

PUNJAB AND HARYANA HIGH COURT BAR ASSOCIATION
CHANDIGARH THROUGH ITS SECRETARY.

v.

STATE OF PUNJAB AND ORS.

DECEMBER 7, 1993

[KULDIP SINGH AND S.C. AGRAWAL, JJ.]

Public Interest Litigation—Writ Jurisdiction—Constitutional Duties of the High Court.—High Court not taking note of the controversy which shocked the bar of the region and permitting the withdrawal of a Writ Petition which sought an enquiry into the matter of the abduction of an Advocate and his family—View taken by it that the controversy raised in the Writ Petition was confined to the hardship caused to the litigating public by the strike by the Lawyers—Held not justified.

A practising Advocate K, his wife and infant child upon a visit to a Police Station were missing and were feared killed, leading to unrest and strikes by the bar in Punjab. The Government rejected the demand of the Bar setting up a judicial enquiry into the occurrence. The High Court Bar Association thereafter held an enquiry and found the involvement of the local police in the killing of the lawyer and his family. The Police recorded a confession in which the detinue admitted the slaying of Kand his family members.

A Writ Petition in Public interest was filed by a resident of Ambala seeking a Judicial enquiry by a member of the higher judiciary in the State. Thereafter the Bar Association of the Punjab & Haryana and the Bar Council of Punjab & Haryana were impleaded as parties and after taking affidavits, on record after notice, the Division Bench of the Punjab & Haryana High Court admitted the Writ Petition and observing that the petition involved general public interest and importance, referred the matter to a Full Bench of the High Court. The Writ Petition was dismissed as withdrawn after final hearing by the Full Bench. The Full Bench was of the view that the graveman of the Writ Petition was the hardship caused to the litigating public by the strike by the lawyers and therefore was of the view that the admission of the Writ Petition by the Division Bench did not convert the petition into a public interest litigation. In this view of the

A matter the request of the Bar to keep the petition alive as the relief of judicial enquiry was being sought by the Bar into the abduction and possible murder of the Advocate's family was rejected. Disposing of the appeals filed against the said judgment, this Court

B **HELD : 1.1.** The Full Bench of the High Court was not justified in closing its eyes and ears to the controversy which had shocked the Bar in the region and should have directed an independent investigation/enquiry into the mysterious abduction and alleged murder of the Advocate and his family. The High Court also failed to perform the duty entrusted to it under the Constitution. [925-F-G]

C **2.** The CBI is directed to take up the investigation of the case and the Home Secretary Punjab, Senior Superintendent of Police Ropar and the concerned SHO are directed to provide all assistance to CBI. [926-B]

D **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 7243 of 1993.

From the Judgment and Order dated 19.3.93 of the Punjab & Haryana High Court in C.W.P. No. 2376 of 1993.

Rajinder Sachher and Ravindra Bana for the Appellant.

E G.K. Chatrath, Attorney General, Walia Assistant Attorney General, R.S. Suri, G.K. Bansal and Thinlay Topagay for the Respondents.

The following Order of the Court was delivered :

F Special leave granted.

G This appeal is a sequel to an unfortunate occurrence dated January 25, 1993 wherein Kulwant Singh, Advocate, practising at the District Courts, Ropar, his wife and a child aged about two years were alleged to have been abducted and murdered. The lawyer fraternity in general and the advocates practising at the High Court and the District Courts in the States of Punjab, Haryana and the Union Territory of Chandigarh were not satisfied with the police investigation. The Punjab and Haryana High Court Bar Association (Bar Association) demanded a judicial enquiry into the occurrence by a sitting Judge of the High Court or a District Judge or a **H** Vigilance Judge belonging to the higher Judiciary. Their demand, having

not been acceded to the by State Government, the Bar Association went on indefinite strike with effect from February 6, 1993. Later on, the District Bar Associations in the States of Punjab, Haryana and the Union Territory of Chandigarh also went on strike thereby stopping the functioning of the Courts throughout the jurisdiction of the Punjab and Haryana High court. An action committee formed by the Bar Association held an enquiry into the matter and submitted its report on February 14, 1993. The report is reproduced hereunder :—

**"REPORT OF THE KILLING OF MR. KULWANT SINGH
ADVOCATE, HIS WIFE AND TWO YEARS OLD SON.**

Bar Association of Punjab and Haryana High Court formed an "Action Committee" for the release of Mr. Kulwant Singh, Advocate, his wife and two years old son, who were alleged to have been abducted/detained by the Ropar Police on 25th Jan. 1993.

The brief facts regarding detention/abduction of Mr. Kulwant Singh, Advocate and his family and child Mr. Kulwant Singh was trying for the release of one Mrs. Manjit Kaur and her minor son who were being illegally detained by Ropar Police. Manjit Kaur belonged to the village Budha Bora and Mr. Kulwant Singh also belonged to the same village. The Panchayat of said village had requested Mr. Kulwant Singh, Advocate to get Manjit and her son released from illegal custody of the Police. On 25th Jan. 1993 at about 9.25 P.M. Mr. Kulwant Singh rang up the police station to check up whether Manjit Kaur and her minor son had been released or not. He was told that two had been released and he could come and take them as the police wanted to hand them over to some responsible person. As a lady was to be brought, Mr. Kulwant Singh told his wife to accompany to the police station. There was no one to look after the child as Mr. Jagir Singh, Kulwant Singh's father was only one left behind in the house and as such the child was also taken alongwith by Mr. Kulwant Singh to the police station. Mr. Kulwant Singh and his family left for the police station, Ropar at about 9.30 P.M. in their Maruti car and have not been heard of since then. Mr. Jagir Singh, father of Mr. Kulwant Singh, met the President of the Ropar District Bar Association and informed him about the whole thing. The two then

A contacted the S.H.O. Police Station Ropar and also D.S.P. Ropar. Mr. Jagir Singh then met the S.S.P. the S.S.P. told Mr. Jagir Singh that Mr. Kulwant Singh is not in the custody of Ropar Police and that he may have been taken away by police of some other District.

B That five members led by Convener of Action Committee visited Ropar on 4th Feb. 1993 and met the members of the local Bar Association. They then met the Deputy Commissioner, Ropar at his residence and told him about their concern regarding Mr. Kulwant Singh and his family. The D.C. told the Action committee members that he had checked up with the local police and that C Mr. Kulwant Singh and his family have not been picked up by the Ropar Police. The Police has nothing against him as he is not involved in any crime. He said that the police sent wireless messages all over Punjab and that some information regarding Mr. Kulwant Singh and his family will come soon.

D The Action Committee members then met the S.P. Operation Ropar as the S.S.P. was not there. The S.P. told the Action Committee that he had never heard of Mr. Kulwant Singh and the Ropar Police had nothing against him, and neither he is wanted by the Ropar Police.

E On 5th Feb. 1993 the Action Committee members met the Chief Minister, Punjab in the morning. The Chief Minister also told them that he will enquire into the whereabouts of Mr. Kulwant Singh and that the Action Committee may contact him on 9th Feb. 1993. The High Court Bar went on strike the same day.

F On 6th of Feb. 1993, the Action Committee met the S.S.P. Ropar. The S.S.P. told the members that Mr. Kulwant Singh is not in the custody of Ropar Police. However, he said that one Lucky a known terrorist and another Lucky, son of Manjit Kaur surrendered before the Police at Patiala and Ropar respectively and G that the interrogation of both is on. He also assured the members that..... some thing..... will inform the members about it.

H On 7th Feb. 1993, Sh. Navkiran Singh the member of the Action Committee was told by the S.S.P. on telephone that Mr. Kulwant Singh and his wife and two years old son have been killed and that

he will give the details tomorrow morning. On 8th Feb. 1993, the S.S.P. informed the President of the Bar that Lucky had confessed that Mr. Kulwant Singh and his family have been killed by him and one Surjit Singh, as both wanted to surrender before the police and Mr. Kulwant Singh was against it because he thought that the surrender would expose him.

The police story as told by the S.S.P. is unbelievable. There are glaring loopholes which cannot be plugged easily. The dead bodies of the three have not been found till date. The car has been recovered but its stereo, stepnee and its number plate are missing. It is for the first time in the history of Punjab terrorism that the terrorists have tried to hide their crime by picking and throwing the dead bodies in the canal. The terrorists would not have removed the stereo and stepnee and thrown the car in the canal. The very purpose of terrorist crime is defeated if the crime is hidden, because the motive behind the terrorist crime is to terrorise. It is pertinent to mention here that the culprits surrendered before the police on the same day after the High Court Bar raised a hue and cry about the whereabouts of Mr. Kulwant Singh and his family. It is rather strange that the same police which was declaring on the roof tops that they have nothing against Mr. Kulwant Singh is now claiming in the same breath that Mr. Kulwant Singh was the king-pin and that he wanted to kill Beant Singh in the near future and also blast Ropar Thermal plant. The substantial evidence goes to prove that Ropar Police is responsible for the brutal killing of Mr. Kulwant Singh, his wife and his two years old son.

Sd/-

**ACTION COMMITTEE
KULWANT SINGH MURDER CASE.**

1. Gian Singh Dhuriwala, Convener.
2. Ajay Pal Singh, Secretary.

MEMBERS

Ranjan Lakhanpal, Puran Singh Hundal, Amar Singh Chahal, H.S. Gill, Rajvinder Singh Bains, Harbhajan Singh, Navkiran Singh, J.C.

A Verma, Surinder Lamba, R.S. Tacoria and K.C. Azad.

Chandigarh, 14 February, 1993."

B The Statement of Harpreet Singh alias Lucky, son of Gurmeet Singh Saini, aged 20 years was recorded by Shri Sohan Lal, Superintendent, Police Headquarter, Ropar on February 14, 1993. It would be useful to reproduce the said statement hereunder :—

C "Statement of Harpreet Singh @ Lucky s/o Gurmeet Singh Saini aged 20 years in connection with regard to case FIR No. 10 dated 8.2.93 under sections 364/302/201 IPC and 3/4/5/ of T.A.D.A.(P) Act Police Station Rup Nagar District Ropar.

D I reside in village Bahadurpur. We two brothers and one sister and my parents are alive. I studied upto primary at my village Bahadurpur and after doing 10th class from Government High School, Village Lodhi Majra I passed 10 + 1 from D.A.V. Public School Ropar and then I did two years course in turner from I.T.I.

E While studying at village Lodhi Majra I became friend of Kulbir Singh r/o Ghanauli and Kuldip Singh r/o Lodhi Majra. Kulbir Singh of village Ghanauli is running a shop of repairing and selling watches at village Nuhon. Kulbir Singh got him introduced Kulwant Singh Saini, a lawyer of Ropar. Kulwant Singh Saini, Advocate thereafter got him introduced to one Gurmeet Singh militant of K.L.F. (Khalistan Liberation Force) out fit. About 1/1/2 months ago I, Kuldip Singh r/o Lodhi Majra, Surjit Singh of Attari, Gurmeet Singh Chhota Fauji, Kulbir singh of Ghanauli and Kulwant Singh Saini, Advocate conspired to kill Chief Minister of Punjab by getting explosive in a truck and by exploding the same truck on the road side. Thermal Plant of Ropar was decided to explode with a bomb and it was decided to commit mass killing of people belonging to particular community at Ropar and Ghanauli. Since before this I and Surjit singh of Attari had Committed murder of Comrade Ram Murti with bullets and police had come to know about this thereafter police had started visiting my house in my search. Myself and Surjit Singh went to the house of Kulwant Singh Advocate and told him that we wanted to surrender before the police. Kulwant Singh, Advocate replied that "your would not surrender." He said "if you would surrender the entire people would be unfolded and neither Thermal Plant could be exploded

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nor the Chief Minister could be eliminated. Nor people of one community would also be killed. He also stated that if we surrendered then we (myself and Surjit Singh) alongwith our families would be got killed from militants. He also stated that "you would not go out of militants organization." I and Surjit Singh conspired and thereafter summoned Kulwant Singh to Bela Chowk on the pretext of holding community. Kulwant Singh Saini Advocate alongwith his wife and children came in a maruti car on the fixed time. I and Surjit Singh sat in his car and took him to floating restaurant at Sihhand on the pretext of holding community. On having occasion we killed Kulwant Singh, Advocate, his wife and kid with bullets and thereafter dead bodies alongwith car were thrown in Bhakhra canal. After few days I disclosed this fact to Avtar Singh Nambardar to produce him before the police. I have got recovered the car of Kulwant Singh after disclosing the place of occurrence to the police.

R.O. & A.C.

Sd/-

Harpreet Singh

Sd/-

(Sohan Lal)

Supdt. of Police

Headquarter, Ropar

14.2.93

I verified that accused Harpreet Singh @ Lucky son of Gurmit Singh Saini r/o Bahadurpur district Rupnagar has made above confessional statement in my presence which he has made with free will. Whatever Harpreet Singh stated only that has been recorded.

Sd/-

(Sohan Lal)

Supdt. of Police

Rupnagar."

One Suresh Kumar, son of Shri Som Parkash, resident of Ambala (Haryana) filed Civil Writ Petition No. 2376 of 1993 before the Punjab and Haryana High Court in public interest. The law points and the prayers in the said writ petition were as under :

A "That the following law points involved in this writ petition requires the consideration by this Hon'ble Court: —

(I) Whether it is in the interest of the respondent that doubts regarding mystery surround gruesome murder is unearthed and the truth brought out by judicial enquiry?

B (II) Whether the interest of justice requires that a judicial enquiry be conducted by a Sitting Judge of the High Court or a District Judge or a Vigilance Judge especially when the interests of the litigating masses are suffering?

C It is, therefore, prayed that a writ in the nature of *mandamus* may be issued to the respondent directing them to order a judicial enquiry by a sitting Judge of the High Court or a District Judge or a Vigilance Judge belonging to the higher judiciary, to go into the circumstances in which the gruesome murder of late shri Kulwant Singh, Advocate of Ropar, his wife and minor child took place. Any other relief which this Hon'ble Court deem proper and any direction befitting the occasion may kindly be issued."

D On March 3, 1993, a Division Bench of the High Court issued notice of motion returnable on March 12, 1993. The High Court also issued notice to the Bar Association of the High Court of Punjab and Haryana through its President and to the Bar Council of Punjab and Haryana through its Chairman. Both the Associations were directed to be impleaded as parties to the writ petition. On March 16, 1993, the Division Bench of the High Court passed the following order : —

F "Affidavits on behalf of the respondents are allowed to be placed on records.

G The petition raises substantial questions of law of obvious general public interest and importance. We consequently admit it to a Full Bench, with a request to the Hon'ble Chief Justice that considering the urgency of the issues involved, the matter be placed before the Full Bench at the earliest.

Sd/-
(S.S. Sodhi)
Judge

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Sd/-
(V.K. Bali)
Judge

March 16, 1993."

The writ petition was finally heard by a Five-Judge Bench of the High Court and was dismissed as withdrawn by a speaking order dated March 19, 1993.

Mr. G.S. Grewal, senior advocate appearing for the Punjab and Haryana High Court Bar Association, Mr. H.S. Hudda, senior advocate appearing for the Bar Council and Mr. S.C. Mohanta, senior advocate appearing for various other Bar associations vehemently contended before the Five-Judge Bench of the High Court that the writ petition was in the nature of a public interest litigation and the same could not be allowed to be withdrawn. It was further argued that since the lawyers in the States of Punjab, Haryana and the Union Territory of Chandigarh were on strike for more than six weeks and were demanding an independent enquiry into the mysterious and tragic death of Kulwant Singh Advocate and his family, it would be in the interest of justice to finally adjudicate on the points raised in the writ petition. The Bench, however, rejected the contention and dismissed the writ petition as withdrawn on the following reasoning :—

"We may point out, at the out set, that in our view the tone and tenor of the petition as framed by the petitioner is the hardship caused to the litigant public due to the strike by the members of the Bar. The real emphasis in our view, is on the situation arising out of the lawyers strike. While referring to the strike, the petitioner has no doubt mentioned about the disappearance of Mr. Kulwant Singh, his wife and their minor child in mysterious circumstances and demand of the members of the Bar that a judicial enquiry be ordered. This, in our view, is the background for the members of the Bar to go on strike. On the other hand, the written statement filed on behalf of the High Court Bar Association seeks to raise much larger issues. In other words, the tenor of the written statement filed by the Bar Association and the Bar Council is materially different from that the petition as originally framed.

In our view, there is a vital distinction between the original

A petition filed by the petitioner and the stand taken by the added respondents. Reading between the lines, the reference of the former is to save the "litigant" and that of the latter is to save the "lawyer". In one case the relief is claimed against the members of the Bar and in the other the relief is claimed against the State. We do not think that we could be justified in permitting the proxy war in the name of litigation styled as public interest litigation when the real sufferer is the litigant public. Ordinarily one would expect a broad identity of interest in the litigant and the lawyer which is lacking in the present case.

C For the purpose of the present matter, it is not necessary to go into the larger question as to the parameters of public interest litigation in general. What appears to be settled position of law is that whereas any person can set the criminal law into motion, no stranger can challenge conviction or other adverse order recorded against a person under the garb of public interest litigation. Such action can be taken by the person concerned and where such person is under a disability, by his next friend etc. This in addition to the fact that the Court on its own is bound to provide a counsel to the accused at the State expense. Since the matter relating to alleged murder of Mr. Kulwant Singh and his family members is *sub judice*, no stranger can maintain a petition under the garb of public interest litigation.

F Viewing it from another angle, the mere fact that the Motion Bench has admitted the writ petition of Suresh Kumar for consideration of the Full Bench does not necessarily conclude the question whether, in fact, the writ petition relates to a matter of public interest litigation. It was only a *prima facie* view of the matter that the writ petition was admitted, which the petitioner now seeks to withdraw. It is axiomatic that no order of the Court can prejudice the parties to the *lis*. Therefore, the admission of the writ petition by itself will not convert the petition of Suresh Kumar into public interest litigation.

H We are aware of the essential role which the Bar has to play in the present day system of justice. No one who is interested in public welfare can be happy about the strike which has gone on for over

six weeks and threatens to continue indefinitely in the future. The real sufferer is the litigant public. We, therefore, appeal to all the Associations of the Bar to call off the strike and avoid the hardship to the litigant public.

In view of the aforesaid factual and legal position, we have no option but to allow civil miscellaneous application of the petitioner seeking withdrawal of his writ petition. The same is accordingly dismissed as withdrawn."

This appeal by way of special leave is by the Bar Association through its Secretary against the Five - Judge Bench judgment of the High Court.

We have heard Mr. Rajinder Sachhar, Learned counsel for the appellant. We have also heard Mr. G.K. Chatrath, Learned Advocate General for the State of Punjab. It is not necessary for us to go into the question as to whether the writ petition before the High Court was for bringing an end to the lawyers strike or to appoint an independent enquiry - agency to probe into the disappearance and alleged murder of Kulwant Singh Advocate and his family. Be that as it may the fact remains that the Five-Judge Bench of the High Court was seized of the matter wherein the issues regarding the abduction and alleged murder of Kulwant Singh Advocate and his family were raised before it. The report of the "Action Committee" of the Bar Association, statements recorded by the police including that of Harpreet Singh @ Lucky and other relevant documents were before the High Court. The High Court was wholly unjustified in closing its eyes and ears to the controversy which had shocked the lawyer fraternity in the Region. For the reasons best known to it, the High Court became wholly oblivious to the patent facts on the record and failed to perform the duty entrusted to it under the Constitution. After giving our thoughtful consideration to the facts and circumstances of this case, we are of the view that the least the High Court could have done in this case was to have directed an independent investigation/enquiry into the mysterious and most tragic abduction and alleged murder of Kulwant Singh Advocate and his family.

We are conscious that the investigation having been completed by the police and charge-sheet submitted to the court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and

- A to instill confidence in the public mind it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI).

- B We, therefore, direct the CBI to take up the investigation of the case F.I.R. No. 10 dated 8.10.1993 under sections 364/302/201, I.P.C. and 3/4/5 T.A.D.A. (P) Act, Police Station Rupnagar, District Ropar with immediate effect. We further direct the Senior Superintendent of Police, Ropar and the Station House Officer, Police Station Rupnagar to assist the CBI in conducting the investigation. The CBI shall exercise all the powers available to it under the Criminal Procedure Code and any other provision of law. The State of Punjab through its Home Secretary is further directed to provide all assistance to the CBI in this respect.

- D We direct the Director, CBI to depute a responsible officer to hold the investigation as directed by us. This may be done within one week from the receipt of this order. The CBI shall complete the investigation within three months from the date of receipt of this order by the Director and submit its report in accordance with law. The proceedings before the Addl. Distt. & Sessions Judge, Ropar, shall remain stayed till March 31, 1994. The appeal is, thus, disposed of.

M.M.

Appeals disposed of.