

(2010) 01 GUJ CK 0001

In the Gujarat High Court

Case No : Special Criminal Application No. 428 of 1998

Ranjanben Rameshbhai Parmar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 323, 503, 504, 506(2)

Citation : (2010) 01 GUJ CK 0001

Hon'ble Judges : H.N. Devani, J

Bench : Single Bench

Advocate : P.K. Shukla, for the Appellant; L.B. Dabhi, Assistant Public Prosecutor, for the Respondent

Judgement

H.N. Devani, J.—Pursuant to registration of a first information report being Hansot Police Station II - C.R. No. 26/1995 for the offences punishable under Sections 323, 504 and 506(2) of the Indian Penal Code, Shri Rameshbhai Khushalbhai Parmar, husband of the petitioner herein came to be arrested on 6th May, 1995. While in custody, on 7th May 1995, at about 01:30 hours, he complained of stomach ache and uneasiness and was taken out of the lockup and steps were taken to make arrangements for taking him to the hospital. However, before he could be taken to the hospital, he expired. Since the death had occurred under suspicious circumstances, on 14th August 1995, an inquiry was directed u/s 174 of the Code of Criminal Procedure, 1973 (the Code). The Sub-Divisional Magistrate recorded the statements of witnesses as well as doctors who had performed the autopsy of the dead body of the deceased and upon conclusion of the inquiry, opined that the deceased may have died suddenly due to stomach problem and that the death was not caused due to excessive beating. He, accordingly, forwarded a report dated 18th September 1995 to the District Magistrate, Bharuch.

2. It appears that one Tehmtan Sam Nanavati, a practising advocate, taking

recourse to a newspaper report alleging custodial death, filed a petition before this Court being Special Criminal Application No. 858 of 1995 requesting the Court to take cognizance and direct the State Government to pay compensation to the legal heirs of the deceased. The said writ petition came to be dismissed by a judgment and order dated 22nd February 1996, wherein the Court has observed as follows:

[3] Coming to the question of allegations, in my view, the reports of concerned authorities placed on record are evidently clear and self-explanatory providing answer to the allegations. The report is also annexed with post mortem report. From the post mortem report, neither grave and serious external injuries nor corresponding internal injuries were found. In absence of visible external injuries, prima facie it is difficult to hold sound thrashing, beating and manhandling of deceased accused. Except the bare allegation, I do not find any corroborative piece of evidence to substantiate the allegation about beating or manhandling. As the consequence thereof, it is difficult to infer police atrocity during custody. Mr. Shukla has invited my attention to the cause of death as given by doctors. According to the doctors who performed post mortem examination, the probable cause of death of deceased, Rameshbhai Khushalbai Parmar, native of Pardi, Taluka Hansot is due to hypovolemic haemorrhagic shock resulting from GI perforation. There is nothing on record to suggest that hypovolemic haemorrhagic shock resulting from GI perforation can result on account of physical assault, torture or inhuman beating and manhandling. It is true that such an internal injury, namely, GI perforation can be a result of excess beating with fist and legs. Many a times, such an act on the part of the police may not leave any external mark of injury on the body but according to the medical opinion certainly there must be internal marks of injury. In this case as discussed above, no such internal mark of injuries were found to suggest beating or giving fist blows by police.

[4] As directed by Court, the respondent No. 5 and respondent No. 3 did make preliminary enquiry and while doing so they also recorded the statements of family members of deceased including father, wife, friends and brothers. Nobody has made any allegation, i.e. police atrocity resulting into custodial death. It has also come on record that the deceased had tendency of consuming alcohol in excess. It has also come on record that many a times deceased was complaining about stomach pain. If this is so, excess consumption or addiction to such type of drugs may damage some internal organs which by lapse of time may result as fatal causing G.I. Perforation. Thus, the prima facie evidence brought on record is not suggestive of police atrocity or death having nexus to police atrocity and therefore, I find the petition devoid of merits. Absence of complaint from family members and history of chronic consumption of liquor and resultant effect on organs renders it as doubtful case.

[5] It is the case where the near and dear of deceased are keeping mum and are not making any complaint against any of the authorities. This circumstance also

weakens the case of the petitioner for treating the newspaper item as a public interest litigation alleging excess beating. Had there been a case of police atrocity, the relatives, especially wife, father and brother could have ventilated their grievances, but since no such complaint is coming forward, I do not see merit in allegation of police atrocity and custodial death. Prima facie, I feel the report in question is not based on any cogent and concrete evidence and hence, cannot be attributed much significance. Therefore, the petition deserves to be rejected. However, it is made clear that the observations are confined to the maintainability of this matter only and shall not affect parties' rights on merits and would be at liberty to take appropriate steps as permissible under law. Notice is discharged.

3. Subsequently, after a lapse of more than two years since the date of the aforesaid judgment and order, the petitioner has moved the present petition seeking the following substantive reliefs:

[a] issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent No. 6 herein to carry out a detailed investigation into the present matter once again and be pleased to direct the Central Bureau of Investigation to produce a detailed report of the investigation as carried out;

[b] issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent No. 1 State of Gujarat to award compensation to the petitioner to the tune of any amount as found expedient by the Hon'ble Court in view of the death of the husband of the petitioner;

[c] direct the respondent authorities to furnish the report dated 13.6.1995 and 8.6.1995 filed by the respondent Nos. 3 and 5 to the petitioner as the copies of the same have not been submitted to the petitioner;

4. According to the petitioner, she was not given proper advice and was hopeful that the State authorities would do the needful, however, thereafter, having lost all hopes, she has moved this Court by way of the present petition. It is the case of the petitioner that the offence leading to the arrest of her husband was a family squabble in which after bringing him to the police station, he was a victim of police brutality due to which, the situation had become so serious that her husband ultimately succumbed to the injuries and was pronounced dead. It is further the case of the petitioner that her husband complained of stomach ache, restlessness and uneasiness at about 01:30 hours and died at about 02:30 hours, in the meanwhile, no sincere efforts were made by the police authorities to take him to the hospital and provide urgent treatment. That inspite of serious condition of the husband of the petitioner, no medical treatment was given and if medical treatment had been provided immediately, her husband's life could have been saved. It is also the case of the petitioner that total remissness and negligent attitude on the part of the respondent No. 3 and other officers at the

police station at the relevant time, has led to death of the husband of the petitioner.

5. After issuance of notice, it appears that the matter came to be heard from time to time and on 21st December 2005, this Court passed an order in the following terms:

[1] Heard Mr. M.V. Patel, learned Counsel appearing for the petitioner and Ms. M.S. Panchal, Id. APP, appearing on behalf of the respondent-State.

[2] Ms. M.S. Panchal, Id.APP, has taken me through the report submitted by the officer and the finding recorded by after further investigation carried out at the instance o the order passed by this Court.

[3] It emerges from the record that the petitioner was arrested in respect of the offences punishable under Sections 323, 504 and 506(2) of the Indian Penal Code for the alleged criminal wrong committed qua his cousin brother about 01-30 p.m. on the date of incident. Undisputedly, he has died while in custody and the stand taken by the respondent-State is that the death of the deceased was natural and it cannot be equated with either custodial crime or custodial death. Nobody has attempted to explain till date about the two injuries found on the body of the person deceased which are mentioned in Column No. 17 of the postmortem note. Both these injuries are also mentioned as ante-mortem. It is likely that the deceased was in the habit of consuming liquor and might have developed some disease because of the said habit. But the fact remains that he has died in police custody and two different injuries were found on the body of the person deceased when he died. When it is the say of the respondent-State that he was given an evening meal, it is not answered by the officer as to why he was not presented before the learned Magistrate till evening hours since noon.

[4] So without entering into the merits of the present petition, it is hereby directed that any responsible officer not below the rank of Deputy Secretary to the State of Gujarat, Home Department, shall appear in person before this Court so that the Government can be asked to grant some ex-gratia compensation to the petitioner-widow of the deceased or the two minor dependents, especially when the deceased belongs to a downtrodden society and a member of Scheduled Caste. The widow of the deceased is present in the Court today and this is a case wherein the Government should think and take decision in the matter and, therefore, if the responsible officer as aforesaid appears before the Court, appropriate further orders can be passed. It is clarified that the Government may take decision without prejudice to the rights and contentions raised before this Court and not by way of a precedent but by way of grace also because it is clear that there is no direct nexus between the injuries and the death as per the opinion of the panel of doctors who have performed postmortem.

[5] Ms. M.S. Panchal, Id. APP, shall see that the responsible officer as aforesaid appears before this Court in person on the next date of hearing. The matter is

adjourned to 16th January, 2006.

Direct Service is permitted.

6. Pursuant to the aforesaid order passed by this Court, an affidavit came to be filed on behalf of the respondent No. 1 ? State of Gujarat, denying the averments made in the petition. It is averred in the said affidavit that, in his report dated 18th September 1995, the Sub-Divisional Magistrate, after a full-fledged inquiry, has found that the death of the husband of the petitioner has not been caused due to harassment by the police while he was in custody. That though it is true that the husband of the petitioner died while he was in custody, his death had occurred due to reasons mentioned in the post-mortem note. It is further averred that as per the opinion of the two panel doctors, the death of the petitioner's husband was caused due to illness and not because of any physical torture or any other reason which may create any right in favour of the petitioner for getting compensation from the State government. It is the case of the respondents that as the death of the husband of the petitioner was not caused due to any physical harassment by the police authorities while he was in custody, no compensation can be awarded to the petitioner.

7. Subsequently, an additional affidavit in-reply was made clarifying certain mistakes which had crept in the earlier affidavit. The petitioner has filed an affidavit in-rejoinder to the said affidavit stating that it was due to the misdeeds and negligence of the respondents that the husband of the petitioner has died and that the respondents are responsible for the same.

8. Heard Mr. P. K. Shukla, learned advocate for the petitioner and Mr. L. B. Dabhi, learned Additional Public Prosecutor for the respondent - State authorities.

9. Mr. P.K. Shukla, learned advocate for the petitioner submitted that there is some delay in the filing the instant petition, however, the reason is that the petitioner was under the impression that the State authorities would do the needful on their own. After a considerable time, when the petitioner lost hope, the only recourse available to her was by way of the present petition. It was further submitted that the earlier petition being Special Criminal Application No. 858 of 1995 was rejected by this Court by observing that since no complaint is coming forth from the relatives, specially the wife, father and brother of the deceased; the Court did not see any merit in the allegations of police atrocities and custodial death. Attention was drawn to the fact that while rejecting the petition, the Court had made it clear that the observations made in the said order were confined to the maintainability of the said matter only and would not affect the rights of the parties on merits and the parties would be at liberty to take appropriate steps as permissible under law. It was accordingly submitted that the bar of res-judicata would not come in the way of the petitioner.

10. Attention was invited to report made by the Sub-Divisional Magistrate as well as to the post-mortem report, to point out that the deceased had sustained two injuries which are not explained by the State authorities. It was submitted that,

therefore, it cannot be said that the deceased was not subjected to beating by the police authorities. It was further pointed out that though it was the custom in the community of the deceased to bury the dead, the deceased had been cremated. That throughout, from the time of handing over the dead body to the relatives of the deceased till the cremation, there was a police bundobast. Reliance was placed upon the decision of the Supreme Court in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, for the proposition that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection 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, 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 Article 32 and 226 of the Constitution.

11. Next it was submitted that assuming that the death of the deceased was not caused due to custodial violence, even then from the facts emerging on record, it is apparent that the husband of the petitioner was not provided prompt medical treatment, hence, the authorities are responsible for the negligence which has led to the death of the husband of the petitioner. In support of his submissions, the learned advocate has placed reliance upon the decision of the Apex Court in *D.K. Basu Vs. State of West Bengal*, to submit that right to life under Article 21 of the Constitution of India also contemplates prompt medical aid. Reliance was also placed upon an unreported decision of this Court rendered on 29.08.2006 in *Hasinabibi Ayubmiya Malek v. State of Gujarat* Special Civil Application No. 8324 of 1992 wherein this Court had awarded compensation in a case where there was negligence in providing proper medical treatment to the prisoner while in jail. It was urged that despite the fact that there was a hospital nearby, the deceased was not taken to the hospital immediately and precious time was wasted in trying to arrange for a vehicle. It was contended that in the circumstances, the State is vicariously liable for the acts of its officers and that, in the circumstances, the petitioner is entitled to payment of compensation for the death of her husband while in custody of the police authorities.

12. On the other hand, Mr. L. B. Dabhi, learned Additional Public Prosecutor vehemently opposed the petition. It was submitted that a perusal of the report of the Sub-Divisional Magistrate clearly shows that the death of the deceased has not been caused on account of any custodial violence. It was further submitted

that the conclusions arrived at by the District Magistrate also indicates that there was no police atrocity. It was argued that in absence of any police atrocity or negligence on the part of the respondents, when the deceased has died a natural death, there is no liability on the part of the respondent State to pay any compensation. Referring to the report of the Sub-Divisional Magistrate, it was submitted that the death of the deceased was caused due to excessive consumption of alcohol which had caused perforation in his intestine, resulting into his death.

13. As regards not providing immediate medical treatment to the deceased, the learned Additional Public Prosecutor submitted that the hospital was at a distance of about 1 Km. and that, it was not possible to take the arrestee to the hospital without arranging for a vehicle. It was submitted that the respondents had taken due steps to provide for vehicle to take the arrestee to the hospital, however, unfortunately, before such arrangement could be made, the arrestee had expired. It was submitted that in the circumstances, the petition being devoid of any merit, is required to be dismissed.

14. This Court has minutely examined the record of the case and has considered the submissions advanced by the learned advocates for the parties as well as the decisions cited at the bar. The facts emerging from the record and more particularly from the report dated 18th September, 1995 of the Sub-Divisional Magistrate are that at the relevant time, one Mr. Maganlal Narayanbhai Parmar was the Police Sub-Inspector, Hansot. On 5th May 1995, one Navinbhai Dahyabhai Parmar lodged a complaint with the Hansot Police Station, which came to be registered as a first information report vide C.R. No. II-26/1995 for the offences punishable under Sections 323, 504 and 506(2) of the Indian Penal Code and the investigation was handed over to one Mr. Saraghbhai Ramolbhai, Head Constable, Katpore Out Police Station, who investigated the case.

15. On 6th May 1995, Saraghbhai went to Pardi for investigation in connection with the above referred FIR, where he recorded statements of witnesses at about 13:30 hours. He arrested the accused Rameshbhai Khushalbhai Parmar and produced him at the Hansot Police Station at 13:35 hours. One Mr. Ramkrishna Gopal, P.S.O. was in-charge at 13:35 hours when the said accused was brought to the Police Station. While Rameshbhai was in the lockup, on 6th May 1995, the lockup was opened only once between 19:15 to 20:00 hours to provide him a meal. On 7th May 1995, at about 01:25 hours, the guard on duty Mr. Chunilal Madhavbhai came and told Rajiyabhai Amthabhai Chaudhary, Guard Commandant, who had the custody of the lockup keys, that the arrestee was feeling uneasy and restless, hence, he was required to be taken out. In the circumstances, in his presence, the lockup was opened and the arrestee Rameshbhai was taken out and made to sit outside on the floor of the PSO's lobby and after inquiring from him, he had complained about stomach ache and uneasiness. He also asked for water which was given to him by the Guard Chunilal, and he took one or two gulps of water. Rajiyabhai also informed the

PSO Ramkrishnabhai about the condition of the arrestee at about 01:29 hours. Thereafter, Constable Chunilal was sent to call writer Kanchanbhai to take Rameshbhai to the hospital and to call the PSI. At about 02:00 hours, Constable Chunilal reached Kanchanbhai's residence and informed him that the PSO was calling him. On reaching the Police Station, the PSO told Kanchanbhai to inform the PSI to arrange for a vehicle to take the arrestee to the hospital. Kanchanbhai, therefore, went to the police quarters on a bicycle. It appears that the Government vehicle was under repairs; hence, Kanchanbhai went with the PSI to the house of Prabhudas Master to arrange for a private vehicle. In the meanwhile, the arrestee got hiccups and died in a short while thereafter at about 02:47 hours. The PSI and Kanchanbhai returned to the Police Station with a jeep at about 03:00 hours when they found that the arrestee had already expired. Thereafter, Kanchanbhai and Police Constable Jayantibhai took the jeep and went to Katpore village where Head Constable Saraghbhai was residing. They reached there at about 04:00 hours and informed Saraghbhai about the death of the arrestee. They, along with Saraghbhai, then went to Pardi to inform the relatives of the deceased and returned to Hansot. Meanwhile, the PSI informed the Sub-Divisional Magistrate as well as the Dy.S.P. and the C.P.I. about the incident through wireless. An accidental death case came to be registered being Case No. 5/95. Inquest was carried out at about 09:00 hours on 7th May 1995 by the Sub-Divisional Magistrate, Bharuch. At about 10:00 hours, the dead body was taken to the Primary Health Centre, Hansot, however, as the panel doctor was not available to carry out the autopsy, at about 11:30 hours, the dead body was taken to Bharuch, where the autopsy was carried out between 12:45 hours to 15:45 hours, where after the dead body was handed over to Khushalbhai, father of the deceased. It appears that the informant of the first information report which was registered against the deceased had voiced an apprehension that the deceased was a head strong person and as they had lodged the FIR against him, some dispute may be raised against them, hence, police bundobast be provided. Hence, after the dead body was sent for post-mortem, two police personnel were sent to Pardi for necessary bundobast.

16. The facts also reveal that though there was a Court available at Camp Hansot, the arrestee was not produced before the Magistrate immediately and was put in the lockup at the Hansot Police Station. As per the statement of the Investigating Officer, Saraghbhai, the deceased was habituated to drinking alcohol and as earlier on two to three occasions, there were complaints against him, he felt that if he remained in the lockup for a longer time, he would learn a lesson and in future, may desist from committing offences, hence, he did not produce him before the Judicial Magistrate First Class, Hansot and that his intention was bonafide with a view to reform the accused. However, the version given in this regard by Maganlal Parmar, PSI, is quite different. According to him he had inquired from Saraghbhai, as to why the accused was not produced at the Camp Hansot Court though he was arrested at 13:00 hours, and Saraghbhai told him that he had some other work to attend and that the deceased did not have

any surety, hence, he would be required to be sent to Ankleshwar jail, and therefore, he had thought of producing him before the Magistrate on the next day. Thus there are two different and inconsistent versions coming on record for not producing the deceased before the Magistrate at the earliest.

17. Having regard to the submissions advanced by the learned advocate for the parties as well as the facts noted hereinabove as emerging from the record of the case, it appears that the deceased did not die on account of police brutality or custodial violence. While it is true that the post-mortem report shows two injuries, namely, (1) reddish blue bruise over the posterior aspect of the right elbow joint, and (2) reddish blue bruise over the lateral aspect of right shoulder, however, as per the opinion of the doctor, as recorded in the report of the Sub-Divisional Magistrate, the said injuries could not have caused death of the deceased. The doctor has opined that the cause of death was Hypovolemic Haemorrhagic Shock resulting from Gastro Intestinal Perforation. The doctor had further opined that it was possible for an individual to die on account of excessive beating, however, in the present case, upon examining the body of the deceased, the only external injuries are the two injuries referred to hereinabove. Hence, the death of the deceased has not been caused due to excessive beating.

18. In the order dated 22nd February 1996 passed in Special Criminal Application No. 858 of 1995 also, this Court had observed that an internal injury, namely, GI perforation can be a result of excess beating with fist and legs. Many a times, such an act on the part of the police may not leave any external mark of injury on the body but according to the medical opinion certainly there must be internal marks of injury. In this case as discussed above, no such internal mark of injuries were found to suggest beating or giving fist blows by police.

19. Having regard to the report of the Sub-Divisional Magistrate as well as the post-mortem and inquest reports, prima facie, it appears that the death of the deceased was not caused due to custodial violence. Nonetheless, the facts taken at their face value as emerging from the record do indicate that despite availability of a Court of a Judicial Magistrate at Hansot, the arrestee was not produced before him immediately after his arrest. It would also be apposite to consider the nature of the offences alleged against the deceased, which are offences punishable under Sections 323, 504 and 506(2) of the IPC, wherein the offences under Sections 323 and 504 are non-cognizable offences. Section 506(2) is a non-cognizable offence under the Criminal Procedure Code; however, it appears that the Government of Gujarat has issued a notification making Section 506(2) IPC a cognizable offence. Though Section 506 IPC does not have any Sub-section, the second part of Section 506 is most commonly referred to as Section 506(2). The said provision provides that whoever commits an offence of criminal intimidation, where threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished

with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. ?Criminal Intimidation?, which has been defined u/s 503 IPC, provides that whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such treat, commits criminal intimidation. Upon perusal of the allegations made in the first information report registered against the deceased, prima facie, it appears that Section 506(2) IPC could not have been invoked. However, after invoking the said provision, the husband of the petitioner came to be arrested on 6th May 1995 at 13:30 hours. Despite the fact that the Court of the Judicial Magistrate, at Hansot was available, the deceased was not produced before him immediately after his arrest. The reason given by the Investigating Officer is that, if he remained in the lockup for a longer period, he would learn a lesson and desist from committing offences in future. Be that it may, since 24 hours had not elapsed since the arrest of the deceased, it cannot be said that he was unlawfully confined by the police authorities. However, considering the nature of the offence alleged against the deceased as well as the fact that he was confined only with a view to teach him a lesson, the police authorities would be responsible for the well-being of the arrestee while in their custody. It would, therefore, be necessary to examine as to whether due care and caution has been taken by the police authorities in taking care of the arrestee while in their custody.

20. As is apparent from the facts noted hereinabove, the arrestee complained of stomach ache and uneasiness sometime prior to 01:29 hours. The guard on duty then informed the PSO, whereupon the arrestee was taken out of the lockup at about 01:29 hours and was made to sit on the floor outside the PSO's lobby and was given some water at his request. It appears that the arrestee covered the distance from the lockup to the lobby on his own. The arrestee also asked to be taken to the hospital, whereupon a police constable was sent to call the writer who in turn was sent to call the PSI to arrange to take the arrestee to the hospital. The police constable reached the writer's quarter at about 02:00 hours and the writer thereafter came to the police station and was told to call the PSI and to arrange for a vehicle to take the arrestee to the hospital. The writer then went on bicycle to inform the PSI after which, he and the PSI went to the house of one Prabhudas Master to arrange for a private vehicle as the Government vehicle was under repair. By the time they reached the police station, it was about 03:00 hours. In the meanwhile, the health of the arrestee deteriorated and he died at about 02:47 hours. Thus, it is evident that though the arrestee complained about stomach ache and uneasiness prior to 01:30 hours and appeared to have been in a critical condition, for more than an hour, he was not provided any sort of medical treatment, after which he expired. Hansot has a Primary Health Centre, which according to the learned advocate for the

petitioner, is situated near the police station. Hence, the police authorities ought not to have had any difficulty in providing immediate medical treatment to the arrestee. However, as noted hereinabove, the authorities took an inordinate time in procuring a vehicle to take the arrestee to the hospital, resulting in the arrestee dying in absence of medical help. The facts noted hereinabove are eloquent. Instead of giving due attention to the arrestee who must have been in a critical condition and providing him prompt medical treatment, the police authorities took their own time in even getting a vehicle. Instead of directly calling for a vehicle on an urgency basis or calling the doctor to the police station to attend to the emergency, the police authorities unmindful of the condition of the arrestee, whiled away time by first sending the constable to call the writer, then sending the writer to the PSI, and the PSI in turn going in search of a private vehicle, resulting in inordinate delay in providing emergent medical help to the arrestee. In the circumstances, though the arrestee may not have died due to custodial violence, it can certainly be said that there was negligence on the part of the authorities in providing medical treatment to him.

21. This Court vide order dated 21st December 2005 had, without entering into the merits of the case, directed the State Government to consider grant of some ex-gratia compensation to the petitioner?widow of the deceased or the two minor dependents specially keeping in view the fact that the deceased belongs to a down trodden society and is a member of Scheduled Caste. According to the Court, this was a matter where the Government can think and take a decision without prejudice to the rights and contentions raised before this Court and not by way of a precedent but by way of grace also because it is clear that there is no direct nexus between the injuries and the death as per the opinion of the panel of doctors who have performed post-mortem. However, it appears that the respondent State authorities instead of considering the matter by way of grace, have gone into the technicalities of the case and callously turned down the request made by the Court on the ground that as per the opinion of the Additional Director General of Police based on the report of two agencies, viz., the District Magistrate, Bharuch and the Superintendent of Police, the deceased had not died due to custodial violence but had died due to perforation in his intestine, hence, no compensation should be paid.

22. Though the report of the Sub-Divisional Magistrate as well as the opinion of the Additional Director General of Police and the opinion of the State Government indicate that the deceased had not died due to custodial violence, they are all silent as regards the delay on part of the State authorities in providing medical treatment to the deceased. The opinion of the doctor has not been sought on the question as to whether the life of the arrestee could have been saved, had he been provided prompt medical treatment. All the authorities have proceeded merely to examine the issue from the angle of custodial violence, but have failed to consider the aspect of negligence on the part of the respondent authorities in providing medical treatment to the deceased. Considering the fact that the husband of the petitioner died in police custody on 7.5.1995, the present petition

was filed in 1998 and almost fifteen years have elapsed since the death of the husband of the petitioner, no useful purpose would be served in calling for a report in this regard as it would further delay the matter and the poor destitute widow of the deceased who has spent countless hours in this Court in her quest for justice would have to despondently wait for another round of reports and opinions.

23. In the facts of the present case where the accused has been arrested and put in the lockup in connection with the offences which are by and large non-cognizable in nature; and has been detained in police custody and not immediately produced before the Judicial Magistrate with a view to teach him a lesson, and has thereafter not been provided prompt medical treatment, resulting into the death of the arrestee, in the opinion of this Court, the State Government would be vicariously liable for the acts of its employees and therefore, be liable to pay some compensation to the heirs of the deceased.

24. In *Rama Murthy Vs. State of Karnataka*, the Apex Court considered the Report of All India Committee on Jail Reforms (headed by Justice A.N. Mulla) where the Committee had noted that firstly, prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access: no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners, therefore, suffer from a double handicap. The Court observed that in "American Prison System" by Richard Hawkins and Geoffrey, there is a discussion at pages 411-13 as to whether a prisoner can seek any relief from the Court because of neglect of medical treatment on the ground of violation of their constitutional right. The Court observed that policy makers may bear this also in mind while deciding about the recommendations of the Mulla Committee Report.

25. The Apex Court in the case of *D.K. Basu v. State of West Bengal* (supra) has held that a mere declaration of invalidity of an action or finding of custodial violence or death in lockup, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done. It was held that where the infringement of the fundamental right is established, the Court cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. The Court observed that to repair the wrong done and give judicial redress of legal injury is a compulsion of judicial conscience. It was held that the award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in

proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights carried out under Article 21, is an exercise of the courts under the public law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect fundamental rights of the citizen.

26. In the case of *Shakila Abdul Gafarkhan v. Vasant Raghunath* (2003) 7 SCC 747, the Apex Court while directing payment of compensation observed that the amount of compensation shall be as a palliative measure and does not preclude the affected person from bringing a suit to recover appropriate damages from the State Government and its erring officials if such a remedy is available in law. In case of *Nilabati Behra v. State of Orissa*, (supra) the Apex Court held that citizen complaining of the infringement of the indefeasible right under Article 21 cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The Court observed that if the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the havenots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate. (Emphasis supplied).

27. Examining the facts of the present case in the light of the decisions cited hereinabove, as already noted hereinabove, though the post-mortem report indicates two injuries on the body of the deceased, the same have not been explained by the respondent State authorities. However, considering the fact that, in the opinion of the doctor, the death of the deceased has not been caused due to custodial violence, it may be inferred that the death of the deceased was not caused on account of police brutality or custodial violence. However, as is evident from the facts noted hereinabove, there is gross negligence on the part of the police authorities in providing medical treatment to the arrestee. In the first place, the husband of the petitioner was arrested in connection with the offences which prima facie appear to be non-cognizable offences. Thereafter, he was confined in the lockup with a view to teach him a lesson and not produced before the Judicial Magistrate immediately after his arrest despite the Court being available. Though the arrestee had complained of stomach ache and uneasiness, steps were taken to arrange for a vehicle to take him to the hospital at snail's pace. The inordinate delay in providing medical treatment to the arrestee resulted in his death even before the vehicle could be arranged for. The time between the arrestee being taken out from the lockup and his death is more than one hour. It is difficult to believe that the police authorities could not provide for medical treatment to the arrestee for a period of more than one hour despite his being in a critical condition and the Primary Health Centre being

situated in the vicinity. In the circumstances, this Court is of the view that the respondents are responsible for infringement of the fundamental rights of the arrestee and therefore, the State would be vicariously liable for the negligence caused in providing prompt medical treatment to the deceased. The petitioner is, therefore, entitled to payment of some compensation under the public law remedy under Article 226 of the Constitution of India.

28. The petitioner has not claimed any definite amount by way of compensation. Despite the death of the husband of the petitioner having occurred while he was in police custody, no ex-gratia has been paid to the petitioner so far. Since the present remedy is by way of public law remedy, compensatory amount cannot be granted. However, considering the fact that about fifteen years have passed since the death of the husband of the petitioner and she has still not received any amount so far, as a palliative measure, the respondents are required to be directed to pay a reasonable amount by way of compensation to the petitioner. Considering the period of time that has elapsed since the death of the husband of the petitioner as well as the depreciation in the value of the rupee, in the opinion of this Court, a sum of Rs. 1,00,000/- can be said to be a reasonable amount.

29. Insofar as the relief for carrying out detailed investigation into the matter once again by the Central Bureau of Investigation is concerned, on the facts of the present case, in the opinion of this Court, considering the lapse of time as well as peculiar facts and circumstances of the case, this is not a matter which calls for a detailed investigation by the Central Bureau of Investigation. The facts emerging on record do not indicate any case of custodial violence or police brutality so as to call for detailed investigation, as prayed for. In the circumstances, the said relief cannot be granted.

30. For the foregoing reasons, the petition partly succeeds and is allowed to the following extent. The respondents are directed to pay an amount of Rs. 1,00,000/- [Rupees one lakh only] towards compensation to the petitioner within a period of six weeks from the date of receipt of a copy of this order. In case of delay in making the payment as aforesaid, the respondents shall be liable to pay interest on the said amount at the rate of 9% per annum. Rule is made absolute accordingly.