

Before Satish Kumar Mittal, J.

AJMER KAUR — *Petitioner*

versus

STATE OF PUNJAB AND OTHERS — *Respondents*

C.W.P. No. 5204 of 1995

10th February, 2005

Constitution of India, 1950-Arts. 226 and 227—Allegation of custodial death—Son of petitioner named as an accused in an FIR and produced before the police by family members—Post-mortem report clearly indicate that the deceased died due to torture— On inquiry, S.D.M. finding that the police officials negligent in discharging their duty- Police not showing the arrest of deceased in the police record— Investigation conducted by the police and the reasons given in the cancellation report not convincing— Cancellation report submitted by the police is liable to be set aside— In case of custodial death generally ocular or other evidence are not available— Petition allowed, investigation of the case directed to be conducted by Crime Branch of the State—Family members of deceased also held entitled for interim compensation of Rs.1,50,000.

Held, that the interest of justice demands that a fair and proper investigation be conducted by an independent agency. The Courts exist for doing justice of the persons who are affected. They cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. It has a greater duty and responsibility i.e. to render justice in a case where the role of the investigating agency itself is put in issue. The Courts have to ensure that accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. Justice has no favourite, except the truth. In case of custodial death, generally ocular or other evidence are not available. Police officials alone can explain the circumstances in which a person in their custody died. Therefore, I direct that the investigation of the custodial death of Baljit Ram be conducted by Crime Branch of the State.

(Para 20)

Further held, that the petitioner and her family members are entitled for interim compensation on account of custodial death of Baljit Ram. After giving thoughtful consideration to the peculiar facts and circumstances of the case, keeping in view the age of the deceased and his earning capacity and the number of family members, I am of the opinion that family of the petitioner should be awarded interim compensation of Rs.1,50,000/- immediately to be paid by the State Government on the principle of vicarious liability of the wrong done by its employee. The said amount of compensation shall be subject to adjustment in the event of other proceedings taken for recovery of compensation on the same ground by the claimants.

(Para 24)

R.M. Singh, Advocate, *for the petitioner.*

A.S. Ladhar, AAG, Punjab.

T.P. Singh, Advocate, *for respondents No. 2. and 3.*

A.D.S. Sukhija, *Advocate for respondent No.4.*

Aman Arora, Advocate for, A.R. Takkar, Advocate, *for respondent No.6.*

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) Petitioner Ajmer Kaur has filed this writ petition under Articles 226 and 227 of the Constitution of India praying for the issuance of a writ in the nature of certiorari for registration of a case against the respondents on account of custodial death of her son Baljit Ram in Police Station Lalru, Tehsil Rajpura, District Patiala and also for issuance of a writ in the nature of mandamus directing the respondents to pay compensation to the aggrieved family.

(2) In brief, it has been averred that the petitioner along with her family consisting of her husband and three sons is residing in village Kasauli, Tehsil Rajpura, District Patiala. They are Harijans. One son of the petitioner, namely Baljit Ram, was employed as Steno in the office of Chief Agricultural Officer, Patiala. He was 30 years of age and was having three years service to his credit.

(3) On 17th April, 1992, one Anju Bala, a resident of the village, grand daughter of respondent No.5 and niece of respondent No.6, was kidnapped. In this regard, an FIR No.25 dated 17th April, 1992 under Section 363/366 IPC was registered at Police Station Lalru. In that case, abovesaid Baljit Ram was named as suspected accused. It is the case of the petitioner that her son Baljit Ram was falsely implicated in that case, though he was not involved in the alleged offence.

(4) During investigation of the said case, family of the petitioner was interrogated by the police. It has been alleged that Rajinder and Darshan, sons of the petitioner were illegally confined and tortured in police station Lalru from 1st July, 1992 to 11th July, 1992 to produce Baljit Ram. Ultimately, on 11th July, 1992, Narmail Singh, another son of the petitioner, alongwith some other persons, produced Baljit Ram before DSP, Rajpura, who assured them that he would not be tortured and was only required to join investigation. On the same day, DSP Rajpura handed over Baljit Ram to respondents No.2 and 3, who took him to Police Station, Lalru. In the evening, family of the petitioner visited Police Station Lalru and found that Baljit Ram was given merciless beatings by respondents No.2 and 3 and he was crying. His clothes were removed and blood was oozing from different parts of his body. Family members of the petitioner requested them not to torture him, but they threatened them to run away from the police station, otherwise they would also meet the same fate. It has been averred that thereafter deceased Baljit Ram was not produced before the Court within 24 hours as required by the law. Thereupon, the petitioner moved an application before the Illaqa Magistrate, Rajpura on 14th July, 1992 for directing respondents No.2 and 3 to produce Baljit Ram in the Court. On that application, report of the SHO was called for 15th July, 1992, but no report was made and the case was adjourned to 17th, July, 1992. On 17th July, 1992, respondent No.2 submitted a false report that Baljit Ram was not arrested so far in the case.

(5) On 18th July, 1992, husband of the petitioner went to the Police Station and found that his son Baljit Ram was in a critical condition. He again made a request to respondents No. 2 and 3 not to torture him and produce him before the court, but his request was not listened.

(6) On 19th July, 1992, Baljit Ram died in police custody. Respondents No. 2 and 3 took his dead body to Philadelphia Hospital, Ambala City. It has been alleged that the respondents tried to prevail upon doctors of the Hospital and got false entries entered in the record. Baljit Ram was declared dead at 6.30 P.M. on 19th July, 1992. Thereafter, the doctor of Philadelphia Hospital, Ambala City sent the dead body of Baljit Ram to Civil Hospital, Ambala City for post-mortem examination. It has been alleged that there also, the respondents tried to pressurise the doctors to conduct the post-mortem in haste and not to mention any injury on the body of the deceased. However, meanwhile, a large gathering collected on the spot and in that situation, the doctors of Civil Hospital, Ambala City sent the dead body of Baljit Ram for post-mortem to Medical College and Hospital, Rohtak, where on 22nd July, 1992, post-mortem was conducted by a team of medical doctors. At the time of post-mortem examination, the following injuries were found on the body of the deceased Baljit Ram :—

1. Abrasion on (Rt) PKP big Jac foot situated 4 cm below the lower border of medial malleolus 2 cm in dia with soft scab present.
2. Abrasion on (Rt) big toe on metatarso phalangeal joint on Dorsal aspect size 3 x 0.5 cm with soft brown scab present.
3. Abrasion on (Rt) patella in mid size 3.5 cm x 3 cm with soft brown scab present.
4. Abrasion on (Lt) Patella 2 cm below the lower border placed vertically size 2 x 1 cm, hard brown scab present.
5. Abrasion on posterior aspect of (Rt) elbow joint 1.5 x 1 cm placed transversely covered by hard brown scab.
6. Abrasion on (Lt) elbow joint size 2 cm in dia covered by hard brown scab.
7. There are two freshly healed abrasions (scab fitted off) situated in mid axillary line, above one is situated 16 cm below the arm pit measuring 3 x 2 cm and lower one is situated 3 cms below it measuring 2 x 1.5 cm.

The above mentioned abrasions are situated on (Lt) lateral aspect of chest.

8. There is ecchymosin of scalp in occipital region size 4 cm in dia.

(7) As per opinion of the doctor, cause of death was blunt trauma to the abdomen causing rupture of spleen. The duration of injuries between death and the post mortem examination was 3 days.

(8) It has been alleged that after the post mortem examination, the family members of the petitioner insisted for registration of case against guilty police officials. Under public pressure, an FIR No. 36, dated 22nd July, 1992 was registered under Section 302 IPC, but no enquiry was conducted in the same nor any guilty police official was ever arrested. It has been alleged that family members of the petitioner kept on running from pillar to post for 3 years but no action was taken against the guilty persons and no justice was given to the poor Harijan family for the custodial death of their son Baljit Ram and for causing torture and harassment to the entire family in connection with the kidnapping case of Anju Bala. It has been further mentioned that even in the FIR for kidnapping of Anju Bala, one Ram Kumar alone was found involved as the prosecutrix herself made statement against him. Deceased Baljit Ram was found not involved at all in the said crime. When for 3 years, in spite of the matter being raised by the press for several times against the custodial death of Baljit Ram and torture to the Harijan family, no action was taken, the petitioner filed the instant writ petition in this Court.

(9) During the pendency of the writ petition, the Sub Divisional Magistrate, Rajpura, who was appointed to enquire into the matter, submitted his report dated 28th June, 1995. In this report, he found as under:—

- A. That the deceased Baljit Ram was wanted being a suspected accused in a case regarding kidnapping of Anju Bala, but subsequently in the said FIR, he was found innocent.
- B. That on 11th July, 1992, at 10.00 A.M., deceased Baljit Ram was handed over to DSP Rajpura, who further handed over him to respondent No. 3 and was taken to Police Station Lalru, but the police officials failed in their duty to record the arrest of the deceased immediately on 11th July, 1992 and produce him before the competent court.

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- C. That the police officials were negligent in not recording arrest of the deceased and taking his remand from the competent court. The story put forwarded by the police that they had handed over the deceased to one Arjan Singh and subsequently, he produced him in the police station on 18th July, 1992, was not believed.
- D. That Baljit Ram died on 19th July, 1992 while in custody of the police, but it has not been proved that the death was caused due to torture of the police, because the post mortem report given by the Medical College, Rohtak does not support the version.
- E. That SI Bahadur Singh was negligent and disciplinary proceedings be initiated against him. However, Inspector Balkar Singh was found to be innocent.

(10) In view of the aforesaid report, the writ petition was admitted on 12th July, 1995 and was ordered to be listed for hearing within six months.

(11) Respondents No. 2, 3 and 4 have filed separate written statements. In his written statement, respondent No.2 has admitted that at the relevant time, he was posted as SHO in Police Station Lalru. The registration of FIR No.25 on 17th April,1992 under Section 363/366 IPC against deceased Baljit Ram has also not been disputed. However, it has been explained that after few days of the occurrence of kidnapping, Baljit Ram came in the village and the people chided him and out of frustration, he took poison. He was taken to Rajindra Hospital, Patiala for medical treatment. On receipt of the information, the police of Police Station Civil Lines Patiala recorded report No. 28 of 29th April, 1992 and thereafter deputed the police officials for Rajindra Hospital. In the Rajindra Hospital, statement of Baljit Ram was recorded by ASI Gian Singh. The aforesaid FIR and the statement shows that Baljit Ram was admitted in Hospital having taken poison, but during the course of medical treatment, he ran away from Rajindra Hospital. After three months, he was produced before the police of Police Station Lalru on 11th July,1992. Respondent No.2, in his written statement, has also not disputed that on 11th July,1992, Baljit Ram was handed over to the police, but it has been pleaded that he was got released by one Arjan Singh after disclosing the entire story.

Thereafter, he was again produced in the police station on 19th July, 1992. Since Baljit Ram was weak and suffering from sickness due to his having taken poison, therefore, seeing his condition he was taken to Philadelphia Mission Hospital, Ambala for treatment, where he died. It has been stated that death of Baljit Ram occurred due to acute gastro enteritis. It has been further averred that due to pressure of the family members and other persons, the deceased was taken to Medical College, Rohtak for post mortem examination. The post mortem report of the deceased has been disputed. Regarding FIR under Section 302/34 IPC, it has been averred that after investigation, the untraced report was submitted by police, which is still pending for acceptance before the Judicial Magistrate.

(12) Almost similar written statement has been filed by respondent No.3.

(13) Respondent No. 4 in his written statement has not disputed the aforesaid factual position, but denied the allegations levelled against him regarding his involvement and connivance with the police. It has been stated that he has been falsely implicated in this case. He had nothing to do with this matter at any stage and he has been unnecessary dragged into the controversy.

(14) During the pendency of the case, the Deputy Superintendent of Police, Dera Bassi, has filed an affidavit to the effect that cancellation report in case FIR No. 36 dated 22nd July, 1992 under Section 302/34 IPC was prepared, but was never sent to the Judicial Magistrate and on the request of the petitioner, the matter was re-investigated. After re-investigation, an untraced report was prepared and sent for acceptance on 31st December, 1997, which is still pending before the Sub-Divisional Judicial Magistrate, Rajpura.

(15) A copy of the untraced report has also been placed on record, perusal of which shows that investigation of the aforesaid FIR was handed over to SI Gursewak Singh, SHO, Police Station Dera Bassi. The post mortem on the dead body of Baljit Ram was got conducted from a team of doctors of Medical College, Rohtak. In the post mortem report, cause of death has been shown as blunt trauma to the abdomen causing rupture of spleen and the injury has been described to be ante-mortem in nature. After the post mortem report, the matter was investigated by Inspector of CIA staff. During

investigation, it was found that Baljit Ram took away a girl of the village belonging to Pandit community and on this an FIR No.25 of 1992 under Sections 363/366 IPC was registered against him in Police Station Lalru. When Baljit Ram came back to his village, people of the village chided him and on this, he took poison and was got admitted to Rajindra Hospital, Patiala. During his medical treatment, he ran away from the hospital. Thereafter, Baljit Ram appeared in Police Station Lalru on 11th July, 1992, But he was got released by one Arjan Singh Jathedar after disclosing the circumstances. Thereafter, aforesaid Arjan Singh Jathedar again produced Baljit Ram before the police on 19th July, 1992. Since Baljit Ram was weak and sick, therefore, he was taken to Philadelphia Mission Hospital for treatment, where he died on the same day. It has been further mentioned in the cancellation report that from the investigation, it was found that death of Baljit Ram has occurred due to sickness and convulsions, but heirs of the deceased in connivance with the doctor, who conducted the post mortem, got a wrong post mortem report to the effect that death of Baljit Ram occurred due to torture. However, the doctor of Philadelphia Mission Hospital in the MLR did not report any injury and the bed head ticket also depicts this position that his death has occurred due to poisoning and convulsions. It has been reported that this case is totally false and was registered due to political pressure. Even in the judicial enquiry conducted by SDM Rajpura, the alleged accused were found innocent. In view of these facts, the SP ordered to file untraced report in this case.

(16) When the aforesaid material came before this Court, the petitioner filed an application for making additional prayer in the writ petition to the effect that investigation of the case be handed over to some independent agency, like Central Bureau of Investigation in the interest of justice. It has been alleged that the police has not investigated the matter at all as the police officials are involved in this case and has illegally submitted the untraced report.

(17) Reply to the said application has also been filed by respondents No. 2 and 3, in which it has been stated that there is no need for further investigation of the matter by the Central Bureau of Investigation or any other independent agency, as already the matter has been investigated by the police twice as well as judicial enquiry was also conducted by SDM, Rajpura and in those

investigations and enquiry, nothing incriminating was found against the police officials (answering respondents). It has been further averred that deceased Baljit Ram did not die due to any beating or torture in the police custody, rather he expired because of his ill health and taking of poison, and the medical certificate issued by Philadelphia Mission Hospital would show that the death has occurred due to acute gastro enteritis. It has been further submitted that Dr. C.F. David of Philadelphia Mission Hospital has specifically stated that there was no external injury on the body of the deceased at the time of his admission in the hospital.

(18) I have heard counsel for the parties at length and have perused the record of the case.

(19) After hearing the learned counsel for the parties and perusing the contents of the petition, written statement and various other documents annexed I have come to the conclusion that the matter requires fresh investigation by an independent agency. I am not going in detail of such and every arguments raised before me, as the detailed discussion of those arguments will prejudice to either of the parties during investigation of the case. However, the following factors led me to reach this conclusion.—

- (i) The deceased Baljit Ram was named as an accused in case FIR No. 25, dated 17th April, 1992 under Sections 363/366 IPC registered at Police Station Lalru for alleged kidnapping of Anju Bala. In investigation of the said case, the Family members of the petitioner were interrogated by the police of Police Station Lalru.
- (ii) On 11th July, 1992, family members of the petitioner produced Baljit Ram before DSP Rajpura, who in turn handed over him to respondents No. 2 and 3, who took him to Police Station Lalru.
- (iii) The arrest of Baljit Ram on 11th July, 1992 was not shown in their police record. Respondents No. 2 and 3 took the stand that though on 11th July, 1992, custody of Baljit Ram was handed over to them, but he was got released by one Arjan Singh Jathedar after disclosing the entire story, who again produced him before them on 19th July, 1992.

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- (iv) On 14th July, 1992, an application was filled by the petitioner before the Illaqa Magistrate, Rajpura for production of Baljit Ram in the Court alleging therein that he was arrested by the police on 11th July, 1992 and was not produced before the court within 24 hours. On that application, police submitted report that Baljit Ram was not arrested in the case. However, the fact of handing over Baljit Ram to the police on 11th July, 1992, subsequently his release to Arjan Singh Jathedar his production before the police on 19th July, 1992 was not mentioned.
- (v) The custody of Baljit Ram on 19th July, 1992 in the Police Station Lalru has not been disputed. According to respondents No. 2 and 3, he was produced by Arjan Singh Jathedar. He was weak and suffering from sickness due to having his taken poison. Therefore, he was taken to Philadelphia Hospital, Ambala (a Private Hospital) where he died. According to respondents No. 2 and 3, Baljit Ram died due to acute gastro enteritis. In this regard, they relied upon the medical certificate issued by the said Hospital and the statement of Dr. C.F. David. Admittedly, no post mortem of the deceased was conducted at Philadelphia Hospital, Ambala, rather it was conducted by a team of doctors of Medical College, Rohtak on 22nd July, 1992.
- (vi) A team of doctors of Medical College, Rohtak conducted the post mortem examination of the deceased on 22nd July, 1992. As per the post mortem report, 8 injuries were found on the body of the deceased and the cause of death was blunt trauma to the abdomen causing rupture of spleen. The duration of injuries between death and the post mortem examination was 3 days. The post mortem report clearly indicates that the deceased died due to torturing.
- (vii) No explanation is coming forward as to how the injuries were caused on the body of the deceased. These injuries falsify the stand taken by respondents No. 2 and 3.

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- (viii) The plea taken by respondents No. 2 and 3 that after handing over of Baljit Ram on 11th July, 1992 to the police, he was handed over to Arjan Singh Jathedar, who handed over Baljit Ram back to the police on 19th July, 1992 was not believed in the judicial enquiry conducted by the Executive Magistrate. If the deceased remained in custody of the police from 11th July, 1992 to 19th July, 1992, then it was for respondents No. 2 and 3 to explain the injuries and cause of death.
- (ix) The stand taken by respondents No. 2 and 3 that when the deceased Baljit Ram was handed over to them on 19th July, 1992 by Arjan Singh Jathedar, he was weak and suffering from sickness because he had taken poison three months back does not inspire any confidence. The post mortem report also does not support its version. Even otherwise, it does not stand to reason as to why Baljit Ram was not arrested in FIR No. 25 dated 17th April, 1992, when the police allegedly recorded his statement in the Rajindra Hospital on 29th April, 1992. This fact creates doubt in the mind of the court about the story put forwarded by the police that Baljit Ram had taken poison in frustration in the month of April, 1992.
- (x) The Sub Divisional Magistrate, in his report, found that the respondents were negligent in discharging their duty.
- (xi) The investigation conducted by the police and the reasons given in the cancellation report are not convincing and this court is satisfied that no proper enquiry was conducted by the police as in the crime, their fellow members were involved. Therefore, the cancellation report submitted by the police is not acceptable at all and is liable to be set aside.

(20) In view of the above factors, the interest of justice demands that a fair and proper investigation be conducted by an independent agency. The courts exist for doing justice to the persons who are affected. They cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed.

It has a greater duty and responsibility i.e. to render justice in a case where the role of the investigating agency itself is put in issue. The Courts have to ensure that accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. Justice has no favourite, except the truth. In case of custodial death, generally ocular or other evidence are not available. Police officials alone can explain the circumstances in which a person in their custody died. Therefore, I direct that the investigation of the custodial death of Baljit Ram, for which FIR No. 36, dated 22nd July, 1992 was registered at Police Station, Lalru, under Section 302 IPC, be conducted by Crime Branch of the State and Additional Director General of Police (Crime) is directed to entrust the investigation of this case to an officer not below the rank of Deputy Superintendent of Police under the supervision of the Senior Superintendent of Police, and every endeavour shall be made to complete the investigation expeditiously, preferably within a period of six months and submit its final report to the court.

(21) Now, the question arises whether the petitioner and her family members are entitled for interim compensation on account of the custodial death of Baljit Ram. The factum of death of deceased Baljit Ram while in custody of the police is not in dispute. As per the post mortem report, 8 injuries were found on the body of the deceased and the cause of death has been opined as blunt trauma to the abdomen causing rupture of spleen. For the reasons recorded, I have already issued directions for fresh investigation of the case by the Crime Branch of the State.

(22) Custodial death is one of the worst crime in civilised society governed by Rule of law. It violated the fundamental right of personal liberty guaranteed under Article 21 of the Constitution of India, which is unalienable. The Hon'ble Apex Court in **Smt. Nilabati Behera alias Lalita Behera versus State of Orissa and others (1)**, has held that award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict

(1) AIR 1993 S.C. 1960

liability for contravention of fundamental rights. It is held that defence of sovereign immunity does not apply in such a case even though it may be available as a defence in private law in an action based on tort. It is further held that the award of damages by the Supreme Court or the High Court in a writ proceeding is distinct from and in addition to the remedy in private law for damages. It is one mode of enforcing the fundamental rights by Supreme Court or High Court. The same view was again reiterated by the Hon'ble Apex Court in **D.K. Basu versus State of West Bengal, (2)**, wherein it was held as under :—

“It is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and not strait

jacket formula can be evolved in that behalf. The relief to address the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

(23) In **Nilabati Behera's case** (supra), the Hon'ble Apex Court granted compensation of Rs.1.50 lacs in case of custodial death of a young boy of 22 years subject to adjustment in the event of other proceedings taken for recovery of compensation on the same ground by the claimants.

(24) In view of the aforesaid legal position and the facts and circumstances of this case, as discussed above, I am of the opinion that the petitioner and her family members are entitled for interim compensation on account of custodial death of Baljit Ram. After giving my thoughtful consideration to the peculiar facts and circumstances of the case, keeping in view the age of the deceased and his earning capacity and the number of family members, I am of the opinion that family of the petitioner should be awarded interim compensation of Rs.1,50,000/- immediately to be paid by the State Government on the principle of vicarious liability of the wrong done by its employee. The said amount of compensation shall be subject to adjustment in the event of other proceedings taken for recovery of compensation on the same ground by the claimants.

(25) Any observation made in this order while directing the investigation and awarding the compensation will not be taken as expression of opinion by this Court on merits of the case by the investigating agency.

(26) The writ petition is accordingly allowed in the aforesaid terms.