

Saheli, A Women's Resources Centre Through Ms. Nalini Bhanot and Others

Vs

Commissioner of Police Delhi Police Headquarters and Others

Writ Petition (Criminal) Nos. 250-253 of 1988

(B. C. Ray, S. R. Pandian JJ)

14.12.1989

JUDGMENT

RAY, J. -

1. These writ petitions have been filed by the Women's and Civil Rights Organization known as SAHELI, a Women's Resources Centre on behalf of two women Maya Devi and Kamlesh Kumari who have been residing on one room tenement each on the ground floor of house No. 408/S/A L Gali No. 29, Anand Parbat and were severely beaten up by the alleged landlord in collusion with the SHO, Shri Lal Singh an the police of Anand Parbat Police Station. The facts of the case giving to these writ petitions are as follows :

Kamlesh Kumari and her husband Inder Singh moved into the house No. 408/5/A L, Gali No. 29, Anand Parbat in 1974. They had three children, Saroj 13 years old girl, Naresh 9 years old boy (now deceased) and Suresh 7 years old boy. They were living in one room on the ground floor of the said house which is a double storey. The other lady, Maya Devi has also been living in another room of the said house on the ground floor with her husband and children. The husbands of both Kamlesh Kumari and Maya Devi are truck drivers and they often remain away from their home. There is a dispute over the ownership of the house. In or about 1984, the old landlord, one Tajinder Singh left the house and one Monohar Lal claims to be the new landlord. At present, one Puran Chand and his two sons Shambu Dayal and Prakash Chand claim to have bought the said property from Manohar Lal and they have been illegally evicting all the tenants from the said premises. In their attempt they succeeded in evicting all the tenants except the two tenants named Kamlesh Kumari and Maya Devi. It is because of these illegal threats of eviction, Kamlesh Kumari obtained an order of stay from the court against her forceful eviction and that said order is in force. Some time in October 1987 the so-called landlords cut off the water and electricity supply to Kamlesh Kumari's room and the same has not been restored till this day. On November 2, 1987 the then SHO of Anand Parbat Police Station, Lal Singh called for Kamlesh Kumari and told her to vacate the room. On November 4, 1987, the said SHO again called for Kamlesh Kumari and when she arrived at the police station she found that the so-called landlords were already present there. In the presence of Shambu Dayal and others, Lal Singh told Kamlesh Kumari to take some money and leave the room whereon Kamlesh Kumari said that she should be given some time especially because her children are studying in schools. On November 12, 1987, the said SHO once again called Kamlesh Kumari and this time he threatened to lock her up if she refused to vacate the room. On November 13, 1987, Kamlesh

Kumari went to Tis Hazari Court to consult her lawyer. On coming back she found her children missing Maya Devi was standing outside, all her belongings thrown out. Maya Devi told Kamlesh Kumari that the Sub-Inspector of Police K. L. Nanda of Anand Parbat Police Station had come and had taken away her children and had thrown away May Devi from her room. Kamlesh Kumari immediately went to the police station and met the SHO, Lal Singh and asked him about her children. The SHO said that her children had been kept locked up and she would not be allowed to see her children unless she vacated the room. Kamlesh Kumari then went to Tis Hazari Court to see her lawyer. The lawyer phoned the police control room and rushed back to Anand Parbat Police Station. With great difficulty the lawyer got the three children released from the police station.

2. On the same day, i.e., November 13, 1987, after Kamlesh Kumari and her children had just taken their dinner, Shambu Dayal trespassed into her room and hit Kamlesh Kumari on the forehead with a brick. She rushed to the police station and reported the matter to the police. The police had her medically examined but refused to take any action against the assailants.

3. On November 14, 1987, Kamlesh Kumari was attacked by Shambu Dayal, his brother Prakash Chand accompanied by Lal Singh in civilian clothes and Sham Lal, Sub-Inspector in uniform accompanied by two others. They beat Kamlesh Kumari, tore her clothes and molested her. Her 9 year old son clung to his mother to protect her when Lal Singh took him away and forcibly threw him on the floor. Lal Singh also asked Shambu Dayal to beat Naresh. Kamlesh Kumari was dragged away to the police station and a criminal case was imposed upon her of trespass. She was sent to Tihar Jail and her lawyer got her released on November 16, 1987. Kamlesh Kumari on her release came back and found that her child, Naresh was in a very bad condition. The children took shelter at a neighbour's house and the neighbours had got local doctor to look after Naresh. On the advice of the doctors, Naresh was admitted to Ram Manohar Lohia Hospital on November 18, 1987. However, no medical legal case was registered. Kamlesh Kumari's lawyer tried to get a medical legal case registered. At last medical legal case was registered on November 23, 1987 by the ACP, Patel Nagar at 11.30 p.m. In the FIR No. 143/87 the said ACP had written that she had said that no policeman had beaten her son although she had specifically named Lal Singh and others. On November 26, 1987, Naresh died in hospital and an inquest was carried out. This news was published in the Hindi newspapers.

4. On December 10, 1987, SDM, Vipul Mittra called Kamlesh Kumari to his office stating that he was conducting an enquiry into the facts and circumstances leading to Naresh's death. On December 6, 1987, the Crime Branch filed its report in the court opposing bail for Shambu Dayal. In the said report, it has been stated that the details of the DD entries mentioned in the bail application itself show conspiracy or connivance of the local police with the accused. This report was annexed as Annexure 'C' to these petitions. Kamlesh Kumari and her neighbours and lawyer on the day of Naresh's death sat on dharna outside the residence of the Lt. Governor and demanded a judicial enquiry be ordered into the death of the Kamlesh's son, Naresh. The report given by the fact-finding team of the Peoples' Union for Democratic Rights, into the death of Naresh was also published. The said report states that the representatives of the Peoples' Union for Democratic Rights met the SDM, Vipul Mittra who told them that he would intimate them his findings; but subsequently when they contacted him it was told that it was a sensitive report and it can be made public only by the Lt. Governor. As such the instant writ petitions were moved before this Court praying amongst others the issuance of a writ for directions directing the respondents to pay Kamlesh Kumari exemplary damages for the death of her son, Naresh.

5. On June 13, 1988, this Court directed to implead the Medical Superintendent, Ram Manohar Lohia Hospital, New Delhi as respondent 4 and also directed the Medical Superintendent to keep the record relating to Naresh, son of Kamlesh Kumari in a sealed cover and deposit the same with the Registrar of this Court within two weeks from the date of the order. By order dated August 22, 1988 the respondents were given two weeks time to file counter-affidavit and one week's time thereafter was given to the petitioners to file rejoinder.

6. Kanwaljit Deol, deputy Commissioner of Police, Headquarters (II), Delhi on behalf of Commissioner of Police affirmed an affidavit in counter wherein it has been stated that :

"On the basis of the aforesaid complaint ACP/Patel Nagar got registered case FIR No. 143 dated November 24, 1987 under Section 308/34 IPC, P. S. Anand Parbat, New Delhi and entrusted investigation to Inspector, Vigilance, Central District, who arrested accused Shambu Dayal, son of Puran Chand on November 24, 1987. On November 26, 1987 Naresh expired in Ram Manohar Lohia Hospital an post-mortem was got conducted. The autopsy doctor opined that injuries were ante-mortem caused by blunt force impact/possible injuries were not sufficient to cause death. Death was due to puenuonitis as diagnosed clinically. Offence was changed to Section 304/34 IPC."

7. It has been stated therein that Maya Devi residing in one room adjacent to room of Kamlesh Kumari for 6-7 months, the landlords did not issue any rent receipt. It was also stated that :

"..... On November 13, 1987 the landlord forcibly got acted the room in possession of Maya Devi with the connivance of local police which is evident from the DD entry made by ASI, Kishan Lal who visited the spot on the spot on the information of quarrel between Maya Devi and landlords' men."

It has further been stated that on November 14, 1987, Shambu Dayal got registered a false case under Section 448 IPC to get the above objective and the local police arrested Smt. Kamlesh Kumari the same day. She was not admitted to bail despite approach by her relatives. The SHO himself took part in the beatings and the minor child (Naresh) of Smt. Kamlesh was also not suparead, and was thrown away while he clung to feet of his mother, while she was being beaten mercilessly. Naresh sustained severe injury in his left beg and could not be attended by the doctors in absence of his parents. On November 16, 1987 only Naresh was attended by his mother after release from jail and by then the child had suffered from old ailments. She took him to RMI Hospital on the advice of the local doctors. The injuries inflicted to Naresh on November 14, 1987 caused fever ad pneumonitis and finally resulted in his death. Later on the nature of injury on left leg of the child was opined to be grievous one.

8. The relevant portion of the report dated December 5, 1987 submitted by Puran Singh, Inspector, Crime Branch, Delhi is quoted hereunder :

"So far it seems that there is a high level conspiracy in getting the rooms of tenants got vacated by the landlord if the accused is bailed out, it will be difficult to find out the truth. Smt. Shobha and the doctors are already under pressure. As the local police is involved in all this episode so bailing out the accused will definitely affect the fate of the case. The accused should not be bailed out as it is clear case u/s 302/120-B IPC. The details of DD entries mentioned in the bail application itself show the

conspiracy or connivance of the local police with the accused. Therefore the bail is opposed strongly."

9. The landlord, Shambu Dayal and Puran Prakash and Lal Singh, SHO and Shyam Lal, Sub-Inspector have been impleaded as respondents by order dated September 20, 1988 in these writ petitions. They also filed counter-affidavits.

10. It is now apparent from the report dated December 5, 1987 of the Inspector of the Crime Branch, Delhi as well as the counter-affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from respondent 2, Delhi Administration.

11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In case of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the SHO, Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the state is responsible for the tortious acts of its employees. Respondent 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the SHO of Anand Parbat Police Station, Shri Lal Singh.

12. It is convenient to refer in this connection the decision in *Joginder Kaur v. Punjab State* (1969 ACJ 28, 32 (P&H)) wherein it has been observed that :

"In the matter of liability of the State for the torts committed by its employees, it is now the settled law that the State is liable for tortious acts committed by its employees in the course of their employment."

13. In *State of Rajasthan v. Vidhyawati* (1962 Supp (2) SCR 989, 1007 : AIR 1962 SC 933) it has been held that : (SCR p. 1007)

"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such as any other employer. The immunity of the Crown in the United Kingdom, was based on the old feudalistic notions of justice, namely that the King was incapable of doing a wrong, and therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to be sued in tort or in tort or in contract, and the Common Law immunity never operated in India."

14. In *Peoples' Union for Democratic Rights v. Police Commissioner, Delhi Police Headquarters* ((1989) 4 SCC 730) one of the labourers who was taken to the police station for doing some work and on demand for wages was severely beaten and ultimately succumbed to the injuries. It was held that the State was liable to pay compensation and accordingly directed that the family of the

deceased labourer will be paid Rs. 75,000 as compensation.

15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent 2 to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs. 75,000 within a period of four weeks from the date of this judgment. The Delhi Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if they are so advised. As the police officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh. The writ petitions are disposed of accordingly.

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