
(1996) 11 P&H CK 0103
In the Punjab And Haryana At Chandigarh

Rattan Chand

APPELLANT

Vs

The Chandigarh Administration and Others

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149

Citation : (1997) 2 ACC 108

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Judgement

R.L. Anand, J.—Rattan Chand son of Hari Chand, resident of House No. 247-L, Sector 11-A, Chandigarh, is the unfortunate father of his soil Raj Kumar deceased a young boy of 21 years, who became the victim of police firing in connection with the Mandal Commission and the aforesaid petitioner has filed the present petition against Chandigarh Administration, the State of Punjab and Deputy Commissioner, Chandigarh, respondents No. 1 to 3, respectively praying for the issuance of a writ of mandamus directing the respondents to make the payment of compensation of Rs. 8,00,000/- to the family of the victim since the deceased Raj Kumar was killed in police firing of 23.10.1990 on the crossing of Sectors 37,38,40 and 41, Chandigarh. It has further been prayed for the quashment of Annexure P. 8 which was sent to the petitioner on 2.7.1993 declining the request of the petitioner for the payment of compensation.

2. It has been pleaded by the petitioner that in the month of September/October, 1990 the country became the first ever democratic demonstration against the reservation policy introduced by the Government of India. Chandigarh city witnessed active agitation against the reservation policy of the Government. The students, employees and many other sections of the Society were involved in such activities. For controlling the agitation the Chandigarh Administration had to requisition the extra police personnel/security forces from the neighbouring States. On 23.10.1990 bus bearing registration No. PIC-556 carrying Punjab Armed Police personnel came to Chandigarh for assisting local administration in

maintaining the law and order in the city. The bus reached Sector 37-38 crossing at about 9.30 P.M. It was coming from Amritsar side. The bus as well as the Police personnel met with an accident and on the alleged provocation the police personnel opened fire on the peaceful demonstrators with the result that Raj Kumar son of the petitioner was killed and number of other persons sustained multiple injuries. Thereafter a police officer Mr. Chaman Lal ASI lodged FIR No. 207 of 1990 in police station Sector 39 under Sections 147, 148, 149, 332, 335, 439, 511 and 307 of the Indian Penal Code. A perusal of the FIR reveals that the bus reached on the dividing road of Sector 37-38 Chandigarh at 9.45 P.M. A mob of 500-600 persons which was spread all along with the road was shouting slogans. During those days a large section of society including the students and employees were agitating against the acceptance of Mandal report. They were demonstrating and shouting slogans against the Government. The police personnel should have handled the situation with tact and should have tried to pacify the demonstrators. However, instead of doing that the police personnel opened fire on the demonstrators. They had no business to fire at the demonstrators and kill the innocent people there. Even if there was any need of opening fire, they should have opened fire in the air which could have scared away the demonstrators. So far as the information of the petitioner's case, the police personnel were acting in a highly provocative manner and most of them were dead drunk and they opened fire on the demonstrators resulting into the death of Raj Kumar, a young boy of 21 years who was working as a driver in some private concern. The petitioner, father of Raj Kumar is working as Baildar on a class IV post in P.W. Department. The petitioner has two other children i.e. one son and one daughter. The son is married and is doing petty business of photography. The daughter is already married. On account of the death of his son Raj Kumar, the petitioner suffered mental agony and trauma and being in advanced age he could not be in a position to do any extra work in future years. The deceased used to help his family in the financial matters and with his death, multi-fold economic miseries have come in the family of the petitioner whose son had been murdered by the police which is the agency of the State without any reason and in these circumstances it has become incumbent and necessary on the part of the respondents to pay compensation to the petitioner so as to get rid of their economic difficulties. The petitioner made a representation to the Chandigarh Administration for the grant of compensation, which was processed but no final decision was taken. Consequently, the petitioner preferred a writ petition No. 3415 of 1992 which was disposed of with the directions to the respondents to take a decision one way or the other. Thereafter, the respondents did not take any action within the stipulated period. The petitioner preferred a contempt petition and during the pendency of the contempt petition the orders Annexure P. 8 dated 2.7.1993 were brought to the notice of the petitioner. It was observed by the Court while rejecting the contempt petition that it would be open for the petitioner to challenge the orders declining the representation in the appropriate proceedings. In the present writ challenge has been given by the petitioner to Annexure P. 8 and he has further alleged that respondents are liable

to pay the compensation on account of their torturous act.

3. The case of the petitioner has been contested by the respondents. One set of written statement has been filed by Mr. L.R. Yadav, Commandant, 1st Commando Bn. Punjab Police, Bahadurgarh, Patiala, who stated on the relevant day the agitation of the students, employees and many other sections of the Society was at alarming situation and the agitators were indulging in setting the vehicles on road on fire. The stand of this respondent is that on 23.10.1990, ASI Chaman Lal alongwith his force in bus No. PIP-5616 came to Chandigarh on temporary duty and at about 9.45 P.M. he reached the crossing of Sector 37-38, 40; 41 where 5-600 persons were demonstrating and were putting on fire the tyres and the drums of Tarcoal. When the bus reached near the demonstrators, they indulged in throwing brick bats upon the bus. Due to this, the side glasses of the bus were broken. The driver of the bus received injuries at the hands of the demonstrators. Mr. Chaman Lal tried to pacify the demonstrators and 6-7 persons out of the mob tried to set the bus on fire and in the given situation and in his self defence the police party had to fire without aiming upon any of the demonstrators. FIR No. 207 of 1990 was registered in this regard on the statement of Mr. Chaman Lal. Putting entire blame on the demonstrators this respondent has taken the stand that the police force under the supervision of Chaman Lal acted in self defence and as such no torturous liability arises. Annexure P.8 was stated to be justified.

4. Chandigarh Administration also filed the separate written statement and its stand is more or less common with that of Mr. Yadav, who filed reply on behalf of the State of Punjab.

5. I have Heard Mr. S.P. Jain, Advocate, on behalf of the petitioner, Mr. Ashok Aggarwal, Sr. Advocate, on behalf of Chandigarh Administration and Mr. P.S. Chhina, Sr. D.G. (P) on behalf of State of Punjab and with their assistance have gone through the record of this case.

6. Ours is a democratic country. Sometimes, genuine grievance of the citizens are delayed due to explainable or non-explainable delays. Even the Administration sometimes takes legitimate actions under the Constitution but against those decisions citizens have the legitimate right to make a protest in a democratic manner in the shape of conducting demonstration and raising slogans so that the Executive Authorities may reconsider its decision even if that decision is legal or proper. This is a backbone and spirit of our democratic institution. Police force is a necessary organ of the State/Centre Governments. Afterall it has to protect the public property. The police is also supposed to protect the life and property of an individual. A right of private defence has even been accepted in the Indian Penal Code. This right has even been extended up to taking of one's life. If the offender gives the ground of reasonable apprehension of grievous hurt etc. However, this right of private defence is subject to one laudable exception that the person who wants to exercise the right of private defence cannot use more force than the one necessary and secondly he must ensure that least

damage is caused to the aggressor because the right of private defence is necessarily a right of defence and not that of offence. If a person under the garb of right of private defence goes to the maximum extent and takes the life of third person, such action on the part of such person cannot be defended by the law Courts. No doubt, the police Rules give powers to the Police Department to use force even to the extent of causing death with fire arms yet the use of such force must be to the minimum at the first instance and that is why there are other modes also prescribed in the police Rules for crippling the opponents. Lathicharge is one of them, use of tear gas cells and use of water canons are also the recognised modes of making the opposite side blunt. Since in the present case, State or its functionaries were involved, a stringent duty was expected to be performed on the part of these functionaries to ensure that at the first instance the demonstrators must be made quiet by using minimum force. In the written statement of both the respondents, there is no indication that before resorting to the firing, any warning was given to the demonstrators to disperse or Mr. Chaman Lal either declared the assembly as unlawful. Also there is no indication from the affidavits that before action started of firing the lathi charge or any other modes or means was adopted so as to pacify the demonstrators. Also there is no indication that the directions of the firing at the first instance were in the air and then towards the non-vital parts of the body of a human being such as foot or the lower part of the leg. While dealing with the citizens an onerous duty is expected to be performed by the State and by its functionaries who are all powerful so that the least damage or harm is caused to the citizens who were demonstrating in a democratic manner for their cause against the reservation policy. Also no record or any medium has been placed on record to establish that before resorting to the firing, any effort was made by the police force or by its members to give warning to the demonstrators/agitators or mob. To resort to straightway firing in itself is the presumptive proof of the torturous act committed by the State and its functionaries and under the garb of so-called right of self-defence, the life of an individual cannot be taken nor it can be permitted to be taken. These types of cases came for consideration before the various High Courts. In 1992 CLJ 128, P. V. Kapoor v. Union of India and Ors. 1992 CLJ 128, it was held that the jurisdiction of the High Court to entertain a petition under Article 226 of the Constitution of India is not affected when a challenge has been given to the police firing and when it is alleged that there was hardly any justification on the part of the police to resort to the firing and that the police did not handle the injured in a proper manner after the firing. It was also held that when it is established that firing on crowd was unwarranted the adequate compensation should be awarded to the next of the kin. Also there is no evidence in this case to establish that after the injury caused to Raj Kumar deceased what efforts were made by the police force to deal with him. Whether any effort was made by the police force to provide first aid so that the valuable life of Raj Kumar could be saved. After all the life of a citizen cannot be equated with a cattle or animal. There might be some persuasion on the part of the deceased when he along with others were agitating. In this connection every body

has permit to express his view points in an ordinary and democratic manner. Assuming that Raj Kumar was one of the members of the crowd, there is not an iota of allegations in the affidavit of the respondents that he at any point of time became violent giving a right of defence to the members of the police force for taking his valuable life. Once it is established that deceased was treated in a manner not conducive to the human norms reasonably expected from the administration and its functionaries, the petitioner is definitely entitled to the compensation. In *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, , it was held that State is liable to torturous act of its employees and the State is liable to pay compensation for the police atrocities. My attention has also been invited to the judgment dated 26.8.1995 in C.W.P. No. 5115 of 1995, *Prabhu Dayal v. The Union Territory of Chandigarh* 1993 G.L.J. 2899, wherein the Division Bench of this Court awarded compensation to the parents of the child who died on account of electrification due to the negligence of the Electricity Authorities.

7. learned Counsel appearing on behalf of the respondents submitted that the disputed question of facts cannot be determined in the writ jurisdiction and no compensation can be awarded to the claimant on the mere averments. The argument is partly correct to the extent that disputed question of fact cannot be gone into so far as the writ jurisdiction of the High Court is concerned but once it is established and proved that the functionaries of the State acted in a careless and negligent manner in resorting to the firing such action cannot be defended. Rather it has to be held that such type of actions would be presumptive of the criminal negligence committed on the part of the State or its functionaries.

8. It has been held in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , as under:

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, 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 Articles 32 and 226 of the Constitution.

The Supreme Court is not helpless and the wide powers given to it by Article 32,

which itself is a fundamental right, imposes a constitutional obligation on it to forge new tools, which may "be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to the Court under Article 142 is also an enabling provision in this behalf. 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 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 constitution scheme, the mode of redress being that which is appropriate in the fact 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 tampered by judicial restraint to avoid circumvention of private law remedies were more appropriate.

9. The next point for determination would be as to what amount of compensation in the present case should be awarded to the unfortunate petitioner who lost his male issue at the threshold of his prime youth. As per allegations the deceased was working as a driver in a private firm. Although there is no proof to this extent in the shape of driving licence yet the admitted fact is that the deceased was a young unmarried boy of 20-21 years and in our society the old parents always try to pin hopes on their sons that they would serve them in their old age. It is true that the deceased was to marry himself. It is also true that there is no evidence about the age of the petitioner yet it cannot be lost sight of the facts that a ray of hope has been vanished at the cruel hands of the police which acted in a most injudicious manner in taking the life of an innocent agitator. In this view of the background the ends of justice would suffice if it is ordered that respondent-authorities jointly and severally shall pay a sum of Rs. 1,00,000/- by way of compensation to the petitioner within three months from the date of the passing of this judgment and directions in the shape of mandamus are issued to all the respondents for the compliance of the order passed in this judgment.

10. Before I part with this judgment, I would like to further say that copies of this judgment be sent to the Director General of Police, Punjab, Haryana and Union Territory, Chandigarh with the directions that a necessary circular be issued to all the police stations/wherever the police is sanctioned in any form whether in the shape of C.R.P.F., or in the shape of Home Guards or the police taken on loan from the other States or any other special force or task so that in future while dealing with such demonstrations/agitations, least use of force may be adopted. Use of excess force or reckless force can result into the loss of valuable human lives and such action cannot be encouraged in the society like

ours. this Court hopes and expects that directions would be duly respected by all concerned so as to avoid ugly situation which may crop up due to the inaction/ wrong directives given by the police force or by its supervisory authorities.