

**(2012) 06 OHC CK 0007**

**In the Orissa High Court**

**Case No :** Writ Petition (Criminal) No. 39 of 2004

Ramesh Das and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 28-06-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226, 32

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 13, 19

Penal Code, 1860 (IPC) — Section 224, 380

**Citation :** (2012) CriLJ 4604

**Hon'ble Judges :** V. Gopala Gowda, C.J;S.K. Mishra, J

**Bench :** Division Bench

**Advocate :** G.B. Kar, K.B. Kar, M.B. kar and L.K. Mishra, for the Appellant;

## **Judgement**

S.K. Mishra, J.—Parents of the deceased Sukanta Das alias Budha Biswal have filed this writ application claiming compensation of Rs. 5,00,000/- for the custodial death of their son. Facts are not in dispute. One Abani Kanta Mohanty, son of Krushna Chandra Mohanty of Kalamandap Road, Dolamundei, P.S. Purighat, Dist. Cuttack presented a written report at Purighat Police Station to the effect that at about 7 p.m. of that evening the deceased was caught red handed while taking away three pieces of aluminium bar after committing theft of the same. On the basis of such report, Purighat Police Station Case No. 140 dated 21-06-2003 was registered for the offence u/s 380 of the I.P.C. As the deceased was found to be 14 years old, he was treated as a juvenile delinquent and was produced before the Chief Judicial Magistrate, Cuttack in connection with G.R. Case No. 848 of 2003. The learned Chief Judicial Magistrate, Cuttack remanded the deceased to the observation home at Berhampur till 13-08-2003. On the same day later on, learned Chief Judicial Magistrate directed for compliance of Section 19 of the Juvenile Justice Act, though by the time, Juvenile Justice Act was repelled and in its place Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act" for brevity) was in force. It appears that there was non-compliance of Section 13 of the Act.

2. Thereafter, the deceased was escorted by Havildar D.D. Naik and C/1143 A.K. Kanungo to the Observation Home, Berhampur. They were travelling in 6003 Up Howrah-Chennai Mail to Berhampur. It is admitted by the opposite parties that the deceased jumped from the running train on 24-06-2003 at about 5.30 a.m. near Dhauli Muhan passenger halt and died at the spot. In this connection, Khurda Road G.R.P.S. U.D. Case No. 8 dated 24-06-2003 has been registered on the report of C/ 1143 Amiya Kumar Kanungo and Khurda Road G.R.P.S. Case No. 59 dated 24-06-2003 u/s 224, I.P.C. on the report of Havildar D.D. Naik have been registered and investigated into.

3. Thus, it is clear from the pleadings of the parties that the deceased was in the custody of the police officers when his death took place. Thus, two important questions arise for determination in this case; firstly, whether the death of the deceased was a custodial death and whether the State should be directed to pay compensation to the petitioners because of the death of the deceased?

4. It is duty of the police authorities to ensure safety and security of the person in their custody. Only because they were negligent, such an incident could take place. Though the authorities have termed the incident as a suicide, foul play cannot be ruled out. Therefore, this Court comes to the conclusion that it is a case of custodial death and the authorities are responsible for the same. The police personnel being the employees of the State of Orissa, the State is vicariously liable for the death of the aforesaid deceased.

5. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the Supreme Court examined a similar case and has come to the conclusion that enforcement of the constitutional right and the grant of redress embraces award of compensation as part of legal consequences of contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is 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 in 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 remedy for enforcement and protection of such rights and such a claim based on enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from contravention of the fundamental rights. Thus, holding the Supreme Court further clarified that such principle justified award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for contravention made by the State or its servant in the purported exercise of their power, and enforcement of fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226.

6. Similar view has been taken in People's Union for Civil Liberties Vs. Union of

India and another, wherein the ratio decided in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, was relied upon and it was further held that in assessment of the compensation, the emphasis has to be on the compensatory and not on punitive manner. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment of the offence, irrespective of compensation, must be left to the criminal Court in which offender prosecuted, which the State, in law, is duty bound to do. A similar view has been taken by the Division Bench of this Court in Ahalya Pradhan Vs. State of Orissa and Others, wherein the custodial death was levelled as a suicide, which was negated by a fact finding commission, the Division Bench of this Court has come to the conclusion that the legal heirs of the deceased are entitled to receive compensation.

7. Similarly, in Banalata Dash Vs. State of Orissa and Others, , this Court has come to the conclusion that it is the duty of the jail authorities to ensure safety and security of the inmates of the jail. Only when there have been negligence on their part, an incident relating to death of the deceased could take place and, therefore, a compensation of Rs. 3,00,000/- has been awarded to the petitioner.

8. Keeping in view the aforesaid proposition of law, this Court comes to the conclusion that the deceased Sukanta Dash alias Budha Biswal was in custody of police personnel and it was their duty to keep him in safe custody till they report to the Superintendent of the Observation Home, Berhampur. Only because they were negligent in their duty, the deceased could escape as alleged and in the result, he died. This being the fact of the case, this Court comes to the conclusion that a compensation of Rs. 3,00,000/-(Rupees three lakhs) to the petitioners shall be sufficient to subserve the interest of justice.

9. Accordingly, it is directed that the opposite party No. 1 shall pay a sum of Rs. 3,00,000/- (Rupees three lakhs) within 8 (eight) weeks to the petitioners, failing which the amount shall carry interest at the rate of 9% per annum from the date of filing of the writ petition.

The writ petition is accordingly disposed of.

V. Gopala Gowda, C.J.

I agree.