

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.169/2015

Date of order: 31.08.2023

Smt. Dorothy Marbaniang Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. N. Syngkon, Adv with
Ms. L. Phanjom, Adv

For the Respondents : Mr. K. Khan, AAG with
Ms. T. Yangi B., AAG
Mr. S. Sengupta, Addl.Sr.GA
Ms. A. Thungwa, GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

ORDER: (per the Hon'ble, the Chief Justice) (Oral)

The petition was disposed of by a judgment and order of March 22, 2016, declining the principal prayer for a reinvestigation into the circumstances leading to the death of a police official in Patharkhmah.

2. The petitioner was the mother of the deceased. The grievance of the petitioner was that the procedure under Section 174 of the Code of Criminal Procedure, 1973 had not been followed in course of the

investigation and that there was an attempt by the investigating agency to suppress the real facts and give the incident a colour of suicide.

3. There were three important allegations in the petition filed by the mother who, unfortunately, has died since. The mother pointed out an anomaly that the doctor, who had treated the deceased when he was still alive and was taken to the Patharkhmah community health centre, indicated that the gun-shot wound that the then patient had suffered was from behind his head. Such opinion revealed that the then patient had been shot on the back of his head and the bullet exited the cranium from the left part of the forehead. However, as the petitioner duly emphasised, the post-mortem examination conducted at the Civil Hospital in Nongpoh on the next day indicated that the gun-shot wound was suffered on the left forehead and the bullet entered the skull from such part and exited from slightly off the middle of the back of the head.

4. The second anomaly that the petitioning mother brought to attention was that her son was right-handed and there could not have been any good reason for him to either commit suicide or, even if he did, to use his left hand to pull the trigger. The third aspect alluded to was that the deceased police official may have earned the wrath of the

mafia which is aggressively active in the State, with connections to the most influential and the powerful, dealing with illegally-mined coal.

5. There is no dispute that about 32 trucks laden with coal, almost invariably illegally-mined, had been stopped at the Patharkhmah Outpost in the morning of January 24, 2015. The incident pertaining to what led to the death of the police officer occurred slightly before 9 pm when two junior police personnel in neighbouring lodgings said that they heard an explosion and first thought it may have been a fire-cracker, but later, on hearing a moaning sound, they followed the sound which took them to the quarters of the in-charge at the outpost and found such in-charge lying in a pool of blood in his bedroom with the front door to the modest flat and the bedroom door ajar.

6. The charge-sheet in this case was filed on October 10, 2015 in Nongpoh PS Case No.28(1) of 2015 under Section 302 of the Penal Code, 1860. Charges have since been framed against five persons under Section 306 of the Penal Code.

7. At the time that the writ petition was taken up for final disposal, the relevant Bench noticed that the investigation had been concluded. The manner in which the final order of March 22, 2016 is worded gives an impression that the relevant Bench of this Court perceived that since

the investigation had already been completed, it was a *fait accompli* and the Court could not do anything further.

8. Aggrieved by the failure of the High Court to order further investigation or reinvestigation or a de novo investigation as had been sought by the petitioner, such petitioner carried a petition for special leave to appeal to the Supreme Court, being SLP (C) No.15461 of 2016. The relevant petition was disposed of by the Supreme Court by a recent order of May 8, 2023. By such order, the matter was remitted to this Court “to decide and dispose of the writ petition afresh in accordance with law and on its own merits and taking into consideration the observations made by this Court in the case of *Sushila Devi* (supra) ...”

9. Earlier in the Supreme Court order, there is a reference to the case of *Sushila Devi* reported at (2014) 1 SCC 269 and an observation that while disposing of the writ petition this Court had “misapplied and/or mis-construed the said decision.” According to the order of May 8, 2023, in the case of *Sushila Devi*, the investigation directed by the Court to be conducted by the Central Bureau of Investigation had already been completed and, it was in such circumstances, that the Court observed that the monitoring of the matter any further was not warranted.

10. The Supreme Court went on to notice a judgment rendered in Criminal Appeal No.13 of 2023 (*Anant Thanur Karmuse v. The State of Maharashtra*) and quoted paragraph 11 therefrom which referred to two other previous judgments reported at (2016) 4 SCC 160 (*Dharam Pal v. State of Haryana*) and (2013) 15 SCC 578 (*Bharati Tamang v. Union of India*).

11. In essence, what the order dated May 8, 2023 observed was that when a Constitutional Court was in receipt of a petition complaining of irregular or insufficient or faulty investigation, the mere fact that the investigation had been completed or that a charge-sheet had been filed or that a final report had been presented under Section 173(8) of the Code would not deter the Court into looking at the perceived anomalies and directing further investigation or reinvestigation or a de novo investigation, if the circumstances so warranted.

12. As aforesaid, the Supreme Court perceived that the order of this Court of March 22, 2016 disposing of the writ petition by, in effect, refusing the prayers therein gave the impression that merely because the investigation had been concluded, the High Court was of the view that it could do nothing else in the matter.

13. It is in such circumstances that the nature of the investigation, the anomalies indicated by the petitioner and the circumstances leading to the death of the relevant official have been gone into in course of the present set of hearings.

14. Both the case diary and the detailed charge-sheet, together with photographs appended thereto, were called for. During this period, the further conduct of the trial was injuncted, so that it was first ascertained whether the investigation that was conducted or the report filed thereupon had to be disregarded or whether any further or fresh investigation was called for.

15. It is in such light and on the basis of the Supreme Court directions that the matter has been assessed. Two junior police personnel, who were cooking at their lodgings adjacent to the quarters of the in-charge of the Patharkhmah Outpost, were the first to reach the place of occurrence and it appears from their independent statements that they heard the sound of an explosion and their first impression was that it must have been a fire-cracker. They later heard a continuing groan and followed the sound to the quarters of the in-charge and entered through the open door of the quarters and into the open bedroom to find the officer lying in a pool of blood with his face down on the left side.

16. Such police officials recounted that they did not touch anything but found that the left hand of the bullet-hit officer clutched a fire-arm. There were senior police officials nearby, including a person from Ri-Bhoi, who were called and, thereafter, since they found the relevant officer to still be alive, upon taking photographs on a mobile phone, they quickly took him to the nearest medical facility which was the Patharkhmah CHC.

17. There is no doubt that the doctor who examined the patient observed that the gun-shot wound suffered by the official appeared to have been a shot from the back of the head with the bullet exiting the forehead. However, it must be kept in mind that the person was still alive and the primary aim of the attending medical personnel would then have been to resuscitate him and treat the injuries he suffered rather than concentrate in any great detail as to how the injuries may have occurred. At any rate, since the relevant doctor found the patient to still be alive and showing feeble signs of life, and as the facilities at the relevant CHC were inadequate, the patient was referred to GNRC Hospital in Guwahati where he was taken and where the official apparently died.

18. The relevant doctor at the Patharkmah CHC was examined in course of the trial and he repeated that in his view, on the basis of his observation at the relevant time, he thought that the person had suffered a gun-shot injury on the back of his head with the bullet exiting the frontal part of the cranium. The official also admitted that this was the first time that he had treated a bullet or a gun-shot injury.

19. A post-mortem examination on the body of the deceased police official was conducted at the Nongpoh Civil Hospital. The summary of the observations and the findings have been indicated in the charge-sheet filed in the matter. It appears that the doctor who conducted the post-mortem examination on the body at 10:50 am on January 25, 2015 noticed and recorded that the forehead wound was circular in shape and measured 1.5 cm in length and 0.9 cm in breadth while the back wound was irregular in shape and it measured 2.3 cm and 2.5 cm in breadth and length. It is elementary that, ordinarily, when a bullet first makes contact with a body or any hard object, the hole that it creates at the entry point is more regular and of lesser magnitude or dimension than the larger and more irregular hole that it creates at the exit point, subject to having covered a bit of a distance through a dense medium in the interregnum. Thus, it would be evident from the observations of the

doctor who conducted the post-mortem at Nongpoh Civil Hospital that the wound suffered was inflicted on the forehead and the bullet exited through the parietal lobe of the cranium.

20. Following the protest raised by the mother upon the findings of the post-mortem being made known to her, a further autopsy was conducted at the crematorium by personnel from the North Eastern Indira Gandhi Regional Institute of Health and Medical Sciences, which is an agency under the control of the Union government and not the State. Upon such second post-mortem examination, the report by the relevant doctors indicated as follows:

“(T)he entry wound on the frontal region of the head situated 0.5 cm to the left of the midline, the exit wound on the parietal region of the head situated 2 cm to the right of the midline and bruise around the left eye.”

21. Thus, it is evident that the doctors who conducted the second post-mortem examination agreed with the findings of the doctor who had conducted the initial examination at the Nongpoh Civil Hospital, that the deceased had been shot on his forehead and the bullet exited the skull through the back of the head.

22. The two police personnel who had first discovered the in-charge of the Patharkhmah Outpost after he suffered the gun-shot injury, did

not report anything untoward or having spotted anyone else. A more senior official reached the spot immediately as he was staying in the nearby guesthouse. Photographs were taken contemporaneously of how the body lay before the then still surviving officer was lifted and taken to the CHC. There appears to be no material to suggest any foul play or anything remiss about the place of occurrence warranting any suspicion that the fatal injury could have been inflicted on the official by any other person.

23. As to the mother's suggestion that since her son was right-handed he would scarcely use his left hand to shoot himself, it does not appear that using the left hand to hold a gun next to one's forehead and pull the trigger would cause any great difficulty to even the most compulsive right-handed person whose left hand may be as non-functional as possible. It is not difficult to imagine a gun being lifted by the lesser hand, such hand being brought close to the forehead and the trigger being pulled without difficulty. In the scenario when there is nothing else which stands out as an anomaly or even remotely suspicious, it cannot be conjectured as to why the deceased used his left hand, as long as it is evident that there may not have been any other

person at the place of occurrence or any trace of any person being present at the time of occurrence.

24. There is no doubt that the power of the mafia that runs the illegal coal business and the ancillary coke plants in this State is wide and almost all pervasive. Indeed, despite there being a prohibition on the mining of coal in the State, other than by adopting the lawful scientific method, by the National Green Tribunal and such order being expressly endorsed by the Supreme Court by or about the year 2016, the illegal mining of coal continues to be rampant in the State. For any person even with impaired vision, the train of overladen trucks carrying coal is all there to see on the National and State highways in Meghalaya; but the administration, for reasons best known to it, turns a Nelson's eye to such activities. Repeated orders of this Court over the last 18 months would reveal the frustration experienced because of the lack of action on the part of the administration. It now appears that some form of action, over the last month or so, may have been taken; but it appears to be only token action to appease the Court and not intended to arrest either the kingpins or the political supporters of the masterminds who are, obviously, on the gravy train. The malaise appears to go right to the top.

25. Returning to the matter at hand, in the light of what has been discovered by this Court of the flourishing business in illegal mining, there is no doubt that the owners of the 32 trucks or the coal that such trucks contained wielded considerable authority and influence and a part of the report is quite damning against the Block Development Officer of the area. Doubtless, no action has been taken against such official or others who may have instructed him to act in the manner that he did. While the mendacity of the entire coal business is plain to see, it is quite another to suggest that one or more of the persons involved with the trucks that had been apprehended may have been involved in killing the concerned official.

26. Ordinarily, even if a tailor-made investigation report is prepared, which the Indian judge has enough experience to discover, there are some anomalies or traces of contradiction. At any rate, in this case what is evident from not only the case diary and the charge-sheet but also from the evidence that has come on record at the trial is that it was the official himself who may have pulled the trigger on himself and not any other. As to who drove such person to commit suicide or who would be liable under Section 306 of the Penal Code, is the object of the exercise being conducted at the trial. On a careful reading of the material

produced, it does not appear that any person who may have been intricately involved in the matter has been left out or protected and, proving a charge under Section 306 of the Penal Code, is always a high ask.

27. At the end of the day, it cannot be lost sight of that a young police officer, who may not have agreed with the manner in which the illegal coal mining activities were being continued, lost his life. There can be nothing but sympathy for the family, including an apology on behalf of the State to the now deceased mother of the officer for the State having failed to protect him adequately. However, upon going through the material it does not appear that the gun-shot injury that killed the official was fired by any person other than the officer himself. On the basis of the material produced and upon it being gleaned for any anomalies, it cannot be said as to who or what may have pushed the officer to such desperation or impelled him to take his life. It is for the trial court to endeavour to unearth the truth in such regard.

28. For the reasons aforesaid, upon considering the matter afresh in the light of the directions issued by the Supreme Court and upon being alive as to the extent of the authority available to a Constitutional Court when any anomaly as to any investigation is brought to its notice, it

does not appear that, particularly after eight years after the incident, any further investigation or a fresh or de novo investigation is called for.

29. It is recorded that the matter has been gone into in considerable detail by reason of its very nature, despite the original petitioner being no longer available. Counsel originally engaged by the petitioner has been allowed to participate in the proceedings. Upon hearing both the State and Counsel formerly engaged by the original petitioner, it does not appear that this is a fit case for any further or fresh investigation to be directed.

30. It is hoped that the compensation due on account of the untimely and unnatural death of the concerned official has been paid in accordance with law to the persons entitled thereto.

31. No observation here should prejudice or influence the trial court in any manner whatsoever as the object of the present exercise was completely different. It is hoped that the trial resumes immediately and the matter is brought to its logical conclusion in accordance with law as expeditiously as possible and, preferably, within six months from date.

32. WP (C) No.169 of 2015, which was revived pursuant to the Supreme Court order of May 8, 2023, is disposed of.

33. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
31.08.2023
"*Lam* DR-PS"

