
M. Jain

Before G.S. Sandhwalia, J.

HARCHET KAUR AND ANOTHER—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 5166 of 1994

January 15, 2013

Constitution of India, 1950 - Art. 226/227- Compensation on account of death in police custody - Deceased picked up by police - Thereafter declared dead in false encounter - State contended encounter to be real as deceased having relationship with extremist - Compensation allowed holding that even if deceased had taken

employment as clerk he would have earned Rs.5000/- - If multiplier of 18 is applied, he would have been entitled for sum of Rs.10,50,000/- - Thereafter sum of Rs.5 lac as claimed for compensation is not unreasonable - Writ Petition allowed.

Held, that coming to the quantum of compensation which is claimed to the tune of Rs.5 lacs, this Court is of the opinion that the incident is of 1989 and more than 23 years have elapsed since the death of Shiv Charanjit Singh in the alleged false encounter, who, admittedly, was a B.Sc. student in the Punjab Agriculture University, Ludhiana and even if he had taken employment as a Clerk in private enterprise, he would not have earned less than Rs.5000/- and if a multiplier of 18 is applied, he would have been entitled for a sum of Rs.10,50,000/- and if interest is to be awarded, the amount would triple over the said period. The petitioner would be entitled to at least 20% of that amount, and therefore, the sum of Rs.5 lacs; as claimed for the compensation on account of death of her son cannot be held to be unreasonable, in any manner.

(Para 13)

Kuldeep Sanwal, Advocate, *for the petitioner.*

Anupinder Singh Grewal, Addl.A.G., Punjab with Anu Pal, AAG, Punjab, for the respondents.

G.S. SANDHAWALIA, J.

(1) The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to pay a sum of '5 lacs as compensation to the victim's family on account of killing of Shiv Charanjit Singh by the police while he was in their custody.

(2) The pleaded case of the petitioner is that Shiv Charanjit Singh was the son of the petitioner who was a student of B.Sc. in the Punjab Agriculture University, Ludhiana and resident of 350-C, Model Town Extension, Ludhiana. On 09.07.1989, at about 8 p.m., he was forcibly picked up from his house by police party headed by Mr. Chatopadhyaya, DSP, Ludhiana and other members of the police party were ASI Sant Kumar, ASI Gurdial Singh, Shankar Dass, SHO, Police Station-Sudhar. Dr. Jagdev Singh was present at that point of time along with other members

of the family. The husband of the petitioner, Shri Gulwant Singh sent a telegram to the Hon'ble Chief Justice of Punjab & Haryana High Court at Chandigarh, on 12.07.1989, apprehending torture and false implication of his son, Shiv Charanjit Singh, which reached the High Court on 14.07.1989. This telegram was treated as a petition for writ of habeas corpus and numbered as Cr.W.P. No.2301 of 1989. The father of the deceased, Shiv Charanjit Singh, approached the police authorities after taking some respectable persons with him and was assured his release after interrogation by the police. However, through some news item in Daily Ajit (Punjabi language paper), the family of the petitioner came to know that Shiv Charanjit Singh was killed in a false encounter on 19.07.1989. In Cr.W.P. No.2301 of 1989, enquiry was ordered to be conducted by the then District & Sessions Judge, Ludhiana, Shri D.S.Dhaliwal, who submitted his report dated 19.03.1991. As per the conclusion of the report, Shiv Charanjit Singh was picked up by the police from his house on 09.07.1989 at about 8 p.m. Thereafter, the writ petition was decided on 17.12.1991 and it was held that the persons really responsible for the death of Shiv Charanjit Singh could not be established and whether it was caused by Sant Kumar, ASI or by Gurdial Singh, ASI of the C.I.A. staff but the fact of the deceased being picked up was established. Since the son of the petitioner died in the custody of the police, she was entitled for exemplary damages for the infringement of the right guaranteed under the Constitution of India. The petitioner made a number of rounds to the Government offices but was of no avail. A written representation dated 26.11.1993 was also made. The claim was based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right in distinct form and in addition to the remedy in private law for damages for the tort resulting from the contravention of the fundamental rights. The petitioner had lost her young prospective supporter in her old days as his son was killed by the callous attitude of the protectors of law due to no fault of his and she deserved compensation. Reliance was placed upon observations of the Hon'ble Apex Court in *Smt.Nelabeti Behera @ Lalita Behera versus State of Orissa & others (1)*.

(3) In the written statement filed on behalf of respondents No.1 & 2, the defence taken was that while deciding the Cr.W.P. No.2391 of 1989, it had been observed that the allegations made in the telegram that

Shiv Charanjit Singh was picked by Shri S. Chattopadhaya, A.S.P., Ludhiana, had been negatived by the Learned Sessions Judge, Ludhiana and that he also could not be sure whether the death was caused by Sant Singh or Gurdial Singh and it had been further held that it would not be appropriate to order registration of a case against S.I. Shankar Dass and his companions. The oral contention that the Court should award compensation was held not tenable in the circumstances of the case and the petitioner was not entitled to the relief claimed on the same facts without any additional factors since no appeal had been filed against the said order. The writ petition having been filed after five years of the alleged occurrence deserved dismissal and that no writ lies for the relief claimed since disputed questions of fact were involved. Even otherwise, the writ petition was filed after the expiry of the period of limitation. It was further submitted that the deceased, Shiv Charanjit Singh was resident of Village Manuke, P.S. Jagraon, as per the record of the office and not of 350-C, Model Town Extension, Ludhiana. It was denied that on 09.07.1989 at about 8 p.m., Shiv Charanjit Singh was picked up from his house by the police party headed by Shri S. Chattopadhaya, A.S.P., Ludhiana and consisting of other members. It was further denied that the deceased was picked up in the presence of Dr. Jagdev Singh and other members of his family, rather, he was never in the custody of the police and that on the night of 18-19.07.1989, the police party held nakabandi headed by S.I. Shankar Dass, the then SHO of P.S. Sudhar in chowk Kailay on the Pakhowal road when at about 12.05 a.m., two scooterists came from the Pakhowal side and they were asked to stop with torch light. They threw away the scooters on the road and started firing on the police party after taking positions on the bank of the road. Police party also took positions and fired in self defence. The firing from both sides continued for about 10 minutes. When the firing stopped from the other side, the police party found one scooterist, aged about 23-24 years with height 5' 6" and of wheatish colour, lying dead. One A.K.47 rifle, one magazine loaded with 20 cartridges and 20 empty cartridges of A.K.47 were taken into possession along with the scooters. The other scooterist ran away from the spot. The dead body was later on identified to be of Shiv Charanjit Singh Ramdasia resident of Village Manuke, P.S. Jagraon by one Major Singh son of Bakhtawar Singh resident of Mullanpur. The deceased had links with Jaswant Singh Hirdewal, a hardcore extremist. The encounter was verified by Shri Joginder Singh, DSP who found the above facts to be true. The

allegations regarding the enquiry ordered by this Court and the conclusions were admitted but it was denied that the deceased was picked up by the Punjab Police from his house on 09.07.1989 or from anywhere else. It was further denied that the petitioner was entitled for exemplary damages for infringement of his rights guaranteed by the Constitution of India and it was denied that the petitioner had met the answering respondents and her written representation had not been received in the office of the answering respondents. The petitioner's son had died in a real encounter and it was denied that any fundamental right of the petitioner had been violated. The deceased had links with the extremists and he had died in a real encounter and thus, the petitioner was not entitled for monetary compensation. The fact that the father of the deceased had sent a telegram to the Hon'ble Chief Justice was admitted and the enquiry which was ordered. ASI Gurdial Singh and ASI Sant Kumar were neither summoned during this enquiry nor their statements were recorded. Learned Sessions Judge, Ludhiana had not held any police official responsible for picking up Shiv Charanjit Singh from his house on 09.07.1989. He had died in an encounter on 18/19.07.1989 and, therefore, the petitioner had no right for compensation.

(4) In the written statement filed by the Collector, Ludhiana, respondent No.3, it was pleaded that request for payment of '5 lacs to the petitioner cannot be acceded to as there were neither any orders of the High Court to that effect nor were there any Government rules/instruction under which the answering respondent could make the payment. The payment of *ex gratia* grant could only be made to a terrorist victim which condition was not fulfilled by the petitioner. That an application was received from the petitioner on 30.11.1993 and the report of Senior Superintendent of Police was sought on the application, which were received on 21.02.1994 and 08.06.1994. The payment could only have been made, as per the Government instructions, to the next kin of the victim of terrorist violence and since the report from Senior Superintendent of Police, Jagraon, stated that the victim was a terrorist who was killed in an encounter and as such, the request for compensation to the petitioner could not be acceded to by the answering respondent.

(5) Petitioner filed replication, taking the plea that this Court had observed that it was a *prima facie* opinion that the deceased had been kidnapped and the only uncertainty was that which of the police officials

was responsible. The prayer for compensation had been declined since the petition was only for habeas corpus and there was no legal right to seek compensation in the said petition. The petition was not time barred and it was not that the State should raise such technical objections when justice demands the necessary relief to the petitioner. The limitation started from 17.12.1991, the date of the judgment when the earlier proceedings terminated. There was no dispute regarding the fact that the deceased had been kidnapped by the police officials and had not been seen alive and it was only on 20.07.1989, it was known that he was killed in an encounter by the police on 19.07.1989. Thus, it was proved that he was picked up and kept in police custody, tortured and interrogated and killed on 19.07.1989. The police had come up with a routine story of encounter and the falsity of the encounter was clear from the facts that in spite of the allegations that police party was attacked first and the firing continued for about 10 minutes, no one from police side was injured. This was the routine story put forward by the police invariably in every case of false encounter and it was quite strange that the police got the encounter verified from its own official.

(6) Counsel for the petitioner, on the strength of the above pleadings, submitted that the enquiry report was in favour of the petitioner and it was apparent that the son of the petitioner was picked up and, thereafter, was shot dead and thus, the petitioner was entitled for the relief claimed. Reliance was placed upon *Smt. Nilabeti Behera* (supra), *CWP No.3446 of 1994 titled Joginder Kaur Vs. State of Punjab & others* decided on 03.05.1994, *Dr. Mehmood Nayyar Azam versus State of Chattisgarh & others (2)*, *Court on its own Motion versus State of Punjab (3)* and *Varinder Kaur & another versus State of Punjab & others (4)*.

(7) State counsel, on the other hand, submitted that it was not proved that the deceased was in police custody and it needed to be established by way of evidence and since disputed questions of facts were involved, therefore, compensation could not be awarded to the petitioner and submitted that as per the postmortem report, which was placed on record subsequently, it was clear that the deceased died due to the lacerated wounds on account of firing and the report of the Learned Sessions Judge, Ludhiana, was only a *prima facie* opinion and it was not a conclusive proof.

(2) 2012 (3) RCR (CrI.) 925

(3) 2008 (2) RCR (CrI.) 790

(4) 2005 (1) RCR (CrI.) 496

It was further submitted that as per the report of the District Judge itself, it showed that the father of the deceased had been convicted in two criminal cases including one under Section 392 and another under Section 302/34 IPC but was acquitted.

(8) After hearing counsel for the parties, this Court is of the opinion that the writ petition is liable to be allowed since the petitioner has placed sufficient material on record to show that the deceased Shiv Charanjit Singh was picked up by a police party. There is no dispute of the fact that a telegram was received by this Court on 12.07.1989 which was treated as Cr.W.P. No.2301 of 1989, the contents of the same reads as under:

“Treated as a Criminal Writ petition upon receiving a telegram sent by Gulwant Singh addressed to Chief Justice Punjab and Haryana High Court, Chandigarh, stating that police C.I.A. headed by Chatupadhya D.S.P. Ludhiana picked up my son Shiv Charanjit Singh from resident Model Town on 9th July 89 at 8.00 P.M. and disappear without disclosing any offence despite best efforts tortured false implications fake encounter apprehended prayed for intervene treating telegram habeas corpus petition.”

(9) In the said writ petition, the report of the District & Sessions Judge, Ludhiana was called for. A perusal of the enquiry report goes on to show that the Learned District & Sessions Judge, Ludhiana had noticed that full opportunity was given to the parties and the father of the deceased, Gulwant Singh had stepped into the witness-box and also his neighbour, Dr. Jagdev Singh, an alleged independent eye-witness, apart from Sunder Singh. The State had examined S.I. Jagjit Singh, Head Constable Prem Nath, Head Constable Manjeet Singh, DSP S. Chatopadhyaya, MHC Kartar Singh and Constable Rajinder Singh and Jagtar Singh. The District & Sessions Judge, after examining the statements of both the sides, came to the conclusion that *prima facie* Shiv Charanjit Singh was picked up from his house on 09.07.1989 at about 8 p.m. by the police officials, may be A.S.I.'s and known as Gurdial Singh of the C.I.A. Staff, Ludhiana.

(10) This Court in Cr.W.P. No.2301 of 1989, came to the conclusion that original allegations were not true regarding the picking up of Shiv Charanjit Singh by Shri Chatopadhyaya, DSP, Ludhiana and also that it would not be appropriate to order registration of case against Shankar Dass, SI and his companions at the instance of this Court. The Ludhiana

police was required to investigate the case arising out of Daily Diary No.40 of 19.07.1989, recorded at police station Sudhar and its counter version within the framework of the Code of Criminal Procedure. The oral contention of the petitioner for awarding compensation was held not to be tenable since the case was at the stage of investigation and enquiry. However, it was held that there was no bar for the complainant to seek alternative remedy in appropriate forum. The petitioner had filed application for compensation before the Collector, Ludhiana (Annexure P-3) on 26.11.1993. The said application was processed by the Collector as per the report itself and from the report dated 08.06.1994 (Annexure R3/2), it would be clear that the Senior Superintendent of Police, Jagraon had written to the Inspector General of Police, Internal Vigilance Cell, Punjab that an encounter had taken place where two scooter riders, who had been given signal by the torch light to stop by the police party but instead of stopping, they started firing and after 10 minutes of firing, one of the said persons was found dead who turned out to be Shiv Charanjit Singh, son of Gulwant Singh and husband of the present petitioner. FIR No.88 dated 19.07.1989 under Sections 307/34 IPC, 3/4/5 TADA Act, 25 of Arms Act was registered in P.S.Sudhar and therefore, no further action was required to be taken on the application of the petitioner. It was, in such circumstances, the request for compensation to the petitioner had been declined on the ground that the deceased was an alleged terrorist. The father of the deceased had sent a telegram on 12.07.1989 and thereafter, the deceased had allegedly died in an encounter on 18-19.07.1989 in a firing of 10 minutes which took place and in which AK47 rifles along with 20 empty cartridges and 20 loaded cartridges were recovered, goes on to show that the version set up by the police cannot be said to be correct. Admittedly, none of the police side was injured in the firing incident which was initiated by the scooterists and 20 loaded cartridges had been fired, as per the enquiry report which has been appended. Scooterists were stopped by the torch light by SI Shankar Dass, SHO and they had fired on the stopping but none had been injured from the police side whereas one person had died who had been, admittedly picked up on 09.07.1989 and a telegram had already been sent on 12.07.1989 by the father of the deceased. This co-incidence, coupled with the report of the then District & Sessions Judge, Ludhiana which, though exonerated certain officials, came to the conclusion, after taking into account the statements of Gulwant Singh, father of the deceased, Jagdev Singh, an

Ayurvedic Medical Practitioner, who was present and after examining the mother of the deceased and another neighbour, Sunder Singh that police officials had picked up the deceased.

(11) Regarding the other alleged scooterist, who was stated to have been accompanying the deceased, Shiv Charanjit Singh, no effort was ever made by the police to trace him which would be clear from the affidavit dated 03.12.2012, now filed, which shows that an untraced report was filed before the Sub Divisional Magistrate, Jagraon, on 09.04.1990 and he accepted the same and ordered that the investigation would start afresh in case the said person become available. Nothing has been placed on record to show that any such person was traced and investigation started afresh to substantiate the allegation that the encounter was real. This Court, while disposing of the writ petition which was in the nature of habeas corpus, had given liberty to the complainant to seek his remedy in the appropriate forum on 17.12.1991. Thereafter, the petitioner had filed an application for compensation on 26.11.1993 before the Collector and a report dated 08.06.1994 (Annexure R-3/2) was received and keeping in view the contents of the report, compensation was not paid to the petitioner who then filed the present writ petition on 26.04.1994. The writ petition, thus, cannot be said to be belated in any manner as the petitioner has a right to seek compensation under Article 226/227 of the Constitution of India for the death of her young son who was studying in B.Sc. in the Punjab Agriculture University. The Hon'ble Apex Court, in **Smt. Nilabeti Behera** (supra), while treating a writ petition under Article 32 of the Constitution of India, directed the State of Orissa to pay a sum of '1,50,000/- on account of her son's death and left it open to the petitioner to claim additional amount flowing from the custodial death of his son. In the said case also, there was a report of the District Judge which was disputed by the respondents and the Hon'ble Apex Court came to the conclusion that there was a constitutional obligation on the Court for doing complete justice and for enforcing the fundamental rights. The Court was not powerless to grant any relief to the petitioner for recovery of damages and the remedy in public law is more readily available. The relevant portion of the judgment reads as under:

“33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court

or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, which the court moulds the relief by granting" compensation in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of the exampellary damages' awarded against the wrong-doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

(12) Similarly, in **Dr. Mehmood Nayyar Azam** (supra), the Hon'ble Apex Court came to the conclusion that a social activist who was abused and assaulted by police authorities and photographed while holding a placard that he was a cheat, fraud, thief and rascal, was entitled for compensation and awarded a sum of Rs.5 lacs towards compensation which was directed to be paid to him. A Division Bench judgment of this Court in **Court on its own Motion** (supra), directed the State to pay compensation on account of death of a person in police custody with liberty to the DGP to recover the amount from the officials of the State. Similarly, in **Varinder Kaur** (supra), a Single Bench of this Court also directed that a sum of Rs.3 lacs were to be paid to the heirs of the missing persons who

had been abducted by the police officials even though criminal proceedings were then pending, on the strength of a report of the Additional Sessions Judge that it could not be established that they had been abducted by the said police officials but they had been abducted by the police, which is similar to the situation in hand. A three Judge Bench judgment of the Hon'ble Apex Court in *Sube Singh versus State of Haryana (5)*, while directing a CBI enquiry for police harassment, did not grant compensation since enquiry had been ordered but came to the conclusion that compensation could be granted under Article 226 of the Constitution of India and the persons were free to claim additional compensation by way of civil or criminal proceedings. Relevant portion of the judgment reads as under:

“38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Civil Procedure.”

(13) Coming to the quantum of compensation which is claimed to the tune of '5 lacs, this Court is of the opinion that the incident is of 1989 and more than 23 years have elapsed since the death of Shiv Charanjit Singh in the alleged false encounter, who, admittedly, was a B.Sc. student in the Punjab Agriculture University, Ludhiana and even if he had taken employment as a Clerk in private enterprise, he would not have earned less than '5000/- and if a multiplier of 18 is applied, he would have been entitled for a sum of '10,50,000/- and if interest is to be awarded, the amount would triple over the said period. The petitioner would be entitled to at least 20% of that amount, and therefore, the sum of '5 lacs, as claimed for the compensation on account of death of her son cannot be held to be unreasonable, in any manner.

(Mehinder Singh Sullar, J.)

(14) Accordingly, the present writ petition is allowed and the petitioner is awarded a sum of '5 lacs for the death of her son who had been picked up by the police officials and was shot dead in a police encounter. This amount would be adequate compensation for the aggrieved mother whose young son was done to death after having been picked up and shown to have been shot dead in an encounter.

(15) Writ petition is allowed accordingly. The said amount be paid by respondent No.1, within a period of 2 months from the date of receipt of a certified copy of this order.