
(2007) 08 PAT CK 0147
In the Patna High Court
Case No : Cr.WJC No. 274 of 2005

Sita Ram Mahato

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 454

Citation : (2007) 4 PLJR 226

Hon'ble Judges : Shyam Kishore Sharma, J

Bench : Single Bench

Advocate : D. Kr. Upadhyay and Sandeep Kumar, for the Appellant; Gyan Prakash Ojha for the State, for the Respondent

Judgement

Shyam Kishore Sharma, J.—Heard learned counsel for the parties. The petitioner seeks direction of this Court for taking legal action against respondent Nos. 4 to 6 and further prayer is that the persons responsible for custodial death of the petitioner's son may be located and punished. The petitioner has also sought compensation for death of his son because he is a poor person and was dependant upon the earning of his bereaved son.

2. The petitioner's son Nand Lal Mahato aged 25 years was apprehended in Parsauni P.S. Case No. 33 of 2004 which was registered for offences under Sections 454 and 380 of the Indian Penal Code. While the petitioner's son was in police custody, he died. The allegation was that the petitioner's son had stolen articles such as, clothes, jewellery and cash alongwith other accused persons.

3. The petitioner has alleged that his son was brutally beaten up while he was in police custody. The petitioner went to the police station and requested the police officials to release his son but again the petitioner's son was beaten up by the police and when the condition of the petitioner's son became precarious, then he was taken to hospital where he died on 22.9.2004. The post mortem examination was conducted and doctor found some ante mortem injury also.

4. The case is pending since- 2005. The court at various occasions has passed orders. It appears that the District Magistrate-cum-Collector took plea that he has ordered for Magisterial enquiry but the outcome of Magisterial enquiry has not come as yet. On the other hand, learned counsel for the State has submitted that it was a death on account of poisoning by the deceased himself. He took pesticide in his residential house and the death of "the petitioner"s son was on account of that.

5. The facts on the record disclose something else. The post mortem examination reveals that the deceased had received some ante mortem injury also. That has remained unexplained. Learned counsel for the petitioner has submitted that this Court in similar circumstances has ordered for payment of some compensation to the dependant of the deceased. For example, a copy of order passed in C.W.J.C. No. 11177 of 2003 has been produced in course of argument of the case. From the judgment dated 6.10.2004 passed in C.W.J.C. No. 11177 of 2003 it appears that the court has directed the respondents to pay a sum of Rs. 1,00,000/- (Rupees one lakh) to the petitioner or any of the dependants of the deceased within eight weeks of the order. Respondents were also directed to pay the cost of litigation to the petitioner which was assessed at Rs. 1000/- (Rupees one thousand) within the same time. This case is of similar nature as the petitioner"s son died while he was in police custody. The ante mortem injury found in post mortem examination does not support the version of the respondents. Non-filing of Magisterial enquiry report up till now goes to show that the respondents were not serious in making proper enquiry. This is a case of custodial death of a person who was made an accused in a petty nature of case.

6. Without expressing any opinion on the allegation, the judgment of this Court passed on 6.10.2004 in C.W.J.C. No. 11177 of 2003 is ordered to be also followed in this case and the respondents are directed to pay Rs. 1,00,000/- (Rupees one lakh) to the petitioner or any of the dependants of the deceased within eight weeks from today. They are also directed to pay cost of this litigation to the petitioner, which I assess at Rs. 1,000/- (Rupees one thousand) within the same time. This order will not preclude the petitioner in approaching the Civil Court for seeking more compensation according to the provision of any other law. This case is being adjourned for four months. In the meantime, learned counsel for the State will file further counter affidavit narrating outcome of Magisterial enquiry. If no satisfactory enquiry comes, then this court may order enquiry/ investigation by another agency.