

Miri Engtipi Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Feb-01-2005

Judge : B.P. Katakey, J.

Acts : Arms Act - Sections 25(1B) and 27; [Constitution of India](#) - Articles 21; Indian Penal Code (IPC) - Sections 120(B), 121(A), 122, 123, 302, 364(A), 368 and 448

Appeal No. : Civil Rule No. 527 of 1998

Appellant : Miri Engtipi

Respondent : State of Assam and ors.

Advocate for Def. : Borogohain, Adv.

Advocate for Pet/Ap. : H.K. Sharma, Adv.

Disposition : Petition dismissed

Prior history : B.P. Katakey, J. 1. The writ petitioner who is the wife of Hari Terang has filed this present application for awarding compensation for the custodial death of her husband and also to direct the respondents to take appropriate action against the respondent No. 2 namely Mukesh Agarwal, Superintendent of Police, Diphu. 2. I have heard Mr. H.K. Sharma, learned counsel for the petitioner and also Mr. Burgohain, learned Addl. Advocate General, Assam assisted the learned State counsel for all the res

Judgement :

B.P. Katakey, J.

1. The writ petitioner who is the wife of Hari Terang has filed this

present application for awarding compensation for the custodial death of her husband and also to direct the respondents to take appropriate action against the respondent No. 2 namely Mukesh Agarwal, Superintendent of Police, Diphu.

2. I have heard Mr. H.K. Sharma, learned counsel for the petitioner and also Mr. Burgohain, learned Addl. Advocate General, Assam assisted the learned State counsel for all the respondents.

3. The case of the writ petitioner in the writ petition is that the petitioner's husband Hari Terang, who was serving as Section an Assistant in the office of the Executive Engineer Diphu irrigation Division, was picked up by police on 30/10/1997 and while he was in police custody he was beaten mercilessly for which he was hospitalised and as a result of which the petitioner's husband died in Diphu Civil Hospital on 4/11/1997. The petitioner has, therefore, filed the present writ petition for adequately compensating her for the custodial death of her husband due to police torture and also for violation of fundamental rights granted under Article 21 of the [Constitution of India](#).

4. The respondents opposing the contention made by the writ petitioner in the writ petition submitted their affidavit-in-opposition denying the statement of the writ petitioner in the writ petition to the effect that the husband of the writ petitioner was subjected to torture in police custody, who was arrested in connection with Diphu P.S. Case No. 193/ 97 Under Section 448/364(A)/120(B)/121(A)/122/123/368/302 I.P.C. read with Section 25(1B)(a)/27 of the Arms Act. The further case of the respondents in the affidavit-in-opposition is that pursuant to the death of Hari Terang an inquiry was conducted and from the said inquiry it has been revealed that he died on 4/11/1997 at Diphu Civil Hospital as he was suffering from 'Decompensated alcoholic Cirrhosis of Liver'. It has further been stated that after the arrest of Hari Terang he fell ill and there after he was treated by the Doctor and

subsequently in terms of the doctors' advice he was hospitalised in Diphu Civil Hospital and where he died on 4/11/1997. According to the respondents, Hari Terang was never subjected to any torture and he died of his illness and all proper medical care was extended to him and, therefore, the writ petitioner was not entitled to get any compensation as there was no negligence on the part of the police officers.

5. This court vide order dated 30/4/1998 by taking into account the allegations made in the writ petition directed the learned District Judge, Nagaon to cause an inquiry about the death of husband of the petitioner, Hari Terang, and to submit the report to this, court. Accordingly, an inquiry was conducted by the learned District Judge, Nagaon, wherein opportunities were given to the writ petitioners as well as the respondents to adduce evidence and there after submitted a detailed report before this court. The said inquiry report submitted by the learned District Judge was furnished to the learned counsel for the petitioner on 18/1/ 1999 and also was furnished to the learned Govt. advocate, Assam. Neither the writ petitioner nor the respondents, in spite of receipt of the report, submitted by the learned District Judge, has filed any objection to the said report objecting acceptance of the same.

6. Mr. H.K. Sharma, learned counsel for the petitioner submits that it was an admitted fact that the husband of the petitioner was picked up by the police in connection with Diphu P.S. Case No. 193/97 on 30/10/ 97 and he died in Diphu Civil Hospital while in custody on 4/11/1997. According to the learned counsel for petitioner proper medical care was not extended to the husband to the writ petitioner and had such medical care been extended the petitioner's husband would not have died. The petitioner's husband being in police custody it is duty of the police officer to extend all possible medical care for the illness suffered by the detenu while in custody. Mr. Sharma, learned counsel for the petitioner, therefore, submits that as the respondents have failed to extend proper medical care to save the life of the detenu the fundamental rights under Articles 21 of the [Constitution of India](#) has been violated and, therefore, the writ petitioner has to be adequately compensated. Mr. Sharma, learned counsel for the petitioner in support of the contention has relied upon a decision of division bench of this court in Civil

Liberties and Human Rights Organisation (CLAHRO), Manipur v. State of Manipur and Ors. reported in (1997) 2 GLJ 384.

7. Mr. Boragohain, learned Addl. Advocate General, Assam submits that this court vide order dated 30/4/98 has directed the learned District Judge, Nagaon, to make a detail inquiry about the allegation of the custodial death and also about the negligence of the some police officers in not extending the proper medical care to the husband of the writ petitioner who died on 4/11/1997 while in custody. The learned District Judge in the said inquiry examined 4 (four) witnesses on behalf of the writ petitioner were examined and 22 (twenty-two) witnesses on behalf of the respondents were examined and 98 (ninety-eight) documents were exhibited during the said inquiry. The learned District Judge thereafter upon perusal of the deposition of the witness examined and also the documents exhibited in course of the inquiry, having submitted the report with a finding that Hari Terang was never assaulted and tortured while in custody and in fact he died because he developed Jaundice. Therefore, the writ petitioner is not entitled to any compensation, as the negligence on the part of the police officers has not been established in the said inquiry.

8. I have considered the rival submissions put forward by the learned counsel for the parties and also the statements made in the writ petition, affidavit-in-opposition and also the annexures appended thereto. I have also perused the report submitted by the learned District Judge, Nagaon, pursuant to the order dated 30/4/98 passed by this court.

9. The learned District Judge while conducting the inquiry in pursuant to said direction passed by this court has examined 4(four) witnesses on behalf of the writ petitioner and 22(twenty two) witnesses produce on behalf of the respondents. During the depositions of the witnesses 98 (ninety eight) documents were exhibited. The learned District Judge after scanning the evidence on record, both oral and documentary, has come to the definite finding that Hari Terang who was taken into custody on 30/10/1997, fell ill while in custody. The police immediately called the Doctor and who treated Hari Terang in the police station and, thereafter, on the basis of the advice of the attending Doctor he was hospitalised in Diphu

Civil Hospital on 2/11/1997. Learned District Judge has also recorded a categorical finding that in the Civil Hospital all possible medical care were extended to Hari Terang but as he was a chronic alcoholic and suffering from Liver Cirrhosis with Jaundice, his life could not be saved and he died in the hospital on 4/11/1997. It has also been categorically held in the said report by the learned District Judge that Hari Terang was never subjected to any torture by the police while in custody and he was in fact immediately hospitalised on the advice of the Doctor where proper medical care was extended to him.

10. The division bench of this court in Civil Liberties and Human Rights Organasation (CLAHRO) by taking into account the fact that there was certain injuries in different parts of the body of the deceased, who died in custody, awarded a sum of Rs. 2,00,000/- (Rupees two lakh) as compensation to the wife and the minor children of the deceased. In the present case the learned District Judge was asked to conduct an inquiry by this court about allegation made by the writ petitioner in the writ petition and in the said inquiry a categorical finding has been recorded by the learned District Judge that the husband of the writ petitioner was never subjected to any torture and in fact he died in the Civil Hospital, Diphu due to 'bleeding from Oesophagial varices, Jaundice (sewewre) and Hepatic (liver) failure from Cirrhosis of Liver' and all proper medical care was extended to the husband of the writ petitioner, i.e., Hari Terang. Therefore, the decision of division bench of this court is not applicable in the facts and circumstances of the present case.

11. The writ petitioner can claim compensation only if it is established that husband of the writ petitioner, who was taken into custody died while in police custody either for the torture meted out to him by the police or in the event of not extending proper medical care to the detenu while he was in custody. In the present case it is evident from the deposition of the witnesses, namely D.Ws-1, 5, 6 and, 20, i.e. Dr. Prafulla Kr. Nath, Dr. Borsing Rongpi, Dr. Ashok Bagchi and Dr. Ripunjay Kakati that Hari Terang was immediately hospitalised as per the advice of the doctor and the attending doctors' extended all possible medical treatment to the detenu namely Hari Terang but he died of Liver Cirrhosis with Jaundice as he was a chronics alcoholic. The District Judge also, categorically held that Hari

Terang was never subjected to any beating or torture by the police while is custody. The writ petitioner has not objected the finding recorded by the learned District Judge, Nagaon.

12. That being the position, I do not find any merit in the writ petition and, therefore, the writ petition is dismissed. Keeping in view the facts and circumstances of the case I make no order as to cost.

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