

Geeta Devi Vs. State of Jharkhand and Others

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Court : Jharkhand

Decided On : Aug-08-2017

Appellant : Geeta Devi

Respondent : State of Jharkhand and Others

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No.- 1364 of 2007
Geeta Devi Widow of late Radheshyam Mahatha, resident of village- Tupra, PO & PS- Pindrajora, District- Bokaro Petitioner -V e r s u s- 1. The State of Jharkhand through its Chief Secretary 2. Deputy Commissioner, Bokaro 3. Superintendent of Police, Bokaro 4. Jail Superintendent, Chas Sub Jail, District- Bokaro 5. Md. Alimuddin, the then Officer-in-Charge, Pindrajora Police Station, now posted at Harla Police Station, District- Bokaro 6. Shri Sitaram Oraon, then Assistant Sub Inspector of Police at Pindrajora Police Station, Bokaro, now posted at Police Station, District- Bokaro 7. Smt. Sarla Devi, wife of Druga Prasad Mahatha 8. Shiva Prasad Mahatha, son of late Chandra Shekhar Mahatha Respondent nos. 7 and 8 both are residents of village- Tupra, PO & PS- Pindrajora, District- Bokaro . Respondents CORAM: - HONBLE MR. JUSTICE RAJESH SHANKAR For the Petitioner : - M/s. A.K.Sahani & Ajit Kumar, Advocates For the Respondent-State :- Mr. Vishal Kumar Rai, J.C. to SC-IV1008.08.2017 Heard learned counsel for the parties.

2. The present writ petition has been filed for issuance of direction upon the respondents more particularly the respondent no. 1 to hold an enquiry about the

suspicious death of her husband in Chas Sub Jail, to take steps against erring respondents no. 4 to 8 and also to pay compensation for such custodial death.

3. The factual background of the case as transpires from the writ petition is that the husband of the petitioner namely Radheshyam Mahatha (now deceased) was an employee of Bokaro Steel Plant and he superannuated from service on 31.03.2003. After retirement, he demanded his share in the ancestral property from the respondent no. 7 & 8 which was objected by them. The son of the petitioner had lodged an F.I.R being Pindrajora P.S Case no. 18 of 2005 under Sections 457 and 380 of the I.P.C. The respondent no. 7 and his 2 associates used to threaten the husband and the son of the petitioner to withdraw the case due to which the petitioner registered a Sanha Petition No. 81/2005. Thereafter, on 31.05.2015, the respondent no. 7 gave a fardbeyan before the officer-in-charge, Pindrajora Police Station alleging that Radheshyam Mahtha (since deceased) along with Sanjay Kumar Mahatha, Umesh Pandey and two other persons entered her house, assaulted her and her husband and also took away Rs.20,000/- cash as well as jewellery from them. It was further alleged that Umesh Pandey was armed with a pistol and was threatening to kill them. On the basis of the fardbeyan, an F.I.R. was lodged on the same day being Pindrajora P.S. Case no. 65 of 2005 under Sections 147/148/149/452/341/342/323/380 of the Indian Penal Code and u/s 27 of the Arms Act. Radheshyam Mahtha was arrested by the respondent no. 5 at about 1:00 A.M on 04/05.06.2005 and he was produced in the court of C.J.M, Bokaro on 05.06.2005 and thereafter remanded to judicial custody. It is alleged by the petitioner that in the Sub jail, Chas, Bokaro, the deceased was tortured by the respondent no. 4 in connivance with the respondent no. 7 and 8 due to which he fell ill on 17.06.2005. The respondent no. 4 did not take any step for providing proper treatment to the deceased and as such he died in the jail at about 12:00 midnight and thereafter he was sent to the referral hospital. On 18.06.2005, when the petitioner and other family members went to see the dead body of the deceased, they saw mark of several injuries on his body including burn injury on his back and the symptoms of poisoning.

4. Learned counsel for the petitioner submits that the circumstance in which Radheshyam Mahatha died raises a serious doubt over the conduct of the jail

authorities of the Sub Jail, Chas, Bokaro. 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 respondent nos. 1 to 4 submits that late Radheshyam Mahatha was remanded to judicial custody in connection with Pindrajora P.S. Case No. 65 of 2005 and sent to Sub Jail, Chas on 05.06.2005 as under trial prisoner. He was reported sick in the mid-night of 17/18.06.2005 by the Jail authorities and thereafter he was referred to the referral hospital, Chas for treatment, where he died at about 2.00 A.M. on 18.06.2005. The postmortem was conducted on the same day. As per the post-mortem report, the cause of death has been said to be cerebral haemorrhage due to cardio respiratory failure as a result of shooting up of blood pressure. Learned counsel for the State-respondents further submits that an inquiry was conducted by an Executive Magistrate, who after inquiry, submitted his report on 21.04.2007. Moreover, the National Human Rights Commission relying upon the inquest proceeding, magisterial inquiry report and the post-mortem report concluded that the death of the deceased Radheshyam Mahatha had occurred during treatment due to illness, as such no case of any foul play or medical negligence is made out. It is, thus, submitted by the learned counsel for the State-respondents that the inquiry has already been conducted for finding out the reason behind the death of Radheshyam Mahatha in which it was found that his death occurred due to ill health. Under the aforesaid facts, there is no need of referring the present matter for any further inquiry as prayed by the petitioner in the present writ petition.

6. Having heard the learned counsel for the parties and on going through the relevant documents placed on record, it appears that a magisterial inquiry was conducted by the Executive Magistrate, Chas, Bokaro regarding the death of 4 under trial prisoner Radheshyam Mahatha, who was in judicial custody in connection Pindrajora P.S. Case No. 65 of 2005. The said inquiry report was submitted before the Sub-Divisional Officer, Chas, Bokaro on 21.04.2007. On perusal of the inquiry report dated 21.04.2007, it appears that on 05.06.2005, late

Radheshyam Mahatha was remanded to judicial custody in connection with Pindrajora P.S. Case No. 65 of 2005 and sent to Sub Jail, Chas on 05.06.2005 itself as an under trial prisoner. On 18.06.2005 at about 12:45 a.m., the Medical Officer of the Sub Jail, Chas informed the Jail Superintendent that the health condition of Radheshyam Mahatha is not good as his blood pressure has shot up to 230 mmHg and he is in unconscious position. The Medical Officer recommended for sending him to Sub-Divisional Hospital, Chas. Accordingly, Radheshyam Mahatha was admitted to Sub-Divisional Hospital, Chas, who was treated by the doctors there but after about an hour i.e. at 2.00 a.m., Radheshyam Mahatha died. As per the post-mortem report, the cause of death has been said to be cerebral haemorrhage due to cardio respiratory failure as a result of shooting up of blood pressure.

7. It further transpires from the letter dated 03.08.2009 written by the National Human Rights Commission, (Law Division), New Delhi to the Superintendent of Sub-Jail, Chas, Bokaro that a complaint made in this regard was considered by the National Human Rights Commission on 31.07.2009 and after consideration, the Commission passed the following orders:- The Supdt. Sub Jail, Chas, Bokaro, Jharkhand sent this intimation to the Commission regarding the death of under trial prisoner, Radhe Shyam Mahatha aged 63 years on 18.06.2005 at Sub-Divisional Hospital, Chas. He was lodged in this jail since 05.06.2005. He was sick and was admitted in Jail Hospital since 07.06.2005. On 18.06.2005 on deterioration of his condition, he was taken to Referral Hospital, where he died same day while undergoing the treatment. The State authorities have forwarded the Inquest proceeding, magisterial enquiry report and post-mortem report. The inquest proceedings revealed no injury on the person of the deceased. The 5 witnesses opined that it was a case of natural death. Perusal of post- mortem report also revealed no injury on the person of the deceased. The cause of death has been given that that the death was account of Cardio-respiratory Failure due to Cerebral Hemorrhage caused due to sudden rise of blood pressure and shock. The family members of the deceased have also petitioned the Commission alleging foul play and medical negligence leading to death of the deceased. The Dy. Commissioner, Bokaro vide his letter dated 29.08.2008 has denied the allegations and has stated that the deceased has died due to illness as indicated in the post mortem report.

The Commission has perused the magisterial enquiry report of Executive Magistrate, Chas, Bokaro. The Magistrate has concluded that the death of deceased Radhey Shyam Mahatha has taken place during treatment due to illness. He did not suspect any foul play or medical negligence. The reports are taken on file. The case is closed. The petitioners Smt. Geeta Devi (wife of the deceased) and Sanjay Mahatha (son of the deceased) may also be informed accordingly. 8. It is apparent from the aforesaid facts that the complaint made with regard to the custodial death of Sri Radheshyam Mahatha was properly considered by the National Human Rights Commission, New Delhi and on due consideration of the same, the Commission concluded that the death of late Radheshyam Mahatha had occurred during treatment due to illness, as such no case of any foul play or medical negligence is made out. Accordingly, the complaint made in this regard was ordered to be closed.

9. 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.

10. 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 11. 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 the matter to be investigated by CBI or even for registration of a criminal case.

12. 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 under trial prisoner namely Radheshyam Mahatha is required to be inquired by any independent agency as prayed by the petitioner.

13. However, it is an admitted fact that the death of late Radheshyam Mahatha occurred in judicial custody as an under trial prisoner, I think it appropriate to direct the Inspector General, (Prison), Jharkhand, Ranchi to take a decision with regard to payment of suitable compensation to the petitioner Geeta Devi, widow of late Radheshaym Mahatha taking into consideration the relevant policy/scheme of the Government of Jharkhand in this regard.

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

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