

Koshila Devi and Anr. Vs. State of Jharkhand and Ors.

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Court : Jharkhand

Decided On : Jul-19-2017

Appellant : Koshila Devi and Anr.

Respondent : State of Jharkhand and Ors.

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No.- 4344 of 2005

1. Koshila Devi, widow of Late Vijay Nayak, resident of Mohalla Hatia Talab, PO & PS- Chutia, District- Ranchi 2. Chhatu Nayak, son of Late Bhuneshwar Nayak, resident of Mohalla Hatia Talab, PO & PS- Chutia, District- Ranchi Petitioners -V e r s u s- 1. The State of Jharkhand 2. Inspector General of Police, (Prison), Jharkhand, Ranchi 3. Jail Superintendent, Birsa Munda Central Jail, Ranchi 4. The Warden, Birsa Munda Central Jail, Ranchi . Respondents CORAM: - HONBLE MR. JUSTICE RAJESH SHANKAR For the Petitioner : - Mr. V.Shivnath, Sr. Advocate & Mr. Niraj Kishore, Advocate For the Respondent-State :- Mr. Sahid Khan, S.C. (Mines) & Mr. Nikhil Kumar Mahto, JC to SC (Mines) 09/19.07.2017 Heard learned counsels for the parties.

2. The present writ petition has been filed for grant of compensation of Rs.10 Lacks on account of death of an under trial prisoner Vijay Nayak, who died at Birsa Munda Central Jail, Ranchi. The petitioner has also prayed for carrying out an investigation in relation to the death of Vijay Nayak through CID/CBI.

3. The factual background of the case as transpires from the writ petition is that the deceased Vijay Nayak was arrested in connection with Chutia P.S. Case no. 47 of 2003 and was produced before Sri R.K. Sahay, Additional Judicial Commissioner, FTC, Ranchi on 21.05.2005 in a good health condition. After five days, the petitioners were informed by the Superintendent of Birsa Munda Central Jail, Ranchi vide memo dated 26.05.2005 that the under trial prisoner Vijay Nayak was admitted to RIMS, Ranchi due to his sudden illness where he has been declared dead at about 3:50 a.m. on 26.05.2005.

4. Learned senior counsel for the petitioners submits that the circumstance in which Vijay Nayak died raises a serious doubt over the conduct of the jail authorities of the 2 Birsa Munda Central Jail, Ranchi. The petitioners made representations to the Officer in-charge, Harijan Cell, Ranchi and the Department of Home, Government of Jharkhand, Ranchi. They also filed application before the National Human Rights Commission, New Delhi for conducting investigation with regard to the death of Vijay Nayak. However, nothing was done. It is also submitted that it is the duty of the State and its Officers to protect the life of under trial prisoners and in case of any mishappening, the erring officers must face an inquiry by an impartial agency. Moreover, the family members of the deceased are also entitled for suitable compensation.

5. Learned counsel for the respondents submits that Vijay Nayak was admitted to Birsa Munda Central Jail, Ranchi on 21.05.2005 at about 12:30 P.M. in connection with Chutia P.S. Case no. 47 of 2003 for the offences punishable under Sections 147/148/149/341/323/325/448/302 of the I.P.C. He was reported sick on 22.05.2005 by the Jail authorities and thereafter admitted in jail hospital for treatment. On 26.05.2005 at about 3:50 a.m., his health condition became serious and he was taken to RIMS, Ranchi where he was declared dead. The postmortem was conducted on 27.05.2005 by a Board of five doctors. As per the opinion of the Medical Board, the cause of death was kept reserved for want of histopathological report of the tissues. Subsequently, the said histopathological report was obtained disclosing the fact that the death of Vijay Nayak occurred due to combined effect of kidney, heart and brain complications. As per the bed head ticket maintained in the jail hospital, the deceased was found in addiction of alcohol at the time of

admission in the jail hospital. Moreover, the deceased was also suffering from epilepsy. Learned counsel for the respondents further submits that an inquiry was conducted by an Executive Magistrate, who after investigation, submitted his inquiry report on 22.11.2005. As per the said inquiry report, cause of death of the deceased was found to be fatty changes in the liver, 3 partly autolysed tissue showing tubular degeneration of kidney. It is, thus, submitted by the learned counsel for the respondents that the inquiry has already been conducted for finding out the reason behind the death of Vijay Nayak in which it was found that his death occurred due to ill health. Under the aforesaid fact, there is no need of referring the present matter for being investigated by any agency as prayed by the petitioners in the present writ petition.

6. Having heard the learned counsels for the parties and on going through the relevant documents placed on record, it appears that the deceased Vijay Nayak was admitted to Birsa Munda Central Jail, Ranchi as under trial prisoner on 21.05.2005 at 12:30 P.M. He was reported sick on 22.05.2005 and thereafter the jail doctor admitted him in the jail hospital for treatment under his supervision. On 26.05.2005 at 3:50 a.m., the health condition of Vijay Nayak suddenly became serious and the jail doctor immediately sent him to RIMS, Ranchi for better treatment where he was declared dead. The inquest of the deceased was carried on 26.05.2005 by the Executive Magistrate, Sadar, Ranchi. The postmortem was conducted by a team of five doctors of RIMS, Ranchi on 27.05.2005, the video recording of which was also done and, thereafter, the dead body of the deceased was handed over to his brother namely Ajay Nayak vide receipt dated 27.05.2005. On perusal of the entire record, I do not find any manipulation in the postmortem report as the same has been conducted in a transparent manner by a Board of five doctors, the video recording of which was also done. Since, it was a case of death of an under trial prisoner, an inquiry was also ordered, which was conducted by one Vijay Kumar, Executive Magistrate, Sadar, Ranchi, who submitted his report on 22.11.2005. On perusal of the inquiry report (Annexure-G to the counter affidavit), it transpires that the statements of Superintendent of Jail, other officials of the Jail and co-prisoners were also taken. It was found by the 4 inquiry officer that before the death of Vijay Nayak, there had been no complaint against the jail authorities. All the co- prisoners consistently stated that Vijay Nayak was habitual

alcoholic and had also suffered epilepsy attacks inside the jail. In the said inquiry report, the inquiry officer did not find any such evidence, which could support the allegation levelled by the petitioners in the present writ petition.

7. A Constitution Bench of Honble Supreme Court in the case of State of W.B. Vs. Committee for Protection of Democratic Rights reported in (2010) 3 SCC571 at paragraph- 70, while considering the scope under Article 226 for issuance of direction to the CBI to investigate a case in which allegation is levelled against local authorities/police, explained its scope and permissibility, which reads as follows :

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

8. The same principle has been reiterated by the Honble Supreme Court in the case of Mohd. Haroon Vs. Union of India reported in (2014) 5 SCC252 9. In the case of (Mohammad Yasin Vs. State (NCT of Delhi) and others reported in (2009) 14 SCC644 having similar fact situation, the Honble Supreme Court has refused to refer 5 the matter to be investigated by CBI or even for registration of a criminal

case.

10. Considering the facts and circumstances of the present case and the parameters laid down by the Honble Supreme Court in the above referred cases, I do not find that in the fact situation of the present case, the death of an under trial prisoner namely Vijay Nayak is required to be investigated by any independent agency as prayed by the petitioners.

11. However, it is an admitted fact that the death of Vijay Nayak occurred in judicial custody as an under trial prisoner, I think it appropriate to direct the respondent no.2 (Inspector General, (Prison), Jharkhand, Ranchi) to take a decision with regard to payment of suitable compensation to the petitioner no.1 (Koshila Devi, widow of late Vijay Nayak) taking into consideration the policy/scheme of the Government of Jharkhand in this regard.

12. The writ petition is, accordingly, disposed of with the aforesaid observation and direction. (Rajesh Shankar, J.) Ritesh/A.F.R.

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