

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2525 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Dinesh Kumar Singh, Son of late Umashankar Singh Resident of New Siwan Sugar Mill, Near Mohalla Ram Nagar, P.S.- Town Thana Siwan, P.O. and District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Director General of Police, Bihar Govt, Patna
2. The Principal Secretary, Home Dept. Old Secretariat, Govt. of Bihar, Patna.
3. The D.I.G. of Police Saran, Chapra.
4. The District Magistrate, Siwan.
5. The Superintendent of Police, Siwan.
6. Sri Kartikey Sharma, A.S.P. Siwan.
7. Sir Vinay Pratap Singh, incharge of Muffasil Police Station Siwan.
8. Sri Subodh Singh, Incharge of Town Police Station- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Shama Sinha, Advocate
Ms. Asmita, Advocate
Ms. Shreya, Advocate

For the Respondent/s : Mr. Prabhat Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 23-04-2024

“The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the



Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves.”, observes the Hon'ble Supreme Court in *State of M.P. v. Shyamsunder Trivedi & Ors.* reported in (1995) 4 SCC 262

2. The instant writ petition has been filed by one Dinesh Kumar Singh, father of one Yogesh Kumar Singh @ Techchu Singh alleging custodial violence perpetrated upon his son, above-named for the following reliefs:-

“(a) To direct the respondents authorities to take action against the respondent Nos. 6 to 8 who have illegally arrested the son of the petitioner namely Yogesh Kumar Singh @ Tachu and beaten badly by lathi, Kicked and punched and gave serious injury to him.

(b) To take action against the respondents who arrested Yogesh Kuamr Singh @ Tachu on 04.07.2017 and produced before the chief judicial Magistrate on 08.07.2017 i.e. after 4 days (96 Hours) which is contrary to the provision of Sec. 56, 57 of the Cr. P.C. 1973.



(c) To take action against the respondents who have arrested the son of the petitioner without following the provision of section 50 of Cr. P.C. 1973 since the he has not fulfilled their illegal demand.

(d) To direct the respondents for any other appropriate writ/writs, order/ orders, direction / directions, relief/ reliefs for which the petitioner found entitle so.”

3. Undisputed facts leading to the filing of the instant writ petition are as follows:-

On 4th of July, 2017 at about 02:30 P.M., the son of the petitioner was picked up from the Court premises at Siwan by police in connection with Siwan Muffasil P.S. Case No. 185 of 2017 under Section 326, 307 and 34 of the IPC and 27 of the Arms Act. It is also matter of record duly admitted by the Respondent Nos. 5 and 7 in their counter affidavits that the son of the petitioner was arrested by the police from Court premises at Siwan on the basis of some confessional statement made by the co-accused persons in connection with Siwan Muffasil P.S. Case No. 185 of 2017. It is pertinent to mention here that the Investigating Officer and other Police Officers, who were involved in arresting the said Yogesh Kumar Singh @ Techchu Singh from Siwan Court premises probably did not know that



statement of an accused implicating another in the commission of offence is not admissible in evidence and this cannot be treated as basis of arrest of a person without having any concurrent material against him.

4. Be that as it may, after arrest, it is revealed from G.D. Entry No. 111 dated 4th of September, 2017, that he was taken to the Muffasil Police Station, Siwan and kept in police custody. According to the Respondent No. 7, who was Officer-in-Charge of Muffasil Police Station, Siwan, the said arrested person complained of breathing problem in the police lock up and he was immediately taken to the local hospital. He was produced before the Sadar Hospital, Siwan for his treatment. The Medical Officer examined him at about 05:00 P.M. and found the following injuries:-

- “1. Pain and Swelling case left thigh (SIC)
2. Bruise 1” x ½” on left scapular region
3. Pain in chest.
4. Bruise 4” x 1” inch on left lethose region (SIC)
5. Bruise 10” x 5” on left thigh
6. Burise 4” x 4” on left leg
7. Bruise 8” x 5” on right thigh
8. Pain and (SIC) both lower limbs”



5. The Medical Officer opined that the nature of the injuries was simple and caused by hard and blunt substance.

6. It is not the case of either of the parties that after his arrest, the accused was under the custody of any person other than police. It is also not the case of the respondents that the son of the petitioner was arrested in injured condition as found by the Medical Officer, though the nature of injury was stated to be simple. The arrested person was admitted to the hospital and considering serious nature of injuries, he was referred to Patna Medical College & Hospital (hereinafter referred to as the 'PMCH'). He was discharged from PMCH on 7th of July, 2017. Thus, it is presumed that the victim received the injuries while in police custody. In order to show the extent of injuries, the petitioner has produced certain photographs, on perusal of which it is found that upper part of both legs of the son of the petitioner were badly injured with marks of bruise, hematoma and swelling.

7. The learned Advocate for the petitioner refers to an application filed on behalf of the arrested person on 5th of July, 2017, before the Chief Judicial Magistrate, Siwan, stating, inter alia, that he was arrested by Siwan Police in connection with some unknown case and with the intention to commit his



murder, he was severely assaulted in Siwan Town Police Station. Considering the serious nature of injury, local police admitted him to Sadar Hospital at Siwan. The Medical Officer referred him to PMCH and he was admitted to the said hospital. In spite of the receiving such complaint, the Chief Judicial Magistrate did not take any legal step of directing the Police Authority to cause preliminary inquiry under Section 202 of the Cr.P.C.. Subsequently, the petitioner informed the incident in detail to the Inspector General of Police, Muzzafarpur and Director General of Police, Patna. No step was taken by the Police Authorities also.

8. In the meantime, on 6th of July, 2017, an application bearing D.R. No. 2677 of 2017, dated 5th of July, 2017 was received by the Chief Judicial Magistrate, Siwan, wherein it was informed that Yogesh Kumar Singh was arrested and taken to the police station in police lock up, he complained of breathlessness and he was admitted to Sadar Hospital. The Medical Officer of Sadar Hospital referred him to PMCH. The medical report, however, did not show that the patient complained of any breathlessness or that the Medical Officer found breathlessness in the first medical injury report prepared by the Medical Officer on medical examination at Sadar



Hospital, Siwan. In the discharge certificate issued by PMCH in the column of Brief Clinical History/Findings, the Doctor recorded “a case of multiple injuries including back of right leg and left palm. Alleged history of police lathi charge on 04.07.2017 (1PM) at Siwan- C/O breathlessness Pain in D/L legs weaken.”

9. Thus, from the beginning, the arrested person made complaint of police atrocity while he was in custody of police. On 8th of July, 2017, he was produced before the learned Chief Judicial Magistrate. The son of the petitioner/accused told him that he was feeling pain on his chest and legs. He was not feeling strength on his legs and there was mark of hematoma on the left thigh with swelling of the accused. The accused was remanded to judicial custody with such injury and the Medical Officer attached to the correctional home was directed to give proper treatment to the accused.

10. It is ascertained from the submission as well as record of the instant revision (Annexure 10/A in reply to counter affidavit of respondents) that the son of the petitioner was acquitted in connection with Sessions Trial No. 622 of 2018 vide a judgement dated 29th of February, 2020 arising out of Siwan Muffasil P.S Case No. 185 of 2017.



11. Thus, the fact remains that though the son of the petitioner was severely tortured and assaulted in police custody. No criminal case was initiated against the erring police officer.

12. The learned Advocate for the Respondent No. 7 states that the Respondent No. 7 was unaware about any injury received by the son of the petitioner in police custody. However, since he was primarily under the custody of the Respondent No. 7, who at the relevant point of time was Officer-in-Charge of Siwan Muffasil Police Station, a departmental proceeding was initiated against him and he was duly punished. The Respondent No. 8 stated in his counter affidavit that the concerned Police Station Case No. 185 of 2017 related to Siwan Muffasil Police Station and Respondent No. 8 does not have any role in arresting, keeping the accused in police lock up or alleged police atrocity and custodial violence

13. By filing a separate counter affidavit, it is stated by the Respondent No. 5, the Superintendent of Police, Siwan that till date departmental inquiries are going on to ascertain the real culprits who was responsible for assaulting the son of the petitioner and as soon as it will be ascertained by the police, criminal case shall be instituted against them.



Surprisingly, the incident took place in the year 2017 and till March, 2024, the Superintendent of Police did not find out the culprits who assaulted the son of the petitioner.

14. The learned Advocate for the petitioner draws my attention to paragraph 18 of the *Shyamsunder Trivedi (supra)* wherein the Hon'ble Supreme Court lamented because of the fact, the Central Legislature did not take any step to make necessary statutory amendments in the light of 113th Report of the Law Commission. Paragraph 18 runs thus:-

“18. In its 4th Report of June 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so dehumanising as the conduct of police in practising torture of any kind on a person in their custody. The Commission noticed with regret that the police image in the estimation of the public has badly suffered on account of the prevalence of this practice in varying degrees over the past several years and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve quick results by short-cut methods. Though Sections 330 and 331 of the Penal Code, 1860 make punishable those persons who cause hurt for the purpose of extorting the confession, by making the offence



punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows us, have been very few because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are. Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. The recommendation, however, we notice with concern, appears to have gone unnoticed and the crime of custodial torture etc. flourishes unabated. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, we hope that the Government and Legislature



would give serious thought to the recommendation of the Law Commission (supra) and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.”

15. This Court, however, does not lament. It is not in dispute that the son of the petitioner was in custody under Respondent No. 7 and all police officers and personnel who were on duty on 4th of July, 2017 from 02:00 P.M to 05:00 P.M in Siwan Muffasil Police Station. Thus, applying the principle under Section 106 of the Evidence Act, they have special knowledge as to who committed custodial violence upon the son of the petitioner. If the police personnel fails to discharge their burden of special knowledge, adverse presumption may be drawn against them.



16. Thus, applying the provision of Section 106 of the Indian Evidence Act, this Court comes to the conclusion that the Officer-in-charge, lock up in-charge and all other police officers and personnel who were on duty on 4th of July, 2017 from 2 P.M to 5 P.M. are responsible to state how and by whom the son of the petitioner was assaulted in the police lock up of Siwan Muffasil Police Station. On their failure to provide such information, they are liable to be prosecuted. The Respondent No. 5 shall lodge a complaint against the Officer-in-Charge and all police officers as well as the lock up in-charge of Siwan Muffasil Police Station under appropriate penal provisions for custodial violence and atrocities perpetrated upon the son of the petitioner.

17. Moreover, due to such custodial violence and police atrocity, the Department of Police under the Home Department shall pay compensation of Rs. 2 lakh to the son of the petitioner within four weeks from the date of this order.

18. The order of payment of compensation shall be executed by the Principal Secretary, Department of Home, Government of Bihar.

19. The Superintendent of Police, Siwan will be the official informant in connection with the criminal complaint



that has been directed to be lodged against the police personnel.
The investigation of the proposed criminal case shall be concluded with the statutory period mentioned in Section 167 (5) of the Cr.P.C., so that immediate trial of the offenders may be ensured.

20. With the aforesaid observation/direction, the instant writ petition stands disposed of on contest.

(Bibek Chaudhuri, J)

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CAV DATE	
Uploading Date	
Transmission Date	

