

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

C. C. W. Council of India

CrI.A.Nos.508 with 509 of 1996

(N. Santosh Hegde and B. P. Singh JJ.)

15.10.2003

JUDGEMENT

Santosh Hegde, J.

1. These two appeals arise from a judgment of the Nagpur Bench of the High Court of Judicature at Bombay made in Writ Petition (Criminal) No. 204 of 1993. Even though the points for our consideration in these appeals have narrowed down considerably because of the previous orders of this Court in these appeals as also some previous judgments of this Court, we think it necessary to very succinctly refer to the facts to the extent that is necessary.

2. Some of the policemen on duty in the Crime Branch Office of Nagpur City took into custody one Junious Adam Illamatti, a resident of Ajni Railway Colony on 23-6-1993. While he was in police custody, it is stated he was found dead. It is also alleged that when his wife Jarina Adam went to the Police Station to enquire about her husband, she was also locked up by the said Police and molested. On 26-6-1993 a criminal case being Crime No. 438 of 1993 was registered for offences under Ss. 302, 342, 330, 354 read with S. 34 against 10 Police Officers. The investigation in this regard was conducted by a Deputy Superintendent of Police, State CID (Crimes) Mr. Godbole. After investigation said Police Officers were charge-sheeted for the offences mentioned hereinabove and in the trial in S.C. No. 416 of 1993 before the Additional Sessions Judge, Nagpur, said 10 Police Officers were acquitted of the charge under S. 302, I.P.C. but were convicted for offences punishable under S. 333 read with Ss. 34, 342 read with Ss. 34, 355 read with S. 34, and a punishment of 3 years' R.I. with fine for the principal offence was awarded by said Sessions Judge to the abovementioned 10 Police Officers.

3. A criminal appeal against the said judgment and conviction is pending before the High Court.

4. On 29-9-1993 Criminal Writ Petition No. 204 of 1993 was filed initially by the respondent in Criminal Appeal No. 508 of 1996 before us i.e. Christian Community Welfare Council of

India. Subsequently above-mentioned Jarina Adam wife of deceased was also impleaded as petitioner No. 2. In the said writ petition inter alia a direction was sought to the respondent-State to conduct a proper inquiry into the custodial death. There was a prayer to direct the respondent-State to pay compensation of Rs. 10 lacs to the second petitioner. The High Court by the impugned order issued various directions in regard to the laying down of guidelines to prevent and check custodial violence and procedures to be followed by Police while arresting any person as also procedures to be followed by the Police after arresting such person, procedures to be followed in arresting a female person, manner in which such female person is to be detained etc. The High Court also directed the State Government to pay a compensation of Rs. 1,50,000 to the second petitioner, the widow of the deceased. During the course of judgment the High Court directed the State Government to enquire into the conduct of the I.O. Mr. Godbole to find out whether there was any lapse on his part in arrest/his investigation. The Court also observed in the body of its judgment that the amount of Rs. 1,50,000 directed to be paid as compensation to the 2nd petitioner may ultimately be recovered from the concerned Police Officers pro rata depending upon their involvement in the death of the deceased. Against the said judgment apart from the 2 appeals mentioned hereinabove the I.O. Mr. Godbole also filed a S.L.P. which later on came to be withdrawn by him with liberty to approach the High Court.

5. At this stage it is necessary to note that this Court while granting leave has confined the same to consider whether the directions issued by the High Court in sub-paras (iv), (v) and (vii) of the operative part of the judgment in paragraph 29 need to be retained, modified or deleted. There is no dispute in regard to this limited scope of the appeal. Sub-paras (iv) and (v) of the operative portion of the judgment reads thus:

"(iv) The State Government is directed to issue immediately necessary instructions to all concerned police officials of the State that in every case after arrest and before detainee is taken to the Magistrate, he should be medically examined and the details of his medical report should be noted in the Station House Diary of Police Station and should be forwarded to the Magistrate at the time of production of detainee;

(v) The State Government should also issue instructions to all concerned police officials in the State that even after the police remand is ordered by the concerned Magistrate for any period, every third day, the detainee should be medically examined and such medical reports should be entered in the Station House Diary."

6. We are informed by learned counsel appearing for the State that so far as the direction issued in these sub-paras of the judgment are concerned, the law is settled by the judgment of this Court in *D. K. Basu v. State of W.B.*¹ wherein this Court has held in sub-paras (7) and (8) of para 35 of the said judgment as follows:

"(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State of Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well."

7. We are in agreement with the submission made by learned counsel for the State that in view of the said requirement laid down by this Court in the said judgment the, para 36 directions issued by the High Court in Cl. (iv) and (v) of its operative part will have to stand modified and will be substituted by the requirement laid down by this Court in sub-paras (7) and (8) of para 35 of the judgment in Basu's case.

8. In sub-para (vii) the High Court has directed the State Government to issue instructions in the following terms:

"(vii) The State Government should issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female persons shall be detained or arrested without the presence of lady constable and in no case, after sunset and before sunrise."

9. Herein we notice the mandate issued by the High Court prevents the Police from arresting a lady without the presence of a lady constable. Said direction also prohibits the arrest of a lady after sunset and before sunrise under any circumstances. While we do agree with the object behind the direction issued by the High Court in Cl. (vii) of operative part of its judgment, we think a strict compliance of the said direction, in a given circumstance, would cause practical difficulties to the investigating agency and might even give room for evading the process of law by unscrupulous accused. While it is necessary to protect the female sought to be arrested by the Police from Police misdeeds, it may not be always possible and practical to have the presence of a lady constable when the necessity for such arrest arises, therefore, we think this direction issued requires some modification without disturbing the object behind the same. We think the object will be served if a direction is issued to the Arresting Authority that while arresting a female person, all efforts should be made to keep a lady constable present but in circumstances where the Arresting Officers is reasonably satisfied that such presence of a lady constable is not available or possible and/or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation such Arresting Officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on the circumstances of the case even without the presence of a lady constable. We also direct that with the above modification in regard to the direction issued by the High Court in Cl. (vii) of this appeal, this appeal is disposed of.

Criminal Appeal No. 509 of 1996 :

10. As noted above, this appeal is filed against an observation made by the High Court that the compensation of Rs. 1,50,000 paid to the widow of the deceased may be recovered from

the erring Police officials. The challenge to this observation is based on the ground that the same is made without hearing the appellants who were not the parties to the said writ petition. So far as the liability to pay compensation to the aggrieved party who has suffered because of the Police excesses there can be no doubt in view of the judgment of this Court in *Smt. Nilabati Behera alias Lalita Behera v. State of Orissa and others*². The question whether such compensation paid by the State can be recovered from the Officers concerned will depend on the fact whether the alleged misdeeds by the Officer concerned is committed in the course of the discharge of his lawful duties, beyond or in excess of the same which will have to be determined in a proper enquiry. The High Court by the impugned judgment has not conclusively held that the amount should in any circumstance be recovered from the Officers, therefore, at this stage it is too premature for us to go into this question whether the appellants in this case are liable to reimburse the State the amount paid by it to the widow of the deceased as directed by the High Court. This will have to be as stated above adjudicated in an inquiry wherein it will have to be decided whether the acts of the concerned Police Officers were in the performance of State duty a (sovereign function) or outside the same. If it is found that the appellant-Officers did cause the death of the deceased and the same is not in the performance of their official duty or in excess of the same then they cannot escape the liability. However, as stated above this question would arise only as and when an inquiry specifically in this regard is conducted. Therefore, for the present there need for any direction in this regard does not arise.

11. With the said observations this appeal is also disposed of.

Order accordingly.

¹1997 (1) SCC 416

²(AIR 1993 SC 1960)