

(2018) 07 UK CK 0124

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 1050 of 2018

Smt. Kalawati Rawat

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 324
Code of Criminal Procedure 1973 — Section 173, 55A
Constitution of India, 1950 — Article 21

Citation : (2018) 07 UK CK 0124

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Deep Prakash Bhatt, Manisha Rana Singh, Sandeep Tandon

Final Decision : Disposed Off

Judgement

LOK PAL SINGH, J. (ORAL)

1. The writ petition has been filed by the petitioner seeking following relief:-

i) Issue a writ, order or direction in the nature of mandamus directing the respondent no.6 to initiate inquiry in the matter of custodial death of the

husband of the petitioner in Sub-jail Haldwani inter alia directing fair investigation by any other investigating agency.

ii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to pay exemplary and adequate compensation

to the petitioner and deceased-detenué's children for their survival and scheme for their rehabilitation.

iii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondent no.1 to punish the erring jail authorities for

being neglectful in their duties and violation of the provisions of Jail Manual,

Police Regulation, Human Rights of prisoner and for violation of

Fundamental Rights guaranteed under the Constitution of India through appropriate departmental proceeding and to award deterrent punishment to the erring jail and other administrative authorities

2. Brief facts of the case are that the husband of the petitioner late Prakash Singh Rawat was posted as a Forest Watcher in the State Forest

Department. He was working as contractual employee. In the year 2011 there was some dispute between husband of the petitioner and another

villager, who lodged a case under Section 324 of IPC. During the pendency of the criminal appeal number 66 of 2014, warrant was issued against the

husband of the petitioner, who was arrested and produced before the Magistrate concerned. He was sent to jail on 21.08.2014. Petitioner was

informed on 22.08.2014 that her husband who was in the prison has fallen sick and was hospitalized in Base Hospital Haldwani. Petitioner rushed to

the hospital alongwith her father-in-law and brother-in-law and found that her husband has already died. She found several injuries on the dead body

of the deceased. The complaint was lodged by her on alleged suspicious custodial torture in imprisonment. FIR under Section 302 of IPC against

unknown person was lodged, which was registered FIR/ Case Crime No.460 of 2014.

3. After investigation, the Investigating Officer submitted a final report on 05.01.2015 stating therein that the death of husband of the petitioner is

natural. The post mortem report of the deceased has been annexed with the petition, which depicts following injuries on the body of the deceased:-

1. Partially healed abrasion of 5cm x 2cm present at the clossolateral aspect of middle part of left forearm.

2. Abrasion of 1cm x ½ cm.

3. Contusion of 2cm x 1cm present over left front parietal region of scalp.

4. Contusion of 3cm x 1cm present over the posterior central region of scalp.

4. On filing the final report, a protest petition was filed before the Magistrate concerned and the same was allowed and further investigation was

directed in the matter. The investigation remained pending for a long time and again a final report was submitted by the Investigating Officer in the

case.

5. In view of the Section 55A of the Cr.P.C. since the deceased was in the custody of jail authority, therefore, it was their duty to take care of health and safety of the accused. But, on the perusal of the post-mortem report, it would reveal that the deceased sustained several injuries. He was taken to hospital where he was declared dead. Sub-jail authority Haldwani did not report to the police how the deceased sustained such injuries. The first responsibility casts upon the jail authority to inform the local police if the incident occurred in the jail and, in case, if incident did not happen inside the jail and any injuries on the body of the deceased prior to admitting him to jail were reported, the jail authority should have asked to police authority to get the accused medically examined, but it was not done by the jail authority. Therefore, it can be safely presumed that when the husband of the petitioner was admitted to the jail, he was in fit and healthy state. Thus, a doubt is created regarding failure of jail authorities in discharging their duties in an irresponsible manner.

6. Mr. Mahendra Singh Dasoni, Investigating Officer was directed to appear before this Court. Today he is present before the Court. The Court put some queries to him. He has made a statement at Bar. Stating that the deceased was admitted to the jail on 21.08.2014 at that time his behaviour was abnormal. The statement of Investigating Officer, Mr. Mahendra Singh Dasoni, appears to be false as it is contrary to the post-mortem report which depicts the injuries as mentioned above.

7. From the statement of the Investigating Officer, it would reveal that the Investigating Officer is trying to mislead this Court and has made a false statement as above. Since, the Investigating Officer has made a false statement before this Court a fair investigation cannot be expected from such an Investigating Officer. Though, twice the final report has been submitted. Fair trial includes the fair investigation. Article 21 of the Constitution of India guarantees the fair trial which includes the fair investigation. Thus, in view of this Court, the Investigating Officer failed to investigate the matter fairly.

8. Admittedly, a young man of 36 years has lost his life for the reasons best known to the jail authorities and those who have taken the deceased to the jail. Thus, it is apparent that the Investigating Officer has submitted a final report without conducting a fair investigation in the matter.

9. A short counter affidavit has been filed by the State. In the paragraph 6 of the

short counter affidavit to the writ petition, the post mortem report is admitted. However, there is no denial of the contents of the writ petition by the State in said counter affidavit.

10. The C.B.I. has filed counter affidavit stating therein that the deceased fell sick and was hospitalized in Base Hospital Haldwani. In paragraph 21

of the counter affidavit it is stated that respondent no.5 had already conducted investigation and since, the C.B.I. is already over-burdened with

number of important cases and is facing acute shortage of manpower, therefore, it would not be appropriate to issue directions to the C.B.I. to

investigate the matter and it is suggested that CB-CID, SIT should be directed to conduct the investigation.

11. Ms. Manisha Rana Singh, A.G.A. for the State has supplied a copy of letter written by the Additional District Magistrate Nainital, Mr. Udai Singh

Rana to the District Magistrate, Nainital on 10.02.2015. Udai Singh Rana, Additional District Magistrate, Nainital who has allegedly recorded the

statement of some persons who were also sitting in the same prisoners's vehicle, by the deceased was brought from Khatima to Nainital and has

stated that other accused who were traveling in the same prisoners's vehicle have made statement that the deceased was afraid and was thrilling.

This report appears to be a false report just to save the culprits. It appears that the Additional District Magistrate, Nainital, Udai Singh Rana is also

trying to save the actual culprits and submitted a false report.

12. The Hon'ble Apex Court has repeatedly directed the State of Uttarakhand that the investigation of heinous offences are not being carried out

in a proper manner and in some of the cases the Investigating Officers are deliberately not discharging their duties in a responsible manner.

13. The Hon'ble Apex Court in the case of Dayal Singh and Others Vs. State of Uttaranchal (2012) 8 SCC 263 issued directions to the State of

Uttarakhand about the quality of investigation. This Court has directed the Secretary Home to improve the investigation but nothing has been done by

the Department of Home, Uttarakhand in this context. Considering the non-compliance of the order passed by Hon'ble Apex Court, this Court

several times has directed the Department of Home, Uttarakhand to improve the quality of investigation by giving proper training to the Investigating

Officers so that a proper investigation in a scientific manner be carried out. But

despite the repeated directions issued by this Court nothing has been done by the State Government to improve the quality of investigation. The investigations are being carried out in traditional manner without any improvement. None of the investigating officers is trying to find out a witness and mentioning the name of those witnesses who deny becoming the witness of the incident. Stereotyped recording of the statement and preparing the case diary is not a healthy practice. The investigation being conducted in such a manner that the accused person is getting benefits of the lacuna of the investigation and ultimately the prosecution collapses.

14. Paragraph nos. 47.4 and 47.5 of the judgment (supra) are extracted hereinunder:-

47.4 Director Generals of Police UP/Uttarakhand are hereby directed to initiate, and expeditiously complete, disciplinary proceedings against

PW6, SI Kartar Singh, whether he is in service or has since retired, for the acts of omission and commission, deliberate dereliction of duty in not

mentioning reasons for non-disclosure of cause of death as explained by the doctor, not sending the viscera to the FSL and for conducting the

investigation of this case in a most callous and irresponsible manner. The question of limitation, if any, under the Rules, would not apply as it is by

direction of the Court that such enquiry shall be conducted.

47.5 We hold, declare and direct that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts

return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts

of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during

the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the Courts

would be fully justified in directing the disciplinary authorities to take appropriate disciplinary or other action in accordance with law, whether such

officer, expert or employee witness, is in service or has since retired.

15. From the perusal of the record, it would reveal that fair investigation has not been done by the Investigating Officer in the present case. The

Investigating Officer as well as the Additional District Magistrate, who has submitted a report to the District Magistrate has also not submitted the fair

report. On overall assessment, this Court is of the view that since the husband of the petitioner died in jail and injuries were found on the person of the husband of petitioner, it appears to this Court that the jail authorities might have been involved in this case. Therefore, fair investigation has not been carried out by the Police due to the involvement of jail authorities/ police authorities. This Court also feels that any State Investigating Agency will not be able to investigate the matter fairly and freely. Thus, as fair investigation is basic feature of fair trial, which is to be done fairly, this Court has no hesitation to state that the said police authorities will not be able to conduct the investigation properly. This Court is of the opinion that in order to bring home the guilt of the real culprits, investigation should be entrusted to the Central Bureau of Investigation. Thus this Court is issuing the following directions:

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16. Considering the circumstances of the present case, this Court is issuing following directions:-

- i) S.S.P. C.B.I., Dehradun is directed to register a case in the matter which shall be investigated by C.B.I. through Investigating Officer not below the rank of Circle Officer.
- ii) C.B.I. is directed to investigate the matter and submit report under Section 173 of Cr.P.C before the competent Court having the jurisdiction to try the case.
- iii) Director General of Police, Uttarakhand is directed to initiate the Departmental Inquiry against Sub-Inspector, Kultar Singh, Investigating Officer of the case, who failed to discharge his duties in a responsible manner.
- iv) Principle Secretary, State of Uttarakhand shall initiate inquiry against Shri Udai Singh Rana, the then ADM Nainital, if he is still serving.
- v) The State Government shall pay compensation of Rs.5,00,000/- to the petitioner on account of custodial death of her husband namely, Prakash Singh Rawat within three months from today.
- vi) The Investigating Officer of the case shall hand over the entire material available with him to the C.B.I. forthwith.

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16. The present Writ Petition is accordingly disposed of.