

Nain Kaur and another

Vs

State of J. and K. and others

Writ Petn. (Cri.) Nos. 373-374 of 1995

(M. K. Mukherjee, S. B. Majmudar JJ)

27.02.1996

### ORDER

1. This petition under Article 32 of the Constitution of India has been filed for a writ requiring production of Dharamvir Singh, a practising Advocate of Amritsar, before this Court. The two petitioners are the mother and cousin of Dharamvir respectively. Their grievance is that even though Dharamvir was on bail in connection with two cases earlier registered against him and was released from Central Jail, Jammu on May 12, 1995 consequent upon quashing of his detention by the High Court of Jammu and Kashmir, he was taken into custody as soon as he came out of the jail by Sudarshan Singh, an officer of Pacca Danga Police Station of Jammu city and since then his whereabouts are not known.

2. Responding to the notice issued on the petition, Mr. Pramod Jain, Special Secretary (Home), Government of Jammu and Kashmir has filed a counter-affidavit wherein he has admitted that Dharamvir Singh was released from Central Jail, Jammu on May 12, 1995. In detailing Dharamvir's subsequent movements, Mr. Jain has stated that on May 21, 1995 a Nakka was laid in the area of Kharkhola Post near the Indo-Pak Border under the joint supervision of officials of Border Security Force (BSF) and local Police Station Ranbir Singh Pura. In course of an encounter there one person sustained injuries and fell down dead, while his associates escaped. From the spot one 0.38 mm pistol with two live rounds and one nozzle were recovered. On receipt of the report of the above death, an entry was made in the daily diary of Ranbir Singh Pura Police Station and investigation under Section 174 Cr. P.C. taken up. In course of that investigation photographs of the dead body were taken, but in spite of best efforts the identity of the deceased could not be immediately established, as nobody came forward to claim the dead body. It was therefore handed over to Jammu and Kashmir Sewa Samiti for cremation after keeping the same for three days. Mr. Jain has further stated that subsequently a few sikh gentlemen and a lady came to the police station and identified, on perusal of the photographs, clothes and other items seized from the person of the deceased, that he was Dharamvir. Mr. Jain has lastly stated that during the investigation it was established that Dharamvir was killed in an encounter with BSF and other members of Nakka party while entering into India from Pakistan. In support of his above statements Mr. Jain has filed the statements recorded during the investigation under Section 174 Cr. P.C. and some other documents.

3. Since the respondents were claiming that the person who allegedly died in the encounter was Dharamvir, relying on the identification of some sikh gentlemen and a lady principally on the basis of the photograph of a dead body, we enquired of the petitioners as to whether the photograph was that of Dharamvir. As petitioner No.1, the mother of Dharamvir, emphatically stated it was not of her son we directed her to produce a photograph of Dharamvir with a supporting affidavit which she complied with. To pursue the matter further we tried to requisition the services of Mr. R.L. Chadha,

an advocate of Jammu High Court, who according to the petitioners was present when Dharamvir Singh was brought out of the Central Jail, Jammu and taken away by the officers of Pacca Danga Police Station. Mr. Chadha, however, did not respond to our request.

4. Since from a comparison of the photographs, it is difficult for us to disbelieve the assertion of the petitioner No.1 that the dead body was not that of her son and, for that matter, to accept the version of the respondents that Dharamvir died in an encounter we direct the Director of Central Bureau of Investigation to cause an investigation made into the matter and submit its report within three months from today.

5. List thereafter. Order accordingly.