
(2007) 10 OHC CK 0032
In the Orissa High Court

Smt. Sadin Meher

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Protection of Human Rights Act, 1993 — Section 13, 26

Citation : (2007) CLT 655 Supp : (2007) 38 OCR 803 : (2007) 2 OLR 780

Hon'ble Judges : A.K. Ganguly, C.J.;Indrajeet Mahanty, J

Bench : Division Bench

Judgement

A.K. Ganguly, C.J.—This writ petition has been filed by Smt. Sadin Meher, wife of late Pahilman " Chittaranjan Meher, praying for an investigation of the case arising out of death of her husband either by the Central Bureau of Investigation or by the Crime Branch. The case which has been made out is that the petitioner's husband was working as a mechanic in Niranjn Motor Garage. On 15.2.2001 the petitioner's husband Chittaranjan did not return from the garage at night and the petitioner thought that he might be busy in his work. Next morning the petitioner with her elder son went to Niranjn Motor Garage to find out what had happened and then came to know from the owner of the garage that her husband had been arrested by the police as he committed theft. On being so informed, the petitioner went to the Police Station, namely, Barapalli Police Station and asked the OIC of the Police Station about her husband, but she did not get any answer. Feeling helpless, she came back to her house and came to know subsequently from the villagers that her husband's dead body was lying near the railway station and the police had taken the photographs of the dead body and the wearing apparels of her husband. Knowing this, the petitioner rushed to the Police Station and asked the OIC to show her the photographs and the wearing apparels of her husband. The petitioner came to know that UD case No. 2 of 2001 was registered in the Police Station, but the photographs and the clothes of her husband were not shown to her by the OIC. Thereupon the petitioner made an application to the Collector, Bargarh and also the

Superintendent of Police, Bargarh for making an inquiry about the custodial death of her husband.

2. Further case of the petitioner is that the S.P. Shri Jasvinder Singh intervened in the matter and directed the OIC of Barapalli P.S. to show the photographs of the dead body of the petitioner's husband to her. On being so directed the OIC showed the photographs and clothes of the petitioner's husband to the petitioner. The petitioner's case is that she was rebuked by the OIC and also by other members of the Police Staff of the Police Station in filthy language and was driven out of it. The case of death of petitioner's husband became known to the locality and the matter was flashed in the newspapers.

3. Further case of the petitioner is that the Superintendent of Police, Bargarh made an inquiry on the petition filed by the petitioner. After completion of inquiry, the then Superintendent of Police placed the OIC of Barapalli P.S. and another Sub-Inspector of Police under suspension with effect from 26.4.2001. A copy of that inquiry report has been annexed to the writ petition. The relevant facts which have been indicated in the said report are extracted below:

...The deadbody was found in a suspicious circumstances. The cloth used to hang is very small and the person cannot tie it around his neck and hang himself since there was nothing at the spot to reach to the roof. The pump house has a very lower ceiling of around 6 ft height from the floor. There was no stone, bricks or any other furniture by which the deceased can get up to the roof of the ceiling and hang himself. The knot of the cloth was at the back of the head which in normal suicidal cases normally remains on one side of the neck.

In his report the S.P. has stated that he has examined various persons, who have told the S.P. that the Inquiring Officer told them as follows:

...told the enquiring officer that by his experience he can say that it is not a case of suicide because as per his version the head was touching the ceiling. The cloth by which the deceased was hanged was very small and there was no support below the feet of the deceased like stone, bricks or any things by which he can reach the hanging roof. The knot of the cloth was behind the head and not on the side of the neck.

The Superintendent of Police also examined the petitioner. In the concluding part of the report, it is stated that there was gross negligence of duty and violation of human rights by S.I. Balaram Sagar, OIC Barapalli P.S., who detained petitioner's husband without telling him the reason of arrest not recording it anywhere in the records of the Police Station and without informing his family members. It has also been stated that despite the fact that deceased Chittaranjan was kept in the Police Station for two days, the UD case was registered as of an unknown person and for this delayed information to his wife and relatives and also to the office of the Superintendent of Police investigation into the suspected murder of Chittaranjan could not take place properly and a lot of evidence has been lost.

4. Learned Counsel for the petitioner very much relied on the report of the S.P. and submitted that the case is one of murder and not a case of natural death. He has also submitted that in this state of affairs the Special I.G. of Police (OPS), Orissa directed the Superintendent of Police, CID, Crime Branch, Orissa, Cuttack to take up investigation about the custodial death of petitioner's husband in connection with Barapalli P.S. U.D. Case No. 2/2001 by letter No. 2849 dated 15.5.2001 and it was directed by the Special I.G. of Police in the said letter to submit a report within a fortnight whether the case is suicidal or homicidal. Copy of the said letter has been enclosed as Annexure-5 to the writ petition. It is alleged that at that juncture the S.P. Shri Jasvinder Singh was transferred allegedly on political pressure and one Gopabandhu Mallick joined as S.P, Bargarh. Immediately after joining of Gopabandhu Mallick, the suspended OIC and two other police officials were reinstated in service and thereafter the new S.P. Gopabandhu Mallick suppressed the letter given to the Crime Branch for investigation and did not send the same to the Superintendent of Police, CID, Crime Branch for inquiry. Instead of that an intimation was sent to the Human Rights Protection Cell.

5. The case of the petitioner is that justice is denied to her and no proper inquiry has been made in respect of the incident of death of her husband. That is why she has filed this writ petition before this Court as early as on 15.10.2001. Since then the matter has been kept pending.

6. Two affidavits have been filed in this matter, one by Sarat Kumar Paramguru, who was working as Deputy Superintendent of Police, Bargarh and the other by Balaram Sagar, the Officer-in-Charge of Barapalli Police Station. Subsequent to the order of this Court dated 21.6.2007 one Prasanta Kumar Bhoi, who is presently working as Sub-divisional Police Officer, Bargarh filed an affidavit and also by one U.K. Routray, the Inspector of Police who conducted the enquiry on behalf of Human Right Protection Cell.

7. The version in the counter affidavit filed by Sarat Kumar Paramguru is that the investigation has been completed by the Human Rights Protection Cell, Orissa, Cuttack, which is competent to make an investigation relating to custodial death and relying on the said report it has been averred in the counter affidavit filed by Sarat Kumar Paramguru, Deputy Superintendent of Police that the death of husband of the petitioner did not take place in the Police Station. According to him, same has been substantiated by the report of the Human Rights Protection Cell, Orissa, Cuttack dated 4.11.2001 in connection with Barapalli P.S.U.D. Case No. 2 of 2001. According to the said report, the cause of death appears to be suicidal hanging and there is no suspicion of foul play. In the said affidavit of Deputy Superintendent of Police it has been stated that one Manoj Kumar Gupta of Barapalli reported in writing at Barapalli Police Station to the effect that an unknown person was found dead due to hanging by means of a rope around his neck in his pump house which is situated behind the market yard of Barapalli. On the basis of said report, the S.I. of Police Prafulla Kumar Rath registered Barapalli

P.S.U.D. Case No. 2 of 2001 in the absence of OIC. It is further averred that the Inquiry Officer visited the spot, which is an abandoned pump house of informant Manoj Kumar Gupta situated at a distance of 11/2 KMs east to Barapalli Police Station near Barapalli market yard. The Inquiry Officer conducted the inquest over the dead body in presence of local witnesses treating it as unidentified and sent it to the District Headquarters Hospital, Bargarh for post mortem examination. During inquiry, it came to light that the deceased Chittaranjan Meher was a resident of village Menda, P.S. Tarava, Dist. Sonepur and he was staying in Dak Bangala Pada under Barapalli P.S. with his family members. Chittaranjan, since deceased, was working as a welder in the garage of one Ranjan Pradhan and was reportedly addicted to liquor. During his stay, Chittaranjan developed intimacy with Ranjan Meher, a friend of Ranjan Pradhan, and others who were working in the garage. On the evening of 15.2.2001 Ranjan Meher had gone to attend the call-of nature keeping his clothes in the garage and on return he found Rs. 100/- missing from his Punjabi shirt pocket. Suspecting that Chittaranjan (Pahilman) had stolen the money he asked him about the missing money. On that Chittaranjan became violent and assaulted on the face of Ranjan. On this issue there was quarrel and misunderstanding between Chittaranjan and Ranjan. Some persons present there took Chittaranjan and produced him in Barapalli P.S. at about 12.00 midnight and requested the Police to detain him in the Police Station till next morning for a compromise. Since it was a dispute between the friends they were not interested to lodge the FIR, Chittaranjan was detained in the Police station by S.I., P.K. Rath but not in the police hazat till next day morning. On the next day morning Chittaranjan was sent for medical examination by ASI P.K. Kheti. As those persons who complained in the last night did not turn up till next day morning, Chittaranjan was let off with a warning. According to the stand taken in the counter, it is revealed that the final report in Barapalli P.S.U.D. Case No. 2 of 2001 dated 4.11.2001 was submitted by Shri U.K.Routray, Inspector, HRPC, Orissa, Cuttack, who was enquiring the matter. It is stated therein that the S.I. Balaram Sagar, who was out on night patrolling duty in the intervening night of 15.2.2001 and 16.2.2001 returned to the Police Station in the early hours at about 8.15 A.M. of 16.2.2001 and did not find any one in the police lock up. To this effect, he made a station diary entry. On 23.2.2001 Chittaranjan was found dead by hanging in the abandoned water pump house. It has been admitted in the counter that Chittaranjan, the husband of the petitioner was detained for one night, i.e. on 15.2.2001 for his medical examination as he had sustained some abrasions and swelling on his cheeks and burning injury on his right hand, but he was not kept in the police hazat. Therefore, the contention of the petitioner that her husband died while he was detained by the OIC of Barapalli P.S. in connection with the theft case is not true.

8. The report of the Superintendent of Police Shri Jasvinder Singh, was not very much dealt with. It was stated that there was subsequent appointment of another Superintendent of Police and the matter was handed over to the Human

Rights Protection Cell. It has been said that the HRPC is a sister organization of State Crime. Branch and said U.K.Routray took up the inquiry under the direct supervision of Anirudha Pradhan, OPS, Deputy Superintendent of Police. After completion of inquiry, Shri Routray submitted his final report in Barapalli P.S.U.D. Case No. 2 of 2001 declaring the cause of death to be suicidal hanging and there is no suspicion of any foul play. It has, however, not been denied that the OIC of Barapalli P.S. namely, Balaram Sagar and other police staff who were suspended by the Superintendent of Police Shri Jasvinder Singh were released from suspension subsequently by Shri Gopabandhu Mallik, who joined as Superintendent of Police, Bargarh on 5.6.2001.

9. In the counter affidavit which has been filed by Balaram Sagar, OIC of Barapalli P.S. the same stand which has been taken in the counter affidavit filed by Sarat Kumar Paramguru has been repeated. In the counter affidavit filed by Sarat Kumar Paramguru - opposite party No. 2 it has been stated that said Balaram Sagar was placed under suspension by the Superintendent of Police, Bargarh on 26.4.2001, inter alia, on the ground that the OIC Balaram Sagar was responsible for illegal detention of Chittaranjan " Pahilman Meher and he was responsible for manipulation of records of the Police Station. It has also been stated that since the order of suspension was passed on 26.4.2001, as no charge was framed against Balaram Sagar he was released from suspension on 2.6.2001 by the Superintendent of Police, who succeeded Shri Jasvinder Singh. The allegation of custodial death has been denied in the affidavit filed by Balaram Sagar - opposite party No. 3.

10. A further affidavit has been filed on 5.7.2007 by Upendra Kumar Routray, who is now working as Inspector of Police, Police Training College, Angul. Shri Routray made the inquiry on behalf of Human Rights Protection Cell. He has said that he took up the inquiry pursuant to the order dated 14.7.2001 passed by the subsequent Superintendent of Police Shri Gopabandhu Mallick, who came after the transfer of Shri Jasvinder Singh. He has further said that the inquiry revealed that Chittaranjan Meher was aged about 30 years and was working as welder in the garage of one Ranjan Kumar Pradhan. While engaged with the welding work, he developed intimacy with one Ranjan Meher, driver and others of a nearby shop and Chittaranjan was addicted to liquor. The fact of Chittaranjan's quarrel with Ranjan and others has been repeated in the affidavit. It has been admitted therein that deceased Chittaranjan remained in the Police Station and slept with Sentries in the night of 15.2.2001. On the next day morning, he was sent to Barapalli Community Health Centre with injury requisition and was medically examined. Thereafter he returned from the Community Health Centre and sat on the verandah of Police Station awaiting arrival of others. As nobody arrived there till 11.00 A.M. Chittaranjan was allowed to go to his house. In the affidavit filed by Shri Routray it has been admitted that the local police committed irregularities by not making any entry in the records of the Police Station about presence of Chittaranjan and that on 23.2.2001 one Manoj Kumar Gupta finding a dead body hanging in his abandoned pump house reported the matter at Barapalli Police

Station and on inquiry it was found to be the dead body of Chittaranjan Meher and the Medical Officer Dr. Anita Nanda conducted post mortem examination and opined that the death was due to hanging. It is admitted that initially the wife of Chittaranjan came to Barapalli Police Station to see the photo and wearing apparel of Chittaranjan, but those were not shown to her. Thereafter those were shown to her only on the direction of the Superintendent of Police Jasvinder Singh. It has also been admitted that finding irregularities in the maintenance of Police Station records and inaction on the part of the police, the then Superintendent of Police Shri Jasvinder Singh suspended the OIC Balaram Sagar and S.I. P.K. Rath of Barapalli P.S. In the affidavit the opinion of the doctor has been referred to and it has been stated that the facts stated in the report of the previous Superintendent of Police Shri Jasvinder Singh are not correct. It has been stated that Shri Jasvinder Singh has been examined by the deponent.

11. Similar stand has been taken in the affidavit filed by Prasant Kumar Bhoi.

12. After perusing the case made out in the petition specially the report of the then Superintendent of Police Shri Jasvinder Singh, this Court finds that the case of the petitioner cannot be just rejected as totally baseless, particularly when it is alleged that Chittaranjan " Pahilman Meher is alleged to have committed suicide by hanging in the pump house of 7 ft length, 5 ft width and 7 ft height with a small cloth; At the same time, on the basis of the report which has been filed by the Human Rights Protection Cell the stand, which has been taken by the Inspector Shri Upendra Kumar Routray in his counter affidavit, brings the case within the arena of disputed claim of the petitioner. It is very difficult for the writ Court to decide the controversy on the basis of such claim and counter claim. This Court has been pointed out that the case of the petitioner cannot be termed to be a baseless one and the judicial conscience of the Court dictates that the case is required to be investigated by an expert and impartial agency. This Court is not very happy with the report of the Human Rights Protection Cell. The said Cell possibly is not created under any Statute. That Cell was there when the State Human Rights Commission was not functioning. The Cell was a body within the Police Administration. Therefore, it is very difficult for the said Cell to act independent of the influence of the Police Administration. Apart from that, the Court fails to appreciate how could Shri U.K. Routray, who was acting as an Inspector of Police and was conducting the inquiry on behalf of the Cell could examine the Superintendent of Police Shri Jasvinder Singh. This has been stated by Shri Routray in paragraph 7 at page 6 of his affidavit which has been affirmed before this Court on 5th July, 2007. A Superintendent of Police occupies a much higher post in the hierarchy in Police establishment.

13. All these things require a further investigation as the questions which have been raised in this petition are fundamental questions affecting the life and property of the petitioner. The death of the husband under suspicious circumstances completely shatters the life of the wife and also affects not only the life and livelihood of the wife but also other members of the family. It is

obvious that the petitioner and her husband (Chittaranjan) are poor people and Chittaranjan was eking out his livelihood virtually as a daily wage earner. There is no criminal antecedent of Chittaranjan. The State has to answer how could Chittaranjan die under the circumstances as complained by his wife in writ petition. It may be that the questions raised in this writ petition have been raised by the poor people of the State, but so far as the fundamental right is concerned our Constitution does not make any discrimination on that ground. On the other hand it is the duty of the Court to protect the rights of the poor with the same care and caution as those of the more fortunate people in this country. This duty of the Court is rooted in the traditions and conscience of our Constitution and it is fundamentally important for the Court to uphold that tradition.

14. Therefore, this Court directs that a fresh inquiry must be made by the State Human Rights Commission on the complaints which have been made by the petitioner despite the bar u/s 26(2) of the Protection of Human Rights Act, 1993. The Court is passing this order as justice of the case requires such an order to be passed. The conscience of the Court is not satisfied with the kind of enquiry which has been held by the Human Right Protection Cell. To dispel that brooding the sense of injustice in the mind of the petitioner this Court is exercising its power under Article 226 of the Constitution on principles of equity, justice and good conscience. Law bends before justice and the wide powers under Article 226 of the Constitution has been conferred on the High Court to reach injustice where it is found (See *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*,).

Here the Commission is to function as an expert body under direction of the High Court under Article 226 of the Constitution (See *Paramjit Kaur Vs. State of Punjab and Others*, of the report). While conducting such enquiry State Human Rights Commission is not bound by the previous report of the Human Right Protection Cell.

15. The Court sends the entire records of this case to the State Human Rights Commission, Orissa, Bhubaneswar for inquiry. All the affidavits which have been filed in this case should be sent to the Commission. Since the State Human Rights Commission is an authority which has powers of Civil Court to make an inquiry as indicated in Section 13 of the Act, the Commission will conduct such inquiry by treating the petition filed by the petitioner Smt. Sadin Meher before this Court, as a complaint before the Commission. In making the said inquiry, the State Human Rights Commission is at liberty to call for any record or summon any witness which the Commission may consider necessary for the purpose of holding the inquiry.

16. Since the matter is an old one, this Court expects that the Commission will complete the inquiry as early as possible, but definitely within a period of six months from the date of transmission of the records to the Commission. This Court makes it clear that whatever findings will be given by the Commission shall be binding on the State Government, since the Commission is holding enquiry on

the order issued under Article 226 of the Constitution by the High Court.

17. The Registrar (Judicial) of this Court is directed to transmit the entire records of this case to the Commission so that the records reach the Office of State Human Rights Commission, Orissa, Bhubaneswar within 16th October, 2007.

18. The writ petition is thus disposed of. No order as to costs.

Indrajeet Mahanty, J.

19. I agree.