
(1990) 01 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 4475 of 1989

Vikram Bahadur Singh and others	Vs	APPELLANT
District Magistrate, Jabalpur and others		RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 106(3), 109

Citation : (1990) JLI 738

Hon'ble Judges : Ram Pal Singh, J; Faizan Uddin, J

Bench : Division Bench

Advocate : Fakhruddin, for the Appellant; S.C. Datt for respondent No. 1, N.C. Jain for respondent No. 2, Dilip Naik, D.A.G. and Rajendra Singh, for the Respondent

Judgement

Ram Pal Singh, J.—The petitioners has filed this petition under Art. 226 of the Constitution of India, praying for issuance of a writ of "Habeas Corpus" or any other appropriate writ or direction against the respondents. The petitioners Nos. 1 and 2 are the Social Workers, who originally filed this petition as Public Interest Litigation because one Wahid alias Ismail died in the custody of Police Station Omti, Jabalpur in the evening of 21-9-1989. The petitioners Nos. 3 and 4 who are close relations of the deceased, joined this petition as petitioners subsequently by orders of this Court dated 5-10-89 passed on IA No. 9330 of 1989.

2. On consideration of the I. A. No. 9113/89, an ad Interim writ was issued by this Court on 23-9-89 as a result of which the dead body of the deceased Wahid was disinterred (exhumed) in accordance with section 106 (3) of the Code of Criminal Procedure and was sent to Forensic Science Laboratory, Bhopal for the purpose of second post mortem examination by Dr. Heeresh Chandra and Dr. Satpathi as prayed for by the petitioners. By the same order, the Commissioner, Jabalpur Division, Jabalpur was directed to seize immediately the Sanha report of 21-9-89 and other documents concerning the arrest and detention of the

deceased Wahid alias Ismail. The directions issued in the ad interim writ were complied with and the record, postmortem report and the documents seized, have been produced before his Court.

3. The respondents are respectively the District Magistrate, City Magistrate, Supdt. of Police, Additional Supdt. of Police, Town Inspector, posted at Jabalpur at the relevant time. State and Director General of Police, Bhopal are respectively the respondent Nos. 6 and 7.

4. The petitioners contend in the petition that the deceased, according to the press report published in local Hindi daily (Desh Bandu) was arrested by the Omti Police in the night of 20-9-89 u/s 109 Cr. PC and was locked up in the Police Station Lock-Up and subsequently produced before the City Magistrate, the respondent No. 2 who instead of releasing him on bail or sending him to judicial custody, directed the production of the deceased, next day due to which Wahid was again locked up in the Police Station. They further contended that the deceased Wahid alias Ismail died in the Police lock-up as a result of police brutality. The petitioners further contend on the strength of the report published in "Dainik Bhaskar" dated 22-9-89 that the respondents have acted irresponsibly and against the provisions of law. Inter alia they also contend that due to omissions and commissions of the respondents, the fundamental rights of the deceased, who was a citizen of this country, guaranteed under Arts. 14, 19, 21 and 22 of the Constitution of India have been contravened. The petitioners, therefore, prayed that this Court should also direct the State respondent to take appropriate action against the guilty, responsible, for this lock-up death, start criminal prosecution and prosecute the guilty in a Court of law. The petitioner in the end, prayed for award of adequate compensation to the petitioners Nos. 3 and 4 for the death of Wahid alias Ismail in Police lock-up.

5. The petitioner No. 3, by an affidavit contended that she is the mother of deceased Wahid who was the sole bread earner of the dependent family. She further alleged that when she saw the dead body of her son, brought by the Police in village for burial, she (sic) his broken right hand with several injuries on the body and neck. According to her, the dead-body of Wahid was buried at 2 a.m. in the night against her wish and without performing any religious rites. She admits having received an amount of rupees four thousand six hundred from the police. An affidavit was also filed by the petitioner No. 4 on the pattern of the affidavit of the respondent No. 3.

6. The respondent Nos. 1, 3, 4, 6 & 7 filed a combined return with an affidavit of Shri H.N. Tripathi, Dy Collector, while the respondent No. 2 and 5 filed their returns separately duly supported by their respective affidavits. The substance of the first return is that the respondent No. 2 and the respondent No. 5, who have knowledge of the concerned facts shall suitably reply. This return mentions that the respondent No. 2, who is City Magistrate, Jabalpur, was a Magistrate for 24 hours. This return further mentions that the respondent No. 2 and 5 perform their duties in their capacities i.e. Executive and Statutory and the answering

respondents do not interfere in the performance of their duties. Inter alia, this set of the respondents denied the contents of the petition and opposed the relief as prayed for.

7. The respondent No. 5 as filed a lengthy return and if it is capsulised, then facts which emerge are that he was the Station House Officer of Omti Police Station at the relevant time and at 4 a.m. on 21-9-89 when he, on Gast duty with Police party reached Civic Centre, Marhatal, Jabalpur, he noticed a person trying to conceal himself near Prabhu Vandana Talkies and when challenged, tried to escape, but was apprehended. When questioned, after initial hesitation, that person disclosed to him that his name was Ismail who hailed from Mandla. On persistent questioning, the said Ismail retracted and informed that he hails from Nainpur but lives near Haddl-Godam in Jabalpur. Ismail was brought to Police Station, Omti at 5.15 a.m. where he was made to sit in the verendaha. On 21-9-1989 at 8 40 a.m., this respondent left Police Station for duty and returned back at 10.40 a.m., again questioned Ismail and then proceeded for other duties. He again returned back to police station at 12.25 p.m. and by that time, a case had been registered against Ismail u/s 109 of Cr. P.C. by one Head Constable. At 3. p.m., three women-Balita. Deepa and Sangeeta of Balaghah were brought to Police Station. When at 3.50 p.m. Ismail and others were being prepared to be sent to the Court of City Magistrate, Ismail passed stool in the lock-up and smeared it on his clothes. After being cleaned up, Ismail and others were sent to the Court of City Magistrate but the respondent No. 2 was with the Collector and returned to his Court at 5. p.m. There were eight remand applications. The respondent No. 2 declined to accept them and directed them (including Ismail) to be produced the next day at 11 a.m. Consequently, Ismail was locked up in Omti Police Station in the female lock up, alone, because other prisoners refused to share their night with him. This respondent left the Police Station for city duty at 6.50 p.m. and when, he returned back at 8.30 p.m., he was informed that the said Ismail has committed suicide by hanging from iron gate with synthetic gunny bag rope. Marg was recorded, superior officers were informed and the respondent No. 2 held that inquest. Dead body was sent for post-mortem which was performed on 22nd, Sept. 1989 and the report indicated that Ismail died of asphyxiation on account of partial hanging. The respondent No.5 refuted the press allegation of physical violence inside the Police precinct. Inter-alia he contended that the deceased was a previous convict for offences of theft and house-breaking. He annexed thirty documents in the support of his return.

8. We shall briefly deal with the facts contained in the return of the respondent No. 2. He contended that on 21-9-1989 he was busy in official duties and was in meeting with the respondent No. 1, the District Magistrate, up to 5.30 p.m. and by that time, the Court hours were over. City Magistrate has in detail described the cumbersome procedure prescribed for dealing with cases under sections 109 Cr. P.C. and expressed that entire procedure could not have been followed when the deceased with others were produced before him at 5.30. p.m. He has extensively quoted section 57, 167, 109, 111 and 116 of the Code of Criminal

Procedure and contended that several detenues reached his Court at 4-45 p.m. when he was busy in the chamber of the Collector in a meeting from where he returned to his Court at 5.30 p.m. Every case would have taken about 10 minutes to deal with and it would have taken more than an hour to dispose them all. None informed him that bail is being offered for any of them. Therefore, keeping these circumstances in view, he directed all the detenues to be produced before him next day in his Court at 11 a.m. He then proceeds to argue that as the detenues were produced at 4.45 p.m. he assumed that if they are produced in his Court next day at 11 a.m., they will be within 24 hours limit. This, in nutshell, is the stand taken by the City Magistrate (Executive Magistrate), who discharges his judicial functions under the provisions of sections 107, 109, 110, 111 and 116 Cr. P.C. according to the distribution of work.

9. The respondent No. 2 in his residence at 8.30 p.m. on 21-9-1989 was informed u/s. 174 Cr. P.C. that one Ismail, detained in Police Station Omti u/s 109 Cr.P.C. has committed suicide, hence, he should proceed to Control Room immediately. He, therefore, proceeded to the place and in presence of respectable inhabitants of the neighbourhood started investigation during which the dead body was sent to the Medical College where post-mortem examination was performed by Dr. Sankalya and Dr. Nagpal. The body was subsequently identified by one Jabbar in Medical College where he informed that the name of the deceased was Wahid and he was resident of Nainpur Distt. Mandla, where his close relations resided. Consequently, the dead body was sent to Nainpur through Dy. Supdt. of Police Shri K.S. Rathore. In presence of the Sub Divisional Magistrate, Mandla, the dead body of Wahid was identified by his close relations. After recording the statements of several witnesses, the inquest was completed as contemplated by section 176 Cr. P.C. by the respondent No. 2.

10. The post-mortem of the dead body of Wahid was preformed by Dr. A. C. Nagpal, Lecturer in Medicine and Dr. D.K. Sanklay, Lecturer in Forensic Medicines, on 22-9-89 in whose opinion, the deceased died of asphyxia due to ante mortem hanging. The legature mark was present in the neck which in their opinion, was suggestive of partial hanging. No anti-mortem injuries were discovered on any part of the body either internal or external. In compliance with the ad interim order of this Court dated 22-9-89, the District Magistrate, Mandla disinterred the dead-body of Wahid alias Ismail which was subjected to re-post-mortem by Prof. Heeresh Chandra, Director-cum Advisor, Medico-legal Institute, M.P. Bhopal and Dr. D.K.S. Satpathy, Senior Forensic Specialist on 26-6-1989. Relevant documents were also sent to these two eminent specialists who also examined the spot, photographs and then opined in their report that "we confirm that the death of deceased Abdul Wahid alias Isamil was due to hanging and further confirm on the basis of reconstruction, with the help of second autopsy, spot examination, material under examination, photo-graphs supplied and taken by us that the said death was suicidal." Except the ligature mark on the neck, they could not discover any other Injury on any part of the body, either internal or external, either ante-mortem or post-mortem. They concurred with the finding

of the first post-mortem report. Dr. Heeresh Chandra and Dr. D.K. Satpathy, both renowned doctors of repute in their field appointed to do second autopsy on the dead body as prayed for by the petitioners themselves and their meticulous and lengthy report does not have any doubt in our mind that the death of Wahid was suicidal due to partial hanging. No injury, either external or internal was discovered in both the autopsies which is indicative of the fact that no beating or physical torture were given to him in the Police lock up. No material has been placed before us even to suspect otherwise. Thus, the first post-mortem opinion of Dr. A.C. Nagpal and Dr. D.K. Sakaly was confirmed by Dr. Heeresh Chandra and Dr. D.K. Satpathy in second post-mortem report which cannot be doubted. In absence of any other evidence produced before us, we are of the view that deceased Wahid was not subjected to any physical torture inside the lock-up.

11. When a person apprehended by the Police u/s 109 of the Cr. P.C. is produced before an Executive Magistrate, in a manner hereinafter provided, section 111 Cr. P.C. shall require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behavior for such period, not exceeding one year, as the Magistrate thinks fit. That Magistrate shall proceed to act under S. 111 Cr. P.C. as soon as the person apprehended by the Police u/s 109 Cr. P.C. is produced before him Section 111 of the Cr. P.C. provides:

S. 111 When a Magistrate acting u/s 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Thus, the Magistrate, before whom that apprehended person is produced is required to apply his mind only if he deems it necessary that the show cause notice is required to be given in that case, then he shall make an order in writing. Chapter VIII of the Code deals with the security for keeping peace and good behavior and this chapter contains complete procedure for dealing with the persons, arrested by the Police u/s 41 (2) of the Code. However, the Police arrests a person u/s. 41 (2) i.e. persons belonging to one or more of the categories of persons specified in section 109 Cr. P.C. or section 110 Cr. P.C., then the procedure prescribed in Chapter VIII of the Code has to be followed by the Magistrate, when the Police produces that person before him. If the procedure prescribed u/s 111 Cr. P.C. is not followed by the Magistrate on production of such person before him, then that Magistrate acts contrary to the procedure duly prescribed by law. It appears that the respondent No. 2, the City Magistrate Jabalpur, was not present in his Court when the deceased Wahid was produced in his Court. He thus, failed to perform his duty as a Magistrate because he did not follow the procedure laid down in section 111 of the Code of Criminal Procedure, The respondent No. 2 in his lengthy reply in his return has given various reason for not performing his duty as such Magistrate. But those reasons are totally irrelevant because no explanation is brooked where law requires a particular

procedure to be followed by a Court. A Magistrate while dealing with a case u/s 109 Cr. P.C. is required to act judiciously and in doing so, he is to follow the procedure laid down by law. A Magistrate cannot abdicate his duty as such Magistrate only because he was busy in meeting with Collector, or he was busy in performing any other kind of duty other than that of a Magistrate. Had the respondent No. 2 on 21-9-89, not abdicated his duty as a Magistrate, then he would have dealt with the case of deceased Wahid judicially and probably if he had done so, may be Wahid would not have committed suicide in the lock up. Whenever a person so apprehended is produced before such Magistrate, then he is face to face with the Magistrate and he shall narrate to him if he is being physically or mentally tortured by the Police. This production before the Magistrate is not an empty formality but great responsibility lies on the shoulders of such Magistrate to ask apprehended person with regard to his comfort and welfare while he is in police custody. Lock-up deaths are becoming regular feature in this country, only because the Magistrates are abdicating their duty prescribed by law. Law does not brook any pretext on the part of the Magistrate when apprehended person is produced before him.

12. The respondent No. 1 District Magistrate, Jabalpur in his return has not supported the version given by the respdt. No. 2 in his return that he was busy in a meeting with the respondent No. 1, up to 5.30 p.m. on 21-9-89. Respondent No. 2 has failed to file any document which may give credence to his stand taken by him in his return. If according to the respdt. No. 1, respondent No. 2 was a Magistrate for 24 hours, then failure of the respondent. No 2 to act in accordance with the procedure laid down in S. 111 of the Cr. P.C. can, in no case, be justified. No amount of alibi pleaded by him can absolve him from the allegation that the respondent No. 2 failed to perform his duty laid down by law.

13. A citizen when arrested by the Police becomes the ward of that authority and it is for the guardian to look after the welfare of that citizen with care and caution. When that arrested citizen is locked up the entire incarceration period is to be watched with care so that, citizen may not even harm himself. Such incarceration cannot be treated as punishment. Intermediate detention is only temporary, lasting up to the final adjudication of the case according to law. Hence, great care is to be taken by the Police or Jail authorities to keep a vigilant watch upon the detained person. The police should not lose interest in the welfare and safety of the detenu after he is locked up for the night. Every precaution which are prescribed in the Jail Manual has to be taken so that the detenu may not cause any harm to himself. Police of Omti Police Station failed to keep a watch upon the detenu Wahid when he was locked up in the lock up on 21-9-89, and the result of this omission was his death by suicide. But no responsibility can be fixed upon any of them in these proceedings.

14. But more ominous are the omissions committed by the respondent No. 2 who was discharging his duties as Executive Magistrate on 21-9-89. Respondent No. 2 completely failed to perform his duties as a Magistrate, on 21-9-89 when the

deceased Wahid, arrested u/s 109 Cr. P.C., was produced before him. Deceased Wahid hanged himself in the Police lock-up after his return from the Court of the respondent No. 2. We are shocked to note that Executive Magistrate gives more importance to meetings and attending the VIPs than discharging their duties prescribed by law. For the respondent No. 2, the life or liberty of Wahid was not so important as the meeting, he allegedly attended, ignoring his duty as a Magistrate.

15. We, before parting, shall deal with Mohan Lal Sharma Vs. State of Uttar Pradesh, upon which Shri Fakhruddin, Adv., the learned counsel for the petitioners, has placed reliance. In Mohanlal Sharma (supra), the Supreme Court while dealing with Art. 21 and its scope, found the enquiry conducted by the City Magistrate with regard to Police lock-up deaths, unsatisfactory and directed CBI enquiry for detailed investigation. It was further directed that the State Government should take follow up action. In that case, when post-mortem was conducted by the doctors, external and internal injuries were found upon the body of the detainee who had died in the police lock-up. But in the case of Wahid, two post-mortems were performed and the concurrent verdict of two doctors and two experts was that the death of Wahid was suicidal due to partial hanging. According to these four doctors, no external or internal injuries were found upon the dead body of Wahid. Hence, this case in hand cannot be viewed with the spectacles of Mohanlal Sharma (supra).

16. Admittedly, the petitioner No. 3 and No. 4 have received more than four thousand rupees from the State Coffer for the suicidal death of Wahid in the Police lock-up. No occasion, therefore, arises for awarding any compensation to the petitioners Nos. 3 and 4.

17. To conclude, we dismiss this petition and direct the parties to bear own costs. Registry is directed to forward a copy of this order to the Chief Secretary, Government of M.P., Bhopal.

Per Faizan Uddin, J.

18. I have had the privilege of going through the well written order of my learned brother Ram Pal Singh, J. and I fully concur with the view taken by him. However, I would like to supplement the order with some of my own views in the matter, particularly regarding the nature of proceedings u/s 109 of the Code of Criminal Procedure, in which the deceased was detained and the manner in which the learned Executive Magistrate Shri Rajni Kant Gupta, respondent No. 2 herein, and the respondent No. 5 Station House Officer, conducted themselves and the proceedings in relation to the deceased suspect Ismail.

19. It has to be remembered that the provisions of Chapter VIII of Criminal Procedure Code which include section 109 also, are basically preventive in nature and the person proceeded against is not an accused person nor he is prosecuted for any offence. The gist of the Chapter is prevention of crimes and disturbances of public tranquility and breach of peace. The action taken u/s 109 of the Code of

Criminal Procedure is not based on any overt act but aimed to avert any potential danger in future by a suspected person, as an anticipatory measure. The provisions of section 109, indeed, are quite stringent and if proper care is not taken by the Magistrate concerned to prevent its abuse, the same are likely to be resorted to as an instrument of oppression. When any person is proceeded against u/s 109, section 111 makes it obligatory on the Magistrate to pass a preliminary order in writing in accordance therewith. An enquiry is provided in section 111 which, if results against the person proceeded against, he would be required to execute a bond in accordance with section 117 Cr. P.C., but if the inquiry ends in his favour, he would be discharged in accordance with section 118. Thus, at the conclusion of the proceedings, all that the Law provides is to direct the person to execute only a bond in accordance with section 117 Cr. P.C. if at all the inquiry results unfavorable to the person proceeded against u/s 109 of the Code of Criminal Procedure and nothing beyond that.

20. In the instant case, according to the return of M.B.S. Jaggi, the respondent No 5 Station House Officer, Omti, Jabalpur when all persons detained in the Police Station were being sent to City Magistrate (Respondent No. 2) at 3.30 p.m., it was delayed because the deceased Ismail passed stool inside the lock up. But he has conveniently avoided to mention as to ultimately at what time deceased Isamil and others were taken to the Court of City Magistrate, respondent No. 2 who after 5.00 p.m. declined to accept them due to paucity of time. The respondent No. 2, in paragraph 4 of his return mentioned that the arrested persons were taken to his Court at 4.45 p.m. The respondent No. 5 has failed to explain as to why did he take steps to forward the detenues so late in the evening when he knew full well that if the cases were not entertained and disposed of by the City Magistrate, the Jail authorities would not admit the detenues in jail after 6.00 p.m. remanded to further custody.

21. Similarly respondent No. 2, the City Magistrate, in his return has stated that he was busy in attending some meeting in the Chamber of the Collector (respondent No. 1) and returned back to his Court Room only at about 5.30 p.m., when it was not possible for him to take up the cases of eight arrested persons brought to his Court and, therefore, he directed the police concerned to produce them next day at 11.00 a.m. But surprisingly enough the District Magistrate, respondent No. 1 is conspicuously silent in his return and makes no mention that there was any meeting in his Chamber in which the City Magistrate respondent No. 2 also remained busy till 5.30 p.m. Not only this but the learned City Magistrate in his return toes on to mention that it was not reported to him by any one that any of the arrested persons had any surety with them to offer bail. But there is no mention of this fact also in the order sheet recorded by him and this statement appears to be only an after thought stand to somehow wriggle out of the astounding situation and to shunt the responsibility that heavily lay upon him, for discharging judicial functions.

If the powers under Chapter VIII of the Code of Criminal Procedure are vested in

the Executive Magistrates, they cannot at the risk of life and liberty of the citizen lightly escape the responsibility by simply saying that he was busy in some meeting unmindful of the cases of persons facing detentions. If the Executive Magistrates enjoined with the functions and duties to deal with cases arising out of Chapter VIII of the Code of Criminal Procedure, cannot spare time to deal with them why such Executive Magistrate are assigned such work, who give precedence to all other sundry works and ignore their judicial functions. If the respondents No. 2 and No. 5 were a little careful, may be, the incident of suicide may have been averted. As a matter of fact powers under Chapter VIII Cr. P.C. should also be vested in the Judiciary to be dealt with by the Judicial Magistrates who are more prone and perfect in judicial approach because the proceedings u/s 107 to 110 Cr. P.C. are judicial in nature. The Law Makers should seriously consider about it. In view of the facts and circumstances narrated above the District Magistrate (respondent No. 1) and the State Government should give 1 serious consideration whether a person like Shri Rajni Kant Gupta, the respondent No. 2 is St to be assigned with the functions and duties to deal with cases under sections 107, 108, 109 and 110 of the Code of Criminal Procedure.