

**IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA**

Civil Writ Petition No.1225 of 2001.

Judgment Reserved on:19.7.2007

Date of decision: 31.10.2007

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**Santosh Kumari**

**....Petitioner**

**Versus**

**State of H.P. & Others**

**....Respondents**

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*Coram*

**The Hon'ble Mr.Justice Dev Darshan Sud,J.**

*Whether approved for reporting ?<sup>1</sup>*

**For the Petitioner:**            **Mr.G.D. Verma, Senior Advocate  
with Mr.B.C. Verma, Advocate.**

**For the Respondents:**       **Mr.M.S.        Chandel,        Advocate  
General with Mr.Rajan Dewan,  
Additional Advocate General.**

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**Dev Darshan Sud,J.**

This petition has been instituted by the wife of deceased Shri Gulab Singh claiming compensation for wrongful death caused to her husband while he was in police custody. The petitioner has approached this Court on the allegation that her husband, who was about 28 years old, had gone to Shoghi to meet the Junior Engineer of the Public Works Department. On the evening of 8.1.2001, a telephonic call was received from Assistant Sub Inspector,

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgement?*

Kandaghat by one Shri Hira Nand asking him to call Jagdish Chand, brother of the deceased. Information was imparted by the Assistant Sub Inspector on telephone itself that deceased Gulab Singh had been arrested in an excise case and two boxes of illicit liquor had been found in his possession. The petitioner alleges that Jagdish Chand, brother of the deceased, was informed that the deceased had jumped near Boileauganj from a running bus and had sustained injuries. His condition was serious and Jagdish Chand should reach Snowdon Hospital, Shimla. A criminal case under the Punjab Excise Act was reported to have been registered against him. The petitioner pleads that Jagdish Chand (brother of the deceased) hired a private vehicle from Sadhupul and reached Kandaghat from where one ASI and two constables, his other brother Bharat Singh and Panchayat Ward Member Shri Hira Singh accompanied him. They reached Indira Gandhi Medical College at about 12.30 AM on 9.1.2001 and found that Shri Gulab Singh was lying in an unconscious state in the hospital. They noticed that he had injuries on his head, shoulders, eyes, arm, knees and private parts. He died in the hospital on 9.1.2001 at about 10.25 P.M. The petitioner alleges that her husband was not given medical treatment in time and that he had died in custody of the police because of unnatural causes. She submits that her allegations in the petition are further fortified from

the fact that the postmortem of the deceased was not carried out till 11.1.2001 i.e. about two days after his death. Other allegations pointing out as to how the death of her husband occurred and the treatment given to him while he was in detention have been made in the petition.

The respondents have denied the allegations of illegal detention of the husband of the petitioner. It is submitted that a case FIR No.4/2001 under Section 61(i)(xiv) of the Punjab Excise Act has been registered against the deceased at Police Station, Kandaghat on 8.1.2001 at about 2.30 P.M. The respondents plead that when he was being brought by the police personnel of Police Post Sairy to Police Station, Kandaghat, the deceased escaped from their custody near Boileauganj in Shimla and in this process sustained injuries on his skull. He was immediately taken to the Indira Gandhi Medical College for treatment. The respondents are emphatic in stating that the petitioner was in possession of 24 pouches of 750 ML. liquor "Mark Heero No.1", which was against law. His death in the hospital is admitted.

Petitioner has pleaded violation of Fundamental Rights, breach of Articles 14 and 21 of the Constitution of India and submits that the deceased has been deprived of his life without following due process of law and in grave and flagrant violation of right to life and personal liberty

enshrined in Articles 14 and 21 of the Constitution of India. The respondents submit that the petition involves disputed question of fact, the allegations made in the petition are unsubstantiated. In these circumstances, it is urged that this Court is not the proper forum for determining disputed questions of facts. Reliance is also placed on the report of the enquiry conducted by the Sub Divisional Magistrate(Rural), Shimla under Section 176 of the Code of Criminal Procedure (1974) which exonerates the police of any wrong doing.

I have heard learned counsel for the parties and have gone through the record.

It is undisputed that the husband of the petitioner died in Indira Gandhi Medical College. It is also a fact that he was in the custody of the police and before his arrest he had not suffered any injuries. It is also an accepted fact that the District Magistrate, Shimla had ordered an inquiry under Section 176 of the Code of Criminal Procedure by an order No.SML-PSH-Misc.(2)/93-1103, dated 11.1.2001 directing the Sub Divisional Magistrate, Shimla, to inquire into the death of late Shri Gulab Singh. The postmortem report reveals that the autopsy of the deceased was video-graphed. On an examination, the doctor found as many as nine injuries as detailed therein; namely:

- (i) A surgical stitched wound on right side of forehead 2CM above right eye brow with three stitches. No evidence of infection black eye right side.
- (ii) A grazed abrasion over front of right ear 10 bute 1 cm x 1 cm brown in colour.
- (iii) A grazed abrasion on lateral aspect of right arm, 8cm x 2<sup>1/2</sup>cm, dark brown in colour.
- (iv) A circular abrasion of 1cm diameter on the top of the right shoulder, dark brown in colour.
- (v) A grazed abrasion over the lateral aspect of right fore arm 7cm x 3cm dark brown in colour.
- (vi) Multiple small contusions with abrasions over the interior aspect of scrotum on 5cm x 6cm area, purplish pink in colour.
- (vii) A grazed abrasion over right shin, 2cm x 1cm, dark brown in colour.
- (viii) A grazed abrasion over dorsum of left knee 2cm x 1/2cm dark brown in colour.
- (ix) A grazed abrasion 1/2cm diameter, 5cm below the left knee, dark brown in colour.

The cause of injuries has been described as "falls from height". The report opines that the injuries are sufficient in the normal course to cause the death of a person.

As noticed, an inquiry was also conducted by the Sub Divisional Magistrate(Rural), Shimla. The report has been placed on the record of this case as

Annexure R-III/1 with the reply affidavit of respondents 2 and 3.

The undisputed facts are that at the time of his death, the deceased was in the custody of the police and had not suffered any injury before his arrest. The manner in which the deceased sustained injuries is sought to be disputed before me and contested as a point of disputed question of fact to urge the ouster of jurisdiction of this Court.

I cannot subscribe to this proposition of law as urged by the respondents. In exercise of jurisdiction under Article 226 of the Constitution of India, when this Court is being called upon to adjudicate on the violation of the Fundamental Rights of the deceased as also the petitioner which according to her, have been violated by the State, this Court can grant compensation. The record itself does not establish a serious dispute of facts as urged by the respondents. The postmortem report Annexure R-1/1 and R-1/T prima facie reveals that the injuries sustained by the deceased are such which can be sustained by a person if he jumps from a moving vehicle, however, the injuries and contusions on the testicles and scrotum of the deceased remain unexplained. The inquiry report by the SDM (Annexure R-III/1) leaves much to be desired. The report, admits the un-natural nature of the death of the deceased. It concludes by saying that there is no doubt that the deceased was in

custody when he died and some carelessness has to be attributed to the police officials. I am not commenting on the other part of the report lest it prejudices the case of the parties should they wish to pursue the matter further in other appropriate proceedings. Suffice it to say that there are certain aspects in the report which need consideration to prima facie establish and show that the Sub Divisional Magistrate has not discharged his duties under Section 176 of the Code of Criminal Procedure in the manner required by law. He admits that *"in the beginning the local residents, who so ever had any information of the incident in question refused to say anything till the police officials involved in the incident are transferred. Soon after this request was made the concerned police officials were transferred from Syri"*. After recording the statements of the witnesses, who according to him, had information about the death of the deceased, those which were inconvenient to the police were brushed aside, especially those which tend to show that the deceased was being carried in a private vehicle to the hospital in an injured condition and not in a bus as alleged and those which directly negatived the version put forth by the police. There is another conclusion which he arrives at by stating that it is not clear whether deceased was transported in the bus or not. It is trite that proceedings under Section 176 of the

Code of Criminal Procedure are quasi judicial in nature and require serious consideration of facts to ascertain the cause of unnatural death. See: ***Harsarup Dass vs. S.Padamanabhaiah, 1972 Cri.L.J. 956.***

I have not said anything more about the inquiry lest it prejudices the rights of the parties to this petition in other proceedings to which they may have recourse. One other fact which needs to be considered and that is that two witnesses to the so-called incident of the deceased jumping from the bus (as alleged by the police) have not been examined by the Magistrate. The First Information Report lodged by the police with the Boileauganj Police Station (Annexures P-1 and P-1/A) narrates that a soldier was manning the CMP Check Post and a lady was present at the spot where the deceased had purportedly jumped and have witnessed the incident. For reasons best known to the Magistrate, he has not thought it fit to examine these two persons.

Award of damages in writ proceedings for illegal detention, death and torture in police custody is now well established in law. In ***SAHELI, a Women's Resources Centre through Ms.Nalini Bhanot and others vs. Commissioner of Police, Delhi and others, AIR 1990 SC 513***, the Hon'ble Supreme Court, dealing with a case where death had been caused by beating and assault by the Station House Officer, held that in the matter of liability of the State for tortuous acts etc., the



State would be liable and granted compensation. In ***Nilabati Behera (Smt.) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa and Others***, (1993)2 SCC 746, the Court held:

"10. In view of the decisions of this Court in ***Rudul Sah v. State of Bihar***, (1983)4 SCC 141, ***Sebastian M.Hongray v. Union of India***, (1984)1 SCC 339, ***Sebastian M.Hongray v. Union of India***, (1984)3 SCC 82, ***Bhim Singh v. State of J&K***, 1984 Supp SCC 504, ***Bhim Singh v. State of J&K*** (1985) 4 SCC 677, ***Saheli: A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters***, (1990)1 SCC 422 and ***State of Maharashtra v. Ravikant S.Patil***, (1991)2 SCC 373, the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the constitution is a remedy available in public law, based on strict liability

*for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings.... ..”.*

In ***Consumer Education and Research Centre and Others vs. Union of India and Others***, AIR 1995 SC 922, the Court held that in public law grant of compensation is a remedy available under Article 32 or 226 of the Constitution of India, for the enforcement and protection of human rights and fundamental rights guaranteed by the Constitution. The defence of sovereign immunity is inapplicable and alien to the concept of protection of and guarantee of fundamental rights. The Court held:

**"31.** ... .. It is, therefore, settled law that in public law claim for compensation is a remedy available under Article 32 or 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence being available for constitutional remedy.

*It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law".*

To similar effect is in ***D.K. Basu vs. State of West Bengal, (1997)1 SCC 416*** holding that:

**"44.** *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected*

and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

**45.** The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizen. The Courts have the obligation to satisfy the social aspirations of the citizen because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the

deceased victim, who may have been the bread winner of the family.

**54.** Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, 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 wrongdoer. 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 the peculiar facts of each case and no strait-jacket 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".

**(emphasis supplied)**

Two other decisions need be noticed and those are, **Sheela S.Yerpude vs. Home Department, Mumbai and others, 2005 CRI.L.J.2224** and **Siddhu and others vs. State of U.P. and others, 2002 CRI.L.J. Allahabad, 4546**, following the decision of the Hon'ble Supreme Court, as noticed before. I may only add that in the case of **Sheela S.Yerpude vs. Home Department, Mumbai and others, 2005 CRI.L.J.2224**, High Court of Bombay was adjudicating a matter where the deceased had died in police custody and his arrest was made contrary to the mandate laid down in **D.K. Basu's** case (supra).

These principles of law being well established, the objection taken by the respondents that this Court in exercise of writ jurisdiction, cannot award compensation and that the petitioner should be relegated to the remedy of filing a Civil Suit cannot be accepted. In the totality of the facts and circumstances established in the case, there is no substance in the argument put forth by the respondents that the remedy by way of writ petition cannot be resorted to by the petitioner since the matter can be determined in a suit instituted by the petitioner for the redressal of her grievance and she should be relegated to such a remedy.

In ***Shakila Abdul Gafar Khan (Smt) vs. Vasant Raghunath Dhoble and another, (2003) 7 SCC 749***, the Hon'ble Supreme Court voiced its concern about the growing tendency of custodial violence and torture which had assumed alarming proportions it was held:-

*"2. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of human Rights in 1948 which marked the emergence of a worldwide trend of protection and*

guarantee of certain basic human rights stipulates in Article 5 that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment of punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

**3.** If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.

**4.** Article 21 which is one of the luminary provisions in the Constitution of India, 1950 (in short the 'constitution') and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The Article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i. e. personal liberty has an important role to play in the life of every citizen.



Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of criminal Procedure, 1973 (for short the 'code') deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is therefore difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandies's observation which have become classic are in following immortal words: "government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the

*Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself", (in (1928) 277 U.S. 438, quoted in (1961) 367 U.S. 643 at 659).*

**5.** *The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghbir Singh's case (supra) more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in Gauri Shanker Sharma v. State of U.P. (AIR 1990 SC 709), Bhagwan Singh and Anr. v. State of Punjab (1992 (3) SCC 249), Smt. Nilabati Behera @ Lalita Behera v. State of Orissa and Ors. (AIR 1993 SC 1960), Pratul Kumar Sinha v. State of Bihar and Anr. (1994 supp. (3) SCC 100), Kewal Pati (Smt.) v. State of U. P. and Ors. (1995 (3) SCC 600), Inder singh v. State of Punjab and Ors. (1995 (3) SCC 702), State of M.P. v.*

*Shyamsunder Trivedi and Ors. (1995 (4) SCC 262) and by now celebrated decision in Shri D.K. Basu v. State of West Bengal (JT 1997 (1) SC 1) seems to have caused not even any softening attitude to the inhuman approach in dealing with persons in custody.*

**6.** *Rarely in cases of police torture or custodial death is there direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.*

**7.** *The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact-situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets*

encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lockup 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 civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial 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 of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore,

*deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens will be a sad day for anyone to reckon with."*

In the present case, the material on the record leaves no doubt in my mind that the death of the deceased-husband of the petitioner is not because of causes as alleged by the police and resultant reluctant endorsement by the Sub Divisional Magistrate. In-fact, the report of the Magistrate indicates that the police was responsible for the death of the husband of the petitioner although this has not been said in so many words. In conclusion, Magistrate observes that the police cannot be absolved of carelessness. A reading of the report clearly indicates that inconvenient facts and submissions have been glanced over and contradictions in the versions of the police and the statements of the witnesses have been ignored. I have no doubt in my mind that a reading of the inquiry report clearly reveals that the Sub Divisional Magistrate while acknowledging that the version put forth by the police was not altogether the correct version, yet proceeded to exonerate them merely by adopting the doctrine of "benefit of doubt" on vague grounds.

What is revealing is that the mandatory directions in **D.K. Basu's** case (supra) have not been followed by the respondents. In that case, the Court had issued the following mandatory directions to be followed in case of arrest and detention of an accused person:

*"36. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures : (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register. (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest. (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or*

other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest. (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained. (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is. (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "inspection Memo" must be signed both by the

arrestee and the police officer effecting the arrest and its copy provided to the arrestee. (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well. (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the (sic) Magistrate for his record. (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. (11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.



**37.** Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

**38** The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier".

On the record I do not find compliance of any of these directions. The inquiry report also accepts the carelessness of the police; the two eye witnesses to the alleged incident of the deceased jumping from the bus and sustaining the fatal injuries have not been examined and the injuries on the scrotum and testicles of the deceased have not been explained.

This petition is, accordingly, disposed of with the following directions:-

- (a) The petitioner shall be paid a sum of Rs.two lacs which will not be recoverable from her.

(b) It will be open to the petitioner to institute proceedings in a Court of competent jurisdiction for damages or any other infringement of her rights which she may be able to establish and in case such an action is brought by her, the amount of Rs.two lacs will be deducted from the ultimate award made by the Court. The petitioner is also free to approach the State Human Rights Commission for redressal, in case she so desires for any other or further relief.

This petition is accordingly allowed to the extent as indicated above. There shall be no order as to costs.

**October 31, 2007.**  
**(aks)**

**(Dev Darshan Sud)**  
**Judge.**