
(2014) 04 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14953 of 2001

Sarla Devi

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Penal Code, 1860 (IPC) — Section 120-B, 306, 342, 381

Citation : (2014) 175 PLR 494

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Jagbir Malik, Advocate for the Appellant; Shivendra Swaroop, AAG, Haryana, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—The petitioner is seeking a writ of Mandamus directing the respondents to grant compensation of Rs. 10 lacs along with interest to the petitioner on account of custodial death of her husband-Shri Ram Gopal. Husband of the petitioner was working with Charu Electricals Pvt. Ltd., Ballabgarh, on a salary of Rs. 3200/- per month. On 5.2.1996 respondent No. 4 detained Ram Gopal, husband of the petitioner upto 7.2.1996 in custody and gave him merciless beatings for three days. On 7.2.1996, Ram Gopal committed suicide and thereafter FIR (Annexure P1) was got registered. Inquiries were made by the Department and it was found that Ram Gopal had committed suicide due to illegal detention and merciless beatings by respondent No. 4. A further inquiry was made by Shri Amar Nath Ichhdujani, SDM Faridabad and it was found that respondents had not done their duty properly and due to their action husband of the petitioner committed suicide. The news items are Annexures P2 and P3. The age of Ram Gopal, husband of the petitioner, was 34 years at the time of his death.

On notice, written statement has been filed by the respondents stating that a

complaint was received in Police Station Central, Sector-8, Faridabad with the allegations that Ram Gopal (since deceased), husband of the petitioner, and Nand Kishore had committed theft in the factory of one Devinder Gupta and FIR No. 119 dated 7.2.1996 was registered against them. During investigation, Nand Kishore and Ram Gopal were interrogated. Nand Kishore admitted that Ram Gopal, husband of the petitioner, had committed theft of certain goods in Charu factory and he had taken all those goods to the village Junhera and on the basis of statement of Nand Kishore, ASI Om Parkash had taken Nand Kishore to get the recovery of stolen goods. Ram Gopal was left behind in the Police Station with HC Ranbir Singh. At that time, with the pretext of using toilet, Ram Gopal went into the toilet and consumed acid as a result of which he died in B.K. Hospital Faridabad and thereafter FIR No. 122 dated 7.2.1996 under Sections 342/306/120-B IPC (Annexure P1) was registered at Police Station Central, Faridabad, against ASI Om Parkash, Rattan Lal son of Jagant Mal and Devinder Kumar son of Rattan Lal. After facing the trial, all the accused were acquitted vide judgment dated 11.3.1997 (Annexure R1). The inquiry conducted by the SDM, Faridabad, does not carry any weight in view of the judgment of acquittal dated 11.3.1997. The deceased was not kept in wrongful confinement and there was no incriminating evidence against the accused to connect them with the aforesaid crime.

Counsel for the petitioner has referred to the judgments passed by the Supreme Court in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , D.K. Basu Vs. State of West Bengal, .

The alleged incident took place on 7.2.1996 and thereafter inquiry was marked to the SDM, Faridabad. As per the Inquiry Report dated 15.2.1996 (Annexure P4) the husband of the petitioner was called in the Police Station for interrogation with respect to FIR No. 199 dated 7.2.1996 u/s 381 IPC. During interrogation, on an information given by the other accused Nand Kishore the police party went to get the recovery of the stolen goods by leaving behind Ram Gopal (since deceased) in the lock up. On the pretext of going to the toilet, he consumed acid and committed suicide. The SDM rushed to the B.K. Hospital where he found that dead body was lying in a mortuary which was identified by Tiper Chand, father of the deceased. A panel of doctors appointed by Civil Surgeon, Faridabad, conducted postmortem of the dead body of Ram Gopal at 5 P.M. on 8.2.1996. The cause of death was withheld for awaiting the result of viscera which was sent to the Chemical Examiner. The SDM examined 24 persons in the inquiry and finally came to a conclusion that the Incharge Police Post was in gross negligence and the other police officials were duty bound to ensure that no substance injurious to human being which could proved fatal is kept at large in the premises of the police post or specially in the toilet where the suspects called in the police post have an access. Deceased Ram Gopal consumed acid lying in the toilet, so the Incharge police post and other officials specially the Mohrar constable failed in their duties to ensure keeping away such like substance from the approach of the suspects. Even though a case of theft was registered against

the deceased Ram Gopal the fact that he committed suicide added gravity to the circumstances. The recovery of stolen articles was not effected on the basis of statement made by Ram Gopal deceased nor he was taken along with the police party to the place from where the recovery was effected. The two land-owners of the place/house from where the recovery has been effected have not joined the investigation. Hence, the conscious possession of Ram Gopal over the recovered articles would not be proved. The final conclusion in the report is that Ram Gopal has died while in police custody after consuming corrosive material i.e. acid being in mental depression, physical torture and humiliation. ASI Om Parkash was held guilty for abetment to suicide. Devender Kumar, complainant, was absolved of any involvement into the conspiracy for abetment to suicide.

As per the detailed inquiry conducted by SDM, Faridabad dated 15.2.1996 (Annexure P4), the two things which goes against the Department are:-

1) That the alleged recovery of the stolen articles was not from the conscious possession of Ram Gopal deceased. It was Nand Kishore who had taken the police party to the house from where the alleged recovery has been effected. Ram Gopal went into the toilet and consumed acid and it was the duty of the police officials to maintain that such like substance should not be kept free in the police station. The Police Department has been negligent in keeping such a substance which is injurious to human life at large in the premises of the police post. Therefore, they cannot be absolved for their act of negligence. The fact that finally in the FIR No. 122 dated 7.2.1996 under Sections 342, 306 and 120-B IPC the police officials have been acquitted on 11.3.1997 (Annexure R1) cannot stand a bar to the civil proceedings with regard to assessment of compensation which can be given to the petitioner on account of negligence of the police department. In all cases of police lock up deaths where it was suicide or on account of atrocities committed by the police, the onus rests on the police to show that there has been no negligence on their part. Reference at this stage can be made to a judgment of the Supreme Court in Smt. Nilabati Behera alias Lalita Behera v. State of Orissa 1994 (1) R.C.R. (Cri) 18 which was a case of custodial death. In paragraph 13, the Supreme Court observed as under:-

In this context, it is sufficient to say that the decision of this Court in Kasturilal upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal related to value of

goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable.

The Court is not helpless to grant relief in the case of violation of right to life and personal liberty and it should be prepared to make new tools and remedies for the purpose of protecting these precious fundamental rights. Procedure suitable in the facts of each case must be adopted for conducting the inquiry, to ascertain necessary facts for granting relief as available mode of redressal, for enforcement of the granted fundamental rights. The Courts have to construct a new principle of liability to deal with an unusual situation which arises and which is likely to arise in future. A Co-ordinate Bench of this Court recently in the case of *Hawa Singh and another v. The State of Haryana and others* (C.W.P. No. 11653 of 2008 decided on 12.1.2011) has examined in detail all the judgments of the Supreme Court with regard to payment of compensation in case of custodial deaths. While referring to International Covenant on Civil and Political Rights, it has been observed as under:-

Article 9(5) of International Covenant on Civil and Political Rights, 1966, would also show that an enforceable right to compensation is not alien to concept of enforcement of guaranteed right. This Article says "anyone who has been victim of unlawful arrest or detention, shall have an enforceable right to compensation.

The Karnataka High Court in *Smt. Parvathamma Vs. The Chief Secretary and others*, while dealing with the case of custodial death has observed in paragraph 10 as under:-

10. We are also on a larger issue that when a person is taken into custody, it is the paramount duty of the police to keep him safely. If there is any dereliction of that duty, then undoubtedly the onus will be on the police to show that there was no negligence on their part. Even assuming for a moment that the case before us is one of suicide, we would like to state that there is a duty on the part of police to show that there was no negligence. However, it cannot be ruled out that there may be some cases where in spite of best efforts by the police a prisoner commits suicide by a method that is beyond the control of the police. In those cases if the police can show that they were not negligent, then it is possible that they may be absolved of the blame. We have in mind, for instance a prisoner in spite of best efforts of the police commits suicide by consuming cyanide immediately on arrest. There may also be other cases where in spite of best efforts of the police the prisoner commits suicide which could not have been prevented by the police. Ultimately it all depends on the facts of each case.

In the present case, as per the detailed inquiry conducted by the SDM, the police department was negligent in keeping the liquid astray in the police post especially in the toilet at large. The deceased-Ram Gopal consumed the same and committed suicide due to mental depression, physical torture and

humiliation. Therefore, his legal heirs are entitled for grant of compensation by the State.

The next question now is to the quantum of compensation. Multiplier system as provided in Motor Vehicle Act has been adopted consistently for calculating or assessing the compensation for custodial death. In this regard, reference can be made to a Division Bench judgment of this Court in Phoolwati Vs. State (Union Territory of Chandigarh) and Others, .

The age of the deceased in the present case was 34 years at the time of his death. As per the judgment of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, a multiplier of 16 will be applicable for assessing the compensation. The income of the deceased was Rs. 3,200/- at the time of his death. Giving an increase of 50% of this amount his income will be treated to be Rs. 4,800/- per month. After deducting 1/3rd from his monthly income on account of personal expenses, his dependency would come to Rs. 3,200/- per month.

The Supreme Court recently in the judgment of Rajesh and Others Vs. Rajbir Singh and Others, has awarded Rs. 25,000/- as funeral expenses, Rs. 1,00,000/- each to the dependents i.e. widow and minor children towards love and affection.

In view of the above, the compensation is to be assessed as under:-

The petition is allowed and a direction is given to the State-respondent No. 1 to give compensation of Rs. 7,39,400/- along with interest at the rate of 9% from the date of filing of this petition till realization to the petitioner within a period of three months from the date of receipt of a certified copy of this order and a compliance report be sent to this Court.