
(2006) 03 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule (HC) No. 20 (K) of 1996

Shaikhui

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(1), 226, 32

Citation : (2006) 2 GLT 861

Hon'ble Judges : M.B.K. Singh, J;I.A. Ansari, J

Bench : Division Bench

Advocate : T. Koza, for the Appellant; K. Meruno, for the Respondent

Judgement

M.B.K. Singh, J.—This is to dispose of Civil Rule (HC) No. 20 (K) of 1996 and Civil Miscellaneous Case No. 24(K) of 1996 wherein inter-related questions of facts and laws are involved.

2. Civil Rule (HC) No. 20 (K) of 1996 was filed by one Shaikhui, a resident of Nagarjan, Dimapur on 27.2.96 alleging about illegal detention of his maternal cousin, namely, Angring alias Ason of Burma Camp, Dimapur by personnel of security forces posted at HQs. of 3 Corps Rangapahar, Nagaland and thereby of consequent violation of the provisions of Articles 21 and 22 of the Constitution of India. According to the Petitioner, the said Angring alias Ason was arrested on 26.2.96 at about 10 A.M. by Army personnel of Rangapahar, Army HQs and taken away towards Rangapahar in a white Gypsy. Further, according to the Petitioner, despite due information given to the Additional Dy. Commissioner, Dimapur and the Officer in-charge of East Police Station, Dimapur about the matter, there was no news relating to whereabouts of the said Angring alias Ason till the filing of the Civil Rule. In this Civil Rule, the Petitioner is praying mainly for issuing a writ of Habeas Corpus directing the Respondents to produce the said Angring alias Ason and set him at his liberty. At the same time, the Petitioner is praying for directing the Respondents to pay compensation to the said detenu's family for torture and illegal detention.

3. On the day on which the above said case was filed, i.e. on 27.2.96, a Bench of this Court, after hearing the Petitioner and the Respondent No. 3, through their respective counsel, directed the General Officer Commanding HQs, 3 Corps, Rangapahar (the Respondent No. 4) to make over the detenu to the nearest Police Station. On 27.2.96 at about 4.45 P.M., the O.C. Sub-Urban Police Station, Dimapur received an unidentified deadbody from security personnel along with one FIR filed by M.K. Yadav No. 125421 Rank C.F.N, of 3 Corps. As per the said FIR, consequent upon an I.E.D. blast, patrolling of entire Dimapur town was undertaken during the night in between 26-27.2.1996 to maintain peace and tranquility and while a column of security forces was patrolling, it was fired upon and in the ensuing encounter, one assailant was killed. Further, as per allegations in the FIR, one M 21 Rifle was recovered and since the individual was involved in treacherous act of killing of security forces, he was graded as black. Thus, the unidentified deadbody was handed over to the police by personnel of security forces on 27.2.96 at about 4.45 A.M. along with the report to the effect that the unidentified deadbody was one of the persons who had attacked the patrolling party in the night and that the said unidentified attacker died in the exchange of firing in between the attackers and the patrolling party. Then, on 28.2.96 at about 6 A.M., the deadbody was identified as of the said Angring by one A.Z. Shimray at the said Sub-Urban Police Station.

4. On 8.4.96 IC 19430Y Brigedier Ramender Kumar, Commander, 64 MT. Brig. under the command of 3 Corps HQs, filed an affidavit in-opposition on behalf of the Respondent No. 4 denying the alleged fact of the arrest of the said Angring alias Ason by the security forces. In the said affidavit, nothing is mentioned about any attack made on any patrolling party and also about the death of one of the attackers who was later on identified as the said Angring alias Ason. According to the said Brig. Ramender Kumar, the statements made in the affidavit are based on his knowledge and information derived from the records. No particular of the said record is given.

5. On 17.5.96, the Petitioner filed Civil Miscellaneous Case No. 24 (K) of 1996 praying mainly for compensation of Rs. 10 lakhs in favour of the family members of the said Angring @ Ason alleging that he was tortured to death by personnel of security forces of 3 Corps HQs. after his arrest. According to the Petitioner, the said Angring @ Ason received multiple bruise injuries all over his person, a deep cut mark just below the heart and two cut marks on the left side of the chest as a result of barbaric torture made on him and after causing his death, the security forces took the deadbody towards Thaikhu Village on 27.2.96 in the early morning and they sprayed some bullets on the body in order to cover their crimes and to make believe that the deceased died in cross firing during an ambush. Further, according to the Petitioner, the security forces detained, interrogated and tortured the said Angring @ Ason leading to his death in violation of all norms, guidelines, provisions of law and directions of the Court and they are now trying to evade the responsibility of murder by saying that the deceased was killed in the alleged ambush. Photographs said to be of the

deadbody of the said Angring @ Ason showing the presence of multiple injuries, bruise and cut injuries on the body besides bullet injury marks are also annexed with the application as Annexure-E.

6. On 24.6.96, Capt. V. Kapur, Company Commander, under the command of the 3 Corps HQs, filed a counter affidavit on behalf of the Respondent No. 4 denying the allegations of the Petitioner in the Misc. Application No. 24 (K) of 1996. In the said counter affidavit, it is alleged that the said Angring @ Ason was never detained in the custody of the security forces as alleged by the Petitioner and as such there is no any question of subjecting the said Angring @ Ason to tortures. As per the said counter affidavit, subsequent to the explosion detonated by the underground of the N.S.C.N. (Isak-Muivah), near Rangapahar, Military Station, on 26.2.96 in which 3 soldiers died while escorting a School Bus of children of security forces carrying innocent children who nearly were killed by the explosion, special operations were launched by the security forces to apprehend the culprits responsible for the said heinous acts. One security forces column detailed for the said task was moving along the road of Dhobinala Thaikhu Village, when it was fired upon by Underground waiting in an ambush. In the retaliatory fire, one underground was hit while his other accomplices managed to escape in the cover of darkness. The security forces exercised extreme restraint against the attack and on humanitarian ground, the injured underground, in spite of having participated in the attack to kill personnel of security forces, was rushed to medical centre at Rangapahar, but unfortunately he was declared death on arrival. Subsequently, the deadbody of the unidentified underground was handed over to Sub-Urban Police Station, Dimapur after completion of legal formality at 4.45 p.m. on 27.2.96. Further, as per the said counter affidavit on behalf of the Respondent No. 4, in the facts and circumstances under which the said underground died, there is no question of giving any compensation. According to Respondent No. 4, the allegation of the Petitioner is purely malicious one made with ulterior motive of reducing the operational efficiency of armed forces.

7. On 24.4.98, the Petitioner filed his rejoinder affidavit to the above said counter affidavit in the Civil Misc. Application reasserting his case that on 26.2.96 at about 10.30 p.m., said Angring @ Ason was arrested by security personnel of 3 Corps and taken away in their vehicles. According to the Petitioner, on the said day, the said Angring @ Ason, went to the resident of one Miss Ningtipla at Wallford Colony, Dimapur to inquire as to whether she knew one, Mr. Akheto Sema and the said arrest took place while the said Miss Ningtipla was seeing off the said Angring @ Ason after telling him about her absence of any knowledge about any person of the same of Akheto Sema in the locality. An affidavit, sworn by the said Miss Ningtipla, was annexed as Annexure-A to the said rejoinder. Further, according to the Petitioner, there was no incident of ambush or firing upon the army on 27.2.96 at Thaikhu Village and the alleged ambush was a fake one alleged in order to cover up the cold blooded murder of the said Angring @ Ason. The Petitioner asserted that the said arrest was made in front of many

local boys, who were playing Carom on the said road side, besides Miss Ningtipla and that some of the local boys heard security personnel talking to one another of having caught the wanted person.

8. On 30.6.99, Maj. M.S. Kang, Company Officer, Para, under the command of 3 Corps HQs. filed an affidavit in reply on behalf of the Respondent No. 4 in the said Civil Misc. Application asserting that the case of the Petitioner was false and that the said Angring @ Ason was killed as a result of retaliatory firing made by the security forces. A copy of the Medical Certificate of death being Annexure-K was also annexed to substantiate the Respondent No. 4's case that the death was due to bleeding resulting from bullet injury and that nothing was mentioned about torture. As per the said affidavit in-reply, the statement given by Miss Ningtipla regarding arrest of the said Angring @ Ason by personnel of security forces, is false and despite the skid attack/ambush on the security forces, personnel of security forces acted properly and fairly as members of a disciplined force without violating any law. Nothing is mentioned in the affidavit in reply if he was present at the place where the said ambush took place at the relevant time or not.

9. On 25.8.99, this Court directed Mr. I. Zamir to produce the report of the Post Mortem conducted on the deadbody of the said Angring @ Ason supported by an affidavit from the S.P. (City), Dimapur. Further, the S.P. (City), Dimapur was directed to file a report on the incident wherein the said Angring @ Ason was reportedly killed. In compliance with the said direction, M.T.B. Nair, S.P., Dimapur submitted his report on 21.9.99 by way of an affidavit annexing relevant documents including the said Post Mortem Report. According to him, on 27.2.96 at about 0500 hrs., on getting telephonic information from the Chairman of the Thaikhu Village about firing having been taken place in the village at around 0215 hours on 27.2.96 near the house of Sikhato Sema, S.I.T. Lotha, O.C. of SBN Police Station and others visited the place of the occurrence and they found 29 number of empty cases of A.K.-47 Rifle and 4 empty cases of 9 m.m. on the road, but they found neither any injured person near any other person on the spot. According to the S.P., Dimapur, on 27.2.96 at about 1645 hours, an unidentified deadbody with multiple bullet injuries was handed over to S.I.T. Lotha, O.C. of SBN Police Station by one No. 125421 C.F.N. M.K. Yadav of 3 Corps HQs., C/O 99 APO and the following injuries, i.e., (i) one bullet injury on the left temple, (ii) two bullet injury holes on the stomach, (iii) one injury mark on the chest, (iv) one bullet injury mark on the right thigh, (v) laceration on both thighs were found on the deadbody. Further, according to the S.P. on 28.2.96 at about 0600 hrs., Mr. Z.R. Shimray, Retd. S.D.O. (PHE), identified the deadbody to be Ason Tangkhul, S/O Makui of Somdal, Ukhrul District, Manipur, a member of N.S.C.N. (I-M) in the said report. The S.P., Dimapur stated about holding of Post Mortem examination on the deadbody and examination of witnesses by the concerned I.O. of the case. It is also ascertained from the report of the S.P., Dimapur that I.O. of the case submitted FR in respect of the case, due to failure to collect evidence for prosecution of any person. The SP, Dimapur annexed

copies of (i) FIR SBN P.S. U/D case No. 01/96 dated 27.02.96, (ii) MCD No. 1, dated 27.2.1996, (iii) C.D. No. 1 dated 27.2.96 (iv) CD No. 11 dated 29.2.96, (v) C.D. No. 111 dated 10.10.97, (vi) Inquest report, (vii) Deadbody Challan, (viii) Handing Taking the deadbody by the army and (ix) Handing taking the dead body to the relatives, (x) P.M. examination report, (xi) Seizure List and (xii) SBN GDE 174 dated 26.2.96 to 201 dated 29.2.96 as Annexures. It is to be noted that as per P.M. examination report, in the opinion of the Doctor, the death was a result of haemorrhage and due to bullet shots. Further, presence of many injuries besides bullet injuries is clearly mentioned in the said P.M. report.

10. On 27.10.99, the Petitioner filed a rejoinder to the said affidavit in-reply filed on behalf of the Respondent No. 4 in the Civil Misc. Application. In the said rejoinder, the Petitioner reiterated his case by referring to the spot inquiry report of Mr. T. Lotha, S.I. of Sub-Urban Police Station and also to the statement of the Chairman of Thaikhu Village. As per the said rejoinder, the inquiry report proved beyond reasonable doubt that the army fired upon the deceased while lying flat on the ground. Further, by referring to the P.M. report in respect of the deadbody of the said Angring @ Ason, the Petitioner reiterated in the rejoinder that the deceased was brutally tortured before he was shot in the alleged ambush. According to the Petitioner, multiple bruises on both the legs, nose and left cheek and multiple abrasion seen on the legs of the deceased are indisputable signs of tortures made on the deceased in the army custody. Further, according to the Petitioner, grievous injuries found on the deadbody, such as fractured of temple bone on both sides of the head, punctured of both legs, damaged liver, ruptured of both large and small intestines and fractured of right thigh bone prove that the detenu was tortured during interrogation and thereafter he was shot and killed by the security forces in their custody. A copy of the P.M. report dated. 28.2.96 is found to have been annexed as Annexure-B to the said rejoinder. A copy of G.D.E. 178 dated 27.2.96 of Sub-Urban P.S. is also found to have been annexed as Annexure-A to the rejoinder.

11. On 2.10.2001, this Court, holding the view that this case of alleged custodial death of the said Angring @ Ason required a thorough inquiry by a responsible Judicial Officer, directed the A.D.C. (J). Dimapur to hold a proper and thorough inquiry into the matter and submit a report within two months from the date of receipt of the records from the Registry.

12. The learned ADC (J). Dimapur, submitted his report vide letter No. ADC (J)/DMR/HC-12 01/174 dated 01.11.2002. The learned ADC stated, in his report:

OPINION: Summing up the contents of FIR. Since there is no antecedent precedence of such attack to security forces on the road within the town area by U.Gs. for the last 52 years, in Nagaland, the FIR is suspicious and could be a self invented story of security forces.

In my opinion, it is a clear case of tortured and shooting out after the arrest by security forces. I do not find reason to delay and go for further inquiry.

13. We have heard Mr. T. Koza, the learned Counsel appearing on behalf of the Petitioner and Mr. K. Meruno, learned C.G.S.C. appearing on behalf of the Respondents. We have also perused the materials before the Court.

14. Upon hearing the parties through their respective counsel and on the basis of the materials before the Court, it is ascertained that the said Angring @ Ason, who was allegedly apprehended and tortured by the personnel of security forces, is no more alive. Since the said Angring @ Ason is no more alive, he is not in the custody of the security forces and as such there is no any basis for issuing writ of Habeas Corpus for his production before the Court and setting him free. Accordingly, this Court is not in a position to grant the main relief claimed by the Petitioner in C.R. (HC) No. 20 (K) of 1996.

15. In the case before us, there are disputes in between the Petitioner and the Respondent No. 4 in respect of the questions if the said Angring @ Ason was arrested on 26.2.96 at about 10. A.M. and illegally detained by security personnel of 3 Corps HQs., Rangapahar; if yes, if he was tortured till he died in the custody of the security forces; if he was killed in retaliatory firing made when a patrolling party of the security forces was ambushed by some undergrounds on the road of Dhobinala, Thaikhu Village on 27.2.96 at about 2 A.M. or if he was killed by the security forces in a fake encounter at the above said time and place. For the purpose of deciding if compensation is to be awarded in favour of the family members/legal heirs of late Angring @ Ason, as claimed, the above mentioned disputed questions are required to be decided on the basis of the materials before the Court. While deciding the said questions, this Court will be able to decide if there had been flagrant and gross violation of the fundamental rights of the said Angring @ Ason as alleged in the case.

16. It was because of the above said disputed questions regarding the facts and circumstances leading to the death of the said Angring & Ason that this Court directed the ADC (J), Dimapur, on 2.10.2001 to hold a proper and thorough inquiry into the matter and submit a report within the specified period. The said direction was given in presence of the counsel of the parties. As per record of the inquiry made by the ADC, Dimapur, despite issuance of notices to Army personnel, such as 125421 C.F.N. M.K. Yadav, 3 Corps HQs. C/O 99 APO, who handed over the deadbody of the said Angring @ Ason along with the FIR to the police and Maj. Sunil Sbecoran, Company Commander, 3 Corps., C/O 99 APO, no positive response was apparently received from the concerned authorities. It is clearly stated in the report to the effect that due to non-production of the army, none of the personnel of the security forces, who were on the patrol duty on 27.2.96 at about 2 A.M. at the place of the alleged ambush could be examined.

17. Apparently despite having knowledge that the ADC (J), Dimapur, was making an inquiry about the disputed facts and circumstances leading to the death of the said Angring @ Ason, as per direction of this Court, no attempt was made from the side of any of the concerned Respondents, particularly, from the side of the Respondent No. 4, to establish his case about the disputed questions. As per

records, the concerned counsel of the parties have already received their respective copies of the inquiry report submitted by the ADC (J), Dimapur. So far no explanation has been made on behalf of the Respondent No. 4 as to why no evidence was produced to establish his alleged facts and circumstances under which the said Angring @ Ason died on 27.2.96 at about 2 A.M. on the road of Dhobinala, Thaikhu Village. No explanation has also been given, in this regard, on behalf of any of the Respondents.

18. We are of the considered opinion that this failure on the part of the Respondent No. 4 to produce any evidence in support of his case in the said inquiry proceeded on direction of this Court will have to be taken as against the Respondents. The said failure casts serious reflection on the truthfulness of the case of the Respondent No. 4. Had the said Angring @ Ason died in the manner and under the circumstances alleged by the Respondent No. 4, he must have been able to produce evidence in that connection before the ADC (J), Dimapur to establish his case. In view of absence of any explanation about the failure to produce any evidence, we may presume that had the said evidence been produced, it would have been unfavourable to the Respondent No. 4 and as such it was not produced.

19. It is ascertained that the deadbody of the said Angring @ Ason was handed over to police by personnel of security forces on 27.2.96 at about 4.45 P.M. with a report to the effect that he was killed in the retaliatory fire made by a column of security forces when it was attacked while patrolling on the road of Dhobinala, Thaikhu Village on 27.2.96 at about 2 A.M. by some undergrounds. Though the deadbody was not apparently identified at the time of handing over to police on 27.2.96, it was subsequently identified as the dead body of Angring @ Ason, a member of N.S.C.N. (I-M). The fact of the deceased being a member of NSCN (I-M) at the relevant time is not a deciding factor in favour of either of the parties. This fact may be submitted by either of the parties in support of their respective cases. One may reasonably say that the deceased being a member of NSCN (I-M) was detained after his arrest and tortured till his death by personnel of security forces or that because of the fact of his being a member of NSCN (I-M), he was killed in a fake encounter by personnel of security forces. One may also reasonably say that the deceased being a member of NSCN, he along with other members of the organization attacked the column of security forces and in the retaliatory firing made by personnel of security forces, he got killed.

20. One more important fact is that when the deadbody of said Angring @ Ason was handed over to police on 27.2.96 at 4.45 p.m. by the personnel of security forces, the deadbody was found having many unexplained injuries apart from bullet injuries. Though the FIR lodged by M.K. Yadav does not disclose anything about the presence of injuries on the deadbody, apart from allegations of the same to be an assailant killed in the encounter. On perusal of the Inquest Report, Post Mortem Report in respect of the dead body, Challan used at the time of sending the dead body for Post Mortem examination which were submitted by

the S.P. Dimapur along with his report on 21.9.99, statement of the Shaikhui (the Petitioner), Z.R. Shimray, given on oath before the ADC (J), allegations made by the Petitioner in Civil Misc. Application No. 24(K)/96 supported by affidavit and photographs of the deadbody, we are satisfied that the deadbody of Angring @ Ason was having many injuries other than bullet injuries at the time when he was handed over to police. There is no any suggestion as well as any reasonable possibilities of the said injuries having been caused after handing over of the same to the police. It is also to be noted that though there is an allegation by the Petitioner in Civil Misc. Application No. 24 (K) of 1996 to the effect of finding multiple injuries, bruises and cut injuries besides bullet injuries on the deadbody, there is no any specific pleading from the side of the Respondent No. 4 to the effect that there was no injury on the deadbody other than the bullet injuries at the time when he was handed over to police.

21. Further, in view of the specific pleading of the Respondent No. 4 to the effect that on humanitarian ground, the injured underground was taken to a Medical Centre at Rangapahar for giving treatment, the concerned personnel of security forces must have certain known about the presence of injuries other than the bullet injuries on the person of the injured and assuming that those injuries had not been caused by any of them, one can reasonably expect that the concerned personnel would have disclosed the fact of presence of said injuries to the police so as to avoid from any accusation as against the security forces in respect of the said injuries. In the facts and circumstances, there is possibility that the personnel of the security forces were responsible in respect of the said injuries also other than the bullet injuries and by not mentioning anything about those injuries, they were expecting that no one would notice those injuries other than the bullet injuries. In other words, those personnel of security forces did not like to draw attention of anybody to those injuries other than the bullet injuries by mentioning specifically about them. In any case, failure on the part of the personnel of security forces to mention about the presence of those injuries on the deadbody other than the bullet injuries and also to give any explanation as to how and why those other injuries were present have to be taken into account as against the Respondents. In our considered opinion, in the facts and circumstances of the case, in the absence of any explanation from the side of the security forces as to how and under what circumstance the said injuries were caused, the said injuries provide telltale evidence of the said Angring @ Ason having been subjected to torture while he was in custody of the security forces.

22. It is already seen that when the learned ADC (J), Dimapur proceeded with the inquiry as per direction of this Court, none appeared and no evidence was produced on behalf of the Respondent No. 4 to establish his case without giving any explanation regarding that. The finding of the ADC (J), Dimapur, as per his report dated 30.10.02, is to the effect that no patrol party of the security forces was attacked by members of any U.G. organization on the said road within town area on the said date and time. According to the learned ADC (J), the story of the said attack could be a self invented story of security forces. The opinion of

the learned ADC (J), Dimapur is to the effect that the said Angring @ Ason was tortured and shot after his arrest by security forces.

23. We have perused the statements of Inspector T. Lotha, Mr. Z.A. Shimray, Mr. Sukhato Yephthomi, Mr. Tokiho Chophi, Mr. Saikhui and Mr. Kakhuho, Chairman of Thaikhu Village, given before the learned ADC (J), Dimapur. None of the said witnesses is found to have given statement to the effect that he saw any patrol party of the security forces being ambushed by some members of a U.G. organization on the date, time and place alleged by the Respondent No. 4 and that he saw any member of the U.G. organization getting killed as a result of retaliatory firing made by security forces. As per records, Mr. Sukhoho gave statement to the effect that on that date at about 2 A.M., in front of house of Shaikaho, he heard sound of firing as well as some people attacking in vulgar language and a human cry out of pain/unbearable injuries and then thereafter he heard some 2/3 vehicles driving away towards town. As per statement of Mr. Kakhuho, Chairman of the Thaikhu Village where the said ambush took place, he heard gun firing sound coming from one direction only and he also heard army personnel saying "pakharo, pakharo" as well as blank firing. The said Kakhuho gave his statement to the effect that he heard sound of army vehicles coming from Dhobinala army circular road and then going back to the same road after firing some rounds. Mr. Takiho Chophi, is a resident of Thaikhu Village and he also gave statement to the effect that he heard sounds of 3 vehicles coming from town to his village and that after few minutes, he heard firing sound of AK-47. According to Mr. Tokiho Chophi, he also heard sound of throwing something inside the vehicle and saw movement of the vehicles of the army.

24. On consideration of the above said statements, we find that none of the witnesses stated about hearing of exchange of firing from more than one direction. According to one of the witnesses, there were firing from one side only and none of the witnesses heard or saw any underground/militant running away and firing towards security forces. But, some of the witnesses saw driving away of army vehicles from the place of occurrence. None of the witnesses stated that those security forces cordoned off the area and that any search operation was conducted at the said area. This is a strange conduct on the part of the security forces. Had the security forces been ambushed or attacked, as alleged, they would have made a search operation in and around the area even by calling for re-enforcement from their HQs., if necessary, as done normally in such a situation. The statements of the above said witnesses are quite consistent with the theory of fake encounter alleged by the Petitioner and we have a serious doubt about the genuineness of the case of the Respondent No. 4.

25. As per statement of Inspector T. Lotha, recorded by the ADC (J), on 27.2.96 at about 5 a.m., he got information through telephone from Village Council Chairman of Thaikhu Village about firing having taken place within the said village at about 2.15 a.m. and he was requested to inquire about the incident. According to the said Inspector, when he reached the place of occurrence in front

of house of one Shikato, PWD Engineer, he found blood stain in one circle on the blank carpeting road and seized 29 empty cases of AK-47 Rifle and 4 empty cases of 9 m.m. pistol. Further, according to this Inspector, he found bullet marks on the brick wall as well as dragging and pulling mark on the road. Mr. Kakhiho, Chairman of Thaikhu Village and Mr. Tokiho Chopi, gave their statements to the same effect. We have perused entries made by Inspector T. Lotha in the case diary, G.D.E. No. 178 dated 27.2.96, purportedly after visiting the place of occurrence. The above said entries are to have been enclosed by the S.P. Dimapur at the time of submitting his report to this Court in the form of an affidavit on 2.9.99. The said entries are as follows.

On the spot inquiry, it is evident that the miscreants fired with someone in a short range. Since the bullet penetrated on the ground and below the wall and all the empty cases found lying on the spot within 30 meter approx and other 9 m.m. bullet (empty) lying on the pucca road where some blood stain remain. It is also seen that the victim was dragged across the road after shot but the victim was not found on the spot which rises suspicion to have been carried away by the miscreants.

26. Even though the above said findings were brought in the records by the SP by enclosing entries of the case diary in his written report as well as by the Petitioner by mentioning about it in his rejoinder dated 27.10.99 to the affidavit in-reply of the Respondent No. 4, there is no denial about the said findings from the side of any of the Respondents including the Respondent No. 4. The above said finding at the spot strengthens our suspicion about the genuineness of the case of the Respondent No. 4.

27. In the light of the above considerations, having regards to all the materials before the Court, we are of the opinion that the case of the Petitioner that the said Angring @ Ason was arrested, detained by the personnel of security forces of 3 Corps HQs. and that he was tortured and then killed in a fake encounter on 27.2.96 at about 2 a.m., is believable and acceptable as the truth in place of the case of the Respondent No. 4 that the said Angring @ Ason, who was an unknown U.G. then, got killed when a column of security forces made retaliatory firing on 27.2.96 at about 2 a.m. when it was attacked by some U.Gs. at or near Thaikhu Village. In the facts and circumstances, we do not find cogent and sufficient reasons for believing the case of the Respondent No. 4. In the light of the considerations already made, we are inclined to believe and accept Petitioner's case and we conclude that the said Angring @ Ason was arrested and detained illegally by personnel of security forces on 26.2.96 and that he was tortured and then killed in a fake encounter on 27.2.96 at about 2 a.m. We have also no hesitation in concluding that the acts committed by the personnel of security forces were acts done in flagrant and gross violation of the fundamental rights of the said Angring @ Ason under Articles 21 and 22 of the Constitution of India. The facts and circumstances have fully established that personnel of security forces of 3 Corps HQs., Rangapahar were fully responsible for the death

of said Angring @ Ason. The right to life for a citizen was deprived of after putting him to illegal detention and torture. For the said actions of the personnel of security forces, the Respondents are vicariously liable.

28. It is well settled that in public law, claim for compensation is a remedy available under Articles 32 and 226 for the enforcement and protection of fundamental and human rights. It is also well settled that the State must be held responsible for the unlawful acts of its officers and that it must repair the damage done to the citizen by its officers for violating their indefeasible fundamental right of personal liberty without any authority of law in an absolutely high handed manner. The Apex Court, taking note of growing custodial deaths and violence has expressed its deep concern about this disturbing factor in D.K. Basu Vs. State of West Bengal, at paras 9, 10 and 11 of the judgment, the Apex Court observed:

9. The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

10. "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word "torture" today has become synonymous with the darker side of human civilization.

Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it.

Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.

Andriano R Bartow

11. No violation of any one of the human rights has been the subject of so many

Conventions and Declarations as "torture"-all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward-flag of humanity must on each such occasion fly half-mast.

At para 22 of the same judgment, the Supreme Court observed:

22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilized nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by laws.

29. After examination of its earlier judgments reported in *Joginder Kumar Vs. State of U.P. and others*, , *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , *State of M.P. Vs. Shyamsunder Trivedi and Others*, , *State of M.P. Vs. Shyamsunder Trivedi and Others*, , *Sebastian M. Hongray Vs. Union of India (UOI) and Others*, , *Bhim Singh Vs. State of Jammu & Kashmir*, , *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, , *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, , the Apex Court noted that, "indeed no express provision in the Constitution of India for grant of compensation for violation of fundamental right of life, nonetheless, this Court as judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty to life, and find a way out for compensation for unconstitutional deprivation of fundamental right to life and liberty by holding at para 44:

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. 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 of Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising 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 the fundamental rights of the citizen.

30. The Supreme Court held at para 55 of the same judgment as follows:

55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. 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 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 in derogation 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.

31. Keeping in view the above said well settled principles of law, we have to determine the quantum of compensation payable to the legal heirs of the deceased. There will always be certain amount of guess work involved in quantifying the amount of compensation. The Petitioner's prayer is for compensation of Rs. 10 lakhs. In *Nilabati Behera (supra)*, wherein Petitioner's son died in police custody, the Supreme Court awarded a compensation of Rs. 1,50,000/- with costs of Rs. 10,000/-. In *Bihar Timung v. Union of India and Ors.*

1993 (2) GLR 347 and Smt. Geeta Sangma v. State of Nagaland and Ors. 1993 (1) GLJ 340 , this Court awarded Rs. 2 lakhs and Rs. 1.50 lakh respectively as palliative. In Smt. Zukheli Sema Vs. Union of India (UOI) and Others, , this Court directed the Respondents to pay a sum of Rs. 2 lakhs as compensation to the Petitioner in the nature of palliative. Accordingly, having regards to all the relevant considerations, we direct the Respondent, Union of India to pay a sum of Rs. 2 lakhs to the legal representatives of the deceased, Angring @ Ason as compensation in the nature of palliative and a sum of Rs. 10,000/- to the Petitioner as costs. The Union of India shall deposit the compensation amount of Rs. 2 lakhs and a sum of Rs. 10,000/- before this Registry within a period of 3 (three) months from the date of receipt of this order. On being deposited, this Registry shall pay compensation amount of Rs. 2 (two) lakhs to the concerned legal heirs of the deceased after proper verification and identification and the cost of Rs. 10,000/- to the Petitioner after proper identification.

32. It is ascertained that the case registered on the basis of the said FIR lodged by M.K. Yadav has been returned in F.R. purportedly on the ground of finding no evidence for prosecution of any person. We consider that it will be proper and just on the part of the concerned authorities of the State to take appropriate steps under the law for taking penal action against those found responsible for the torture and death of the said Angring @ Ason.

33. With these observations and directions, Civil Rule (HC) No. 20(K) of 1996 and the connected Civil Misc. Application No. 24(K) of 1996, stand disposed of.