

**THE HIGH COURT OF MEGHALAYA AT
SHILLONG**

: JUDGMENT:

WP (C) NO. 213 OF 2014

Smti. Meena S Marak	::	Petitioner
Versus		
State of Meghalaya and Others	::	Respondents
Date of Judgment	::	28.02.2018

HON'BLE THE CHIEF JUSTICE SHRI TARUN AGARWALA
HON'BLE SHRI JUSTICE S.R. SEN

Shri S Dey, for the petitioner.

Shri S Sen Gupta, for the respondents 1 to 6 and 8 to 12.

Shri K Paul, for respondent No. 7

AFR BY THE COURT: (per Hon'ble the Chief Justice) (Oral)

The petitioner has prayed for the following reliefs:

- "1. Admit the Petition, call for the records and call upon the Respondents to showcause;*
- 2. Upon cause shown, if any, and upon hearing, be further pleased to:*
 - (a) Direct the Central Bureau Of Investigation to enquire into the circumstances, causes & reasons leading upon the death of the son of the Petitioner, (L) Shri Balsan S Marak on 20.05.2014, including identifying the person(s) responsible for the same, and also being vested with the power to cause a fresh post-mortem to be conducted of the deceased body of the son of the Petitioner, by the Board of Central Government doctors. The said committee may kindly be further directed to submit its report to this Hon'ble Court within a specific time frame to be set by this Hon'ble Court.*
 - (b) Direct the State Respondents to pay a compensation of Rs. 21,00,000 (Rupees Twenty One Lakhs) to the writ petitioner for the illegal detention of the deceased son of the Petitioner and for the illegal torture inflicted upon him, all of which had led to his death on 20.05.2014.*
 - (c) Direct the State Respondents to constitute Meghalaya Human Right Commission as per the guidelines of the National Human Rights Commission.*
 - (d) Be further pleased to pass such other order or orders as Your Lordship may deemed fit and proper in the facts and circumstances of the case.*

AND

In the interim pending disposal of the Writ Petition Your Lordship may be pleased to pass necessary direction to the Respondents to hand over the post-mortem report to the Petitioner.

And for which act of kindness the Humble Petitioner as in duty bound shall ever pray.”

The petitioner's son died in judicial custody on 20.05.2014. The background leading to the death of the petitioner's son Balsan S Marak, according to the petitioner is, that the petitioner's son was declared successful passing out in first division in Class XII Examination. After collecting his mark sheet, his friend Chegan N Sangma requested the petitioner's son on 12.05.2014 to accompany him to Damalgre between 1.00 p.m. to 2.00 p.m. to assist him with regard to the releasing of the mother of Chengan N Sangma, who was arrested in another case at Tura Police Station. Accordingly, the petitioner's son took his friend Chegan N Sangma and on reaching Damalgre junction, his friend called one Smti. Chingje R Marak, who is the eventual complainant in the petitioner son's case and also who was one of the victims in the case of the mother of his friend. It is contended that the petitioner's son along with his friend met the complainant and requested her to help them for the purpose of getting the release of the mother, namely, Smti. Jaynie Ningring N Sangma. She agreed to help but submitted that she would only give the statement to a person, who would eventually protect her. The friend of the petitioner's son contacted one Smit. Neetu N Marak who is a well known lady to accompany them to the police station. It was further contended that they arrived at the residence of Smti. Neetu N Marak but she declined to accompany them to the police station. She however, asked the complainant that she should go in her car along with the driver as she was pregnant. The complainant however, refused to do so, and eventually went to the Police Station with the petitioner's son on his motorcycle where she was dropped. It is contended that the petitioner's son waited outside the police station and after some time, the

driver of Smti. Neetu N Marak and the friend of the petitioner's son, Chegen N Sangma arrived at the spot and found that the petitioner's son was surrounded by the police personnel. It is alleged that the gunman of respondent No. 7 i.e., the Superintendent of Police who is also arrayed as respondent No. 11 was assaulting the petitioner's son and eventually took him inside the police station.

According to the petitioner, the petitioner's son was detained from the evening of 12.05.2014 and was only produced before the Magistrate on 14.05.2014 after more than 24 hours without supplying the reasons for detention or for his arrest nor any information was given to the relatives. It is alleged that the petitioner's son was brutally assaulted outside and inside the police station resulting in the fracture on his left elbow and forearm. It is alleged that the petitioner's son was beaten up in the head which led to a discharge from his ears. It is contended that without any medical treatment, the petitioner's son died in judicial custody on 20.05.2014. It is further alleged that a perfunctory post-mortem was carried out. A copy of the First Information Report was not supplied and eventually the petitioner had to lodge a First Information Report in the evening of 20.05.2014 with regard to the death of her son in police custody. On these allegations, the writ petition was filed seeking the aforementioned reliefs.

The respondents in their affidavits have not denied the death of the petitioner's son in judicial custody. However, each one of the respondents have categorically asserted with vehemence that no police personnel assaulted or gave third degree torture to the petitioner's son either outside or inside the police station. It was further contended that necessary medical treatment was given as required under law.

In the light of the aforesaid contention, the Court from time to time had directed various authorities to file their affidavits. During the pendency of the petition, a magisterial enquiry was held followed by a High Level Inquiry conducted by the Commissioner, Garo Hills. On the First Information Report lodged by the petitioner, the authorities eventually transferred the investigation to the CID. The CID submitted a report to the Court only on 30.06.2017. According to the respondents, the Court has taken cognizance of the said report but is yet to frame a charge on the eight police personnel, who are named in the charge-sheet.

The respondent No. 7, who was the then Superintendent of Police of Tura Police Station and who had a major role to play has admitted that the death of the petitioner's son occurred in judicial custody but has specifically denied any assault on the petitioner's son. According to his affidavit and the statement, which he made before the High Level Inquiry conducted by the Commissioner, respondent No. 7 contended that on receiving an intelligence report, the petitioner's son and his friend were apprehended and detained and a formal arrest was made only in the evening of 13.05.2014 when the complainant lodged a First Information Report pursuant to which the petitioner's son was produced before the Magistrate on 14.05.2014 wherein, by an order, the Magistrate remanded the petitioner's son in judicial custody for fourteen days. It was contended that when the petitioner's son complained of pain and fever, necessary medical attendance was given and that he was sent to the hospital, but before treatment could begin he died.

We find that the contention raised by the petitioner as intimated to her by the petitioner's son while he was in police detention matches to a

large extent by the statement given by the complainant under Section 161 Cr.P.C. and with the contents of her FIR. The sequence of events is more or less the same.

What is surprising is the stand taken by the respondents, namely, that as per the medical report, the petitioner's son already had a swelling on his left forearm for about a week and therefore, contended that the injury which was depicted in the medical reports and other reports was prior to his detention and arrest. This stand of the respondents specially respondent No. 7, 8 and 11 was disbelieved by the CID in their report.

In the light of the rival contentions raised by the parties, we have heard Shri S Dey, learned counsel for the petitioner. We have also heard the petitioner in person, Shri S Sen Gupta, Addl. Senior GA for all the respondents except respondent No. 7 and Shri K Paul, learned counsel for respondent No. 7. During the pendency of the writ proceedings the Human Rights Commission was constituted and therefore to that extent, one of the reliefs claimed by the petitioner has been met.

According to Shri S Sen Gupta, learned Addl. Sr. GA, corrective measures were taken by the State Government, a magisterial inquiry was held, a high level inquiry was also held and on the complaint filed by the petitioner, the investigation was handed over to the CID, who has charged-sheeted eight police personnel. It was also contended that initially the Commissioner offered an *ex gratia* payment of Rs. 3,00,000/- to the petitioner, which was subsequently extended to Rs. 10,00,000/- by the State Government but the said payment was refused by the petitioner and, eventually by an order of the Writ Court, an amount of Rs. 10,00,000/- was deposited before the Registry.

Shri K Paul, learned counsel for respondent No. 7 contended that the petitioner's son died under unfortunate circumstances for which there is no defence for the respondent but contended that at this stage, cognizance has been taken by the Trial Court and therefore, there is no need for the Court to direct a fresh investigation through the Central Bureau Investigation (CBI) or direct a fresh post-mortem after exhuming the body. It was contended that if the petitioner was aggrieved by the reports submitted by the CID, it was open for the petitioner to move an appropriate application before the Trial Court under Section 319 Cr.P.C. It was contended that the exercise of powers under Article 226 of the Constitution of India in re-investigating or for conducting a fresh post-mortem should be exercised sparingly only in exceptional cases. In support of his contention, the learned counsel has placed reliance upon the decisions reported in ***K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Others : (2013) 12 SCC 480, State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others : (2010) 3 SCC 571, Sakiri Vasu v. State of Uttar Pradesh and Others: (2008) 2 SCC 409 and Pooja Pal v. Union of India and Others : (2016) 3 SCC 135.***

In rejoinder, the learned counsel for the petitioner upon instructions, submitted that they do not want to press the relief of exhuming the body for the purpose of conducting a fresh post-mortem but contended that the petitioner has a right to know the reason and cause of death of her son and that appropriate investigation should be made in order to find out the real culprits. According to the petitioner, all the culprits have not been named by the CID in their report.

In the light of the pleadings that have come before the Court, one fact which is apparent and which is not in dispute is, the fact that the petitioner's son died in judicial custody. The respondents however, denied any beating, assault or torture on the petitioner's son outside or inside the police station. The CID has disbelieved their version and has come to a conclusion that the petitioner's son was beaten up and assaulted by the police personnel. In order to go further into the matter, we find from the extract of the G.D. entry of Police Station, Tura, which has been supplied to the Court in the affidavit given by the Superintendent of Police, CID as well as from the photo copies, the G.D. Entries given by the petitioner indicates that the petitioner's son was detained on 12.05.2014 and was sent for medical examination at 9.30 p.m. The G.D. entry at 11.30 p.m. indicates that he had suffered a fracture in the right arm and that there was a grievous injury. The entry of fracture in the right arm in the G.D. is incorrect inasmuch as the medical report indicates fracture in the left arm. The medical report on 14.05.2014 indicates swelling on the left forearm and inability to move his left hand. The G.D. entry of Woman's Police Station, Tura indicates that the petitioner's son was detained at 6.45 p.m. on 12.05.2014 and at 9.15 p.m., he was further detained for further interrogation at the behest of the then SP, respondent No. 7. The G.D. entry of Woman's Police Station, Tura indicates that the FIR was lodged by the complaint at 6.00 p.m. on 14.05.2014.

The inquest report indicates bruises on the left elbow and discharge from the right ear. No fresh wounds were found. The inquest report further indicated that the petitioner's son died of internal injuries and that foul play could not be ruled out.

The post-mortem report is inconclusive. The Court, at the outset, can say that it was a shoddy piece of work done only to complete the formalities by the medical authorities. Many columns are not filled up for reasons best known only to the respondents. The post-mortem report however, indicates that the face was eaten up by ants, there were bruises and internal injuries and there was foul smell coming but death could not be ascertained till toxicological analysis report was submitted. What is most important is, that the post-mortem indicates that there were no fresh wounds and that the ante-mortem injuries were four to five days old.

In the light of these reports, it is apparently clear that no injury was caused to the deceased from the time he was sent to judicial custody i.e., from 14.05.2014 till 20.05.2014. The injuries were caused when he was detained and interrogated in the police station from 12.05.2014 to 14.05.2014 i.e., before the time he was produced before the Magistrate. The medical report of 12.05.2014 is the clear indicator that his arm was broken when he was medically examined at 9.30 p.m. on 12.05.2014. The Chief Judicial Magistrate in his affidavit before the Court has submitted that the petitioner's son complained of twisting of his arms by the police personnel but chose to ignore such complaints made by the deceased.

Thus, from the aforesaid, it could safely be concluded that third degree assault was hurled upon the petitioner's son from the time he was detained on 12.05.2014, which caused internal injuries on his head, chest and arm. The post-mortem report indicates certain congestion and internal injuries. Thus, it can be safely presumed that death was caused due to internal injuries while the deceased was in the police custody.

The contention of the respondents that no assault was made upon the deceased thus, cannot be accepted. The contention that the deceased arm was already broken before he was detained cannot be believed. We find that the petitioner's son had driven a motorcycle and in fact, taken the complainant to the police station which fact is also proved by the statement of the complainant. The CID in their report has also taken a similar stand. Thus, the affidavits of respondents No. 7, 8 and 11 on this aspect cannot be believed and in fact, they have committed perjury before this Court for stating false facts.

In this regard, we find that shoddy investigation has been made, initially by the Magistrate; the High Level Inquiry conducted by the Commissioner of Garo Hills was nothing but a cover-up exercise. In fact, he has praised the medical doctors for their work and has put the entire blame for the lack of support and facilities available in the hospitals. The Commissioner has given a clean chit to the police personnel contending that no assault was made upon the deceased. A perusal of the report gives an inkling to the Court that it was nothing but an exercise to cover up the misdeeds of the Police Department. The Commissioner has not considered the fact as to why the petitioner's son was detained for more than 24 hours. The Commissioner has not considered the fact as to why medical treatment was not given to the petitioner's son for more than a week inspite of the fact that on the very first day, it was reported that the petitioner's son had a fracture. No steps were taken by any medical authority to conduct an operation. From a perusal of the medical reports and the OPD reports, one finds that the petitioner's son was being used as a shuttlecock shuttling him from the ENT Department to the Orthopedic Department. In fact, the Orthopedic doctor after looking into

the matter on 17.05.2014 only prescribed pills and said that he would review the matter on 24.05.2014. The Court fails to imagine that when the deceased had suffered a fracture in the elbow and possible in the forearm, he was in pain, his skin had become bluish black and the doctor did not bother to take an X-ray or to conduct an operation for eight long days. On the other hand, the Commissioner gives a clean chit to the doctors. Nothing can be more farcical in the submission of such reports.

The role of the Additional Superintendent of Police and the Superintendent of Police are not upon board. For whatever reasons neither the Commissioner in his report nor the CID had considered their involvement. Admittedly, the SP had given the direction to intercept the petitioner's son and his friend and, on his direction, the petitioner's son was detained and thereafter, arrested on the ground of larger conspiracy in the matter of the mother of the friend of the petitioner's son. The details of this larger conspiracy has not been brought on record before the Court till date. The G.D. entry indicates the presence of the SP between 9.15 p.m. to 9.30 p.m. on 12.05.2014. The petitioner's contention in the writ petition is that the SP also assaulted the petitioner's son which fact has not been noticed by any investigating agency till date. The SP was in charge of the whole situation. It was his moral responsibility to ensure that the petitioner's son was produced before the Magistrate within 24 hours. His detention from the evening of 12.05.2014 till the evening of 13.05.2014 on the ground of suspicion without there being any written complaint was in violation of the petitioner's son's human rights envisaged under Article 21 of the Constitution as well as the directions of the Supreme Court in ***DK Basu vs. State of West Bengal: (1997) 1 SCC 416***. No justification

has been given by any authority on this illegal detention for more than 24 hours without any valid grounds. Thus, even though the Superintendent of Police and the Additional Superintendent of Police respondents No. 7 and 8 have not been named in the charge sheet, they have a lot to answer especially before the Police Department.

We find that the Police Department has done nothing and is sitting tight over the matter. When such kind of inhuman atrocities comes to the fore, it was essential for the Police Department to hold a Departmental Inquiry. It is not necessary to await the result of the criminal proceedings inasmuch as criminal proceedings and departmental proceedings work in different directions. In criminal proceedings, the guilt has to be proved beyond a reasonable doubt whereas, in department proceedings, a delinquent can be proceeded even on a preponderance of guilt of the misconduct conducted by him. In the instant case, no action has been taken by the Police Department departmentally against any of the police officials involved in the incident.

In the light of the aforesaid, we are of the opinion that there is sufficient material before the Court to come to the conclusion that the petitioner's son died in judicial custody on account of injuries caused to him while he was in police detention. We are further of the opinion that the injuries caused to the petitioner's son on his elbow, forearm and head has led to internal injuries resulting in his death. Thus, there is substantial circumstantial evidence to know the cause as well as the reasons leading to the death of the son of the petitioner, which is sufficient for the Court to contemplate on the question of awarding of compensation.

At this stage, we are of the opinion that it is not necessary for the Court to direct another investigation by the CBI or any other agency as prayed by the petitioner. We are of the opinion that the investigation can be transferred from the State agencies to the CBI only in rare and exceptional cases, especially where it is necessary to do justice and instil confidence in the investigation. Ordinarily, superior courts should not reopen the investigation and should be left open to the Court where the charge sheet has been filed, to proceed with the matter in accordance with law. We can only say that in the event the Trial Court finds that there are other persons involved in the commission of the offence, it would be open for the trial court to take suo motu action under Section 319 Cr.P.C. If the trial court finds that it is necessary to conduct a fresh post-mortem, it may do so and after giving due and valid reasons. At this stage, the Court is not inclined to accept the prayer of the petitioner for conducting a fresh post-mortem examination of the petitioner's son.

The Supreme Court has now held in a catena of cases that where there has been a deprivation of the fundamental rights, especially under Article 21 of the Constitution of India, the Writ Court can evolve new tools and award compensation. As early as in **(1993) 2 SCC 746**, the Supreme Court in ***Nilabati Behera (Smt) alias Lalita Behera v. State of Orissa and Others*** held that it was not necessary to relegate the petitioner to the private law remedy and if there was a violation of Article 21 of the Constitution on account of death in the police custody. The Writ Court under Article 226 of the Constitution could always pass orders for payment of compensation. The said decision has been reiterated from time to time and it is not necessary for this Court to dwell any further on

this issue since no opposition has been raised in this Court by the respondents.

The Court finds that initially a sum of Rs. 3,00,000/- was offered which was extended to Rs. 10,00,000/- by the State. The said amount has already been already deposited before this Court. A young life has been snuffed out on account of police brutality. The deceased had just passed out his Class XII Examination in first division. He had a future before him. There has been a violation of human rights. The petitioner's son died in agony. No medical aid was provided to him except pain killers. Even an under-trial is not denuded of his fundamental rights guaranteed under Article 226 of the Constitution of India. Custodial death is one of the worst crimes in a civilised society governed by the rule of Law. The State was responsible for the life and well being at the time of his temporary custody.

The petitioner has suffered mental agony and pain. No information was provided to her about her son's detention. No post-mortem report was provided. Even the copy of the FIR was not provided. Nothing can be worse to see the death of her son while she was alive.

Considering the facts and circumstances that have been brought on record, though no calculation can be computed for the life which has been taken away at an early age, we however, think that in order to meet the ends of justice and to give relief to the mother of the deceased i.e., the petitioner, we are of the opinion that a sum of Rs. 15,00,000/- (Rupees fifteen lacs) would be just and sufficient as compensation for the death that was caused to the petitioner's son while he was in police custody. We accordingly direct that if the petitioner presents herself before the Registrar General of this Court on any working day and is

identified by the petitioner's advocate, the Registrar General will issue a cheque of Rs. 10,00,000/- along with interest, if accrued, if any, to the petitioner within 24 hours. The balance amount of Rs. 5,00,000/- shall be paid by the State Government within four weeks from the date a certified copy of this order is placed by the petitioner before the Chief Secretary to the Govt., of Meghalaya. The Chief Secretary even otherwise will ensure that the sum of Rs. 5,00,000/- is released and paid to the petitioner within the stipulated period of four weeks.

Before we part and consign the matter to the records, we are of the opinion that certain further direction is required to be given so that the Rule of Law is preserved and that action is taken against the erring officials. As we have indicated that no departmental inquiry has been held against the police officials, we accordingly direct the Director General of Police, Meghalaya, respondent No. 4 to direct the Disciplinary Authority, if any, to conduct a departmental inquiry against all the police personnel named in the charge-sheet as well as the respondents No. 7 and 8 and such other police officials, who had a role to play in the incident with regard to their role in the atrocities committed upon the petitioner's son with impunity, the violation of the human rights that is protected under Article 21 of the Constitution and violation of the directives given by the Supreme Court in DK Basu's case (Supra). Such inquiry should be initiated, concluded and action taken within one year from today. In the event, the officials are found guilty, the compensation imposed by this Court shall be recovered by the State Government from these officials.

The doctor's role in the entire episode is pathetic. The treatment given to the petitioner's son in a cursory manner and inaction on the

part of the doctors is writ large. The Court is appalled by their inaction in not treating the fracture and other wounds, which were clearly indicated in the reports. We accordingly direct the Chief Secretary of the Govt., of Meghalaya to direct the Disciplinary Authority to initiate departmental proceedings against the doctors involved in the entire episode with regard to their negligence in handling the matter. Such departmental inquiry should be initiated and concluded and action, if any, taken within one year from today.

The Chief Judicial Magistrate's role is also casual. In spite of the deceased stating that his arm was twisted and was manhandled by the police personnel, he took a very casual approach and, without considering the seriousness of the injury remanded the petitioner's son to 14 days' custody. The Court is of the opinion that a preliminary inquiry is required to be done against the role of the Chief Judicial Magistrate in handling the matter casually. We, accordingly direct the Registrar General of this High Court to issue a show cause notice to the Chief Judicial Magistrate concerned and, upon submission of his reply, the matter would be considered by the High court on the administrative side and, if necessary, a full-fledged disciplinary inquiry against him be initiated.

We also find that the trial against the police officials pursuant to the report submitted by the CID is still at its nascent stage. The charge has not as yet been framed against the accused. We accordingly direct the Trial Court to take immediate steps in conducting the trial and conclude the trial within one year from today. We make it clear that the Trial Court will not grant undue adjournments to the parties and ensure

that the trial is concluded within a year. If necessary, day to day proceedings may be held.

We further direct that the trial court will not be influenced by any observation made by this Court. Any observations made are only tentative in nature and cannot be utilised in the trial or in the departmental proceedings.

We also direct the Registry to send a certified copy of this order to the Chief Secretary, to the Director General of Police and to the trial court within 10 days from today, for necessary information and action.

Writ petition is disposed of accordingly.

JUDGE

CHIEF JUSTICE

Sylvana

Item No. SL-1