
(1998) 10 MP CK 0035
In the Madhya Pradesh High Court
Case No : Writ Petition No. 428 of 1995 (J)

Shyam Lal Soni	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 342, 343, 506

Citation : (2000) 1 MPJR 219

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Arvind Chouksey, Advocate, for the Appellant; Awasthy, Deputy Government Advocate for Respondents Nos. 1 to 3, Mr. R.K. Gupta, Counsel for Respondent No. 4, Mr. Manish Datt, Counsel for Respondent No. 5, Mr. N.S. Kale and Mr. P. Diwakar, Counsel for Respondent No. 6, Mr. R.K. Dubey, Counsel for Respondent No. 7 and Mrs. Archana Chouhan, Counsel, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Liberty is the cherished possession of any civilised society. It is the essence of life, it is also called the eldest child of life. It has been stated by Charles Baron De Montesquieu:

Liberty is the the "right to do everything which the laws allow.

Liberty cannot be allowed to suffer vain-glorious abstractitis but has to be given due paramountcy in the pragmatic world where concept meets its concretised eventuality. Persona! Liberty is deeply dear to an individual and it is protected under the Constitution. Personal freedom is the quint-essence of Article 21 of the Constitution. The right to life includes to live with human dignity. In the case of Francis Coralle v. Union Territory of Delhi, AIR 1981 SC 753 Bhagvati, J (as his Lordship then was) speaking for the Court expressed thus:

We think that the right to life includes the right to live with human dignity and all

that goes alongwith it... Every act which offends against or impairs human dignity would consitute deprivation protanto of this right to live.

It is the settled position of law that the right of life embraces not only mere physical existence but the quality of life as understood in its richness, dignity and serene completeness. The freedom may be curtailed in accordance with the due process of law. Everyone, high or low, has to surrender to the majesty of law and due process of law has to be given due weightage. In democratic set up, rule of law has to prevail and the marriage between democracy and rule of law is sacred, sacrosanct and divine. There cannot be possibility of divorce. The welfare State and its functionaries cannot act dehors the law. There has to be State control as individual liberty is not a personal licence. But the control must be just, fair, right and within the confines of established law. No functionary of the State can be permitted to ignore the sensitive values of human dignity and function in a desen-sitized manner reflecting the proclivity of an autocrat. Such an attitudinal pattern warrants lanceting and pruning for the simple reason in extinction of individual dignity, life becomes an otiosity; liberty, a formality; and death, a futility. In the name of law and order, and safety, the protectors of law cannot take law unto themselves and become the devils of darkness and assume the role of protagonists at the centre stage which becomes nothing less than a pandemonium where abuse of power reigns supreme. True it is, investigation is a significant part for unfolding the crime, interrogation is an important part for unfolding the crime, interrogation is an important aspect to solve the mystery, but how far an investigator or protector of law should be allowed to proceed ? Can he be parmitted to break the spine of law in the name of law and order ? Can he adopt third degree methods to extort as confession or information ? Should the dignity of an individual be allowed to mourn in silence ? Can he boastfully declare that he has achieved the result ? Can he announce that end justifies the means ? How does a poor citizen react under these circumstances ? The custodial atrocity and adoption of third degree methods, if they are prima facie found to be correct, are not to be mildly countenanced. Here is a case which tells a sad story and leaves behind a horrifying note.

The facts as have been uncurtained in the petition are that on 15.12.94 at about 3 P.M. the Respondents Nos. 4 to 8 came to the office of the Petitioner and compelled him to accompany them. The Petitioner, a Home Guard Sainik, told them that he was on duty and without permission from his senior officer he would not be in a position to accompany them. Thereafter, the raspondent No. 5, Sub Inspector or Police Station, Lordganj approached the Company Commander and informed him that C.S.P. had called the Petitioner for some enquiry. They had also told him that they had come there to arrest the Petitioner. The Petitioner was brought by the Respondents Nos. 5 to 8 to the Lordganj Police Station wherein he was detained. According to the Petitioner, the said Respondents abused him in filthy language and beat him. The Respondent No. 4, officer Incharge of Police Station, also reached there and assaulted him. As alleged, all the said Respondents asked him to give the addresses of two persons, namely,

Santosh and Jagdish. The Petitioner clearly told them that he did not know their addresses but knew their mother, Smt. Durga Bai Vishwakarma, who was his father's "religious sister". When the Petitioner expressed his inability to give the addresses of Santosh and Jagdish he was taken to the so called operation room wherein he was removed of his clothes. The Respondents hand-cuffed him and applied an electric copper wire around the private parts of his body, after which he became unconscious. When he regained his consciousness he also found electric current in other parts of the body. Thereafter, as allegations proceed, the said Respondents entered a cane into his anus several times, snatched off his moustache and beat him mercilessly. In the cold December night he was compelled to remain without clothes. On the next day he was thrown in front of his office at "Darikhana". It is also alleged that he was compelled to sign some blank papers. It is also stated that Respondents Nos. 4 of 8 took away cash of Rs. 780/- and a golden ring weighing about 1/2" tola" from him. When other Sainiks, Officers and Home Guards Officer found him unconscious in "Darikhana" they admitted him to Seth Govind Das Hospital (Victoria Hospital) in Ward No. 3. He remained hospitalized from 17.12.94 to 21.4.94. It is also put forth that he was not given proper treatment in the hospital. After he was discharged from the hospital he went to the Lordganj Police Station along with his relatives and friends to lodge a First Information Report but the Lordganj Police refused to register the complaint. Then the Petitioner made a written complaint addressing S.P. Jabalpur and sent copies to the Secretary, Home Department, Director General of Police, Collector, Jabalpur and Inspector General of Police. In spite of such complaints being made no action was taken. The Petitioner found that he was suffering from impotency. He got himself examined by Dr. H.R. Lodh who on examination told him that proper treatment would cost him Rs. 20,000/-. The Petitioner has also averred that he has spent Rs. 3,000/- in medical expenses. In this factual backdrop the Petitioner has visited this Court with a prayer for issuance of direction to C.S.P. to conduct enquiry and further direct the Respondents Nos. 1 to 3 to prosecute Respondents Nos. 4 to 8 for committing offences punishable u/s 330, 342, 343, 323, 324, 345, 247 and 506-II of the Indian Penal Code and to grant compensation of Rs. 2, 00,000/- (two lacs) to him.

A preliminary objection has been filed by the Respondents Nos. 1 to 3 pleading, inter alia, that an enquiry into the matter has been conducted by the Additional S.P. of Police, Jabalpur who has submitted his enquiry report on 3.5.97 on the basis of which an offence punishable u/s 342 of the Indian Penal Code forming the subject matter of Crime No. 217/97 has been registered at the Police Station Lordganj, Jabalpur against the Respondents. At the time of filing of objection it was indicated that challan would be filed after requisite sanction for prosecuting the officers concerned.

A return has been filed by the Respondent No. 4, Shri Y.P. Singh, who has denied to have gone to call the Petitioner from his office. He has also denied to have participated in the abuse and assault. He has also put forth that he had never

interrogated the Petitioner. He has also pointed out that in Victoria Hospital the Petitioner was treated only for bruises and abrasions. It is also highlighted by him that the matter has been investigated by the Additional S.P., who has submitted a report on 16.12.95 in which he had found that no crime has been committed by the Respondent No. 6. The said Respondent has put forth that the Challan has been filed by the Police against the answering Respondent before the C.J.11., Jabalpur forming the subject matter of Criminal Case No. 3884/97.

A counter affidavit has been filed by the Respondent No. 5 contending, inter alia, that between 1991 to 1994 in the city of Jabalpur 12 incidents of theft and house breaking took place which involved theft of property of more than Rs. 2.5 lacs and in the said offence of theft four persons, namely, Kallu Soni, Raju Patel, Jagdish Vishwakarma and Santosh Vishwakarma were involved and against them number of cases have been instituted. It is also put forth that from the possession of Santosh Vishwakarma a motor-cycle which is owned by the Petitioner was found and, therefore, to know about the whereabouts of Santosh Vishwakarma the Petitioner was called to the Police Station, Lordganj. It is also stated that through an informer information was received that the Petitioner used to visit the house of Santosh and Jagdish and his motor-cycle was used by them. It is also averred that the Petitioner was initially working in the Department of Post and Telegraphs and at that time he had faced a departmental proceedings for embezzlement of Rs. 1,000/-. The allegation of detention in the lock-up, abuse and assault have been controverted. It is put forth that Petitioner's presence was procured at the Police Station after obtaining due permission from the Company Commander. It is disputed that Petitioner was ever carried to the operation room. Other allegations have also been contraverted. It is set forth that Petitioner was interrogated to get the information relating to whereabouts of Santosh and Jagdish but the Petitioner had initially answered in an evasive manner. The allegations of cruel and third degree treatment have been controverted. Further it has been stated that after being kept in the Police Station the Petitioner revealed the whereabouts and the addresses of Jagdish and Santosh and admitted that he used to meet the mother of the said two thieves. He also admitted that his motor cycle was in possession of Santosh and Jagdish. After the information was given, the Petitioner was allowed to go from the police station. The signing of blank papers and the extortion have also been disputed. It has been set forth that the Petitioner was admitted to Victoria Hospital and was treated by Dr. N.K. Jain who had opined that no electric current was applied to the Petitioner and there were no marks of injuries on the private parts of the body. It is also put forth that after coming to know about the whereabouts of Santosh and Jagdish the Police of Lordganj Police Station has been able to arrest Santosh, Jagdish and Kallu Soni and also seized the motor-cycle of the Petitioner from the possession of Santosh. It is also pleaded that the present writ petition has been filed to create hurdle, in the matter of investigation.

A return has been filed on behalf of Respondent No. 6 the then Sub Inspector of Police, Lordganj Police Station. The said Respondent has stated that he had

never gone to the Petitioner's office and not touched him. It is put forth by him that he is a law abiding Police Sub Inspector and has excellent service record, and he has served the department with utmost devotion and sincerity. It is put forth by him that though on the alleged date of incident he was posted in the Lordganj Police Station but he had nothing to do with the so called enquiry, investigation and arrest of the Petitioner. On the date of incident he was the Sub-Inspector and was required to obey the commands of his superior authorities and was not given independent charge of the Lordganj Police Station. It is his case that he had never ill treated the Petitioner and he had no idea why and by whom the Petitioner was brought to the Police Station. It is also put forth that he had no knowledge about the incident and, in fact, at the time of the alleged incident he was not at the Police Station and had gone to Supatal (a place in the city of Jabalpur) in connection with the recovery of stolen property in Criminal Case No. 608/94. It is also put forth by him that he had never gone to call the Petitioner and had no role in his interrogation. The allegations of torture, cruel treatment and harassment have been specifically controverted by this Respondent. It is also averred by him that when the Petitioner initially had given names of certain Police officers he had not mentioned the name of the answering Respondent No. 6. It is also stated by him that the Petitioner had made an application on 17.12.94 to the District Commandant Home Guards in which he had mentioned about various allegations relating to incident but had not made any allegation against him.

A reply on behalf of Respondent No. 7. Shri Tek Chand the then Constable of Police, Lordganj Police Station, has been filed. He has disputed the allegations. While disputing the allegations made by the Petitioner he has stated that he had nothing to do with the incident and he was not aware when the Petitioner was brought to the Police Station. He has disputed the allegations relating to the abuse, assault and harassment. He has stated that Petitioner has made allegations against the persons, namely, Sub Inspector P.K. Jain and one more Sub inspector in his first written complaint/representation and, therefore, the said Respondent had nothing to do with the incident but has been falsely roped in.

A counter affidavit has been filed by the Respondent No. 8, Govind Singh, who has taken the plea that he was never posted at the Lordganj Police Station as a Constable and, therefore, he had no role in the said incident. He has also disputed the allegations.

This Court by order dated 14.3.97 directed the Director General of Police Headquarter, Bhopal to hold an enquiry into the incident and submit his report within a period of two months. Time was extended from time to time to complete the investigation. As is reflected from the order-sheet dated 7.11.97 a controversy arose that whether the charge-sheet has been filed only u/s 342/34 I.P.C. or under 330/342/34 I.P.C. An additional submission was filed by the Respondents Nos. 1 to 3 and on consideration of that matter the Court by its order dated 12.11.97 has observed as follows:

On 23.10.97. the petition was heard. Certain additional submissions were filed by the Respondents. In paragraph 2, it has been stated on behalf of the State that:

Consequently a criminal case No. 217/97 u/s 330, 342 of IPC was registered and investigated and charge-sheet has now been put up against the police officials.

With the said additional submissions. FAX MESSAGE sent by the Director General of Police was also annexed. A statement made in the said FAX MESSAGE reads as:

On the basis of that finding I had issued instructions to S.P., Jabalpur to register a criminal case against the concerning police official and put up charge-sheet in the Hon"ble Court. Consequently case No. 217/97 u/s 330, 342 IPC was registered and investigated and charge-sheet has now been put up against the accused Police officials.

Reading the additional submissions and the FAX MESSAGE together, it would only appear that under the directions of the Director General of Police a case was registered against the erring police official and investigation was made for a offences u/s 330 and 342 IPC and a charge-sheet was also filed for offences u/s 330 and 342 of IPC.

Shri Anil Vaidya, T.I. Lordganj present in the Court informs and does not dispute the Petitioner's contention that the challan has been filed only u/s 342 IPC. On being asked as to whether he had intormed the Director General of Police about filing of challan u/s 342 only, he submits that he had informed the Supdt. of Police, Jabalpur that chailan was filed only u/s 342 IPC and not u/s 330.

Without entering into the controversies raised, I deem it desirable to seek explanations of the Police officials because the statement of Shri Anil Vaidya goes contrary to the statement made in the additional submissions and the FAX MESSAGE sent by the Director General of Police. It would be for the State and the concorned Respondents to file their reply or at least to explain that under what circumstances these mis-statements were made before the Court.

Let the replies be filed within three weeks.

By order dated 10.12.97 the Court passed the following order:

Though the Respondent No. 2 has filed his additional reply, but it does not appear from the reply that beyond filing a charge-sheet against the erring officer/officers, what actions the State proposes to take against such officer/s who have been found prima-facie guilty not only in an enquiry held under the supervision of the Director General of Police, but even by the Supdt. of Police who has directed filing of the challan against them.

The State is directed to come out with a straight case as to what action they propose to take departmentally against such erring officers and what compensation they are ready and willing to pay to the Petitioner.

On 17.12.97 a statement was made by the counsel for the Respondents Nos. 4

to 6 that case has already been registered against the Respondents Nos. 4 to 8 u/s 342 IPC and charge-sheet has been filed, While recording the said statement the Court has observed that the statement was not enough as the allegation of the Petitioner relates to adopting of third degree methods for extorting confession. The Court had also taken note of the fact that the Petitioner claimed compensation. Accordingly the Court directed for filing of additional reply.

On 16.3.98 Mr. R.S. Jha, learned Deputy Advocate General made a statement that though the charge-sheet for offence punishable u/s 342 I.P.C. was filed but the Court had already framed charges u/s 330 and 342 IPC. Thereafter, the matter was adjourned for hearing of the matter.

It is to be noted here that some of the Respondents have filed additional affidavits and explanation in support of their stand. It is to be further noted here that Director General, as per the order of this Court, got the enquiry conducted by the Additional S.P. Jabalpur. While filing this report it is clarified by the counsel for the Respondents that the Director General of Police has tendered unconditional and unqualified apology for any act or omission in complying with the orders of the Court. A letter dated 5.5.97 addressed to the Advocate General by the Director General of Police and Fax Message have been brought on record as Documents I and II to the application filed for taking additional documents on record.

It is worthwhile to reproduce the relevant portion of the letter dated 6.5.97 which as under:

The Fax Message sent by the Director General of Police reads as under:

I had minutely gone through the report of the enquiry conducted against the then S.H.O. Lordganj and rests of his subordinates by the Additional S.P. for setting out inhuman treatment to Shyamlal (.) I was satisfied with the report in which the allegation of the Petitioner had been found correct (.) On the basis of that finding I had issued instructions to S.P. Jabalpur to register a criminal case against the concerning police officials and put up charge-sheet in the Hon'ble Court (.) Consequently Case Cr. No. 217/97 u/s 330, 342 was registered and investigated and charge-sheet has now been put up against the accused Police officials (.) I had personally scrutinised the enquiry report and found it satisfactory. (.) However, I tender my unconditional apology for misunderstanding the direction of the Hon'ble High Court.

It may be stated at the very outset that this Court has not taken exception to the non-conducting of the enquiry by the Director General of Police personally. On a perusal of the letter and Fax Message it is graphically clear that the Director General has got the enquiry conducted, and scrutinised the enquiry report and recorded his satisfaction. Hence, the technical breach, is condoned.

The moot question that requires determination in this writ petition, as submitted by Mr. Arvind Chouksey, learned Counsel of the Petitioner, is whether the

Petitioner if entitled to grant of compensation in view of the Police harassment and cruel treatment by adopting of third degree methods for extorting confession and getting information. Mr. Awasthy, learned Deputy Govt. Advocate for Respondents Nos. 1 to 3, Mr. R.K. Gupta, learned Counsel for Respondent No. 4, Mr. Manish Datt, learned Counsel for Respondent No. 5, Mr. N.S. Kale, learned senior counsel and Mr. P. Diwakar for the Respondent No. 6, Mr. R.K. Dubey, learned Counsel for Respondent No. 7, and Smt. Archana Chouhan counsel for Respondent No. 8, have strenuously urged that once a criminal case has been registered and the Respondents Nos. 4 to 8 have been asked to face the criminal trial the question of grant of compensation at this stage does not arise and if this Court would grant compensation that would prejudicially affect the prosecution. The learned Counsel for the said Respondents have placed heavy reliance on the decision rendered in the case of Ayodhya Prasad Yadav and 2 others v. State of M.P. and 5 others in W.P. No. 2758/97 disposed of on 24.4.98.

Before I advert to deal with the contentions raised by the learned Counsel for the Respondents, I think it is essential to state the law on the subject. Every citizen has an aspiration to live in a civilised society guided by proper legal system. Liberty conferred by law cannot be breached and for such breach compensation is allowable, It is to be kept in mind that in a public law proceeding if the Petitioner is able to, prima facie, establish that he has been wronged and there has been violation of Article 21 of the Constitution, the Court has the authority to grant compensation for the public wrong as the State has failed in performance/dischARGE of its public duty. In this context. I may refer to the decision rendered in the case of Rudul Sah Vs. State of Bihar and Another, wherein their Lordships held as follows:

Article 21 which guarantees the right to life and liberty will be denuded or its significant content if the power of this Court were limited to passing order to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due 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 civilisation 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 right 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.

In the case of Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, the Apex Court held that illegal detention in police custody violates a person's right under Article 21 of the Constitution and the State can be directed to pay

monetary compensation for infringement of the Constitutional right. In the case of *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, the Apex Court while granting compensation to the mother of the deceased who had died as a result of assault by the police, laid down as a principle that the State is responsible for the tortious acts of its employees. In the case of *State of Maharashtra and Others Vs. Ravikant S. Patil*, the grant of compensation by the High Court for ill-treatment of an under trial prisoner during investigation was upheld by the Supreme Court. The Apex Court in the case of *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, laid down as under:

It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledge remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of Sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the Constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is calimed by resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution.

At this juncture, I may profitably refer to the decision rendered in the case of *D.K. Basu Vs. State of West Bengal*, wherein their Lordships while dealing with custodial violance and protection of fundamental rights, human rights of a criminal and the duties of police registered the view that a balanced approach is necessary to meet the ends of justice. Their Lordships further proceeded to hold that torture of an arrestee amounts to infringement of fundamental rights of a citizen and a citizen is entitled to receive compensation. The Apex Court expressed thus:

Sections 330 and 331, provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustration (a) and (b) to Section 300 make a Police officer guilty of torturing a person in order to induce him to confess the commissin of a crime or to induce him to point out place where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but monetarily also. The Court, where the infringement of

the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as a civil action but by ways of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

Their Lordships proceeded further to state as under:

...it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniar 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 a 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 to punish the transgressor of 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 lawfull available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious 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 derotation of them.

It is useful to refer to yet another decision rendered in the case of People's Union for Civil Liberties Vs. Union of India and another, wherein the Apex Court granted compensation to the families of the deceased who were killed by the police while they were kept in police custody. In this context I may also refer to the observations of the Apex Court in the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, where in their Lordships held thus:

It is now well settled that a person even during lawful detention is entitled to be treated with degnity befitting any human being and the mere fact that he has been detained lawfully does not mean that he can subjected to ill-treatment, much less any torture beating. The right to be treated even during lawful detention in manner commensurate with human dignity is a well recongnised right under Article 21 of the Constitution, and if it is found that the Police has mal-treated any person in Police custody which is not commensurate with human

dignity, he is atleast entitled to monetary compensation for the torturous act by the police.

In the case of *Pratul Kumar Sinha Vs. State of Bihar and another*, (1994) Supp. (3) SCC 100 the Apex Court took note of the Police atrocity and directed ex gratia payment of Rs. 25,000/- to the family of the deceased.

From the aforesaid discussion, it is clear as noon day that public law proceeding serves defferent purpose as it is meant for enforcement of a fundamental right. Grant of compensation is one of the modes to redress the grievance of person, when the Court is satisfied with regard to the Violation of such right. The citizen can pursue his crusade against the City Halls within the parameters of law.

Now to the case at hand it is not disputed that the Petitioner was summoned to the Police Station. It is also not disputed that the purpose was for eliciting certain information. It is also admitted that the Petitioner gave some information and thereafter, he was released. It is contended by the learned Counsel for the Respondents Nos. 4 to 8 that the Police has the authority to interrogate. As there is allegation of excess and a criminal proceeding has been instituted, the Respondents should be allowed to face afair trial and there should be no grant of compensation. True it is, the Police has the power to interrogate in course of investigation. (sic) within the legitimate right on the part of the Police to arrest a suspect and proceed with interrogation but, the question that arises for consideration is whether the interrogation should be accompanied with torture. In this context I may usefully refer to the decesion rendered in the case of *Kartar Singh Vs. State of Punjab*, wherein the Apex Court ruled thus:

Article 21 guarantees protection aganinsttorture and assault by the State while a person is in custody. It is a legitimate right of the police to arrest a suspect on receiving some credible information or material, but the arrest must be in accordance with law and the interrogation should not be accompanied with torture or use of third degree methods. The interrogation and investigation should be true sense purposeful to make the investigation effective." Their Lordships further proceeded to observe:

Custodial interrogation exposes the suspect to the risk of abuse of his person or dignity as well as distortion or manipulation of his self-incrimination in the crime. No one should be subjected to physical violence of the person as well as to torture. Infringement thereof undermines the peoples" faith in the efficacy or criminal justice system. Interrogation in Police lock-up are often done under conditions of pressure and tension and the suspect could be exposed to grant strain even if he is innocent, while the culprit in custody to hide or suppress may be doubtly susceptible to confusion and manipulation. A delicate balalnce has, therefore, to be maintaned to protect the innocent from conviction and the need of the society to see the offender punished. Equally everyone has right against self-incrimination and a right to be silent under Article 20 (3) which implies his freedom from police or anybody else. But when the Police interrogates a suspect

they abuse their authority having unbridled opportunity to exploit his moral position and authority inducing the captive to confess against his better judgment. Silence on the part of the frightened captive seems to his ears to call for vengeance and induces a belief that confession holds out a chance to avoid torture or to get bail or a promise of lesser punishment. The resourceful investigator adopts all successful tactics to elicit confession.

Hence, it is graphically clear that there cannot be adopting of third degree method to extort information. Right to be treated with dignity still stays with a person whether he is an accused or a witness or a convict.

The learned Counsel for the Respondents No. 4 to 8 have placed reliance on the decision of this Court rendered in the case of Ayodhya Prasad Yadav (supra) wherein this Court in paragraph 22 while dealing with grant of compensation has held as under:

So far as the question of granting compensation is concerned, we do not propose to do in this case because a regular criminal case has already been registered against the accused persons (detenus) and they have already been enlarged on bail; therefore, this will depend on the outcome of the criminal case pending against them, and grant of any compensation at this stage, against the Respondent No. 6-Jasbir Singh Sandhu is premature. The State of Uttar Pradesh is not a party before us in these Habeas Corpus petitions. The officer belongs to State of U.P. cadre; therefore, if at all, compensation is not awarded, it is to be awarded against the Respondent No. 6-Jasbir Singh Sandhu, S.P. Pratapgarh for illegal detention. But since the criminal case is pending against the detenus, therefore, grant of compensation at this stage will be premature. However, we leave it open for the detenus to take up the matter in the Civil Court, in case they are acquitted of the charges by the competent Criminal Court.

Distinguishing the aforesaid case, learned Counsel for the Petitioner has contended that in that case the persons were taken to custody by the Respondent No. 6 and crime was registered against them and on considering this factual position this Court did not think it appropriate to grant compensation. On a plain reading of the aforesaid decision, I am inclined to accept the submission of the learned Counsel for the Petitioner that the facts of the said case are distinguishable inasmuch as the Court did not think it proper to grant compensation as the detenus were held up in a criminal trial. So is not the case here. Apart from the distinguishable fact situation, in the present case, report submitted by the DIG (P) makes it quite clear that the Petitioner was assaulted. In the counter affidavits and the written notes stand has been taken that some of the Respondents are not responsible. Who is responsible for what offence and to what degree, is not to be adjudicated in the present writ petition and, in fact that does not come within the ambit of this litigation. The facts remain, as report of a highly responsible officer indicates, the Petitioner was assaulted. In a welfare State which is wedded to the rule of law the State is liable for the acts of its officer and its employees when there is contravention or (sic) fundamental right.

The State is liable for the failure or negligence of its officer's. Similarly, it is also liable for the high-handed act of its employees. To live with dignity which is guaranteed under Article 21 of the Constitution cannot be made subservient to the atrocities of the police. Initiation of a criminal proceeding does not bring the matter down. It is not the end story but just the beginning. The welfare State has to suffer by paying compensation for the act of its employees. The criminal proceeding is in a different sphere altogether and cannot be brought in aid to escape the liability under the public law which takes care of the contravention of a fundamental right. Thus, on consideration of the facts and circumstances in entirety, I am of the considered view that the Petitioner is entitled to compensation to be paid by the Respondent No. 1. An amount of compensation of Rs. 25,000/- shall meet the ends of justice. The said amount shall be paid within a period of three months from today to the Petitioner by the State. I may hasten to add, it is open to the concerned departmental authorities, if they think it necessary, to hold an enquiry and they may decide what further action will be taken against the Respondents Nos. 4 to 8. It needs no special emphasis to State that departmental proceeding can be initiated apart from the criminal proceeding.

Before I part with case, I may refer to a decision rendered in the case of *Surendra Kumar Barik v. Commandant CISF v. Rourkela Steel Plant and others* Vol. 82 (1996) CLT 499 wherein the High Court Orissa while dealing with the punishment of dismissal of a Security Guard who was caught red-handed at the RSP Main Gate while carrying away one container from inside the premises of the Steel Plant unauthorisedly, expressed the view that it was a case where the "Rakshak" had become a "Bhakshak". So opining, the Court refused to interfere with the quantum of punishment. A Police Officer is required to maintain law and order and to see that there is no breach of peace. But when he engages himself in custodial violence, it can only be said that the "Rakshak" has metamorphosed himself to a "Sanharak". In such a situation the Rule of Law gets a backseat. Every Officer conferred with the power must remember that he cannot become an instrument for ushering in a situation of lawlessness and anathematize the whole social atmosphere. The person who is supposed to maintain law and order has to be guided by the principles of "Dharma". Failure on his part cannot be countenanced. End shall never justify the means in this arena.

Consequently, the writ petition is allowed to the extent indicated above. However, there shall be no order as to costs.