

(2006) 04 AHC CK 0209

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 365 of 2003

Smt. Rama Devi

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (2006) 9 ADJ 557

Hon'ble Judges : R.N. Misra, J; Amitava Lala, J

Bench : Division Bench

Advocate : Bal Mukund, for the Appellant; Syed Ali Murtaza and Manvendra Singh and A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—This writ petition is made for the following prayers:

(i) to issue a writ, order or direction in the nature of mandamus directing the respondents to pay rupees ten lacs to the petitioner (family of the deceased Ran Vijay Singh) as compensation for the custodial death of her husband Ran Vijay Singh.

(ii) to issue a writ, order or direction in the nature of mandamus to respondents police authorities to disclose the where about present posting of the accused persons i.e. SI Raja Ram Singh and Head Constable Mohammad Shamim Hasimi and also direct to arrest the accused persons and produced before the Court below for criminal trial.

(iii) to issue any other writ, order or direction in which this Hon"ble may deems fit and proper in the facts and circumstances of the case.

(iv) to award the Court of this writ petition in favour of the petitioner throughout.

2. So far as the prayer No. (ii) is concerned steps are to be taken in the Court below where the trial is proceeding. However, the petitioner is not harped for the

same but only for the compensation as per prayer in paragraph (i) of the writ petition. Learned A.G.A. appearing for the respondents contended before this Court that recently a judgment of three judges Bench of the Supreme Court held that compensation cannot be awarded as a matter of course but it is to be granted in the appropriate cases. We have gone through the judgment reported in Sube Singh Vs. State of Haryana and Others, and we find many aspects of the matter in respect of the custodial death and compensation in connection thereto. The Court held that the adequate compensation irrespective of the compensation to be granted by the Civil Court or by the Criminal Court can be awarded by the appropriate Court under the writ jurisdiction under Article 226 or 32 of the Constitution of India. But that determination obviously leads to the question in respect of the determination of the appropriate case. The appropriate case is according to us a concrete proof as regards the custodial death either by the investigation, if such stage exists or by determination of the Court, if the investigation is over. In paragraph 12 of the Judgement the Supreme Court held as follows:

Though illegal detention and custodial torture were recognized as violations of the fundamental rights of life and liberty guaranteed under Article 21, to begin with, only the following reliefs were being granted in writ petitions under Article 32 or 226;

- (a) direction to set at liberty the person detained, if the complaint was one of illegal detention.
- (b) direction to the concerned Government to hold an inquiry and take action against the officers responsible for the violation.
- (c) If the enquiry or action taken by the concerned department was found to be not satisfactory, to direct an inquiry by an independent agency, usually the Central Bureau of Investigation.

Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the Law of Torts, was evolved in the last two and half decades.

3. The peculiarity of the dispute herein is to be analyzed in view of the facts and circumstances of the case. In the instant case investigation is already complete and charge sheet has been submitted before the appropriate Court. The Court has taken cognizance of the matter. The trial is continuing and it is likely to be ended very soon. If not, the Court will direct to conclude within the prescribed period if stage is made known. The petitioner's own case is that he is satisfied with the investigation and filing of the charge sheet. Therefore, at this stage a parallel investigation, if directed by this Court, will certainly affect the proceedings before the Trial Court. More so, there might be possibility of different result of the investigation when the petitioner will be sufferer. Aimless argument of the learned Counsel appearing for the petitioner may destroy his own case. We have to keep eyes our open in respect of the interest of the litigant.

4. Therefore, we are of the view that the award of compensation by this Court can be postponed till the decision to be taken by the learned Court below. However, in disposing the writ petition we are of view that the proceedings before the Court below will be completed as expeditiously as possible since we cannot make it time bound in view of ignorance of the petitioner (sic) counsel as regards stage of the trial. However finalization of the case will not be construed as a denial of the case but with the liberty to file a fresh petition immediately after disposal of the proceedings in the Court below.

5. With the above observation the writ petition stands disposed of.

6. No order is passed as to costs.