
Before T.P.S. Mann, J

MOHINDER SINGH,—*Pettitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

CRIMINAL MISC NO. 21859/M OF 2005

22nd August, 2006

Code of Criminal Procedure, 1973—S.482—Third degree physical torture of a person by an Intelligence Officer leading to permanent disability, mental trauma and loss of earning—Claim for compensation—Question as to who is responsible for alleged torture is to be decided after leading evidence of both parties in an appropriate proceedings—Medical evidence clearly showing that the person has become handicapped on account of third degree torture at the hands of officer—Mere fact that the person was a habitual offender and operating with his gang is no ground that he should have been dealt with in such manner—Interim compensaiton of Rs. 50,000 to be paid by Union of India ordered.

Held, that the scope of the present petition under Section 482 Cr. P.C. may not permit this Court to decide as to who was responsible for the alleged torture/atrocities committed upon Dalip Singh. For that purpsoe the Court would require both the parties to lead their respective evidence. That can be done only in appropriate proceedings, like filing of a civil suit by Dalip Singh for claiming damages. Prima facie it is respondent No. 3 who appears to have committed torture/atrocities upon Dalip Singh as a result of which the latter has become a handicapped person. This Court can only apply balm to the injuries of Dalip Singh. In that direction this Court may like to award an amount of Rs. 50,000 to be paid to Dalip Singh as interim compensation. The said amount ought to be paid by Union of India as respondent No. 3 allegedly acted under the colour of his office being an Intelligence Officer with Narcotics Control Bureau.

(Para 11)

R.S. Bains, Advocate, *for the petitioner.*

Naveen Chopra, Advocate, *for respondent Nos. 1 and 3.*

Ms. R.K. Nihalsinghwala, DAG, Punjab, *for respondent No. 2.*

JUDGEMENT

T.P.S. MANN, J.

(1) By way of the present petition, the petitioner has sought payment of adequate compensation for extreme physical third degree torture of Dalip Singh s/o Kartar Singh, leading to fracture of his both hip joints and, despite treatment, becoming a handicapped person.

(2) The petitioner has stated in the petition that Dalip Singh is his nephew being his sister's son. He is aged 40 years, married and having three minor children. It is alleged that said Dalip Singh went to his in-laws' village situated at a distance of 10/12 kilometers from his own village. He was taken in custody from there by respondent No. 3, during the night intervening 7th and 8th of April, 2004. He was physically tortured and his legs were pulled apart, leading to fracture to his hip joints. The nearest Court was merely at a distance of 10 kilometers from the place of his arrest. he was not disclosed any ground of his arrest. He was interrogated regarding one Constable Kali Dass, about whom he had no knowledge. On account of extreme physical torture committed upon him, he was unable to walk and climb the stairs.

(3) It was further alleged that Dalip Singh was produced before the Illaqa Magistrate on 8th April, 2004 at 7.40 P.M. at his residence and thereafter remanded to judicial custody on 8th April, 2004 at 11.00 P.M. He was not given proper medical treatment. An application was finally moved by Dalip Singh to the Court that he had serious injuries on his person and thus, he be got examined from a Board of Doctors. This application was allowed by Sub-Divisional Judicial Magistrate, Ajnala on 17th April, 2004 by directing Superintendent, Central Jail, Amritsar to produce Dalip Singh before Civil Surgeon, Amritsar. Despite directions so issued, Dalip Singh was not got medically examined. Another application was then moved, upon which similar order was passed on 23rd April, 2004, Ultimately, a Medical Board was constituted which after examining him, gave its report dated 17th May, 2004, as per which Dalip Singh was having fracture of the left femur. He was admitted in Civil Hospital, Amritsar on 15th May, 2004 and discharged on 25th May, 2004. Operation was later on conducted on 4th June, 2004 under spinal anaesthesia. Cemented Bipolar Modular Hip Orthoplasty was done with posterior

modified Gibbson's app. with 47 mm Head and stranded stem. As per the discharge certificate (Annexure P.6) Dalip Singh was advised as follows :—

1. Flexion and adduction/not allowed of hip.
2. Squatting-not allowed.
3. Toilet only on English type seats.
4. Stairs climbing—not allowed.
5. Walk with walker.

(4) On account of the above, a prayer was made that directions be issued to Union of India to grant compensation to the tune of Rs. 10 lacs to Dalip Singh for extreme physical torture, committed upon him leading to permanent disability, mental trauma and loss of earning.

(5) Reply has been filed by the respondents wherein it has been denied that Dalip Singh was taken in custody from his in-laws house or that he was physically tortured by pulling his legs apart. It was stated that heroin weighing three kilograms was recovered from Dalip Singh on 7th April, 2004 at Lopoke-Attari Road, Ajnala and complaint under NDPS Act in that respect was pending in the Court of Additional Sessions Judge, Amritsar. His prayer for bail was declined and thereafter he moved High Court for the same relief which was rejected on 10th May, 2005. It was further pleaded that Dalip Singh was a habitual offender and operating with his gang in border districts of Punjab. He was a carrier of narcotics. His gang consisted of Tasveer Singh and Sube Singh. Regarding the presence of injuries on Dalip Singh, the respondents took the stand that as per the opinion of Dr. Surinder Singh given on 8th April, 2004 (Annexure R-1/E), the two injuries i.e. an abrasion and complaint of slight pain were on account of fall on ground/floor.

(6) Whether Dalip Singh had been arrested for being found in possession of three kilograms of heroin or that he had been illegally picked up from his in-laws' place, is not the subject matter of the present petition. The question involved in the present petition is the alleged third degree treatment of Dalip Singh at the hands of respondent No. 3. The medical evidence prima facie shows that there was a fracture of the femur in its neck area. The effect of such an injury required orthoplasty. At the time of his discharge from the hospital, Dalip Singh was directed not to squat or climb the stairs. He was asked to walk with walker and use only English type seat for answering the call of nature. Even the flexion and adduction of hip was not allowed.

(7) Mere fact that Dalip Singh was a habitual offender and operating with his gang in border district of Punjab, as alleged by the respondents, is no ground that he should have been dealt with in the manner as alleged in the present petition. No criminal deserves the third degree torture as has been met out to Dalip Singh.

(8) Prima facie it is clear that Dalip Singh has become a handicapped person on account of third degree torture received by him at the hands of respondent No. 3.

(9) In **D.K. Basu versus State of West Bengal (1)**, the Supreme Court held that torture did not go with the Constitution and in case anyone was shown to be responsible for indulging in torture, he was bound to compensate the victim and face punishment. It was held as under :—

“55. Thus, to sum up, 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

(1) AIR 1997 S.C. 610

the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress 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."

(10) In **State of Madhya Pradesh versus Shyamsunder Trivedi and others (2)**, the Hon'ble Supreme Court deprecated torture in police custody by observing that police excesses and the maltreatment of detainees/under-trials or suspects tarnished the image of any civilised nation and encouraged the men in 'khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. It was observed as under :—

"Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. 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/under-trial 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. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of

(2) 1995 AIR S.C.W. 2793

heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day.”

(11) The scope of the present petition under section 482 Cr. P.C. may not permit this Court to decide as to who was responsible for the alleged torture/atrocities committed upon Dalip Singh. For that purpose the Court would require both the parties to lead their respective evidence. That can be done only in appropriate proceedings, like filing of a civil suit by Dalip Singh for claiming damages. *Prima facie* it is respondent No. 3, who appears to have committed torture/atrocities upon Dalip Singh as a result of which the latter has become a handicapped person. This Court can only apply balm to the injuries of Dalip Singh. In that direction this Court may like to award an amount of Rs. 50,000 to be paid to Dalip Singh as interim compensation. The said amount ought to be paid by Union of India as respondent No. 3 allegedly acted under the colour of his office being an Intelligence Officer with Narcotics Control Bureau.

(12) In view of the above, the present petition is disposed of with a direction to respondent No. 1 to make payment of Rs. 50,000 as an interim compensation to Dalip Singh s/o Kartar Singh resident of Kamaske, Tehsil Ajnala, District Amritsar within a period of three months from the date, a copy of this order is received. Said Dalip Singh, however, is at liberty to take any other appropriate proceedings, including filing of a civil suit, for claiming damages, if so advised. Such proceedings, if so undertaken by Dalip Singh, be concluded expeditiously. In case, Dalip Singh is found entitled to receive more compensation by way of damages, the amount of Rs. 50,000 now being granted as interim compensation, shall be adjusted against it.

(13) It is, however, made clear that any observations made by this Court while disposing of the present petition, be not considered as an expression on the merits or demerits of the case of either party. The Court in which aforementioned Dalip Singh may take up the appropriate proceedings, shall be at liberty to decide the same on the basis of the evidence to be led by the parties.