

PUNJAB AND HARYANA HIGH COURT BAR ASSOCIATION

v.

THE STATE OF PUNJAB AND ORS.

MAY 10, 1996

[KULDIP SINGH AND FAIZAN UDDIN, JJ.]

Indian Penal Code, 1860 :

Ss.364, 302, 201—Abduction and murder of an advocate, his wife and a child—Petition before High Court seeking direction for independent inquiry—High Court declining to interfere—Appeal—Directions by this Court to CBI to take up the investigation—Report of C.B.I. indicating that person accused in the case was falsely implicated and naming certain Police Officers prima facie responsible for the false implication and suggesting their prosecution as also action against D.I.G. Punjab Police for his lack of supervision—Held, as regards prosecution of the Police Officers, matter to be argued before trial court—It would be in the interest of justice to suspend the police officers during the course of the trial—The person falsely implicated would be released forthwith and the Government would pay Rs. 2,00,000 to him as compensation for sufferings caused to him because of false implication in the case in particular his remaining in jail for a long period—Government would pay Rs. 10,00,000 as compensation to the parents of the deceased Advocate.

Constitution of India, 1950:

Article 136—Compensation for murder and false implication of innocent person in the murder case—Abduction and murder of an advocate and his family members—On directions by this Court C.B.I. submitting its report indicating that person accused in the case was falsely implicated and naming some police officers prima facie responsible for false implication—This Court directing to pay Rs. 10,00,000 as compensation to parents of deceased advocate and Rs. 2,00,000 to the person falsely implicated in the case—Action to be taken against erring police officers.

Nilabati Behera v. State of Orissa, [1993] 2 SCC 746, relied on.

A 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. 23/6 of 1993.

B A.N. Jayram, Additional Solicitor General, Dinesh Mathur, Navikiran Singh, R. Bana, Sudhir Walia, R.S. Suri C.B. Babu, P. Parmesum and Debasis Misra for the Appearing parties.

The following Order of the Court was delivered :

C This Court by the order dated December 7, 1993 directed the Central Bureau of investigation (CBI) to investigate into the mysterious and most tragic abduction and alleged murder of Kulwant Singh, Advocate, his wife and their two year old child. This Court noticed the inaction on the part of the High Court in the following words:

D "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."

F The operative part of the order dated December 7, 1993. was as under:

G "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."

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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, Rupar, shall remain stayed till March 31, 1994."

This Court granted extension to the CBI from time to time for the completion of the investigation. The CBI submitted the final report to this Court on March 7, 1996 whereunder following actions have been recommended :

"(i) Harpreet Singh @ Lucky s/o of Gurmit Singh Saini, r/o vill. Bahadurpur, who is presently facing trial in case FIR No 10/93 of PS Sadar Ropar in the Designated Court, Nabha has been falsely implicated in the case.

(ii) SI Avindervir Singh, ASI Darshan Singh, Inspr. Balwant Singh and DSP Jaspal Singh are *prima-facie* responsible for the false implication of Harpreet Singh @ Lucky in the aforesaid case and are liable for prosecution for offences U/s. 193, 194, 211 and 218 IPC.

(iii) The State Government of Punjab is to be requested for taking suitable action against Shri Sanjiv Gupta, DIG, Punjab Police for his lack of supervision."

Mr. Navkiran Singh, Advocate, appearing for the Punjab and Haryana High Court Bar Association has vehemently contended that there is sufficient material on the record to prosecute the police officers for the abduction and murder of Kulwant Singh, Advocate and his family. He has invited our attention to the following paragraphs from the CBI report:

"6. Now the question arises, if Harpreet Singh @ Lucky had not abducted and murdered Kulwant Singh, advocate and his family, then what happened to them. The evidence of the family members of Kulwant Singh Advocate is there to show that Kulwant Singh had talked to PS City, Ropar on telephone at about 9.30 PM on 25.1.93 and left the house alongwith his wife and son to the said

A police station for bringing Manjit Kaur and her son who were reportedly detained by the police. It is also in their evidence that he left the house in his Maruti Car No. DAQ-3804. Certain shop keepers/vendors falling enroute from the house of Kulwant Singh to PS City Ropar were examined but nobody confirmed that they had seen Kulwant Singh, Advocate and his family going to PS City, Ropar in his Maruti Car. It is a fact that Manjit Kaur and her son were there in PS City, Ropar on 25.1.93 night, although she and her son are denying it. Thus, the only persons who could enlighten us about the visit of Kulwant Singh to PS City, Ropar are either the police personnel posted in the PS City Ropar or Manjit Kaur and her son. Several police personnel have been examined but they have denied that Advocate Kulwant Singh had visited the police Station that night. They have also denied about the detention of Smt. Manjit Kaur or her son in the Police Station. Manjit Kaur and her son Amarjit Singh @ Sonu, who are the only key witnesses in this case, have also changed their versions and denied having been ever detained by the police in the PS City, Ropar. Smt. Manjit Kaur is now maintaining that she was never detained by the police and she has also made a statement before the Special Magistrate, Patiala on 3.7.95 U/s. 164 Cr. P.C. stating therein that she was not detained by the police during 25.1.93 to 27.1.93. Her eldest son Inderjit Singh @ Lucky has been appointed as a Special Police Officer by Ropar Police w.e.f. 21.8.94 without taking any application from him and he is working in PS Sadar Ropar under Shri Avindervir Singh, SHO. Village Budha Bhora to which Smt. Manjit Kaur belongs falls under the jurisdiction of PS Sadar, Ropar. It appears that the version of Manjit Kaur and her son is not reliable and Manjit Kaur seems to have made the statement before the Magistrate under certain extraneous pressure.

7. A very significant fact that remains unexplained is the recovery of the car by the police from the Bhakra Canal on 12.2.93. If Lucky was innocent and was not involved in the crime, he could not have known where the car was. It is in the evidence of family members of Kulwant Singh that Kulwant Singh and his family had gone to PS City, Ropar on 25.1.93 in the said car allegedly recovered from Bhakra Canal on 12.2.93. As per the records prepared by Avindervir Singh, SHO he had recovered this car at the instance of

Harpreet Singh @ Lucky. Now question arises as to how he could recover the car if Lucky was innocent and was not involved in the crime. Thus, the recovery of the car by the police, false implication of Harpreet Singh @ Lucky subsequent payment of money to his father under a false name showing him as an SPO and appointment of Inderjit Singh @ Lucky, as an SPO during the investigation of this case possibly to keep a control on him, his mother Manjit Kaur and his brother Amarjit Singh @ Sonu and subsequent denial by Manjit Kaur and her son about their detention by the police does point the finger suspicion at the police but these circumstances are not clinching in nature.

8. The recovery of the car of Advocate Kulwant Singh was made by SI Avindervir Singh which obviously could have been done on the basis of certain information available with him which shows his personal knowledge about the occurrence. Otherwise he could not have known that the car was thrown into the canal. This is a circumstance against Avindervir Singh. The dead bodies of Kulwant Singh, Advocate and his family members could not be recovered inspite of our best efforts. The precise sequence of events after Advocate Kulwant Singh and his family left their house on the night of 25.1.93 could also not be established due to the non-cooperation of Smt. Manjit Kaur and her son Amarjit Singh @ Sonu who were the key witnesses in this case. Assuming that Advocate Kulwant Singh and his family, were killed, there is no evidence on record regarding the modus.

9. We have collected adequate evidence to suggest that the police version to the effect that Kulwant and his family members were killed by Harpreet Singh @ Lucky, is not correct. It is proved beyond reasonable doubt that Lucky has not killed Kulwant Singh and his family members. The confession of Lucky has been falsely recorded. The recovery of the car U/s. 27 Evidence Act has been falsely shown.

10. However, the investigation has not been able to bring forth any evidence to reveal the persons who have committed the act of killing of Kulwant Singh and his family members. their dead bodies have not been found in spite of our best efforts. There is no other

A evidence which may connect any of the suspect police officers with the kidnapping/killing, howsoever strong the suspicion may be."

B It is no doubt correct that the CBI investigation reveals circumstances which do point a finger of suspicion at the police officers but whether the circumstances are sufficient to prosecute them for the abduction and murder of Kulwant Singh and his family is a matter for the consideration of the Designated Court which is seized of the trial. We do not wish to go into this question. The appellant before us and the prosecutor shall be at liberty to argue before the trial court that the material collected by the CBI including its report show that the police officers are *prima facie* responsible for the abduction and murder of Kulwant Singh and his family and are liable for prosecution for offences under the relevant provisions of the Indian Penal Code.

D The abduction and murder of Kulwant Singh and his family was the most heinous crime against humanity. It has taken a mysterious and an extremely shocking turn by the finding of the CBI that Harpreet Singh @ Lucky has been falsely implicated in the case. The CBI report indicates that under pressure from the police and finding no other alternative to save his life he agreed to their proposal to accept the murder of Kulwant Singh and his family members. Mr. Navkiran Singh has rightly contended that the least this court can do at this stage is to compensate the old parents of Kulwant Singh. J.S. Vemra, J. speaking for this Court in *Nilabati Behera v. State of Orissa*, [1993] 2 SCC 746 held as under :

F "It follows that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental

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rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situation, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforce-

A cement of a guaranteed right. Article 9(5) reads as under :

"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

B We direct the Punjab Government through Secretary to Government, Home Department to pay a sum of Rs. 10,00,000 (ten lac) to the parents (father and mother) of Kulwant Singh, Advocate as compensation. The payment shall be made within two months of the receipt of this order.

C Regarding Harpreet Singh @ Lucky the CBI reached the following conclusion:

"Facts emerging from the investigation lead us unequivocally and decisively to conclude that Harpreet Singh @ Lucky is not responsible for the abduction or murder of Kulwant Singh, Advocate and his family."

D The Police Officers falsely implicated Harpreet Singh @ Lucky in the case. We direct that he be released from jail forthwith. We further direct the Punjab Government through Secretary to Government, Home Department to pay a sum of Rs. 2,00,000 (two lac) to Harpreet Singh@ Lucky as compensation for the sufferings caused to him because of the false implication in the case in particular his remaining in jail for a long period. The amount of compensation shall be paid within two months of the receipt of this order. We further direct the Home Secretary, State of Punjab to provide security if he considers it necessary to Harpreet @ Lucky. We further direct that in the event of conviction of the police officers, the amount of compensation paid to Harpreet @ Lucky shall be recovered from them personally.

G We transfer the trial from the Designated Court at Ropar to the Designated Court at Chandigarh. The CBI shall file the necessary challan in accordance with the Code of Criminal Procedure before the trial court at Chandigarh. We direct the trial court to conclude the trial expeditiously and preferably within six months of its commencement. We direct the State of Punjab through the Home Secretary or any other appropriate authority to take up the question of grant of sanction under Section 197, Criminal Procedure Code for the prosecution of the police officers immediately and H take a decision in this respect within one month of the receipt of this order.

Keeping in view the facts and circumstances highlighted by the CBI A
in its report it would be in the interest of justice to suspend the police
officers during the course of the trial. We therefore, direct the Home
Secretary, State of Punjab to take appropriate action in this respect . We
accept the recommendation of the CBI regarding Shri Sanjiv Gupta, DIG,
Punjab Police and direct the Government of Punjab through Secretary to
Government, Punjab to take suitable action against Shri Gupta in the light B
of the findings of the CBI

The appeal is disposed of.

R.P.

Appeal disposed of.