

Sohan Pal Vs. State and ors

Sohan Pal Vs. State and ors

SooperKanoon Citation : sooperkanoon.com/1142267

Court : Delhi

Decided On : May-29-2014

Judge : Veena Birbal

Appellant : Sohan Pal

Respondent : State and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(CRL)1672/2010 %
Judgment delivered on:

29. 05.2014 SOHAN PAL Petitioner versus STATE AND ORS
Respondents Advocates who appeared in this case:For the Petitioner : Mr Vineet
Chadha For the Respondents : Mr Saleem Ahmed, Additional Standing Counsel
CORAM: HON'BLE MR. JUSTICE BADAR DURREZ AHMED HON'BLE MS.
JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. This is a criminal writ petition under Article 226 of the Constitution of India wherein prayer is made for directing the respondents to produce the minor daughter of the petitioner from their illegal custody and detention and to hand over the custody of the said minor child to him. Further, prayer is made for issuance of a writ of Mandamus declaring the acts of the respondents in detaining Neelam i.e. wife of the petitioner in Nirmal Chhaya as illegal, arbitrary and unconstitutional and a direction is also sought for imposing damages on the respondents and to award

the same by way of compensation to the petitioner and his minor daughter on account of breach of public law duty on their part.

2. The facts alleged in the petition are as under:- According to petitioner, he got married to Neelam against the wishes of her parents on 4.1.2010. Her father Sh. Gauri Shankar had lodged a missing report vide DD No.17A on 4.1.2010 with P.S. Vijay Vihar informing the Police that his daughter, namely, Neelam was missing since 3.1.2010. On 12.1.2010, her father gave a written complaint stating therein that his daughter, born on 22.9.1994 and aged about 15 years and four months, was missing since 03.01.2010. He further reported that he suspected Sohan Pal @ Sonu s/o Rimal Singh [the petitioner herein]. to have kidnapped his daughter. On his complaint, FIR No.8/2010 dated 12.1.2010 under Section 363 IPC was registered at P.S. Vijay Vihar and the same was marked for investigation to ASI Roop Lal (respondent No.5). On 18.1.2010, petitioner and Neelam surrendered before the concerned Metropolitan Magistrate. On that very day, the petitioner was arrested as Neelams father had stated that Neelam was a minor. On 18.1.2010, both were medically examined and, thereafter, Neelam was sent to Nirmal Chhaya. On 19.01.2010, respondent No.5 took permission for conducting the bone age test on Neelam. On that very day, her statement under Section 164 Cr.P.C. was also recorded. The complainant, Neelams father, had given a birth certificate purportedly issued on 09.01.2001 by Sub-Registrar, Shahdara Zone, MCD, bearing No.3833504 to the Police. The same was sent for verification, and on verification, it was found to be fake as per the endorsement dated 27.01.2010 of the Sub-Registrar (Births and Deaths), Shahdara (North), MCD, Delhi. Another purported birth certificate bearing No.4148218 of Neelam dated 22.01.2010 was handed over to the Police by her father alleged to have been issued by the office of the Sub-Registrar (Births & Deaths), Shahdara (North), MCD, Delhi wherein her date of birth was shown to be 22.09.1994. The petitioner and Neelam had also given their marriage certificate and respective affidavits which were verified by the Police during the course of investigation.

3. On 18.2.2010, a bone age report was given by Dr. Baba Saheb Ambedkar Hospital, Rohini by the Department of Radio Diagnosis wherein it was reported that the age of Neelam appears to be above or equal to 20 years.

4. The petitioner has alleged that the Birth Certificate dated 27.1.2010 alleged to have been issued by the office of the Sub-Registrar, Births and Deaths, Shahdara (North), MCD, Delhi showing date of birth of the Neelam as 22.9.2004 was certified to be fake by the said office. It is alleged that thereafter on 18.2.2010 the bone age report of Neelam was received from the aforesaid hospital which certified her age to be above or equal to 20 years. Even thereafter, the respondents continued to illegally confine Neelam in Nirmal Chhaya. It is further alleged that the petitioner and Neelam had already submitted their marriage certificate showing her age to be 20 years and in her statement under Section 164 Cr.P.C. also, Neelam had given her age as 20 years. It is alleged that there was no material available with the Investigating Agency during the course of investigation to indicate that she was less than 18 years of age. The complainant had also submitted the school leaving certificate of Neelam issued by Laurel Convent School and the same was also not found correct. Despite that, Neelam was kept in illegal and unlawful custody of respondents in Nirmal Chhaya. It is alleged that from April, 2010 to October, 2010, the petitioner made a number of requests to the respondents to release Neelam from their illegal custody but, to no avail. It is stated that while in illegal detention and custody, Neelam gave birth to a girl child on 3.10.2010. It is stated that on 6.10.2010 Neelam expired in illegal detention and custody of respondents and thereafter the respondents refused to hand over the custody of the child to him. The respondents also refused to hand over the dead body of Neelam to him. Finally, the dead body was handed over to him on 23.10.2010 and petitioner cremated her on that day. The petitioner also repeatedly requested the respondents to hand over the custody of the child to him but the custody was not given to him. It is prayed that the detention of Neelam in Nirmal Chhaya be declared illegal as she had completed 18 years of age and damages be imposed upon respondents for her illegal detention.

5. Notice of the aforesaid petition was issued to respondents on 08.11.2010. The same was accepted on that very day by learned counsel appearing for respondents in court and the matter was renotified for 16.11.2010.

6. The girl child of the petitioner was under the care and protection of the Child Welfare Committee and was in Deen Dayal Upadhyay Hospital. On 16.11.2010,

the learned counsel for the petitioner stated that he would be moving an appropriate application for custody of the child before the aforesaid committee. However, to ascertain the paternity of the petitioner in respect of the said child, it was ordered that the petitioner as well as the girl child should undergo DNA Tests. The DNA report established that the petitioner was the biological father of the said child and the Child Welfare Committee handed over the custody of the child to him, as is noted in the proceedings of this court dated 06.12.2010. After receiving custody of the child, the petitioner pressed the petition for his claim of compensation, as according to him his interest was seriously prejudiced by the conduct of respondents.

7. With regard to the petitioners claim for compensation, respondents 1 to 6 have filed a counter-affidavit of the Deputy Commissioner of Police, Outer District, Delhi. The Chairperson, Child Welfare Committee, i.e., respondent no.7, has also filed a counter-affidavit.

8. The stand of the respondents No.1 to 6 is that in the complaint to the police dated 12.1.2010 on the basis of which FIR810 was registered, the father of the deceased Neelam had given her age as 15 years. Her father had produced a birth certificate issued by Sub-Registrar, Births & Deaths, Shahdara (North), MCD, Delhi bearing Registration No.MCD OLR0399727 which showed her date of birth as 22.09.1994. Inasmuch as, according to the said birth certificate, the girl was below 16 years, sections 366/376 IPC were added in the FIR. During the course of investigation the concerned Sub-Registrar vide its endorsement dated 27.1.2010 clarified that the birth certificate bearing registration number was MCDOLR03997527 was not issued by the said office. The result of bone x-ray test was given by the Baba Saheb Ambedkar Hospital on 18.2.2010 wherein the age was stated to be above or equal to 20 years. However, as the record maintained by the Sub-Registrar, Births & Deaths, Shahdara (North), MCD, Delhi indicated the date of birth of Neelam to be 22.09.1994 and, as this was considered to be a primary source for determining the age, as such, the said age was taken into consideration for the purposes of investigation and Neelam was kept in Nirmal Chhaya. It is stated that the investigation was carried out in accordance with law and all the above facts were brought to the notice of the court and nothing was

concealed. It was further averred that the Investigating Agency had discharged its duty in accordance with law. It was further stated that the dead body of the deceased Neelam was handed over by the Child Welfare Committee to petitioner after following due process of law. Even the custody of the child was also handed over to the petitioner. According to the said counter-affidavit, no public wrong had been committed by the Investigating Agency and, as such, no question of awarding compensation arose.

9. The stand taken by the Child Welfare Committee i.e. respondent No.7 in its counter affidavit was that the Committee had acted in accordance with the law and as per the powers conferred by the Juvenile Justice (Care & Protection) Act, 2000. It is stated that the deceased was produced before the Committee on 19.01.2010 by the investigating officer and subsequently on 25.1.2010, as per the orders of the learned Metropolitan Magistrate as she was in need of care and protection. In the purported birth certificate, her date of birth was recorded as 22.09.1994 indicating that she was 15 years and 4 months old. On 19.01.2010, she was taken to Rohini Courts for recording her statement under Section 164 Cr.P.C. In her statement under Section 164 Cr.P.C., Neelam had refused to go with her parents, as such, the learned Metropolitan Magistrate ordered that she be produced before the Child Welfare Committee as she was in need of care and protection as per the Juvenile Justice (Care & Protection) Act, 2000.

10. It is further submitted that while staying in Nirmal Chhaya, Neelam was found to be pregnant. She was referred to DDU Hospital for an ultrasound on 11.03.2010, where she was found to be nine weeks pregnant. It is alleged that she was provided all the medical care and, as per medical advice, a diet chart was specified for her and such diet was given to her.

11. It is further stated that on 11.09.2010, Neelam developed pain and she was referred to DDU Hospital. Thereafter, she was again referred to DDU Hospital on 14.9.2010/15.9.2010. On 2.10.2010 she developed labour pains and was taken to DDU Hospital at night. In the morning she delivered a child. It was a normal delivery. However, after the delivery she was bleeding continuously. The surgery was performed upon her and her uterus was removed in DDU Hospital.

Thereafter, her health deteriorated and on 5.10.2010 blood was arranged from the Lion Blood Bank vide receipt No.12400. On 6.10.2010 she died at 3 p.m. in the hospital. Thereafter, a post-mortem examination was conducted on her dead body as per which the cause of death was septicemia shock subsequent to complications developed after the 3rd stage of delivery.

12. The further stand of the Child Welfare Committee i.e., respondent no.7 is that Neelam was below the age of 16 years as per the MCD birth certificate no.MCDOLR-08206612 bearing date of registration as 30.7.2008 and as she had refused to go with her parents she was in the care and protection of the Children Home for Girls. It was further alleged that she was given all due care and medication during her pregnancy and that there was no negligence on the part of the Child Welfare Committee nor was there any illegal detention by the Committee. It was further stated that the Committee had acted in accordance with law and the procedure prescribed by the Juvenile Justice (Care & Protection) Act, 2000 and Rules. Accordingly, it was contended that the petitioner is not entitled for compensation as claimed by him.

13. The learned counsel appearing for petitioner had contended that Neelams father had lodged a false complaint with the Police with a false document showing her age as 15 years and 4 months. It was submitted that the birth certificate produced by Neelams father was found to be forged on 27.01.2010 as per report given by the Sub-Registrar, Births & Deaths, Shahdara (North), MCD, Delhi. On 18.2.2010 as per ossification test the age of Neelam was opined to be above or equal to 20 years. Despite that, the respondents Nos.2 to 6 concealed the said fact and continued to mislead the courts as well as respondent No.7. It is contended that once it was established that the birth certificate was fake, the respondents ought to have released Neelam from Nirmal Chhaya. It is contended that after the ossification test, detaining Neelam in Nirmal Chhaya was illegal as she had attained majority and had married the petitioner of her own free consent. It is contended that the respondents have committed a grave public wrong. It is contended that Neelams detention by the Child Welfare Committee for a period of 8 months was illegal and unconstitutional. It is contended that respondents have not discharged their statutory duties. It is further submitted that even in the

Sessions trial the petitioner has been acquitted. It is submitted that on account of illegal detention of Neelam, the petitioner be granted compensation of Rs.50 lakhs.

14. The learned counsel appearing for respondents No.1 to 6 submitted that the petitioner has levelled baseless allegations against the respondents. It was further submitted that the Investigating Agency had taken all necessary steps in accordance with law and nothing unlawful has been done as is alleged. It was contended that during the investigation, the prima facie evidence had come with the Investigating Agency that the girl was of 15 years and 9 months and throughout the investigation even Neelams father had taken the stand that she was a minor and in order to safeguard the interest of the minor she was sent to Nari Niketan. WP(Crl.)1672/2010 submitted, there was no illegal detention of Neelam and the petitioner was not entitled to any compensation.

15. The learned counsel appearing for respondent No.7 also contended that Neelam was 15 years 4 months as per the birth certificate No.MCD OLR-08206612 having date of registration 30.7.2008, as such she was kept in Children Home for girls and she was given due care and medication during her pregnancy. It was further submitted that there was no negligence on the part of the Child Welfare Committee and there was no illegal detention of the child by the said Committee and that they had acted in accordance with law as prescribed by the Juvenile Justice (Care & Protection) Act, 2000. Finally, it was contended that all the allegations levelled by the petitioner were false and the petitioner was not entitled to any compensation.

16. We have considered the submissions made. We have also gone through the material on record as well as the Investigation File.

17. It is an admitted position that the petitioner married Neelam on 4.1.2010 and the marriage certificate furnished by them was found to be genuine during the investigation. The stand of the petitioner is that Neelams father had lodged a false complaint by giving her false age. A false case was registered against him under Section 363/366/376 IPC. It was contended that Neelam was above 18 years of age.

18. At this juncture, it would be appropriate to refer to the proceedings pursuant to the complaint lodged by Neelams father on the basis of which FIR No.8/2010 was registered under Section 363 IPC on 26.04.2010 at Police Station - Vijay Vihar. As pointed out earlier, Sections 366 and 376 IPC were added subsequently. Charges were framed on 01.05.2010 under Section 363/366/376 IPC. After a full-fledged trial, the petitioner was acquitted by a judgment dated 15.09.2011 delivered in Sessions Case No.31/2010 by the learned Additional Sessions Judge-II, Outer District, Rohini Courts, Delhi. The learned ASJ held as under:49. So in view of the discussions hereinabove, I have no hesitation in holding that the prosecution has miserably failed to prove the case against the accused. The accused is, therefore, acquitted. While doing so, the learned ASJ also held that Neelam was not a minor on the day of the incident. The discussion on this aspect of minority was as under: 36. The first question which arises for consideration is whether the victim was a major or minor on the date of the incident which took place on 3-1-2010.

37. PW2who is the father of the victim has deposed that his daughter was aged about 18 years on the date of the incident. In cross examination he denied the suggestion that he has filed a false and fabricated certificate of the victim.

38. PW4who is the mother of the victim has stated that on 4-1-2010 the victim was aged around 15 years and 4 months. The prosecution has placed on record one birth certificate which is Ex. PW5A which shows the date of birth as 22-09-1994 but in this exhibit the gender of the child is male and the name of the mother is Veena and name of father is Vijay Kumar. No reliance can be placed on this birth certificate because in the present case the victim is a female and the name of her father is Gauri Shankar and the name of her mother is Kamlesh.

39. Another document proved on record in order to prove the date of birth of the victim is Ex. PW5C. In this document also the name of the father is mentioned as Vijay Kumar and name of the mother is mentioned as Veena whereas the name of the father of the victim is Gauri Shankar and name of the mother is Smt. Kamlesh.

40. The prosecution has also proved on record an order issued from the office of Deputy Commissioner for entering the date of birth of one Larisha in the municipal records the said document is Ex. PW5B. The perusal of this document shows that

the order was passed in favour of one Kumar w/o Shankar Lal with regard to the entry of date of birth of one Larisha in the municipal record. But it has not been proved on record by the prosecution that Larisha and the victim are one and the same person and even in this order the names of the parents of victim is not found . So it is not conclusively proved that this order was issued for getting the date of birth of victim entered in the municipal record.

41. The prosecution has placed on record another birth certificate which is Ex. PW21A which is in the name of the victim and parentage is also correct. This certificate has been proved by Smt. Veena Arora Sub-Registrar birth and death Shahadara South, Delhi. According to this document the date of birth of the victim is 22-09-1994. I am finding it very difficult to place reliance on this certificate because in addition to this certificate the prosecution has proved one birth certificate which is Ex. PW5A, which does not tally with the parentage, gender, name of the victim. The prosecution has also placed on record an order of the Deputy Commissioner which is Ex. PW5B directing that birth entry be made in the municipal record but this order also does not relate to the victim or her parents.

42. Another certificate which has been proved on record is Ex. PW21A and it is not clear as to on what basis this entry was made in the municipal record. Moreover, PW5Mukul Saxena, Sub Registrar birth and death Shahadara North has deposed that this certificate is fabricated at point A, B and C i.e. at the point of date of birth, place of birth and parentage.

43. There is one more birth certificate placed by the prosecution which is Ex PW18A issued by the corporation. This is not clear as to on what basis the date of birth was entered in the municipal record on the basis of which this birth certificate was issued. Because only one order of the Deputy Commissioner has been placed on record by the prosecution and the same does not tally with the other birth certificates placed on record. So in this circumstances, it would be highly unsafe and risky to place reliance on these birth certificates and consider the date of birth of the victim as 22-9-1994.

44. The prosecution has also proved on record the ossification report which is Ex. PW20A. As per this report the age of the victim appears to be above or equal to 20

years.

45. Since the birth certificates are shrouded in mystery so I am not inclined to place reliance on them and I think it just and proper to place reliance of the ossification report Ex. PW20A. So the victim was not minor on the day of the incident. 19. From the above, it is obvious that all the so-called birth certificates produced by Neelams father were, at best, unreliable. And, the learned ASJ placed reliance on the ossification report whereby Neelam was clearly not a minor.

20. So, it is evident that the case registered at the behest of Neelams father was false. The birth certificates submitted by him were false. The petitioner is right in his submission that when the case was registered, Neelam was not a minor. She should never have been detained by the respondents in Nirmal Chhaya. Her detention was, as it turns out, illegal. During her detention and illegal custody, she delivered a baby girl. But, shortly thereafter, Neelam developed complications and died of septicemia shock. Neelam died while she was in the care, protection and custody of the respondents, albeit illegal.

21. Chapter III of the Juvenile Justice (Care and Protection) Act, 2000 (hereinafter referred to as the said Act) deals with child in need of care and protection. By virtue of Section 31, the Child Welfare Committee is empowered with the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. Section 49, which falls under Chapter V (Miscellaneous) of the said Act, provides for the determination of age of a person when brought before, inter alia, a child Welfare Committee. The said Section 49 reads as under: 49. Presumption and determination of age.- (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be. (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof

that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person. 22. It is evident that when a person brought before the Committee appears to be a juvenile or a child, it is enjoined to make due inquiry as to the age of that person and is required to take such evidence as may be necessary and to record a finding.

23. Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 prescribes the procedure to be followed in the determination of age as follows:12. Procedure to be followed in determination of Age (1) In every case concerning a child or a juvenile in conflict with law, the court of the Board or, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

2. The court of the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and sent him to the observation home or in jail.

3. In every case concerning a child or juvenile in conflict in law, the age determination inquiry shall be conducted by the court of the Board or, as the case may be, the Committee by seeking evidence by obtaining (i) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (ii) the birth certificate given by a corporation or a municipal authority or a Panchayat; (iii) available; the matriculation or equivalent certificates, if b). And only in the absence or either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court of the Board, or as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his / her on lower side within the margin of one year and, while passing orders on such case shall, after taking into consideration

such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clauses (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law. 24. Clearly, the Committee was required to determine the age of Neelam within 30 days. The methodology was prescribed in Rule 12(3) above. It is obvious that none of the documents mentioned in Rule 12(3)(a) were available / reliable. Consequently, recourse to Rule 12(3)(b) would have to be taken which contemplates the taking of medical opinion. In the present case, the ossification report clearly showed the age of Neelam to be above or equal to 20 years. Therefore, had this procedure been adhered to Neelam could not have been declared to be a minor. Consequently, she could not have been kept in custody in Nirmal Chhaya, Nari Niketan. The fact that she was kept there, violated her fundamental right guaranteed under Article 21 of the Constitution. The fact that she died while under the care and protection of the respondents further aggravates the situation.

25. In *D.K. Basu v. State of W.B.*: (1997) 1 SCC416(para 41), the Supreme Court held that -- The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

26. It was further held in *D.K. Basu (supra)* as under:54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have

the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. 27. Earlier, in *Nilabati Behera v. State of Orissa*: (1993) 2 SCC 746 the Supreme Court had held: 35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar*¹ granted monetary relief to the

victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and selfrestraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. 28. The current position of the law is stated by the Supreme Court in *M.S. Grewal v. Deep Chand Sood*:(2001) 8 SCC151 as under:28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - 1 (1983) 4 SCC141 (1983) 3 SCR508 1983 SCC(Cri) 798 affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil courts obligation to award damages. As a matter of fact the decision in *D.K. Basu* has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of justice-oriented approach. Law courts will lose their efficacy if they cannot possibly respond to the need of the society - technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice. 29. In all these cases, the victims were under some sort of State custody, punitive or protective. As observed by one of us (*Badar Durrez Ahmed, J*) in *Smt. Kamla Devi v. Govt of NCT of Delhi & Another* [WP(C) 173/1997]. decided on 10.09.2004, the public law

demand, as distinct from the private law tort remedy, is that crime victims be given compensation even in no-fault situations by the State.

30. The unfortunate death of Neelam as per postmortem report is septicemia shock subsequent to complications developed after the 3rd stage of delivery, as is stated in the affidavit of respondent No.7. The deceased Neelam was detained at Nirmal Chhaya for more than 8 months. She died in the custody and care of the State. Even if it be assumed that her death was on account of no-fault on the part of the respondents, it must be remembered that her custody was illegal as she was not a minor. In the light of the Supreme Court decisions referred to above, it is too late in the day to suggest that the petitioner and, more so, his minor daughter ought not to be compensated by the State for Neelam's unfortunate and tragic death.

31. We may also point out that on going through the affidavit of respondent No.7, it appears that Neelam's case was treated like an ordinary delivery case. The affidavit of the concerned doctor who had attended her and the details of medical treatment provided to Neelam have not been stated. The chances of death of a mother at the time of delivery are very rare these days considering the advancement in medical science. We are also not satisfied with the overall care including medical care provided to Neelam considering that she was of a young age. It was a high risk delivery case. It is not the stand of respondent No.7 that when Neelam was placed in Nirmal Chhaya she was suffering from some ailment. The unfortunate death of Neelam has deprived her new born child of love, affection and care of a mother. It has also deprived the petitioner of his wife and her love, care and support which she was willing to provide against all adversity.

32. Thus, the petitioner (for himself and, more so, for his minor daughter) would be entitled to receive a standard compensation or conventional amount from the State (Respondent No.1) for the death of Neelam while she was in the custody of the State. This type of compensation is for nonpecuniary loss for pain and suffering and loss of amenity. [See: *R.D. Hattangadi v. Pest Control (India) (P) Ltd*: (1995) 1 SCC551 (at pp. 446 and 557)]. In *Lata Wadhwa v. State of Bihar*: (2001) 8 SCC197 the Supreme Court settled the conventional sum at Rs 50,000/- as on

1989. In Nagappa v. Gurudayal Singh:

2003. (2) SCC274 the Supreme Court recognized the fact that the inflation factor has to be taken into account. In this light, if the figure for the conventional sum was Rs 50,000/- in 1989 [as per Lata Wadhwa (supra)], then, the figure for 2010 (Neelam died on 06.10.2010) would have to be computed after factoring in inflation. As pointed out by one of us in Smt. Kamla Devi (supra), a good index to work with is the Consumer Price Index for Industrial Workers CPI (IW) [Source: Labour Bureau, Government of India: <http://labourbureau.nic.in/indtab.html>]. With the base year 1982 (=100), the average CPI(IW) for the year 1989 was 171 and for 2001, it was 458. (We are taking the year 2001 because the index with base year 1982 does not extend to the year 2010. A new base year 2001 (=100) has been provided which index extends upto and beyond 2010. Since the index with base year 1982 includes the year 2001, the latter year has been selected as a common year to both the indices). Hence, the inflation - correlated value of Rs 50,000/- in 1989 would work out to Rs 1,33,918.13 [(50000 x

458) 171]. in 2001. Now, taking the new base year 2001 (=100) the average CPI(IW) for 2010 as per the index is 175.9. Therefore, value of the conventional sum in 2010 would be Rs 2,35,561.99 [(133918.13 x 175.9) 100]. (or Rs 2,35,562/-). This would be the compensation by way of the conventional sum payable as on 06.10.2010. Therefore, as on today, the interest on the said amount for the intervening period also needs to be computed. Taking an interest rate of 8% per annum, the interest component for the intervening 42 months works out to Rs 65,940/-. Hence, the conventional sum with interest is Rs 3,01,502/- (Rs 2,35,562 + Rs 65,940) which can be rounded off to Rs 3,00,000/-. The petitioner would, however, not be entitled to compensation for pecuniary loss of dependency inasmuch as Neelam was not employed and the petitioner was not dependent on her earnings, wholly or partially.

33. Consequently, we award a compensation of Rs.3,00,000/- to the petitioner and his said minor daughter. The respondent No.1 is directed to pay the sum of Rs.3,00,000/- to the petitioner on his behalf and on behalf of his minor daughter, i.e., daughter of Neelam within a period of 4 (four) weeks from the date of this

judgment. The petitioner shall deposit the said amount in a fixed deposit in a nationalized bank in favour of the child under his guardianship till the child reaches the age of 18 years. The petitioner may withdraw the interest on the said deposit as a father and natural guardian once in 3 months and utilize the same for the benefit of minor. Once the minor turns 18 years of age, the entire amount of the fixed deposit shall be transferred to her independent name. After receipt of the said amount, the petitioner shall file an affidavit of having complied with a photocopy of the Fixed Deposit Receipt. The petition stands allowed to the aforesaid extent. VEENA BIRBAL, J BADAR DURREZ AHMED, J May 29, 2014
kks

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com