

(2018) 05 MP CK 0147

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.460 Of 2004

Santosh Kumar Dohare (Dead), Bhure And Another	APPELLANT
Vs	
State Of Madhya Pradesh	RESPONDENT

Date of Decision : 24-05-2018

Acts Referred:

Constitution of India 1950 — Article 21, 32
Code Of Criminal Procedure, 1973 — Section 374(2), 482
Indian Penal Code, 1860 — Section 364, 364A
Indian Evidence Act, 1872 — Section 27

Citation : (2018) 05 MP CK 0147

Hon'ble Judges : VIVEK AGARWAL, J;G.S. AHLUWALIA, J

Bench : Division Bench

Advocate : Ashok Kumar Jain, Sangeeta Pachari, Prakhar Dhengula

Final Decision : Allowed

Judgement

G.S. Ahluwalia,

This Criminal Appeal under Section 374(2) of Cr.P.C. has been filed against the judgment and sentence dated 8-6-2004, passed by Special Judge

(M.P.D.V.P.K. Act), Bhind in Special Sessions Trial No.53/2003 by which the appellants have been convicted under Section 364-A of I.P.C. read

with Section 11/13 of M.P.D.V.P.K. Act, and have been sentenced to undergo the Life Imprisonment and a fine of Rs.10,000/- with default

imprisonment.

2. It is important to mention here that during the pendency of this appeal, the appellant no.1 Santosh has expired and accordingly, the appeal filed by

appellant no.1 Santosh was dismissed as having abated.

3. The necessary facts for the disposal of the present appeal in short are that in

the intervening night of 25-26 of January, 2003, Ramswaroop and Mullu were abducted by 5 unknown miscreants. In the morning, the complainant Harmukh lodged a Gum Insaan Report, accordingly, F.I.R. in crime no.20/2003 for offence under Section 364 of I.P.C. was lodged. After the abductees were released, their statements were recorded. The appellants were arrested and after completing the investigation, the police filed the charge sheet against the appellants as well as Roope, Mahipat, Prayagnarayan. Samarath and Malkhan Singh were shown absconding.

4. The Trial Court, by order dated 26-8-2003, framed charges under Section 364-A of I.P.C. and under Section 11/13 of M.P.D.V.P.K. Act.

5. The appellants and other co-accused persons, abjured their guilt and pleaded not guilty.

6. The prosecution, in order to prove its case, examined Harmukh (P.W.1), Mulu (P.W.2), Ramswaroop (P.W.3), Rajesh Sharma (P.W.4), Chandrapal Singh Tomar (P.W.5). The appellants examined Radheshyam (D.W.1), Tulsiram (D.W.2) and Hiralal (D.W.3) in their defence.

7. The Trial Court after recording the evidence and hearing both the parties, convicted the appellants and Santosh for offence under Section 364-A of I.P.C. and under Section 11/13 of M.P.D.V.P.K. Act and sentenced them to undergo the Life Imprisonment and a fine of Rs. 10,000/- with default imprisonment. The Co-accused Roope, Mahipat, Prayagnarayan were acquitted of all the charges. The acquittal of Roope, Mahipat, Prayagnarayan has not been challenged.

8. Challenging the judgment and sentence dated 8-6-2004, passed by Special Judge (M.P.D.V.P.K. Act), Bhind in Special Sessions Trial No. 53/2003, it is submitted by the Counsel for the appellant, that Mullu who is alleged to have been released by the dacoits, just after 4 days of his abduction, did not inform the police about his abduction or about the captivity of Ramswaroop. Although, it is alleged that Ramswaroop got released only after payment of ransom of Rs. 1 lakh, but the prosecution did not examine the person, who had paid the ransom amount. There are discrepancies in the evidence of the prosecution. Ramswaroop and Mullu have stated that Ramswaroop was released only after the payment of Ransom amount, whereas Chandrapal Singh Tomar (P.W.5) has stated that Ramswaroop was got released in an encounter with the miscreants. Chandrapal Singh Tomar

(P.W.5) does not speak of payment of ransom amount, whereas Ramswaroop (P.W.3) does not speak of encounter. Ramswaroop (P.W.3) has stated

that he was sold by the appellant no.3 Shripal to the gang of Pahalwan Singh Gurjar for an amount of Rs. 1 lakh whereas Chandrapal Singh Tomar

(P.W.5) has stated that no such statement was given by Ramswaroop (P.W.3), in his case diary statement. Even, Chandrapal Singh Tomar (P.W. 5)

has not stated that on what date, at which place and with whom, the police encounter had taken place, and he has simply stated that Ramswaroop was

got released after a police encounter with miscreants. It is submitted that the appellants are innocent persons and have been falsely implicated.

9. Per contra, it is submitted by the Counsel for the State, that the prosecution has proved the guilt of the appellant no. 2 Bhure and appellant No.3

Shripal beyond reasonable doubt, and the conviction and sentence awarded to the appellants does not call for interference.

10. Heard the learned Counsel for the parties.

10.1 Section 364-A of I.P.C., reads as under :

â??364-A. Kidnapping for ransom, etc.â?" Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction,

and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or

hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or

any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be

liable to fine.â??

10.2 In order to prove the charge under Section 364-A of I.P.C., the prosecution must prove the following ingredients :

â??1. A person must be kidnapped/ abducted or he must be kept in detention;

2. The abductee/kidnapped person is given an apprehension that he may be put to death or hurt ;

3. The person must be kidnapped or abducted to do or abstain from doing any act or to pay the ransom.â??

10.3 The Supreme Court in the case of Malleshi Vs. State of Karnataka reported in (2004) 8 SCC 95 has held as under :

â??8. The section refers to both â??kidnappingâ? and â??abductionâ?. Section

359 defines kidnapping. As per the said provision there are two types of kidnapping i.e.: (1) kidnapping from India; and (2) kidnapping from lawful guardianship.

9. Abduction is defined in Section 362. The provision envisages two types of abduction i.e.: (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the going of the victim from any place. The case at hand falls in the second category.

10. To "induce" means "to lead into".

Deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is a matter of intention and even if promise held out by the accused was fulfilled by him, the question is: whether he was acting in a bona fide manner.

11. The offence of abduction is a continuing offence. This section was amended in 1992 by Act 42 of 1993 with effect from 22-5-1993 and it was subsequently amended in 1995 by Act 24 of 1995 with effect from 26-5-1995. The section provides punishment for kidnapping, abduction or detaining for ransom.

12. To attract the provisions of Section 364-A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in *Netra Pal v. State (NCT of Delhi)* to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.

13. To pay a ransom as per Black's Law Dictionary means "to pay price or demand for ransom". The word "demand" means "to claim as one's due"; "to require"; "to ask relief"; "to summon"; "to call in court"; "an imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act"; "an asking with authority, claiming or challenging as due". The definition as pointed out above would show that the demand has to be communicated. It is an imperative request or a claim made.

10.4 The Supreme Court in the case of Shyam Babu Vs. State of Haryana reported in (2008) 15 SCC 418 has held as under:-

“19The wording itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a

reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international

intergovernmental organisation or any person to pay a ransom, the offence is complete.”

10.5 The Supreme Court in the case of Suman Sood Vs. State of Rajasthan reported in (2007) 5 SCC 634 has held as under:-

56. Section 364-A reads thus:

“364-A. Kidnapping for ransom, etc.” Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction,

and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or

hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or

any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be

liable to fine.”

57. Before the above section is attracted and a person is convicted, the prosecution must prove the following ingredients:

(1) The accused must have kidnapped, abducted or detained any person;

(2) He must have kept such person under custody or detention; and

(3) Kidnapping, abduction or detention must have been for ransom.

(See also *Malleshi v. State of Karnataka*.)

58. The term “ransom” has not been defined in the Code.

59. As a noun, “ransom” means “a sum of money demanded or paid for the release of a captive”. As a verb, “ransom” means to

“obtain the release of (someone) by paying a ransom”, “detain (someone) and demand a ransom for their release”. “To hold someone to

ransom” means “to hold someone captive and demand payment for their release”. (Concise Oxford English Dictionary, 2002, p. 1186)

60. Kidnapping for ransom is an offence of unlawfully seizing a person and then

confining the person usually in a secret place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go-between to collect the ransom is generally considered guilty of the crime.

61. According to Advanced Law Lexicon (3rd Edn., p. 3932):

“Ransom is a sum of money paid for redeeming a captive or prisoner of war, or a prize. It is also used to signify a sum of money paid for the pardoning of some great offence, and or setting the offender who was imprisoned.”

62. Stated simply, “ransom” is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu.

11. Harmukh (P.W.1) has stated that on 25th of January, Ramswaroop and Mullu were abducted. In the morning, when he went to fields, then the

abductees did not met him. He searched for the abductees, but could not trace out their whereabouts and accordingly he went to the police station and

lodged the F.I.R., Ex. P.1. Ramswaroop was released after 2 months of his abduction. In the F.I.R., Ex. P.1, it was merely mentioned that when

Ramswaroop and Mullu did not come back to the house, then this witness went to the field, and found that Ramswaroop and Mullu were not there.

12. Mullu (P.W.2) is one of the abductee. He has stated that he had gone for irrigating fields. At about 11 P.M. in the night, 5 miscreants came to the

field and the appellant no.3, Shripal was standing there. The miscreants enquired about the owner of the tubewell. Thereafter, the miscreants enquired

about the road for Chhatore Ke Pura. This witness told them about the direction. Ramswaroop and Mullu were asked to accompany the miscreants,

and thereafter they were taken to the forest. The miscreants, kept them for two nights and thereafter, took them to Rampura forest area. In Rampura,

the appellant no. 3 Shripal and Samrath demanded ransom of Rs. 1 lakh and also threatened that in case, the amount is not paid, then Ramswaroop

would be killed and this witness was allowed to go. Thereafter, this witness came back to his house, but Ramswaroop remained in captivity of the

miscreants. The ransom was paid by the brother of Ramswaroop. In cross examination, this witness has stated that he went to police station after two

days of his release and denied that he went to the police station after 1 ½ month of his release. (However, there is nothing in the record, to indicate,

that this witness went to police station, immediately after his release). However, he admitted that he did not went to police station directly, as he was to make arrangements for money. He also did not tell any villager about the abduction. After 1 1/2 month of abduction, when he went to the police station, at that time, he was not aware of the name of Santosh. He further admitted that no test identification parade of Shripal was ever conducted by the police.

13. Ramswaroop (P.W.3) has supported the prosecution story and has narrated the incident of abduction, as narrated by Mullu (P.W.2). This witness

has further stated that after abduction, Mullu (P.W.2) was released after 4 days whereas he was kept in detention. An amount of Rs. 1 lakh was

demand by way of ransom and this witness was released after 1 month and 7 days of abduction after payment of ransom. Appellant no.2 Bhure @

Balram Jatav was identified by this witness in the Court as one of the miscreant. He further stated that after his release, the police had prepared

panchnama, Ex. P.2. This witness has stated in his cross examination, that he knows the appellant no.3, Shripal from the date of abduction and Shripal

was not known to him, prior to the abduction. However, admitted that no test identification parade of the appellant no.3 Shripal was ever conducted by

the Police. He further stated in his cross examination that after keeping this witness in captivity for a period of 1 month and 7 days, Shripal had sold

this witness to Pahalwan Gang for an amount of Rs. 1 Lakh.

14. Rajesh Sharma (P.W.4) had recorded the F.I.R., Ex. P.1.

15. Chandrapal Singh Tomar (P.W.5) is the investigating officer. He has stated that on 26-3-2003, Ramswaroop was released after a police encounter

with the miscreants. He further admitted in the cross examination, that no test identification parade of the accused was conducted by him.

16. Thus, from the appreciation of the evidence of the witnesses, the following circumstances would emerge :

1. In the intervening night of 25-26 January 2003, Ramswaroop and Mullu had gone for irrigating their fields.

2. It is alleged that 5 miscreants came there and asked the abductees Ramswaroop and Mullu to accompany them.

3. After 4 days of captivity, the abductee Mullu (P.W.2) was released by the miscreants, after making demand of ransom of 1 Lakh.

4. Mullu (P.W.2), never informed the police, about his abduction and demand of ransom.
5. Ramswaroop (P.W.3) was released on 26-3-2003, and Panchnama, Ex. P.2 was prepared.
6. Ramswaroop (P.W.3) has stated that ransom amount of Rs. 1 lakh was paid and only thereafter he was released by the accused persons, whereas Chandrapal Singh Tomar (P.W.5) has stated that a police encounter had taken place with the miscreants and in that encounter, Ramswaroop (P.W.3) was released.
7. Chandrapal Singh Tomar (P.W.5) does not speak about payment of ransom, whereas Ramswaroop (P.W.3) does not speak about police encounter.
8. Chandrapal Singh Tomar (P.W.5) has not stated that with whom, the police encounter had taken place, and he has merely stated that in a police encounter with miscreants, Ramswaroop (P.W.3) was released. Even in Panchnama, Ex. P.2, there is no mention of name of miscreant with whom the encounter is alleged to have taken place.
9. Chandrapal Singh Tomar (P.W.5) has not stated that what ultimately, happened in the said police encounter. He has also not stated that whether any case was registered against any miscreant or not?
10. No document has been filed pertaining to the alleged police encounter by Chadrapal Singh Tomar (P.W.5).
11. Ramswaroop (P.W.3) has stated that after 1 month and 7 days of abduction, he was sold by appellant no. 3, Shripal to Pahalwan after taking an amount of Rs. 1 lakh from Pahalwan, whereas it is not the case of the prosecution.
12. If the version of Ramswaroop (P.W.3) is accepted that he was sold by appellant no.3 Shripal, to Pahalwan Gang for an amount of Rs. 1 lakh, then Ramswaroop (P.W.3) has not clarified that thereafter, where he was kept by Pahalwan gang.
13. If the payment of Ransom is accepted, then it would be mean, that ransom was paid to Pahalwan gang and not to Shripal, as appellant no.3 Shripal had already sold Ramswaroop to Pahalwan Gang, whereas it is not the case of the prosecution.
14. The prosecution has not come forward to clarify that by whom, to whom, and at which place, the ransom of Rs. 1 lakh was paid.

15. The prosecution has not examined the brother of Ramswaroop (P.W.3) by whom, it was alleged that the ransom of Rs. 1 lakh was paid. Even the name of brother of Ramswaroop is not known.

16. Harmukh (P.W.1) is the brother of Ramswaroop, but he does not say, that he had arranged for money or had paid the ransom amount to the dacoits.

17. There is nothing on record to show that whether the ransom amount was paid directly to the dacoits or it was paid through any mediator.

18. The prosecution has not clarified that from where the amount of Rs. 1 Lakh was arranged.

19. Even the prosecution has not proved that on what date and at which place, the appellant no.2 Bhure @ Balram Jatav and appellant no.3 Shripal were arrested.

20. Even the arrest memo of these two appellants have not been proved.

21. Chandra Pal Singh Tomar (P.W.5) who had investigated the matter has also not stated that on what date and at which place, the appellant no.2

Bhure @ Balram Jatav and appellant no. 3 Shripal, were arrested.

22. Even those persons/witnesses have not been examined, in whose presence the appellant no.2 Bhure @ Balram Jatav and appellant no.3 Shripal were arrested.

23. There is nothing on record to show that whether any incriminating material was seized from the possession of appellant no.2 Bhure @ Balram Jatav and appellant no.3 or not?

24. There is nothing on record to show that whether any disclosure statements of appellant no.2 Bhure @ Balram Jatav and appellant no.3, under Section 27 of Evidence Act, were ever recorded by the police or not?

25. The witnesses have stated that they had seen the appellants for the first time at the time of abduction, then why the police did not conduct the Test Identification Parade?

26. Mullu (P.W.2) has stated that Santosh was badly beaten by the Police in the Police Station.â??

17. Thus, from the above mentioned circumstances which have emerged after appreciation of prosecution evidence, this Court is of the considered opinion, that in fact the prosecution has miserably failed in establishing the guilt

of the appellant no. 2 Bhure and appellant no.3 Shripal, beyond any reasonable doubt. However, it is unfortunate, that these aspects were not noticed by the Trial Court also and the appellant no.2 Bhure @ Balram

Jatav and appellant no.3 Shripal were convicted for offence under Section 364-A of I.P.C. and under Section 11/13 of M.P.D.V.P.K. Act.

18. According to the certificate issued by the Trial Court under Section 428 of Cr.P.C., the appellant no.3 Shripal is in jail from 5-7-2003 whereas

during trial, the appellant no.2 Bhure @ Balram Jatav had remained in jail from 9-4-2003 to 14-10-2003 and after his conviction by the Trial Court, he

was granted bail by this Court by order dated 26-3-2015. Thus, it is clear that appellant no.3 Shripal has remained in jail for a period of near about 15

years, whereas appellant no.2 Bhure @ Balram Jatav has remained in jail for a period of near about 12 years, and now this Court has come to a

conclusion that the appellant no.2 and no.3 were falsely implicated.

19. Consequently, it is held that the prosecution has miserably failed in establishing the guilt of the appellant no. 2 Bhure and appellant no. 3 Shripal and thus, they are acquitted of all the charges.

20. Accordingly, the judgment and sentence dated 8-6-2004, passed by Special Judge (M.P.D.V.P.K. Act), Bhind in Special Sessions Trial No.

53/2003, is hereby set aside.

21. The appellant no.2 Bhure @ Balram Jatav is on bail. His bail bonds and surety bonds stand discharged. The appellant no.3 Shripal is in jail. He be released immediately, if not required in any other case.

22. However, before parting with this judgment, this Court would like to take note of a disturbing feature of this case. As already held, the appellant

no.2 Bhure @ Balram Jatav, has remained in jail for a period of near about 12 years and appellant no.3 Shripal is in jail for the last near about 15

years. It is unfortunate, that there is no provision under the Law to compensate the victim of false/malicious implication, after his acquittal in the Trial

or in an appeal. However, this Court cannot lose sight of the fact, that Article 21 of the Constitution of India, protects the life and liberty of the citizen

of India. Article 21 of the Constitution of India reads as under :

â??21. Protection of life and personal liberty.â?"No person shall be deprived of his life or personal liberty except according to procedure established

by law.â??

23. Thus, the moot question is that when it is found that the prosecution and conviction of an accused was illegal/malicious and was done with a

malafide intention, then whether, the Appellate Court, can grant compensation to the accused or not?

24. A Division Bench of this Court in the case of Hardeep Singh Anand Vs. State of M.P. reported in (2008) 5 MPHT 172 has held as under :

â??13.....InÂ RudulÂ SahÂ v.Â StateÂ of Bihar and Anr. : 1983CriLJ1644 , the Supreme Court has taken a view that one of the effective

ways in which violation of fundamental rights under Article 21 of the Constitution can reasonably be prevented, is to direct the State to pay

compensation to the person whose rights under Article 21 of the Constitution is affected. In the language of the Supreme Court (Para 10):.Article 21

which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of

release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and the compliance with the

mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant

infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some

palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the

State as a shield. If civilization is not to perish in this country as it has perished in some others too well -known to suffer mention, it is necessary to

educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the

damage done by its officers to the petitioner's rights. It may have recourse against those officers.

14. In fact, in State of Maharashtra and Ors. v. Ravikant S. Patil : (1991)2SCC373 , the Supreme Court referring to the Rudul Sah v. State of Bihar

1983 Cri LJ 1644 (supra) upheld the award of compensation of Rs. 10,000/- by the High Court of Bombay to an under-trial prisoner who had been

handcuffed and taken through the streets in a procession by the police during investigation. We are, thus, of the view that the appellant is entitled to

compensation for violation of his fundamental rights guaranteed under Article 21 of the Constitution to speedy trial and not to be handcuffed without valid justification.

15. The next question is how much compensation the appellant is entitled? In *D.K. Basu v. State of West Bengal* : 1997CriLJ743 , the Supreme Court, after examining the liability of the State to its citizens for infringement of their fundamental right laid down the principle for assessment of compensation to be paid by the State as under (para 55):

In the assessment of compensation, the emphasis has to be on the 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 tortuous 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 strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not interrogation 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.

During the five years of delay in the trial from 15-3-1999 to 6-5-2004 caused by the State, the appellant's liberty was not affected inasmuch as he was not under imprisonment but was on bail. Hence, the appellant will not be entitled to a huge amount of compensation as claimed by him. Nonetheless, the appellant was handcuffed without a valid justification and his dignity as a human being had been seriously affected. In the circumstances, an expeditious trial and his acquittal would have restored his personal dignity as early as possible. But the State instead of taking timely steps to produce and examine the prosecution witnesses delayed the trial for long five years. In

the facts and circumstances of the case, we award a compensation of Rs. 70,000/- (Rupees seventy thousand only) to the appellant. This compensation will be without prejudice to any claim that the appellant may make in a civil Court for damages.â??

25. Being dissatisfied by the order passed by a Division Bench of this Court in the case of Hardeep Singh Anand (Supra), the petitioner therein, filed S.L.P. before the Supreme Court. The Supreme Court by order dated 5-12-2011 passed in the case of Hardeep Singh Vs. State of Madhya Pradesh (Cr.A. No. 2250/2011) observed as under:

â??16. Coming, however, to the issue of compensation, we find that in light of the findings arrived at by the Division Bench, the compensation of Rs.70,000/- was too small and did not do justice to the sufferings and humiliation undergone by the appellant. In the facts and circumstances of the case, we feel that a sum of Rs.2,00,000/- (Rupees Two Lacs) would be an adequate compensation for the appellant and would meet the ends of justice. We, accordingly, direct the State of Madhya Pradesh to pay to the appellant the sum of Rs.2,00,000/- (Rupees Two Lacs) as compensation. In case the sum of Rs.70,000/- as awarded by the High Court, has already been paid to the appellant, the State would naturally pay only the balance amount of Rs.1,30,000/- (Rupees One Lac thirty thousand).â??

26. The Supreme Court in the case of Anita Thakur Vs. State of J&K reported in (2016) 15 SCC 525 has held as under :

â??It is apparent that to that extent, the respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the Constitution, this Court can award compensation to the petitioners. (See Saheli v. Commr. of Police, (1990) 1 SCC 422, Joginder Kaur v. Punjab State [1969 ACJ 28], State of Rajasthan v. Vidhyawati [1962 Supp (2) SCR 989] and Nilabati Behera v. State of Orissa [(1993) 2 SCC 746].) The ratio of these precedents can be explained thus: First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law.

Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police

officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence, cannot be used as a defence in public law.â??

27. Thus, it is clear that where a person has not remained in incarceration for a longer time, then the quantum of compensation amount would be on a lesser side but where a person has remained in jail for a period of more than 12 years or if a person is still in jail i.e., for more than 15 years, then for violation of fundamental rights of the accused, the State must compensate the victim. The Supreme Court in the case of Anita Thakur (Supra) has also held that for patent and incontrovertible violation of fundamental rights, the remedy of compensating the victim of police misconduct, is available. Thus, it is held that as it has been found that the appellant was prosecuted with deliberate and malafide intention, so that the complainant may settle his scores, and the police also joined hands with the complainant so that it can gain popularity by fake and imaginary encounters with the miscreants, then the State must compensate the appellants for the utter violation of their fundamental rights as for no reason, they were compelled to remain in jail for such a long time.

28. The next question is that what would be the just and proper compensation under the facts and circumstances of the case. For adjudicating the just and proper compensation, the appellants would be required to file a civil suit in order to establish the actual loss sustained by them, because of malicious prosecution. However, for utter violation of fundamental right of right and liberty, the State should compensate the sufferer, therefore, it is held that a compensation of Rs. 3 Lakhs to each of the appellant i.e., appellant no.2 Bhure @ Balram Jatav @ Balram Jatav and appellant no.3 Shripal, shall be payable by the State, within 3 months from today. This compensation amount, shall be liable to be adjusted, in case if the civil suit for damages is filed. The State may recover the amount from the erring persons.

29. With aforesaid observations, the appeal succeeds and is hereby Allowed.