
(2003) 11 DEL CK 0003
In the Delhi High Court
Case No : CW No. 4514 of 2002

Shiv Kumar Thakur

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 250, 358

Citation : (2004) 109 DLT 437 : (2004) 75 DRJ 475 : (2003) 2 ILR Delhi 499

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : N.K. Jha, for the Appellant; Mukta Gupta, Rajdeepa Behru and Ankur Jain, for the Respondent

Judgement

Vikramajit Sen, J.—The prayer in this Petition is for the payment of a sum of Rs. 5,00,000/- as compensation for the wrongful prosecution of the Petitioner. The allegation is that money was demanded from the Petitioner by a police officer with the threat that otherwise a case will be registered against him. The bribe having not been paid, an FIR was lodged. The Petitioner was arrested on 30.8.1998 and despite numerous applications for being enlarged on bail, remained incarcerated till 27.7.2001 on which date he was acquitted by a detailed Judgment of the learned Additional Sessions Judge, New Delhi. The following observations in the Judgment have been especially relied on by the learned Counsel for the Petitioner:

"12. From the entire evidence recorded in the case, I come to the conclusion that it is a case, in which the accused has been falsely implicated because the accused could not pay money to the police. The accused himself got burnt in this case. He was frequent visitor to the house of deceased and her children used to call him as Laddoo Chacha. That shows that he was having family relations with the family of Tara Devi and used to visit her house very often. On the day of incident, he received burn injuries during the incident and it has come in the

testimony of the witnesses that he had put shawl/chaddar over the body of the deceased and was bringing her out in his lap. He sought the help of neighbours for removing her to the hospital and she was immediately removed to the hospital. There seems to be no motive for the accused to commit the murder of the deceased. The story regarding refusal by the deceased to pay him Rs. 150/- is unbelievable. This entire story seems to have been cooked-up at the instance of police, by the complainant after about 12-14 days of the incident. What is surprising in this case is that the police did not lodge the FIR on 17.7.1998, when the lady got burnt and received 98% burns. If the witnesses are to be believed, the police was told about the burning of Tara Devi by the accused on the same very day. Two children have stated that they told their father on the same evening, how the mother got burnt. There was no reasons for PW1 to hold back this information from the police. But it seems that this entire story has been cookedup later on. If this story had been true, PW 1 Roop Narain, whose wife had been burnt would not have shown any concession to the accused and would have immediately told the police, the role played by the accused, but the facts are otherwise. Now coming to the MLC of the deceased and the history recorded by the Doctor, from the mouth of the deceased, it has been very clearly recorded by the Doctor that the deceased caught fire accidentally due to busting of stove. Same fat must have been told to PW 1. Since PW 1 in his testimony in the Court has stated that somebody was saying there that his wife had caught fire due to bursting of stove. He did not disclose as to who was this "somebody". It is possible that his own children had told him that mother had caught fire due to bursting of stove. His statement that the children were taken by the accused to his house, further confirm this. The children would not have gone to the house of the accused, if the accused was a culprit in the case and had burnt their mother. It seems that the police, after coming to know of this fact, wanted to extort money from the accused. On one hand, the police asked the accused to give money, on the other hand, police seems to have threatened the complainant that if he did not make the complaint, he would be implicated in the case. The complainant was threatened to make this complaint after 12 days of the incident, making a story against the accused. The accused was persuaded by the police to pay money but when the accused failed to pay the amount demanded by the police, after about one month of receiving the complaint, the police arrested him in this case and sent him for trial. Here is a case, where the accused had to spend a valuable period of his life in the jail because the police cookedup a case against him and converted the accidental case into a murder case. That is the reason that the prosecution did not prove the MLC in the Court, where the Doctor had specifically recorded that the patient gave the history of burning by bursting of stove. I find the accused is innocent, and I hereby acquit him.

13. I consider that it is a fit case, where the State must compensate the accused. Commissioner of Police is directed to initiate action against the Investigating Officer concerned and other police officials, who did not register the FIR, regarding the burning of the woman Tara Devi on 17th or 18th July, 1998 and

registered a cookedup case after 12 days of the incident, after they failed to extract money from the accused. He is also directed to suitably compensate the accused. The accused is at liberty to initiate the proceedings for seeking compensation from the State".

2. Learned Counsel for the Petitioner has cited several judgments in order to substantiate his case that compensation can and should be granted.

3. I do not propose to deal with each one of them separately as a Restatement of the law is available in the erudite as well as perspicuous Judgment of the Division Bench in Poonam Sharma Vs. Union of India (UOI) and Others, . In addition to the ten cases relied upon by the Petitioner before me, the Judgment of the Division Bench is a virtual history of the development of the law pertaining to the grant of compensation either under Article 226 or Article 32 of the Constitution of India.

4. Learned Counsel for the Respondent has contended that none of these cases are of relevance to the Petitioner's claim. The foundation for the award of compensation by the State can only be an illegal or wrongful act.

5. The precedents deal with the custodial deaths, or with arrests without the sanction of the law, or with torture while in custody. In the case before me, a full-fledged trial had been completed. Eventually the Petitioner was acquitted and the observations in the extracted portion of the Judgment were made by the Additional Sessions Judge.

6. In CW No. 4499/2002, which was tagged with the present Petition for some time, a similar question had arisen. My learned Brother, Justice S.K. Mahajan dismissed that Writ Petition as being not maintainable. He observed thus:

"The case set up by the petitioner is that as the F.I.R. Registered against him was based on false allegations, his arrest, detention and prosecution was also illegal and because of the illegal acts of the respondents, a stigma has been cast upon his character and he was entitled to receive compensation from the respondents for such wrongful and malicious prosecution initiated by the police officials. It is submitted that the criminal prosecution was based on a story concocted by the police officials and the report lodged by the prosecutrix was not investigated nor proved and taking the statement of the prosecutrix as true, the petitioner was falsely arrested. It is submitted that even the Test Identification Parade was not conducted not the application moved by the police was pressed. It is also submitted that the conduct of the police was totally unbecoming, unwarranted and malicious and it was a case of no evidence before the Trial Court. It is submitted because of such malicious and wrongful prosecution initiated by the police officials, petitioner is entitled to compensation.

Under Section 140 of the Delhi Police Act, in any case of alleged offence by a police officer, by any act done under colour of duty or authority or in excess of any such duty or authority by the police officer, wherein it appears to the Court

that the offence or wrong, if committed or done was of the character mentioned in the Section, no suit shall be entertained and if entertained shall be dismissed if it is instituted more than three months after the date of the act complained of, In the present case, the petitioner was arrested on 13.9.1998 and the order of discharge was passed on 15.11.2000. The contention of learned Counsel for the respondent Therefore, is that in view of Section 140 of the Deli Police Act no proceedings can be initiated after the period of one year against the respondents claiming compensation for he act done by them in the discharge of their duties. It is also submitted by learned Counsel for the respondents that the petitioner was discharged by the Additional Sessions Judge on the basis of the investigation having not been conducted properly. It is submitted that the faulty investigation allegedly conducted by the police officials does not vitiated the trial and consequently the petitioner would not be entitled to any compensation even if he has been discharged from the case on the basis of such faulty investigation. The maintainability of the petition has also been challenged by the respondents and it is submitted that the petition is otherwise devoid of any merits".

7. As is usual, the Court has to walk a tightrope in balancing competing and conflicting societal interests. On the one hand the public should not be harassed by any Authority and on the other, the action of an Authority should not be viewed through such a minute sieve that it becomes virtually an impossibility for officers of the Authority to discharge their functions for fear of being made vulnerable to a claim for compensation. The middle and acceptable path appears to be that the Court must arrive at a conclusion, not pregnant of any doubt, that the action of an officer of any authority is so perverse or illegal that it cannot bear any semblance to the discharge of an official duty.

8. The present case has attracted a lot of my time and attention, primarily for the reason that in spite of the terse castigations contained in the Judgment of the learned Additional Sessions Judge the Respondents have, despite the passage of over two years, not considered it appropriate to assail the findings/ directions and/or the observations contained therein. Instead, it has been contended before me that the observations pertaining to the grant of compensation did not emanate from adherence to any provision of law. In other words, while it was open to the learned Additional Sessions Judge to acquit the accused, before any opinion could have been recorded in respect of grant of compensation, the provisions of inter alias Section 250 and Section 358 of the Criminal Procedure Code ought to have been complied with by the learned Additional Sessions Judge. This has uncontrovertibly not been done.

9. It has been pointed out by learned Counsel for the Petitioner that these provisions are directed towards the complainant in contradistinction to a police officer. This is indubitably so. However, in order to make out a case the Petitioner must establish the existence of an extremely strong case to the effect that the complainant was actually the police officer, albeit through the mouthpiece of the complainant. In other words it should be evident that the police officer

pressurised the complainant to file a false complaint, which was thereupon acted upon fully conscious of its falsity.

10. The law is galloping towards the advancement of human rights. The day will not be distant when the Apex Court would clarify that the powers contained under Article 226 and Article 32 of the Constitution of India are free from the shackles of Sections 250 and 358 of the Criminal Procedure Code. The High Court, Therefore, may possess the power to order compensation if its judicial conscience is sufficiently provoked and disturbed. The award of compensation, in the writ jurisdiction, can necessarily be given only in cases where there are no disputed questions of facts, which differently stated, means that the dereliction of duty or abuse of powers of officers of any Authority is palpably and patently present. Where a reasonable doubt is possible so far as the manner in which the duty is observed or performed, the grant of compensation should be eschewed. It is not my province to comment or adjudicate upon the correctness of the acquittal order. So far as the Additional Sessions Judge is concerned he was bound to discharge his functions in the conspectus of the Criminal Procedure Code. Any observations made beyond the parameters established by the Code can obviously be cogitated upon by the Court exercising writ jurisdiction.

11. No doubt, there is considerable weight in the contention of learned Counsel for the Petitioner that the MLC was proved/exhibited only by the accused since it contained a statement of the deceased to the effect that she had sustained burns because of the bursting of the stove. Courts have witnessed frequent changes and retractions in dying declarations and, Therefore, this preliminary statement cannot be viewed as gospel truth or as uncontrovertibly statement. On the other hand the FIR was lodged after the holding of an Inquest in consonance with Section 174 of the Criminal Procedure Code and this can explain away the delay in its lodging. The statements of the children were recorded before the Magistrate u/s 164 and, Therefore, cannot be ignored. An accused is given the benefit of the doubt, and in our legal frameworks, would be convicted where unimpeachable proof is available. An acquittal or discharge of an accused ought not to be the only and sufficient ground for granting compensation against the State.

12. On an analysis of all the facts, it cannot be concluded without doubt that a false case was cooked up on the instigation or instance of the Investigating Officer. In the extraordinary jurisdiction vested in this Court by virtue of Article 226 of the Constitution of India the grant of compensation without Trial of disputed questions of facts and a careful scrutiny of the case, compensation ought not be granted.

13. I do not consider it appropriate to grant compensation in the present proceedings which are disposed of with the above observations. Parties shall bear their respective costs.