassa Singh and that the police party itself broke open the seal to take the sample, but it did not show that he had consumed alcohol or was under its influence at the time of arrest. He was also not medicolegally examined, but the report on viscera shows that ethyle alcohol was in his body, leading to the conclusion that he was made to consume alcohol and was given poison while in police custody.

6. On behalf of the respondents 1 and 3 namely, State of Haryana and Jagat Singh DSP Narwana, reply had been filed by the D.S.P. Narwana, with the following allegations :

7. On 28.7.1996 Jassa Singh son of Gurdip Singh was arrested by Head Constable Krishan Lal of Police Station Sadar Narwana in F.I.R. No. 159 dated 28.7.1996 under Section 61/1/14 of the Excise Act (of the said Police Station). Fateh Singh and Ram Kumar were also arrested by the same Head Constable at the same time in F.I.Rs. No. 157, 158 dated 28.7.1996 under the Excise Act. Jai Singh was also arrested in F.I.R. No. 113 of 1995 of the said Police Station. As Police Station Sadar Narwana does not have a regular building, where there is no regular lock up, all the above said accused were kept in a barrack of the Police Station.

8. On the morning of 29.7.1996 ASI Mahabir Singh checked all the accused and found Jassa Singh lying without responding to the call. Immediately. Dr. Satish Mittal was summoned, who after examining him, declared him dead. The relatives of Jassa Singh were informed. Gurdip Singh and Kulwant Singh (father and brother of Jassa Singh respectively), Balwinder Singh and Pritam Singh reached the police station. On information Bhupinder Singh S.D.M. Narwana reached there immediately, conducted enquiry under Section 176 Cr.P.C. and recorded the statements of Gurdip Singh, Balwinder Singh, Kulwant Singh, Pritam Singh, Fateh Singh, Ram Kumar, Jai Singh and the police officials present in the police station. After postmortem the Medical Board did not give its opinion immediately, and the viscera had been sent to the Forensic Science Laboratory. The relations of Jassa Singh did not suspect any foul play at that time. The report of the P.G.I. regarding heart showed "hypertensive heart disease." But taking advantage of the Forensic Science Laboratory's report, compensation has been claimed on the basis that Jassa Singh has been murdered in police custody.

9. Jassa Singh was once convicted by the Court of Sessions for an offence under Sections 302, 307 I.P.C. etc., and sentenced to undergo imprisonment for life. He was again convicted by the Judicial Magistrate Ist Class, Narwana, in a case under Sections 323, 324, 326 I.P.C. He was said to be a drug addict.

10. It is correct that Jassa Singh was detected by the police party at Naka Data Singh Wala at first, which falls in the area of Police Station Garhi, but was shown to be arrested from Mohal Khera. F.I.R. No. 159 dated 28.7.1996 under Excise Act registered against him in Police Station Sadar, Narwana, was subsequently transferred to Police Station Garhi. Fateh Singh, Ram Kumar, Jai Singh, who were arrested in other cases, constantly remained with Jassa Singh throughout his period of stay in Police Station Sadar, Narwana, but none of those persons has seen any one administering anything to Jassa Singh except meal and water from police mess which was also shared by other accused and police officials. No police official has any grudge against Jassa Singh and, there was no injury on the dead body. There was no motive for any police personnel to murder him. However, fair investigation of the case in F.I.R. No. 268 of 1996 under Section 302 I.P.C., Police Station City Narwana is being conducted.

11. Balwinder Singh has confessed during investigation that he took liquor along with Jassa Singh and Prem Singh at Khanauri, and then stayed at the residence of Iqbal Singh on the night intervening 27/28.7.1996. On the next day Jassa Singh took liquor along with Balwinder Singh and Prem Singh, purchased a bottle of liquor, which was detected by the police at Data Singh Wala Barrier, and he was taken to Police Station Narwana. F.I.R. No. 159 of 1996 was registered against him. It is correct that he was not medically examined. Normally it is not possible to administer celphos forcibly without causing injuries on the mouth/face or other parts.

12. Mohinder Lal, Superintendent of Police, filed a separate reply containing similar allegations as are found in the reply of the Deputy Superintendent of Police, referred to above.

13. The second respondent Shiv Dan Singh, (S.H.O. of Police Station Sadar Narwana) filed a separate reply containing similar allegations apart from the following other allegations :

14. This respondent does not figure anywhere in the entire course of the proceedings, and has not done anything which may even remotely suggest his participation in the commission of the crime. The deceased had died due to consumption of illicit liquor. There was no symptom of vomiting or froth coming out at the time of death. The respondent being the S.H.O. of the Police Station has been impleaded, but, has no role to play. The death of Jassa Singh cannot be termed as custodial death. F.I.R. No. 268 of 1996 under Section 302 I.P.C. of Police Station City Narwana has already been lodged in respect of the death of Jassa Singh and the petitioners want to throttle the fair investigation of the case.

15. This Court observing that the matter deserved to be thoroughly probed and

enquired into, directed the Learned Sessions Judge, Jind, to hold the enquiry by recording the statements of witnesses examined by the parties and by associating the parties and their counsel, and to submit his report. The learned Sessions Judge, Jind, has also submitted his report holding that this is a case of murder in police custody.

16. I have heard the counsel for both the sides, perused the report of the learned Sessions Judge and the records.

17. Jassa Singh was allegedly arrested on 28.7.1996 in F.I.R. No. 159 dated 28.7.1996 under Section 61/1/14 of the Excise Act registered at Police Station Sadar, Narwana. On the same date and time Fateh Singh and Ram Kumar were also alleged to have been arrested in F.I.R. 157 dated 28.7.1996 and No. 158 dated 28.7.1996. A copy of the F.I.R. No. 159 dated 28.7.1996 has also been produced as annexure P2. It has been stated therein that Jassa Singh (deceased in this case) was checked, and one sealed bottle of countrymade liquor was recovered from him, that the seal was broken open, sample was taken, and once against the bottle was closed and sealed. The F.I.R. does not say either that Jassa Singh smelled of liquor, or was under its influence. Admittedly, Jassa Singh was not taken to a Medical Officer for examination to find out whether he had consumed alcohol and was under its influence. But, it is alleged that on the next morning Jassa Singh was found dead while he was in the Barracks of Police Station Sadar Narwana. His viscera were taken and sent for chemical examination and the copy of the report sent by the Forensic Science Laboratory, Haryana, at Madhuban, has been produced as annexure P4, which shows that aluminium phosphide (celphos) and ethyle alcohol were detected in his stomach, small and large intestines, liver spleen and kidneys. On the basis of this report the Board of Doctors have given the opinion as to the cause of death of Jassa Singh, the copy of which has been marked as annexure P3. Jassa Singh's death has been declared to be due to aluminum phosphide (celphos) which is ante mortem in nature, and is sufficient to cause death in the ordinary course of nature.

18. Therefore, we find that ethyle alcohol and poison were found in the viscera of Jassa Singh and the question is as to how Jassa Singh, who was in police custody, could have consumed ethyle alcohol and poison.

19. As pointed out already, the F.I.R. registered against him under Excise Act does not show that either he had drunk liquor or that he was under its influence. He was not medicolegally examined before he was lodged in the Barracks of the Police Station. Of course, an attempt was made to show as if he had consumed liquor even before he was lodged in the Barracks. The respondents examined before the learned Sessions Judge, the Sub Divisional Magistrate who conducted the inquest and also the Medical Officer (R.W. 2), who had stated that the possibility of Jassa Singh having died on account of heart attack cannot be ruled out. But in crossexamination he had to admit that regarding poisoning the report of the Chemical Examiner has to be considered, and that alcohol and poisoning

cannot cause heart attack. Further, in view of the report of the Forensic Science Laboratory and the opinion of the Medical Board that Jassa Singh had died due to poisoning, the evidence of this Doctor will not help the respondents. Therefore, the evidence of the Sub Divisional Magistrate and the Medical Officer will be of no help to the respondents.

20. The other witnesses examined are the accused, who were allegedly in the Barracks at the time when Jassa Singh had also been lodged in the same Barracks, and the police constables. Naturally, those persons, who were accused and against whom F.I.Rs. have been registered in the very same police station will be under the influence of the police. The police constables will be interested to save themselves and the respondents. Therefore, the evidence of these accused persons and police constables is unreliable. The evidence of the ExSarpanch Pritam Singh (RW 3) will also be of no help to the respondents inasmuch as his evidence does not throw any light on the cause of death of Jassa Singh, since his evidence was only that Jassa Singh was a habitual drunkard, and not that he was drunk before he was arrested on 28.7.1996. Therefore, it can safely be presumed that Jassa Singh had not consumed liquor before he was lodged in the Barracks of the police station.

21. Further as pointed out already in the face of the Forensic Science Laboratory's report and the opinion of the Board of Doctors as to the cause of death, the evidence tendered on the side of the respondents that Jassa Singh had not been given anything except the meal and water which was also given to the other accused and the police personnel, will be of no avail.

22. The police have no explanation as to how ethyle alcohol and poison were found in the viscera of deceased Jassa Singh. RW6 Constable Vijay Kumar admitted that Jassa Singh was searched before he was lodged in the Barracks of the Police Station. So, if he had alcohol or poison with him that would certainly have been seized by the police before lodging him in the barracks. But still, ethyle alcohol and poison were found in the viscera of Jassa Singh. The Hon'ble Supreme Court in Bhupinder Singh v. State of Punjab, 1988(1) RCR(CrL.) 582 : AIR 1988 Supreme Court 1011 held as follows :

....."The chemical examiner does not, as a rule, give an opinion as to the cause of death but merely gives report of the chemical examination of the substance sent to him. The report by itself is not crucial. It is a piece of evidence. The only protection to it is that it does not require any formal proof. It is, however, open to the Court if it thinks fit to call the chemical examiner and examine him as to the subject matter of the report. The report should normally be forwarded to the Doctor who conducted the autopsy. In the instant case, that was done. The Doctor who conducted the autopsy was given a copy of the report of the chemical examiner. The Doctor in the light of the report gave his opinion that the death of Gian Kaur was by poisoning i.e. organo phosphorus compound. The report of the chemical examiner coupled with the opinion of the Doctor is, therefore, sufficient to hold that it was a death by poisoning."

23. Therefore, from the materials placed before the Court, especially the report of the Forensic Science Laboratory and the opinion of the Board of Doctors, who gave the opinion that Jassa Singh died of aluminium phosphide (celphos) poisoning, it is clear that Jassa Singh had been killed while he was in police custody by giving/infesting into him the ethyle alcohol and the above said poison. The finding to this effect given by the learned Sessions Judge, is also based on materials and there is nothing to disturb this finding.

24. At this stage, we need not enter into the discussion as to who is the person who had done so, and who is responsible for the death of Jassa Singh. Learned counsel for the respondents of course contends that it was Head Constable Kishan Lal of Police Station Narwana, who had arrested and brought him to the police station, that nothing has been alleged against the other official respondents and, therefore, they are neither responsible for the death of Jassa Singh nor are they liable to pay any compensation. They also contend that the said Kishan Lal has also not been made party to this petition.

25. But, as to who is actually responsible for causing death of Jassa Singh is a matter which can be decided after thorough investigation and in appropriate proceedings. In this petition, the petitioners have claimed compensation for the violation of the fundamental right to life and liberty of Jassa Singh enshrined in Article 21 of the Constitution of India. The question is whether in these proceedings under Articles 226 and 227 of the Constitution of India, this Court can direct the respondents or any of them to pay compensation or whether the petitioners should be directed to peruse their remedies under the general law of torts.

26. The learned counsel for the petitioners relied upon the decision of the Hon''ble Supreme Court in Nilabati Behera v. State of Orissa, 1994(1) RCR(CrL.) 18 : AIR 1993 Supreme Court 1960 , wherein the Hon''ble Supreme Court held as follows :

"It follows that 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."

27. The Hon''ble Supreme Court also held as follows :

".....The contrary view would not merely render the Court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the Court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be

compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the establish invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

30. The learned counsel for the petitioners, therefore, contends that these decisions clearly go to support his contention that this Court can, in proceedings under Articles 226/227 of the Constitution of India, direct the State to pay compensation to the family of the victim, who was killed in police custody, in utter violation of his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India.

31. The learned counsel for the second respondent on the other hand contends that the petitioners should be directed to take appropriate action for claiming damages and that this Court should not award compensation in these proceedings. The learned counsel for the second respondent relies upon the decision of the Hon'ble Supreme Court in A.K. Singh v. Uttarakhand Jan Morcha, 1999 CrL.J. 3500. But this decision related to a case where there was a stir in support of the demand for a separate State of Uttarakhand. The administration took stern measures to resist the protesters' march towards Delhi. There was a confrontation which resulted in lot of bloodshed including loss of many lives. The High Court had granted Rs. 10 lakhs each to the dependents of all the persons who died in police firing, Rs. 10 lakh each to the victims of molestation, and Rs. 50,000/ each to 398 persons who were detained by police. The Hon'ble Supreme Court found that without trial and without even considering the evidence which may be adduced in the cases the High Court had awarded compensation and, therefore, set aside the orders of the High Court.

32. But, as rightly contended by the learned counsel for the petitioners, the present cases relates to the death of a single person while he was in police custody. After hearing both sides, this Court directed an enquiry by the learned Sessions Judge, and both the sides have led evidence. After considering the evidence, the learned Sessions Judge, has come to the conclusion that Jassa Singh, the deceased in this case was injected poison and alcohol while he was in

police custody. He has also found that the deceased in this case was illegally arrested and subsequently murdered in police custody. I have also accepted the findings of the learned Sessions Judge, after taking into consideration the materials on record. So, this is not a case where the petitioners are claiming compensation without evidence. Therefore, this decision relied upon by the learned counsel for the secondrespondent will not be applicable to the facts of this case.

33. Similarly the other decision relied upon by the learned counsel for the secondrespondent rendered by the Hon'ble Supreme Court in *Munir Alam v. Union of India*, 1999(2) RCR(Crl.) 680 : 1999 SCC (Crl.) 1000 is also not applicable to the facts of this case, since the learned Sessions Judge, in this case has given a clear finding regarding the custodial death of Jassa Singh.

34. Therefore, in these circumstances, I am of the view that this Court can in proceedings under Articles 226/227 of the Constitution of India, grant compensation to the petitioners in this case, where it is clear that the right to life and liberty of Jassa Singh guaranteed under Article 21 of the Constitution of India have been violated.

35. Then we are left with the question as to what should be the quantum of the compensation that should be awarded to the petitioners. Of course, the petitioners have claimed Rs. 10 lakhs as compensation to be paid by the State. It has been stated that Jassa Singh was 41 years old at the time of his death and that he was cultivating his lands as also the lands of his father apart from running a dairy. Of course, this has not been specifically denied in the reply filed on behalf of the State, but it is contended on behalf of the respondents that Jassa Singh was a vagabond type of person who had been convicted once under Section 302 I.P.C. and had suffered life imprisonment, and then under certain other sections of the Indian Penal Code. But even a person who has been convicted for certain offences cannot be deprived of his right to liberty and life except in accordance with law. Taking into consideration the fact that in these proceedings this Court is granting compensation for the violation of his fundamental right and not damages under the law of torts, I am of the view that a sum of Rs. 1,50,000/ can be, and is accordingly awarded to the petitioners as compensation, payable by the State of Haryana.

36. However, it is open to the petitioner to take any appropriate action as may be deemed fit and necessary for recovering damages under the general law of torts for the custodial death of Jassa Singh. If the petitioners should take any such action and if any such compensation is to be awarded in such action, this amount now granted should also be taken into consideration by the Court concerned.

37. But, so far as the prayer for providing jobs to the minor petitioners No. 2 and 3, it will be open to them to approach the State for appropriate appointment and if, and when they make such an application, the same will be considered by the State, in accordance with law, rules and regulations regarding the appointment

to the State services.

38. So far as the compensation prayed for from the private respondents is concerned the petitioners will have to first establish that he/they is/are responsible for causing death of Jassa Singh, and then only will be able to get compensation from them, if any. Without fixing their responsibility and without identifying the person/persons responsible for causing death of Jassa Singh, it will not be proper in these proceedings to direct any of the private respondents, though they are government servants, to pay any amount as compensation or monthly payment as prayed for by the petitioners.

39. The F.I.R. No. 268 of 1996 has been registered under Section 302 I.P.C. at Police Station City Narwana, regarding the death of Jassa Singh, and the investigation is stated to be progressing. In view of the fact that death of Jassa Singh and occurred while he was in police custody, that too, by injecting poison into him, the learned counsel for the petitioners is justified in his contention that the investigation should be carried on and those responsible for his custodial death should be chargesheeted and punished. Inasmuch as police officials themselves are allegedly involved in the death of Jassa Singh, I am of the view that the investigation in this case should be taken up by the Central Bureau of Investigation, who should investigate the case and take further action for prosecuting and punishing the guilty. For this purposes, the file relating to the F.I.R. No. 268 of 1996 registered under Section 302 I.P.C. at Police Station City Narwana regarding the death of Jassa Singh shall be handed over to the C.B.I. for investigation and further action, who shall complete the investigation within three months and take further action accordingly.

38. A copy of this order be sent to the C.B.I.

The compensation amount of Rs. 1,50,000/ awarded to the petitioners shall be paid by the State within two months from today.

This petition is ordered accordingly.

JUDGMENT accordingly.