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*Before Surya Kant, J*

CHARANJIT KAUR,—*Petitioner*

*versus*

STATE OF PUNJAB & OTHERS,—*Respondents*

**CrI. W.P. No. 769 OF 1995**

9th February, 2005

*Constitution of India, 1950—Article 226—Indian Penal Code, 1860—Ss. 120-B & 364—Allegations of abduction of husband of petitioner by the police—On investigation two police officials tried by the C.B.I., and convicted by the A.D.J.—Claim for compensation—Forcible abduction & detention of husband of petitioner by the police officials fully proved—State failing to maintain & enforce the law—Abuse of the constitutional guarantee of life & liberty of an individual—State Government held to be liable to pay compensation of Rs. 3 lacs to petitioner and her children.*

*Held*, that in the cases where the authorities of the State have failed to maintain and enforce the law and have been found *prima facie* guilty of abusing the constitutional guarantee of life and liberty of an individual, the liability to compensate the victims and/or their legal heirs has been fastened upon the State on strict liability against contravention of fundamental rights to which theory of sovereign amenity does not apply though it is available as a defence in private law in an action based upon tort.

(Para 11)

*Further held*, that on an investigation by the Central Bureau of Investigation, the accused police officials were tried and have already been convicted by the learned Additional Sessions Judge, Patiala, under Section 364 read with Section 120-B I.P.C. Thus, forcible abduction and illegal detention of the victim by the police officials stands conclusively proved. The State of Punjab, therefore, is liable to compensate the petitioner and other legal heirs of Sukhmander Singh, by way of suitable compensation.

(Para 12)

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Nav Kiran Singh, Advocate, with Jasmandeep Singh,  
Advocate, *for the petitioner.*

A. S. Ladhar, A.A.G., Punjab for respondent nos. 1 to 4.

None for respondent no. 5.

### JUDGMENT

#### SURYA KANT, J.

(1) This writ petition was filed by Charanjit Kaur, resident of Village Maluka District Bathinda invoking the writ jurisdiction under Article 226 of the Constitution of India for issuance of a writ in the nature of habeas corpus against the respondents to produce her husband, Sukhmander Singh who, according to her, was picked up on 3rd April, 1992 at about 10.00 A.M. and was arrested by ASI Ajaib Singh, Incharge, Police Post Bhagta Bhalka, along with Head Constable Jugraj Singh and one more constable of C.R.P.F.

(2) Upon notice, after perusing the reply filed by the Senior Superintendent of Police, Bathinda on 12th March, 1996, a direction was issued by this Court to the District and Sessions Judge, Bathinda to hold an enquiry after recording evidence to be led by both the sides and to submit his fact-finding report.

(3) In his report dated 7th September, 1996, learned District and Sessions Judge, Bathinda concluded as follows :—

“Under the circumstances, the finding given in this inquiry is that Sukhmander Singh was abducted on 3rd April, 1992 at 10.00 A.M. from his house in Malooka in the presence of Charanjit Kaur and Dalbara Singh by ASI Ajaib Singh and H.C. Jugraj Singh. The use of the van cannot be conclusively ruled out because it could have been repaired in 4-5 days to make it possible to be used in abduction. The police failed to investigate disappearance of Sukhmander Singh in a systematic manner by concentrating on the van only and thereby tried to cover up the abduction and derailing the investigation.”

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(4) The afore-mentioned enquiry report was accepted by this Court and the writ petition was partly allowed on 27th May, 1997 with the following directions :—

“That being so, this petition is partly accepted and a direction is issued for registration of FIR against ASI Ajaib Singh and HC Jagraj Singh aforesaid for kidnapping Sukhmander Singh, husband of the petitioner-Charanjit Kaur on 3rd April, 1992 at about 10.00 A.M. from village Maluka, District Bathinda. In my opinion, it is a fit case, which should be investigated in the light of the report submitted by the learned Enquiry Officer. The Central Bureau of Investigation is accordingly directed to register a case on the basis of the enquiry report dated 27th September, 1996 and complete the investigation of the case within six months.”

(5) Pursuant to the investigation carried out by the C.B.I. in terms of the directions reproduced above, it is not disputed that ASI Ajaib Singh and HC Jugraj Singh (since dead) were tried for an offence under Section 120-B read with Section 364, IPC in RC-2 (S)/97/SIU-XVIII/CHG, dated 1st July, 1997 in the Sessions Case No. 16-T of 2001/11th February, 2000 and,—*vide* judgment dated 7th February, 2003, learned Additional Sessions Judge, Patiala found the surviving accused guilty of committing an offence punishable under Section 364, I.P.C. and convicted him to undergo R.I. for 10 years and to pay a fine of Rs. 500 and in default of payment of fine, held him liable to undergo further RI for one month. The operative portion of the judgment dated 7th February, 2003 reads as follows .—

“From the statement of Smt. Charanjit Kaur, it is clearly made out that her husband Sukhmander Singh was taken away by the accused forcibly from his house on 3rd April, 1992 at about 10 A.M. Therefore, it can be safely concluded that the accused has committed an offence punishable under Section 364 of the Indian Penal Code. Accordingly, he is found guilty and convicted thereunder. Let he be heard on the question of sentence.”

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(6) While the afore-mentioned writ petition was pending, the petitioner came up with Criminal Misc. No. 807 of 1996 with a prayer to grant compensation to the heirs of Sukhmander Singh, victim. As per the averments made in this application, at the time when Sukhmander Singh was forcibly and illegally abducted, he was about 40 years of age and the petitioner, namely, his wife, was aged about 37 years. They have six children, namely, (i) Birpal Kaur, aged 16 years; (ii) Sukhpal Kaur, aged 15 years; (iii) Jaspal Kaur, aged 13 years; (iv) Jagdeep Singh, aged 11 years; (v) Rachhpal Kaur, aged 9 years; and (vi) Mandeep Singh, aged 6 years. It was also averred in this application that in the light of the judgment of the Apex Court in **Nilabati Behera's** case reported and 1994(1) Recent Criminal Reports 18 and decision rendered by this Court in Criminal Writ Petition No. 3342 of 1989 titled **Tarlochan Singh Sidhu versus State of Punjab**, the afore-mentioned legal heirs of Sukhmander Singh are entitled to a compensation to the tune of Rs. 3,00,000. The averments in the above said application were duly supported by affidavit dated 1st November, 1996 of the petitioner. This application came up for hearing on 8th November, 1996 when notice was issued to the respondents for 7th January, 1997. On 7th January, 1997 and again on 20th March, 1997, opportunity was granted to the respondents to file reply to afore-mentioned application. However, it appears from the record that no reply thereto was filed.

(7) Heard Shri Nav Kiran Singh, learned counsel for the petitioner in support of the prayer made in this application and Mr. A. S. Ladhar, learned Assistant Advocate General, Punjab, appearing on behalf of respondent nos. 1 to 4.

(8) Mr. Nav Kiran Singh, learned counsel for the petitioner contends that in the light of well established law, the petitioners are entitled to the compensation of Rs. 3,00,000. He has placed reliance upon :—

- (i) **Tarlochan Singh versus State of Punjab (1)**
- (ii) **Joga Singh versus State of Punjab (2)**
- (iii) **Pritam Singh versus State of Punjab (3)**

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(1) 1996 (3) R.C.R. 753  
(2) 1997 (2) R.C.R. 809  
(3) 2001 (3) R.C.R. (Crl.) 569

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- (iv) Cr. Misc. No. 14150-M-1994,  
**Karnail Singh versus State of Punjab etc.** decided  
on 11th September, 2001 ;
- (v) Cr. Writ Petition No. 1294 of 1996, **Varinder Kaur etc.**  
*versus State of Punjab etc.* decided on 12th November,  
2002.

(9) In **Tarlochan Singh's** case (*supra*), a learned Single Judge of this Court, after holding a police officer *prima facie* guilty of custodial death, directed the State to pay compensation of Rs. 3,00,000 to be legal heirs of the deceased.

(10) In **Joga Singh's** case (*supra*), an enquiry was got conducted from learned District and Sessions Judge and his report holding *prima facie* that the allegations regarding custodial death were correct having been accepted by this Court, a compensation of Rs. 3,00,000 was directed to be paid to the family members of the victim. Similar was the view taken by this Court in the case of **Pritam Singh** (*supra*) in which a compensation of Rs. 3,00,000 was awarded to the heirs of the victim of unlawful arrest and detention. After considering the entire case law, somewhat similar view was taken by a learned Single Judge of this Court in **Varinder Kaur's** case (*supra*) wherein also a sum of Rs. 3,00,000 was awarded as compensation.

(11) It, thus, clearly emerges that in the cases where the authorities of the State have failed to maintain and enforce the law and have been found *prima facie* guilty of abusing the constitutional guarantee of life and liberty of an individual, the liability to compensate the victims and/or their legal heirs has been fastened upon the State on strict liability against contravention of fundamental rights to which theory of sovereign amenity does not apply though it is available as a defence in private law in an action based upon tort.

(12) Coming to the case in hand, on an investigation by the Central Bureau of Investigation, the accused police officials were tried and have already been convicted by the learned Additional Sessions Judge, Patiala, under Section 364 read with Section 120-B, I.P.C. Thus, forcible abduction and illegal detention of the victim by the police officials stands conclusively proved. The State of Punjab, therefore, is liable to compensate the petitioner and other legal heirs of **Sukhmander Singh**, by way of suitable compensation.

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(13) Consequently, I allow this petition and keeping in view the age of Sukhmandar Singh and the responsibilities left behind by him, direct the State of Punjab through its Home Secretary to pay a sum of Rs. 3,00,000 as compensation within a period of two months from the date of receipt of a certified copy of this order. Out of the total compensation of Rs. 3,00,000, while Rs. 1,50,000 be paid to the petitioner, the remaining amount of Rs. 1,50,000 shall be shared equally by the six children of Sukhmander Singh. The shares of the children who are still minor shall be deposited in a Nationalised Bank in the form of F.D.Rs. which shall be released to them on attaining the age of majority. However, for early release of the compensation amount in respect of the minor child, if any, for the purpose of his/her education or marriage, the petitioner may apply for such early release giving valid reasons therefor.

(14) It is made clear that it will be open for the State of Punjab to recover the amount of compensation from the guilty police official(s) including respondent No. 5. However, such recovery, if any, can be made only after actual payment of the compensation within the prescribed time and the manner, as directed above.

(15) A compliance report regarding payment of the amount of compensation as awarded above, be submitted to the District and Sessions Judge at Bathinda by the State of Punjab.

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**R.N.R.**

*Before K.S. Garewal, J*

TARA CHAND,—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 17771 of 1995

9th February, 2005

*Constitution of India, 1950—Arts. 226 & 311—Punjab Civil Services Rules, Vol. I, R1. 3.26(d), Vol. II R1.5.32 A(C)—Criminal cases against a Police Officer—Petitioner evaded service of process of a Court for almost a year and nine months—Suspension from service—Conviction and award of 3 months S.I. by High Court in a contempt*