

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 48 of 2017

1. Babita Devi
2. Navneet Singh
3. Jyoti Kumari
4. Punit Singh Petitioner

Versus

1. The State of Jharkhand through Principal
Secretary, Home Department, Govt. of Jharkhand, Ranchi.
2. Senior Superintendent of Police, Dhanbad.
3. Officer-in-Charge of Jharia Police Station, Dhanbad
4. M.P. Gupta, Investigating Officer of
Jharia P.S. Case No. 254 of 2015.
5. Central Bureau of Investigation
through the Superintendent of CBI,
VII/2, Karmik Bhawan, Dhanbad. Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Shadab Ansari, Advocate.
For the State : Mr. Ravi Kerketta, S.C.-VI.

14/ 03.07.2023 Heard Mr. Shadab Ansari, learned counsel appearing for the petitioners and Mr. Ravi Kerketta, learned S.C.-VI appearing for the State.

2. This petition has been filed for a direction to hand over the investigation of Jharia P.S. Case No. 254 of 2015 to the CBI. Prayer is also made for a direction to pay the compensation of Rs. 10,00,000/- to the petitioners, who happens the widow and children of the deceased Umesh Singh.

3. Mr. Ansari, learned counsel appearing for the petitioners submits that the petitioner No. 1 is the widow and petitioner Nos. 2, 3 and 4 are the minor children of the deceased namely Umesh Singh, who has been killed in Police Lockup in Jharia (Ghanuadih O.P.) P.S. by the police. He submits that the deceased was taken into custody by Pawan Singh, the Munshi of Ghanudih O.P., who came to the house of the deceased and told him that Harinarayan Ram, Officer-in-Charge of Ghanudih O.P. is calling him. He further submits that the deceased was taken into custody at 10.00 P.M. on 23.06.2015 from his house in connection with Jharia P.S. Case No. 205 of 2015 corresponding to G.R. No. 2238 of 2015, in which case, the deceased was implicated. He submits that the said case has also been lodged against many other inhabitants of the locality for protesting against the heavy blasting in mines, due to which, the house of the deceased was damaged as a big stone fallen on their house and other inhabitants of the locality. He submits that in the next morning, when the deceased did not

return home, the petitioners went to search for him and came to know that the body of the deceased was lying near Ghanuadih Joria. He further submits that the said body was later on seen by the son of the deceased without any cloths, except undergarments. He further submits that there were multiple injuries on the body of the deceased and the shirt was not there and the shirt of the deceased was found in the lockup of the police station, which has been identified by the petitioners, which was recorded in the video. He further submits that the petitioner No. 1, who happens to be the wife of the deceased has lodged an FIR, vide Jharia P.S. Case No. 254 of 2015 corresponding to G.R. No. 2869 of 2015, which was registered against Harinarayan Ram (Officer-in-Charge of Ghanuadih O.P.), Pawan Singh (Munshi Ghanuadih O.P.), Satendra Kumar (Officer Jharia Project) and unnamed police officials. He further submits that even after lapse of one and half year, the Investigating Officer of the said case has not recorded the statements of the victims / petitioners.

4. Mr. Ansari, learned counsel appearing for the petitioners submits that he is also the counsel before the learned court and he has filed an application under Section 176(1-A) of Cr.P.C. before the learned Principal District and Sessions Judge, Dhanbad, upon which, he had ordered a judicial inquiry into the custodial death and deputed CJM, Dhanbad to conduct the said inquiry. He submits that the inquiry, vide judicial inquiry No. 01/2015 has taken place and the inquiry report was submitted, which is Annexure-2 to this petition. By way of referring the said report, learned counsel submits that the learned CJM has clearly held that Umesh Singh was found dead in police lockup, which suggests that this is a case of custodial death and the death was not natural. He further submits that on the basis of the report of the learned CJM, Dhanbad, the learned Sessions Judge, Dhanbad, vide order dated 21.06.2016 found that there is *prima facie* violation of human rights and that's why he has recommended to the State Human Rights Commission to take up the matter with the State Government regarding exploring and viability of compensation to the victims. He further submits that only to save the police officials, the State Government has transferred the said case to the CID and now the CID has submitted the report, whereby the accused police officials have been exonerated. On these grounds, he submits that proper compensation may kindly be provided to the petitioners and the further investigation of the case may kindly be handed over to any

independent agency.

5. On the other hand Mr. Kerketta, learned S.C.-VI, appearing for the State submits that initially the case was investigated by the police, however, thereafter the investigation of the case has been handed over to the CID. He further submits that the said case was reviewed by the ADG, CID, Jharkhand and after review, he has opined that the present case is suspicious and requires investigation and the CID has given certain instructions to the I.O. to conduct proper investigation of this case. He further submits that after through inquiry and after conducting the polygraph test / brain mapping examination, the CID has submitted the final form No. 115 of 2022 dated 28.04.2022, disclosing therein the lack of evidence and police officials have been exonerated. On these grounds, he submits that this court at this stage may not interfere in the matter.

6. In view of the above submissions of the parties, the court has gone through the materials available on record including the contents of the writ petition as well as the counter affidavit and supplementary counter affidavit filed on behalf of the State. Admittedly, the deceased Umesh Singh was taken by the police from his house and the inquiry report of the CJM, Dhanbad clearly found that the said Umesh Singh was found dead in the custody of the police and the case was found to be custodial death and this fact has not been denied in the counter affidavit or in the supplementary counter affidavit. The learned CJM, Dhanbad has elaborately held the inquiry and the role of police officials have been dealt with in internal page-4 in para-3 of the said inquiry report, which is quoted hereinbelow:-

“Now at this juncture I would like to highlight highhandedness of the police which has played a drama in order to give different colour to the situation which indicates one of the chain of the circumstances in commission of the heinous crime and here as per the report submitted by the Officer in Charge of Jharia PS who was called upon by this Court to submit his report along with FSL report regarding blood stained shirt which was found inside the Hajat, who has submitted a report vide memo. No. 178/ 15 dated 13.02.16 stating therein that the seized blood stained shirt was identified by one Rajesh Das, aged about 33 years, son of Arjun Das, resident of: China Khothi, P.S. Ghanuadih OP. Tisra, District:

Dhanbad in a TIP conducted by B.D.O., Dhanbad after obtaining its permission from the Court of learned ACJM. Dhanbad on 05.07.15 and that person namely Rajesh Das claimed and identified the shirt of his own and accordingly the same was not sent for FSL examination. It is nothing but a mockery by the police officials and it is surprising also that there is no explanation that as to how Rajesh Das was inside the Hajat and under what circumstances his shirt having blood stain was found there and to cover this story, the police went further in its drama which is evident from visualizing the compact disc wherein videography of the Hajat as well as recovery of dead body were captured in presence of Dy. S.P., Executive Magistrate and police personnel and the public of the locality and it is viewed that an application addressed by so called Rajesh Das to the Officer in Charge mentioning certain facts was found in side the pocket of said shirt, which might have been made basis of claim and the said paper is free from any blood stain but in my considered view, it is not sufficient explanation and still it is mistry and the police has utterly violated the mandate of the provisions of law as well as natural justice and in hurry they closed the chapter and there is no explanation as to why the family members of the deceased were not called upon at the time of conducting so called TIP, when they were claiming since very beginning that the blood stained shirt belonged to the deceased. It may be termed as one of the illegal design of the police involved in commission of the crime causing disappearance of an evidence of an offence committed or giving false information which is a punishable offence under Section 201 IPC.”

7. The post-mortem report has also been examined by the learned CJM, in which, it has come that several injuries on the person of the deceased were found and the conclusion of the post-mortem report speaks of death was caused due to shock and haemorrhage, caused by multiple injuries due to hard and blunt substance.

8. Considering all these aspects of the matter, the learned CJM has found that the custodial death of the deceased Umesh Singh and finding the report of the learned CJM correct, the then learned Sessions

Judge, Dhanbad has referred the matter to the State Human Rights Commission for the needful by order dated 21.06.2016. The said order dated 21.06.2016 is quoted hereinbelow:-

“Heard the parties. The present case was instituted on the basis of an application filed by one Mr. Shadab Ansari, Advocate, Civil Court, Dhanbad for inquiring the matter with regard to custodial death of Unesh Singh which was the subject matter of Jharia P.S. Case No. 254/2015 Corresponding to G.R. Case No. 2069/2015 u/s. 302/201 I.P.C. The matter was referred to the learned C.J.M. Dhanbad for inquiry and the learned C.J.M. after inquiry submitted a report prima facie stating that there is substantial material on the record to show that the deceased Umesh Singh has died in Police custody. Accordingly, the present proceeding was instituted under Human Right Act as Human Right Case No. 01/2016 the accused persons in the aforesaid police case have appeared and one accused has not appeared despite of the fact that notice was validly served upon. Accordingly, this case is being heard ex parte against him. It was argued on behalf of the accused persons that this court has no option as far as the present proceeding is concerned but to recommend the matter to the state government. As the police case has already been registered this court will have jurisdiction to try this case as and when charge sheet is submitted and the police case being committed to the court of sessions.

Prima facie violation of human right of victims have been found to be true by the Inquiring Officer. Let the- matter be recommended to the Human Right Commission to take up the matter with the State Government regarding exploring the viability of compensating the victims. With this direction this proceeding is disposed of.

9. Thus, the action taken by the police officials are found to be true by the two judicial officers of the said District. It appears that thereafter the matter was transferred to the CID by the Government of Jharkhand and the CID has given a clean chit to the erring police officials. It is surprising that in the counter affidavit, it has not been disclosed how the Police Headquarter of the Government of Jharkhand has not taken any

disciplinary action for such conduct in terms of the procedure prescribed in the Police Manual.

10. In view of the above facts, it is crystal clear that there is violation of life and liberty of the deceased Umesh Singh and if such violation of personal liberty is proved and that has been brought before the Constitutional Court of the State, under Article 226 of the Constitution of the India, the Court cannot be a mute spectator and accordingly, the liberty of the State / State officials has to be read into all public safety statute since prime object of public safety legislation is to protect the individual and compensate him for loss suffered. Recently this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of **Sanjay Gupta & Ors. Versus State of U.P.**, reported in (2022) 7 SCC 203.

11. Further custodial death was one of the subject before the Hon'ble Supreme Court in the case of **D.K. Basu Versus State of West Bengal**, reported in (1997) 1 SCC 416, wherein the Hon'ble Supreme Court while dealing with the aspect of torture in paras-10 to 12 held as under:-

“10. ‘Torture’ has not been defined in the Constitution or in other penal laws. ‘Torture’ of a human being by another human being is essentially an instrument to impose the will of the ‘strong’ over the ‘weak’ by suffering. The word torture today has become synonymous with the darker side of human civilisation.

‘Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.’

— *Adriana P. Bartow*

11. No violation of any one of the human rights has been the subject of so many conventions and declarations as ‘torture’ — all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. ‘Custodial torture’ is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a

calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.”

12. The violation of human rights, liberty and privileges and law of arrest and balancing of individual rights considering the present era as the origin of human rights is expanding and at the same time, the crime rate is also increasing, was again considered by the Hon'ble Supreme Court in the case of ***Joginder Kumar Versus State of U.P. & Ors.***, reported in (1994) 4 SCC 260, where in paras 8 and 9 held as under:-

“8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

*9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider; of meeting the challenge which Mr Justice Cardozo so forthrightly met when he wrestled with a similar task of balancing individual rights against society's rights and wisely held that the exclusion rule was bad law, that society came first, and that the criminal should not go free because the constable blundered. In *People v. Defore* [242 NY 13, 24 : 150 NE 585, 589 (1926)] Justice Cardozo observed:*

“The question is whether protection for the individual would not be gained at a disproportionate

loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice. The rule of the Adams case (People v. Adams [176 NY 351 : 68 NE 636 (1903)]) strikes a balance between opposing interests. We must hold it to be the law until those organs of government by which a change of public policy is normally effected shall give notice to the courts that change has come to pass.”

13. There are other judgments on the issue in question and in the case of In ***Kiran Bedi Versus Committee of Inquiry & Anr.***, reported in **(1989) 1 SCC 494**, the Hon’ble Supreme Court has reproduced an observation in para-25 from the decision in ***D.F. Marion Versus Davis*** as under:-

“25. ‘The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.’”

14. The issue in question was again the subject matter before the Hon’ble Supreme Court in the case of ***Vishwanath Agrawal Versus Sarla Vishwanath Agrawal***, reported in **(2012) 7 SCC 288**.

15. In the case in hand, admittedly the police has taken the deceased from his house and when he has not returned back to home and on search by the family members, his dead body was found and the shirt was found in the lockup of the police station and this aspect of the matter has been found to be proved in the inquiry by the learned CJM, which was further fortified by the learned Sessions Judge, Dhanbad vide order dated 21.06.2016.

16. In the supplementary counter affidavit the State has come forward with a scheme dated 03.08.2012, wherein certain procedure has been prescribed there for compensation. If such a notification is there, the custodial death of the deceased was proved, the State authorities were required to rise to the occasion to pass appropriate order in view of the same scheme, however, in the case in hand in spite of that no action has

been taken by the Government officials for the needful. In the said scheme, the procedure for grant of compensation has been detailed, but the State officials have chosen not to proceed in view of the said scheme.

17. Award of compensation in a proceeding under Article 226 of the Constitution of India is a remedy available under the public law based on strict liability for contravention of fundamental rights, to which the principle of sovereign immunity does not apply. There is no dispute that the death was occurred in the police custody and in a case like this, compensation is mandatory. Reference may be made to the judgment of Hon'ble Supreme Court in the case of *Deputy Commissioner, Dharwad District, Dharwad & Ors. Versus Shivakka (2) & Ors.* reported in (2011) 12 SCC 419, where in para-16, the Hon'ble Supreme Court has held as follows:-

“16. In view of the proposition laid down in the aforementioned judgements, we have no hesitation to hold that the learned Single Judge did not commit any error by entertaining the writ petition filed by Respondent 1 and the direction given by him for payment of compensation to Respondents 1 to 5 was rightly affirmed by the Division Bench of the High Court. At the same time, we are of the view that the compensation awarded by the High Court is less than just. The High Court should have taken note of the fact that the only breadwinner of the family was killed in a barbaric manner and awarded adequate compensation keeping in view the ratio of the judgments of this Court including Railway Board v. Chandrima Das [(2000) 2 SCC 465] .

18. It is the proved case of police brutality upon the deceased Umesh Singh, while he was in police custody. Although, the CID has submitted the report exonerating the police officials, the question remains why the Police Headquarters has not proceeded against the erring police officials departmentally. The parameters of criminal proceedings and the departmental proceedings are based on the different facts and circumstances. There can be no doubt that scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other. Reference may be made to the case of *Union of India v. Naman Singh Shekhawat*, reported in (2008) 4 SCC 1, where in paras-29 and 30, the Hon'ble

Supreme Court held as under:-

“29. There cannot be any doubt whatsoever, as has been submitted by the learned Additional Solicitor General, that initiation of departmental proceeding is permissible even after the judgment of acquittal is recorded by the criminal court. But the same would not mean that a proceeding would be initiated only because it is lawful to do so. A departmental proceeding could be initiated if the Department intended to adduce any evidence which is in its power and possession to prove the charges against the delinquent officer. Such a proceeding must be initiated bona fide. The action of the authority even in this behalf must be reasonable and fair.

30. Reliance has been placed on T.N.C.S. Corpn. Ltd. v. K. Meerabai [(2006) 2 SCC 255 : 2006 SCC (L&S) 265] wherein this Court opined: (SCC pp. 267-68, para 32)

“32. The scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law are quite distinct, exclusive and independent of each other. The prosecution proceedings launched against the respondent herein were in respect of offences punishable under Sections 409 and 477-A IPC, whereas the departmental proceedings as initiated against her were in respect of the charges of misappropriation and other fraudulent practices such as deliberate omission to bring into account the stock received showing bogus issues in the records, falsification of accounts, submission of defective accounts, tampering of records, manipulation of accounts and records, etc. Thus, the respondent herein was proceeded against for quite different charges and on different sets of facts before the Court of Chief Judicial Magistrate, on the one hand, and before the departmental enquiry on the other.”

It was, thus, a case where the charges were different.”

19. Accordingly, the Director General of Police, Jharkhand, Ranchi is directed to start departmental proceeding against two of the erring police officials, on whose act, the precious life has lost and his widow wife and minor children have been left without any shelter. The

Director General shall also go into the inquiry report of the learned CJM, Dhanbad as well as the order of the learned Sessions Judge, Dhanbad, while initiating the departmental proceeding. State is bound for compensation for violation of human rights as death was occurred in police custody by the torture of the police officials.

20. In view of the above and considering that this is a case of public remedy and this court is competent to pass the appropriate order, sitting under Article 226 of the Constitution of India. The Court direct the respondent-State through the Principal Secretary, Department of Home, Government of Jharkhand to pay a sum of Rs. 5,00,000/- (rupees five lakhs) in favour of the petitioners within six weeks from the date of receipt / production of this order, as a compensation for custodial death of the deceased Umesh Singh.

21. It is open for the respondent-State to recover the said amount from the erring police officers, if found guilty. Reference may be made to the case of *Amol Vitthalrao Kadu v. State of Maharashtra*, reported in **(2019) 13 SCC 595**, wherein the Hon'ble Supreme Court in para-7 held as follows:-

“7. We therefore modify the aforesaid direction of the High Court and state that as and when the liability for the crime in question is fastened, the State shall be at liberty to recover the amount of compensation from the erring officials concerned.”

22. This petition is allowed in above terms and disposed of.

(Sanjay Kumar Dwivedi, J.)