

CASE NO.:
Appeal (civil) 1276 of 2003

PETITIONER:
S.P.S. Rathore

RESPONDENT:
State of Haryana & Ors.

DATE OF JUDGMENT: 06/05/2005

BENCH:
Y.K.Sabharwal & Tarun Chatterjee

JUDGMENT:
J U D G M E N T

Y.K. Sabharwal, J.

The challenge in this appeal is to the impugned judgment and order of the High Court directing the District Judge to conduct an enquiry to ascertain the truth of the averments made by Ashu Girhotra, respondent No.5 in his affidavit dated 3rd December, 2001 to the effect that he was implicated in false criminal cases and harassed by the police at the instance of the appellant, a police officer. The brief facts are as follows:

A news report published in Chandigarh News Line dated 5th December, 2000 stated that between 6th September, 1992 and 30th August, 1993 six first information reports were registered in police station, Panchkula in State of Haryana against Ashu Girothra, respondent No.5, his friend Sandeep Verma, respondent No.6 and Gajinder Singh in car theft cases. The police after investigation dropped the proceedings against respondent Nos.5 and 6 in two cases. The Chief Judicial Magistrate, Panchkula by order dated 30th April, 1997 discharged respondent Nos.5 and 6 in the aforementioned cases on the ground that there was no prima-facie material for framing charges against them. The news report also stated that the cases bore an uncanny coincidence that seemed to suggest that respondent No.5 was systematically framed in the car theft cases by making him sign confessional statements.

The High Court on 8th December, 2000 took suo motu cognizance of the aforesaid news report and the judgment dated 30th April, 1997 delivered by the Chief Judicial Magistrate, Panchkula discharging respondent Nos.5 and 6 in the aforementioned cases of car thefts. In its order dated 8th December, 2000, the High Court has observed that it seems the police officials posted at police station, Panchkula were let loose on respondent Nos.5 and 6 by the appellant, a senior police officer belonging to Indian Police Service, Haryana cadre in order to pressurize the sister of respondent No.5 to withdraw the complaint lodged by her against him for the offences under Section 354 of Indian Penal Code. The Court issued notices to the appellant, State of Haryana and others calling upon them to show cause as to why they should not be burdened with compensation to be paid to respondent No.5 for the harassment caused to him by falsely implicating him in car theft cases.

Neither the news report nor judgment dated 30th April, 1997 nor any other material was on record either making any insinuation against the appellant or even naming him when suo motu cognizance was taken. On what basis notice was directed to be issued by the High Court to the appellant has not been explained by learned counsel for the respondents despite our repeated queries.

After about one year of publication of news report and taking of

cognizance, an affidavit dated 3rd December, 2001, was filed by respondent No.5 in the High Court narrating the incidents that led to the filing of complaint by his sister against the appellant for offences under Section 354 of Indian Penal Code. He stated that his sister was a member of the Haryana Lawn Tennis Association, of which the appellant was the President. He stated that his sister was molested by the appellant on 12th August, 1990. Their parents took up the matter with the higher authorities and an inquiry was marked to the then Director General of Police, Haryana, who in his inquiry found that there was prima facie material to proceed against the appellant. In spite of this, no case was registered against him for several years. Then a writ petition was filed by Mrs. Madhu Prakash, their mother who is said to have been present with her daughter when the alleged incident of molestation took place. The writ petition was allowed by an order dated 21st August, 1998 directing registration of case against the appellant and handing over of the investigation to Central Bureau of Investigation. Pursuant to order of the Court, first information report was registered under Sections 354 and 509 Indian Penal Code on 29th December, 1999. It was stated that, since the alleged incident of molestation took place and till the registration of the case against the appellant, the family of respondent No.5 was harassed and pressurized by the police at the instance of the appellant to withdraw the complaint lodged against him. It was during this time the six FIRs were registered against respondent No.5. He was arrested on 25th October, 1993 and was tortured by the police and was forced to sign the confessional statements. He was so much terrorized that he could not even speak about the harassment by the police, when he was produced before the Magistrate. He was released on 29th December, 1993 the day on which his sister committed suicide.

The appellant in his affidavit before the High Court refuted the allegations made against him. He described the alleged incident of molestation as false and fabricated. He further stated that he was not involved in the registration of FIRs against respondent No.5 and that he has not used his position to pressurize the family of respondent No.5 to persuade respondent No.5's sister to withdraw the FIR lodged against him. He stated that during the time the cases were registered and investigated upon, the concerned police officials were not working under his administrative control and that there is no material to show that he has used his position to implicate respondent No.5 in the cases.

In the impugned judgment and order, the High Court recorded a finding that mere fact that six FIRs were lodged against respondent No.5, two of which were dropped by the Police after investigation and he was discharged in the other four cases by the Chief Judicial Magistrate, Panchkula, by itself is not enough to hold that he had been falsely implicated in criminal cases in order to put pressure on him to persuade his sister to withdraw the complaint lodged against the appellant. The Court further came to the conclusion that the allegations were indeed serious and if they are true, there may be a case for awarding compensation to respondent No.5 against the State and against the police officers as well. The Court held that since the averments in the affidavit of respondent No.5 have been emphatically denied by the appellant, in order to ascertain the true facts, it would be necessary to allow the parties to lead their evidence. Accordingly the matter was remitted to the District Judge, Patiala with a direction that he should himself record the evidence of the parties and submit a report to the High Court as to,

- (1) Whether the averments made by respondent No.5 in his affidavit are true or not;
- (2) Whether respondent No.5 was harassed by the police at the instance of petitioner;
- (3) Whether FIRs lodged against respondent no.5 were false and

(4) Whether those FIRs were lodged at the instance of petitioner, as alleged.

The learned counsel appearing for the appellant submits that there was nothing on record to show the involvement of the appellant in the matter at the time of taking suo motu cognizance. Neither the news report nor the judgment discharging respondent No.5 in the car theft cases made any mention about the involvement of the appellant. Further, the appellant had no control over the police officials who registered the FIRs against respondent No.5 and subsequently investigated the case, as he was posted on deputation and was not part of the regular police machinery at that relevant point of time. It was submitted that after recording a finding that there was no material to come to the conclusion that respondent No.5 was harassed by the police at his instance, it was not correct to order an enquiry so as to direct payment of compensation to respondent No.5. It was submitted that Court can order payment of compensation only when there is a prima facie or established violation of fundamental right guaranteed by the Constitution of India. When the foundational fact itself is in dispute the Court cannot order payment of compensation. The scope of the enquiry ordered by the High Court is not to find out whether there was any harassment or not, but to find out whether the appellant is responsible for the harassment of respondent No.5. It was submitted that respondent No.5 kept quiet for all years upto 2001 and for the first time in his affidavit filed on 3rd December, 2001 made false allegations about torture and harassment by the police at the instance of the appellant.

The learned counsel appearing for respondent No.5 in support of the impugned judgment submits that there is no infirmity in the order of the High Court. Since the matter was of serious nature involving violation of fundamental rights of respondent No.5, the Court has deemed it proper to direct an enquiry to find out the truth of the matter. No doubt, the Courts while exercising jurisdiction under Articles 32 and 226 can award compensation for the violation of fundamental rights guaranteed by the Constitution but such a power should not be lightly exercised. In *Rudul Sah v. State of Bihar & Anr.* [(1983) 4 SCC 141], where compensation was awarded, this Court was faced with a situation where the petitioner who was acquitted by the Court of Session was released from jail more than 14 years after he was acquitted. The petitioner approached the Court asking for his release on the ground that his detention in the jail was unlawful and claimed compensation for the illegal incarceration. The petitioner was released from jail and as regards the compensation for illegal detention the Court held that though Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, however, in order to rectify the grave injustice perpetrated upon the petitioner by illegally detaining him in jail for 14 years after his acquittal, which violated his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India, the Court in the exercise of its jurisdiction under Article 32, can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamental right. This principle has been consistently followed in the subsequent line of cases. *Sebastian M. Hongray v. Union of India* (1984) 3 SCC 82; *Bhim Singh, MLA v. State of J&K & Ors.* (1985) 4 SCC 677; *Peoples' Union For Democratic Rights & Anr. v. Police Commissioner, Delhi Police Headquarters & Anr.* (1989) 4 SCC 730; *State of Maharashtra & Ors. v. Ravikant S. Patil* (1991) 2 SCC 373; *Peoples' Union For Democratic Rights v. State of Bihar & Ors.* (1987) 1 SCC 265; *Saheli, A Women's Resources Centre & Ors. v. Commissioner of Police, Delhi Police Headquarters & Ors.* (1990) 1 SCC 422; *Arvinder Singh Bagga v. State of U. P. & Ors.* (1994) 6 SCC 565; *P.Rathinam v. Union of India & Ors.* 1989 Supp (2) SCC 716; *In re Death of Sawinder Singh Grover* 1995 Supp (4) SCC 450; *Inder Singh v. State of Punjab & Ors.* (1995) 3 SCC 702; *D. K.*

Basu v. State of W. B. (1997) 1 SCC 416; Chairman, Railway Board & Ors. v. Chandrima Das (Mrs.) & Ors. (2000) 2 SCC 465). In Nilabati Behera v. State of Orissa & Ors. (1993) 2 SCC 746] a writ petition was filed under Article 32 of the Constitution for determining the claim of compensation consequent upon the death of petitioner's son in police custody. In view of the denial by the State that death was due to police harassment when the deceased was in police custody, this Court gave a direction to the District Judge, Sundergarh in Orissa, to hold an inquiry into the matter and submit a report. The District Judge reached the conclusion that it was a case of custodial death. In view of the dispute as to the correctness of the findings in the report of the District Judge, the matter was examined afresh by this Court in the light of the objections raised. This Court also reached the same conclusion on a reappraisal of the evidence adduced at the enquiry. On this conclusion, the question arose as to the liability of the State for payment of compensation for custodial death. The Court held that:

"A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a Constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right."

The Court further observed that:

"The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the Constitutional remedy. It is this principle which justified award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental rights is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

Justice A.S. Anand (as His Lordship then was) in concurring opinion observed that:

"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 or under Article 226, 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 interest as and preserve their rights. Therefore, when 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 exemplary damages awarded against the wrongdoer 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."

It was further observed that:

"This Court and the High Courts, being the protectors on the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other from of appropriate redressal by the court in the facts and circumstances of the case, is possible\005. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interest of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned."

This legal position has been reiterated in D. K. Basu v. State Of W.B. [(1997) 1 SCC 416].

Compensation can be awarded for violation of fundamental rights in public law domain, but the facts of the case in hand do not justify the directions given in the impugned judgment for conducting of an enquiry by the District Judge so as to determine the compensation to be awarded to respondent No.5.

As already noticed, the news report as well as the judgment of discharge neither mentioned anything about the appellant's involvement in the registration of FIRs against respondent No.5 and harassment by the police at his instance nor refers to the complaint by respondent No.5's sister alleging molestation by the appellant. The High Court went beyond the material on record while taking suo motu cognizance of the matter. What made the High Court to issue notice to the appellant while taking suo motu cognizance has not been explained to us despite repeated queries to learned counsel for the respondents.

Further, the validity of the directions of the High Court has to be seen in the light of the silence of respondent No.5 for more than seven years after release from jail. The allegations of harassment by the police at the instance of the appellant were made for the first time by filing of the affidavit before the High Court on 3rd December, 2001. Respondent No.5 is neither illiterate nor any other factor has been brought to our notice which compelled him to remain silent for number of years. The alleged incident of molestation of respondent 5's sister took place on 12th August, 1990. The FIRs implicating respondent No.5 in the car theft cases were registered during the period between 6th September, 1992 and 30th August, 1993. Respondent No.5 was discharged in the car theft cases by the Chief Judicial Magistrate, Panchkula on 30th April, 1997. How the news report suddenly came to be published after so many years is again a mystery. From the date of the registration of FIRs till the date of the filing of the affidavit before the High Court, respondent No.5 made no complaint that he was harassed by the police at the instance of the appellant.

There is a serious dispute as to factum of harassment by police at the instance of the appellant. Not only the fundamental fact itself but also the very basis of issue of notice to the appellant is in serious dispute.

In Chairman, Grid Corporation of Orissa Ltd. (Gridco) & Ors. v. Sukamani Das (Smt.) & Anr. [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of god or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In Tamil Nadu Electricity Board v. Sumathi & Ors. [(2000) 4 SCC 543], it was held that when a disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortuous liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.

In Khatri & Ors. (IV) v. State Of Bihar & Ors. [(1981) 2 SCC 493], it was held that in order to succeed in claiming relief under Article 32, violation of fundamental right has to be established and that is the

foundational fact which must be established before the petitioners can claim relief under Article 32. The Court observed that:

"The court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared 'to forge new tools and devise new remedies' for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights."

In Nilabati Behera v. State of Orissa & Ors. [(1993) 2 SCC 746], the Court has also broadly specified the situations in which the remedy of providing compensation for violation of fundamental rights available under the domain of public law has to be invoked. The Court held that:

"If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate."

It was further held that:

"Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain mount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute, for civil action in private law."

The sparing exercise of power under Article 32 or Article 226 of Constitution of India for issue of directions to conduct enquiry to determine compensation in glaring and clear cases of rape by police officials, custody death, illegal detention of poor and helpless cannot be resorted to in the case of present nature.

There were no such circumstances which necessitated the exercise of such a power.

Having regard to the facts of the case and the legal principles noted above, the impugned judgment directing the District Judge to conduct enquiry cannot be sustained. Therefore, the impugned judgment is set aside and the appeal allowed.