

State of Assam Vs. Tarulata Devi

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Court : Guwahati

Decided On : Jun-16-2006

Judge : B. Sudershan Reddy, C.J. and B.P. Katakey, J.

Appellant : State of Assam

Respondent : Tarulata Devi

Advocate for Def. : Mr. Ujir

Disposition : Appeal dismissed

Judgement :

B.P. Katakey, J.

1. Smti. Tarulata Devi, the mother of Pankaj Sarma, a young boy of about 25 years and victim of the custodial death, filed a writ petition being Civil Rule No. 1333 of 1995 against the State of Assam and others praying for a direction to initiate a judicial inquiry for the purpose of fixation of liability/responsibility upon the wrongdoers involved in the killing of her son while in custody in Mangaldoi police station on 4.12.1994 registration of a Criminal Case under Section 302 IPC and punish such person (s) found responsible for the killing of her son and also to pay suitable compensation for such custodial violence. The learned Single Judge upon hearing the learned Counsel for the parties and on the basis of the materials available on record vide judgment and order dated 26.4.2001 directed payment of

a sum of Rs. 2 lakh by the State to the writ petitioner for the wrongs on the part of the State and its failure to discharge its solemn duties to protect the fundamental rights of the citizen and also, keeping in view the facts and circumstances involved, directed the Central Bureau of Investigation ('CBI') to register an FIR and to investigate the same in accordance of the Code of Criminal Procedure with utmost expedition. The State of Assam being aggrieved by the direction issued to the CBI to investigate the matter, has filed the present appeal, while making payment of the compensation of Rs. 2 lakh awarded by the learned Single Judge, to the writ petitioner.

2. The facts relevant for the purpose of the present appeal is narrated below:

(i) On the night of 4.12.1994 a police party led by the Officer-in-Charge of the Khoirabari Police Station in Darrang district raided Kuhiarkuchi village at about 12.30 AM and arrested Pankaj Sarma alias Kaushik Sarma along with 11 others alleging that they are members of a banned organization, namely United Liberation Front of Assam (ULFA), by registering Khoirabari Police Station Case No. 48 of 1994 under Section 307, IPC read with Section 3/4/5 of Terrorist and Disruptive Activities (Prevention) Act, 1987. The said arrested persons including Pankaj Sarma were thereafter taken to Mangaldoi Police Station on the same night as advised by the Deputy Superintendent of Police (Headquarter) and according to the police when Pankaj Sarma tried to flee with handcuff on, he fell down and got himself injured at the left side of the chest, resulting in broken of forth rib. Thereafter, Pankaj Sarma was sent to Mangaldoi Civil Hospital for treatment on the night of 4.12.1994 itself, but could not survive and died about 11 PM on that day. The police registered U/ D case No. 30 of 1994 and seized the handcuff from Pankaj alias Kaushik Sarma's hand.

(ii) Smelling foul play by the police personnel which resulted in the death of Pankaj Sarma in Police custody, the father of Pankaj Sarma on 7.12.1994 filed an application before the Deputy Commissioner to make an inquiry into the death of his son in police custody to find the culprits responsible for his death and to punish them and also for payment of suitable compensation alleging that after his son was arrested on the intervening night of 3.12.1994 and 4.12.1994, from the house

of Phaguna Hazarika, he was inhumanly tortured by the police in Mangaldoi police station and as a result of which his son died. A Magisterial Inquiry was thereafter ordered by the District Magistrate, Darrang at Mangaldoi on 12.12.1994 to find out the causes and circumstances leading to the death of Pankaj Sarma, who expired on 4.12.1994 in Mangaldoi Civil Hospital.

(iii) During pendency of such Magisterial Inquiry, the present writ petition being Civil Rule No. 1333 of 1995 was filed by the mother of Pankaj Sarma. The learned Single Judge vide order dated 31.3.1995, upon hearing the learned Counsel for the petitioner as well as learned State counsel appearing on behalf of all the respondents in the writ petition, directed the learned District Judge, Darang to make an inquiry regarding cause of death of Pankaj Sarma and submit his report within four months. The Sub-Divisional Magistrate (E), Darang, Mangaldoi, meanwhile, submitted his inquiry report on 20.6.1995 on the death of Pankaj Sarma with the conclusion that whatever circumstances leading to the death of Pankaj Sarma, there is, however, not even slightest doubt about the fact that he expired while he was still in police custody. The said report submitted by the Sub-Divisional Magistrate (E) was filed in the writ petition on 1.7.1995 and was taken on record. The learned Single Judge thereafter on 31.7.1995 directed that in spite of the report submitted by the Sub-Divisional Magistrate (E), the inquiry as directed to be conducted by the learned District and Sessions Judge, Darrang, Mangaldoi shall continue, against which the State of Assam, present appellant, filed W.A. No. 400 of 1995 challenging the direction regarding the continuance of the inquiry by the learned District and Sessions Judge, which was, however, dismissed on 16.8.1995.

(iv) The learned District and Sessions Judge thereafter upon appreciation of the evidences of both the parties adduced before him submitted the report dated 14.3.2000 by holding that the cause of death is due to assault and torture caused to Pankaj Sarma by the Police while he was in custody in Mangaldoi Police Station. By order dated 3.4.2000 the learned Single Judge directed the Registry to furnish the copy of the said inquiry report submitted by the District and Sessions Judge to the learned Counsel for both the parties and accordingly on 5.4.2000 copies of such report were supplied to the learned Counsel for the petitioner as

well as the learned State counsel appearing on behalf of the respondents. Though adjournments were granted as prayed for by the learned State counsel to submit their reply against the said inquiry report submitted by the learned District and Sessions Judge, the respondents therein did not file any objection to the said report. The respondents in the writ petition including the present appellant in spite of pendency of the writ petition for more than six years, also did not file any affidavit-in-opposition challenging the statements made in the writ petition filed by the mother of the victim of the custodial death.

(v) The learned Single Judge thereafter upon accepting the report submitted by the learned District and Sessions Judge directed payment of a sum of Rs. 2 lakh as compensation and also registration of a case by the CBI with further direction to make investigation to find out the persons responsible for the death of Pankaj Sarma in custody, as the evidences recorded before the learned District and Sessions Judge during inquiry conducted by him reveals that Pankaj was assaulted and tortured by Police in custody and as a result of which he died. The First Information Report was accordingly registered by the CBI in RC.6/S/2001-Calcutta under Section 302/201 IPC read with Section 120B, IPC against Sri G.S. Chetri, Officer-in-Charge of Mangaldoi Police Station and other police personnel and took up the investigation by entrusting the same to Sri O.P. Sharma, Inspector of Police, CBI. The State, thereafter, causing delay of 113, days filed the Writ Appeal on 16.10.2001 together with an application for condonation of delay in Misc. Case No. 427 of 2001 and the appeal was thereafter admitted on 5.12.2001 by condoning the delay occurred in filing the appeal. Meanwhile on 30.10.2001 the amount of Rs. 2 lakh awarded by the learned Single Judge as compensation was sent to the Registrar General of this court, which was paid to the writ petitioner on 7.1.2002.

(vi) Since the CBI registered the First Information Report on 12.6.2001 pursuant to the direction issued by the learned Single Judge on 26.4.2001 and the appeal preferred by the State of Assam was admitted on 5.12.2001, i.e., for almost eight months from the date of the judgment under challenge, an order dated 10.1.2002 was passed in writ appeal directing the CBI to produce the materials collected by it in course of investigation before the court till the interim order dated 5.12.2001

was passed staying lodging of FIR and investigation by the CBI. By order dated 8.4.2002 the writ appellate court directed the CBI to file an affidavit indicating the progress of investigation including the number of witnesses examined and number of documents already collected and accordingly the CBI on 26.4.2002 filed the affidavit stating therein that the FIR was registered on 12.6.2001 pursuant to the direction issued by the learned Single Judge and before passing the interim order by the writ appellate court, the statement of 51 witnesses have already been recorded and 69 numbers of documents have been seized apart from recording the statement of seven witnesses under Section 164 Cr.P.C. and also stating that the investigation of the case was in penultimate stage when such investigation was stayed vide order dated 5.12.2001.

(vii) A Division Bench of this court vide order dated 21.5.2002 initially allowed the writ appeal, by setting aside the FIR registered by the CBI pursuant to the direction issued by the learned Single Judge, with the observation that it will open up the Pandora's box and the evidence prima facie does not disclose/reveal anything. On being challenged by the respondent/writ petitioner, the Apex Court, vide judgment dated 22.9.2003 passed in Civil Appeal No. 7985 of 2003 set aside the said judgment and order dated 21.5.2002 allowing the writ appeal, on the ground that the same does not disclose any cogent reason except making observations and remit the matter to this court for fresh consideration by restoring the appeal to its original number. Hence, the present appeal before this court.

3. We have heard Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellant, State of Assam, Mr. Ujir, learned Counsel appearing on behalf of the respondent/writ petitioner as well as Mr. D.K. Das, learned senior counsel appearing on behalf of the CBI.

4. Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellant, State of Assam, has submitted that even though there is no prima facie materials before the learned Single Judge to direct the CBI inquiry, the learned Single Judge basically relying on the report submitted by the learned District and Sessions Judge, Darrang, which was submitted after more than five years of the date of death of Pankaj Sarma, directed the CBI to register an FIR and to make

investigation. According to the learned senior counsel the report of the learned District and Sessions Judge is based on no evidence at all and the finding recorded in the said report is also vitiated as the learned District and Session Judge has failed to take into account the finding recorded in the report dated 20.6.1995 submitted by the learned Sub-Divisional Magistrate, which inquiry was conducted pursuant to the order passed by the District Magistrate, in view of the application filed by the father of the deceased and the said report having been submitted on the basis of the statements of the witnesses, within one year from the date of occurrence, is most reliable. The learned senior counsel has further contended that as the learned District Magistrate had ordered the magisterial inquiry under Section 176, Cr.P.C, into the causes and circumstances leading to the death of Sri Pankaj Sarma, there is no occasion to direct another inquiry by the learned District and Sessions Judge, a statutory inquiry under the Cr.P.C. having once been conducted by the Magistrate. Assailing the judgment passed by the learned Single Judge, the learned senior counsel has submitted that the learned Single Judge having observed that the PWs 11 and 12 who were examined in the inquiry conducted by the learned District and Sessions Judge specifically mentioned certain police officers by name and designation as having committed the assault on the deceased, there is no need of having any investigation by the CBI, by observing that the wrong-doers is yet to be finally identified. According to the learned Counsel the judgment passed by the learned Single Judge itself is contradictory and, therefore, requires to be interfered with. Mr. Sushil Kumar, challenging the direction issued by the learned Single Judge has further contended that the learned Single Judge ought not to have relied upon the statement of five co-accused of the deceased, namely, PW Nos. 5, 6, 7, 11 and 12 whose statements were recorded by the learned District and Sessions Judge in the inquiry conducted by him, as those witnesses gave false evidences out of vengeance as they were detained under the TADA and they for the purpose of fabricating a new case and for implicating the police officials gave false evidence so as to demoralize the police force who are taking strong action against the members of the banned organization. The learned senior counsel further contends that the report submitted by the Sub-Divisional Magistrate on 20.6.1995 though was ordered to be taken into consideration at the final hearing, was never taken

into consideration by the learned Single Judge while disposing of the writ petition and issuing the direction to the CBI to register the FIR and investigate and had that report been taken into consideration, the learned Single Judge would not have issued the direction. The learned senior counsel referring to the deposition of the witnesses examined in the inquiry conducted by the Sub-Divisional Magistrate as well as in the inquiry conducted by the learned District and Sessions Judge, has submitted that there is even no prima facie case to direct the CBI inquiry.

5. Mr. Ujir, learned Counsel for the respondents/writ petitioner supporting the judgment passed by the learned Single Judge has submitted that the appellant having not filed any objection against the report submitted by the learned District and Sessions Judge, in spite of granting time for that purpose and also having not filed any affidavit-in-opposition controverting the statements made in the writ petition, cannot now in appeal challenge the finding recorded by the learned District Judge and, therefore, it is not open to the appellant to argue that report submitted by the learned District Judge is not based on any evidence on record. It has further been submitted by the learned Counsel that inquiry which was conducted by the Executive Magistrate under Section 176, Cr.P.C. cannot be equated with the investigation directed to be conducted by the CBI as well as the inquiry made by the District and Sessions Judge pursuant to the direction issued by this court in the writ proceeding. According to the learned Counsel it is not that once an inquiry is conducted by the Executive Magistrate, no criminal investigation can be conducted on the subject-matter which is covered by the inquiry conducted by such Executive Magistrate. It is open to the court to direct CBI inquiry, if the court is of opinion that the circumstances for issuance of such direction exist in a given case, submitted by the learned Counsel. Controverting the statement made by the learned senior counsel for the appellant, Mr. Ujir submits that this court cannot go into the details of the deposition of the witnesses recorded during the inquiry by the Sub-Divisional Magistrate as well as by the District and Sessions Judge as it is not an appeal against the conviction. According to the learned Counsel if the court is prima-facie satisfied that a case is made out against the police officer (s) that a person has been tortured in custody, the writ court definitely has the power to direct CBI inquiry to find out the truth, as the purpose of making any investigation is only to unearth the truth and to proceed against the guilty

officers who are responsible for the custodial death of a persons, which violates basic human rights of a person. In the instant case according to the learned Counsel it is evident from the report of the Executive Magistrate that the learned Magistrate while recording the finding that the death occurred while Sri Pankaj Sarma was in custody, himself was not sure about the reason for such death. It has further been submitted by the learned Counsel that in fact the learned Magistrate did not even bother to examine the other persons who were arrested along with the deceased Pankaj and had those persons been examined, they being the best witnesses to the occurrence, the truth would have come out and in that event the report of the learned Magistrate would have been otherwise. Referring to the report submitted by the learned District and Sessions Judge, the learned Counsel has submitted that, the District Judge by scanning deposition of the witnesses examined during the inquiry, has recorded a categorical finding that the death occurred to Pankaj because of the police torture while he was in custody and to find the persons responsible for such occurrence, investigation by independent agency like CBI is necessary as the State police is involved in the incident, more so when the State Government has filed the appeal against the judgment passed by the learned Single Judge directing a CBI investigation. Mr. Ujir has further submitted that it is evident from the affidavit filed by the CBI, pursuant to the direction issued by the writ appellate court, that the CBI investigation is in fact in the penultimate stage and the CBI has found certain police officers to be responsible for killing of Pankaj Sarma in custody and, therefore, at this stage court may not interfere with the direction issued by the learned Single Judge and instead allow the CBI to complete the investigation and to submit the final report before the appropriate court of law.

6. Mr. Das, learned senior counsel appearing on behalf of the CBI relying on the affidavit filed, pursuant to the direction issued vide order dated 8.4.2002 in the appeal, has submitted that the CBI, much prior to filing of the writ appeal challenging the direction issued by the learned Single Judge, registered the FIR on 12.6.2001 in case No. RC-6/S/2001-Calcutta under Section 302/201, IPC read with 120B, IPC and took up the investigation. According to the learned senior counsel the CBI in the meantime has recorded the statements of 51 witnesses under Section 161 Cr.P.C. and seized 69 numbers of documents apart from

recording the statements of seven witnesses under Section 164, Cr.P.C and the investigation of the case was in penultimate stage when such investigation was stayed by this court vide order dated 5.12.2001. According to the learned senior counsel it is evident from the affidavit filed by the CBI that the evidences on record suggest involvement of certain police officers in the crime and it has prima facie been established that the allegations in the writ petition are true. The learned senior counsel, as directed by this court, has also produced the status report of the CBI investigation so far conducted by it.

7. The learned Single Judge by the impugned judgment and order, upon hearing the learned Counsel for the parties as well as upon perusal of the report submitted by the learned District and Sessions Judge, against which no objection was filed by the present appellant and other respondents in the writ petition in spite of furnishing copies of such report as well as granting adjournment for that purpose, directed the CBI to register the FIR and to make an investigation to find out the persons responsible for the custodial death of Pankaj Sarma, son of the writ petitioner. The learned Single Judge has further directed to pay the compensation for the unconstitutional act of the respondents and for the failure to protect the life and liberty of a person. The learned Single Judge while issuing such direction also scrutinized the evidences available before the learned District Judge and on the basis of which the report was submitted and also keeping in view the fact that as the officers of the State police force were involved, the investigation by an independent agency, like CBI was necessary. The State has accepted part of the judgment, in so far as it relates to the direction to pay the compensation of Rs. 2 lakh, which was directed to be paid because of the failure of the State to protect the life of the detainee and taking away his right unconstitutionally and paid that amount but has challenged the direction issued by the learned Single Judge regarding investigation by an independent investigating agency, namely, CBI. The learned Single Judge, however, did not take into consideration the inquiry report submitted by the Sub-Divisional Magistrate (E) on 20.6.1995 which was conducted pursuant to the order dated 12.12.1994 passed by the District Magistrate, Darrang, though vide order dated 31.7.1995 it was observed that the said report, which was filed before the court on 1.7.1995, shall be taken into consideration at the time of hearing and disposal of the writ petition.

8. Let us now, therefore, first deal with the report submitted by the Sub-Divisional Magistrate (E) on 20.6.1995, which according to the learned senior counsel for the appellant was an inquiry conducted, under Section 176 Cr.P.C. It appears from the said report dated 20.6.1995, which is available on record, that the learned Magistrate during his inquiry has examined eight witnesses on behalf of the writ petitioner's side and 13 witnesses on behalf of the respondents in writ petition side. Though it was brought to the notice of the learned Magistrate that 11 other persons were arrested along with Pankaj Sarma, no attempt whatsoever was made by the learned Magistrate to record the statement of those persons who were in custody in connection with the Mangaldoi police station case registered against them. They being the best persons to make a statement relating to cause leading to death of Pankaj Sarma in custody, as they were all along present with Pankaj Sarma, ought to have been examined by the learned Magistrate to find out the truth, as the very purpose of making an inquiry by a Magistrate is to unearth the truth and to suggest measures to be taken and also with a view to initiate criminal proceeding against the persons guilty for such custodial death. The learned Executive Magistrate did not make any attempt in that regard to examine very important persons who were arrested along with Pankaj Sarma on the fateful day, i.e., 4.12.1994. That apart it is evident from the report-submitted by the learned Magistrate that the learned Magistrate has accepted police version regarding the bid to escape made by Pankaj on the ground of absence of any independent witnesses though he has observed that some witnesses have stated that Pankaj was tortured in police custody. The learned Magistrate in the conclusion has stated that 'whatever circumstances leading to the death of Pankaj Sarma alias Kaushik Sarma there is, however, not the slightest doubt about the fact that he expired while he was still in police custody'. From the said conclusion, it, therefore, appears that the learned Executive Magistrate has some doubt about the circumstances leading to the death of Pankaj in custody.

9. From the aforesaid report submitted by the learned Executive Magistrate it is, therefore, evident that the learned Magistrate is not at all sure and could not arrive at a definite finding that Pankaj Sarma was not tortured while he was in police custody and such torture has led to his death. Moreover, as discussed above, because of non-examination of the persons who were arrested along with Pankaj

Sarma on 4.12.1994 and were all along with him in Mangaldoi police station, makes finding recorded in the report submitted by the learned Magistrate doubtful, as the purpose for which such inquiry was instituted has been defeated for not recording the statements of such persons.

10. The learned senior counsel for the appellant has contended that once such inquiry has been initiated and conducted under Section 176 of Criminal Procedure Code, there is no scope having another inquiry by the learned District and Session Judge as ordered by the learned Single Judge. The said contention cannot be accepted on two grounds, firstly, the statements of the persons who were arrested along with Pankaj and all along with him on the fateful day and who were the best persons to depose about the circumstances leading to his death, were not recorded during the inquiry and secondly, the inquiry within the meaning of 176, Cr.P.C as well as the investigation under the Code are two different aspects. The inquiry is conducted to find out the cause of the death and to take necessary action thereafter, but in the instant case as discussed above the report submitted by the learned Magistrate does not inspire the confidence of the court because of the reasons as discussed above. Moreover, even if such report is submitted on the basis of the inquiry made by the learned Magistrate, it will not debar the court, in appropriate case, to direct investigation by an independent agency to unearth the truth, as the purpose of making investigation is to find out truth and to take appropriate criminal actions against the person (s) responsible for any criminal act.

11. The report submitted by the learned District and Sessions Judge reveals very disturbing state of affairs. The learned District and Sessions Judge has recorded categorical finding, on the basis of the evidences made available before him during the inquiry, that Pankaj Sarma was brutally tortured by the police personnel while he was in custody. It appears from the said report submitted by the learned District and Sessions Judge that the story put forward by the police that the injury was caused on the person of Pankaj while he fell down on the handcuff while trying to flee from the custody which resulted in his death, did not find favour of the learned District Judge, in view of the materials available on record that in Mangaldoi police station the police personnel were armed with heavy sophisticated weapons and under such circumstances it is not possible on the part

of any detainee to try to flee and thereby causing such injury. Moreover, neither the State nor any of the respondents, in spite of giving opportunities to file objection, object to the finding recorded by the learned District and Sessions Judge in his report by filing any objection, thereby they have accepted the finding and, therefore, they now cannot be allowed to turn around and say that the finding recorded by the learned District and Sessions Judge is not proper as the same is not based on any evidence. As discussed above, no affidavit-in-opposition was also filed by any of the respondents in the writ petition including the present appellant controverting the statements made by the writ petitioner in the writ petition, those statements, therefore, go unrebutted.

12. The learned Single Judge upon appreciation of the evidences of the witnesses examined by the learned District Judge has recorded the prima facie finding that the police personnel were involved in the brutal torture of Pankaj Sarma in custody which resultant in his custodial death. The learned senior counsel for the appellant though has referred to the deposition of almost all of the witnesses examined during the inquiry made by the learned Executive Magistrate as well as by the learned District and Sessions Judge and has submitted that no case at all was made out to direct investigation by CBI, we, at this stage are not inclined to scrutinize such evidence in details about the sufficiency or otherwise of the materials available on record for the purpose of recording any finding of guilt against any person but we have to scrutinize as to whether any prima facie case is made out to direct any investigation by an independent agency. As discussed above, the learned Single Judge has recorded the finding that there is prima facie material available on record to direct an investigation into the circumstances leading to the death of Pankaj Sarma, who admittedly, died while he was in custody of Mangaldoi Police Station.

13. The contention of the learned senior counsel for the appellant that the whole object and purpose of the co-accused of Pankaj Sarma was nothing but to demoralize the police force who are tackling terrorist activities in the State with firm hand and, therefore, on the basis of the statement of such person no investigation by an independent agency like CBI can be allowed, also cannot be accepted as the police though is under a legal duty and has legitimate right to arrest a criminal

and to interrogate him during investigation of an offence but the law does not permit use of any third-degree methods on the accused in custody during interrogation and investigation, with a view to solve the crime as held by the Apex Court in *D.K. Basu v. State of W.B.* reported in : 1997 CriLJ743 . End cannot justify the means and the interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective and by torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid and no society can permit it. The Apex Court in the said case has further held that the torture in police custody violates the basic human rights of a person and using any form of torture for extracting any kind of information would not be right, just and fair and, therefore, is impermissible, being offensive to Article 21 of the Constitution of India. It has further been held that a detainee cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons, etc., and the constitutional right of a person involved in terrorism cannot be abridged though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. The Apex Court has observed that a State terrorism is no answer to combat terrorism and it would only provide legitimacy to terrorism, which would be bad for the State, the community and above all for the rule of law.

14. The next question which arises for our consideration is whether such investigation can be conducted by the State agency or whether it is to be entrusted to an independent agency like CBI. In the instant case it is not the case of the appellant or the respondent before the writ court that any criminal investigation has been conducted by the State authority under the provision of the Criminal Procedure Code after registration of U.D. Case and no further criminal investigation by an independent body like CBI is necessary. The case of the appellant is that once an inquiry has been made by the Executive Magistrate there is no necessary for further inquiry or investigation. That contention is not acceptable and, hence, we have already rejected the same. In this case admittedly Pankaj Sarma died while in custody of the State police. The learned District Judge has found that State police personnel were involved, who tortured Pankaj Sarma

while he was in custody and which led to his death in custody. Therefore, investigation by an independent investigating agency, which is the basic requirement of a valid, proper and impartial investigation, where the State police officers are not involved, is the requirement of law and it will serve the public interest, as, such independent investigation is the rule of law, more so when the State has come forward with an appeal challenging the judgment passed by the learned Single Judge contending that no investigation at all is required to be made by independent body. In view of the said stands taken by the State, the investigation by an independent agency like CBI is highly proper keeping in view the public interest involved as well as with a view to have a proper, impartial and independent investigation to unearth the truth and to take criminal action, if any, against the person (s) found responsible for any criminal Act.

15. The medical evidence made available before the learned Executive Magistrate as well as before the learned District and Sessions Judge, in course of their inquiry and also the post mortem report submitted by the doctor after conducting autopsy on the body of the deceased Pankaj Sarma, suggest that there were multiple injuries of various sizes and shapes on back side of neck, back, left side of chest, both arms and forearms, thighs and legs apart from fracture of forth left rib near the costochondral junction, though according to the police the fracture injury on forth left rib is attributable to the injury caused because the deceased fell down on the handcuff while trying to flee. But the other injuries found on the body of Pankaj, by the doctor, have not been explained by the police. Therefore, it cannot be said that Pankaj Sarma was not subjected to torture while in custody, although such custodial torture is not permissible and violates the right of a detainee guaranteed under Article 21 of the Constitution of India. Therefore, the investigation by an independent body like CBI is necessary to find out the truth and to take criminal action against the persons responsible for such torture.

16. It also appears from the affidavit filed by the CBI, as directed by this court, as well as the status report submitted by it informing the court about the stage of its investigation conducted by it after registering the FIR, that the investigation is in a very advance stage. The CBI has already examined 51 witnesses under Section 161, Cr.P.C apart from getting the statement of seven witnesses under Section

164, Cr.P.C. recorded and has also seized 69 numbers of documents in course of such investigation. The CBI in the affidavit has also stated that there are evidences on record to suggest involvement of the police personnel in the crime and the prima facie it has been established that the allegations in the writ petition are true. Such investigation being in the penultimate stage, keeping in view the facts and circumstances of the instant case as well as the fact that Pankaj Sarma died while in custody, it would be improper to stop such investigation by quashing the direction issued by the learned Single Judge, when quashing of such direction will amount to acting against public interest and also defeating the very purpose of unearthing the truth and punishing the persons guilty of any criminal action.

17. The purpose of having an investigation by an independent body like CBI, is to unearth the truth and to bring the real truth so that the necessary criminal, proceeding can be initiated against the guilty officer (s) who may be found to be guilty for violating fundamental right of the detainee guaranteed under Article 21 of the Constitution of India. Requirement of having investigation by an independent agency fortifies when there is allegation of involvement of State police personnel and when State opposes such investigation. The custodial death violates the basic human rights of a person and the custodial torture is also not recognized under the Constitution of India or under any law of this country. Such custodial torture is affront to the rule of law as well as the basic human rights. The principle of rule of law and due process are closely linked with human right protection, such protection can be protected effectively when a citizen has recourse to the course of law. Rule of law demands an effective and impartial investigation into the offence alleged and denial of such impartial investigation is as such injustice to the victim and it is to the society also. Failure to have a free and effective investigation strikes at the root of the criminal justice as the basic purpose of having an investigation is nothing but to unearth the truth and to punish the guilty. The State has the constitutional obligation to have an impartial investigation through an independent agency into any offence alleged more so when there is allegation of involvement of State police personnel, but in the instant case it is very surprising that the State is opposing such investigation by an independent body like CBI, which they ought not to have done.

18. In the backdrop of what has been discussed above, as well as taking into account the totality of the circumstances, in our view the public interest demands that for the purpose of having fair and impartial investigation into the allegation of the custodial death of Pankaj Sarma because of torture in police custody, investigation by an independent agency is required, therefore, in our considered opinion, the learned Single Judge has rightly directed the investigation by the CBI after registering an FIR. Moreover, after progress of the investigation to such a stage, as discussed above, it would be against the public interest to quash the registration of FIR and investigation so far conducted by the CBI.

19. In view of the above, in our opinion, there is no infirmity in the judgment passed by the learned Single Judge directing the investigation by an independent agency, i.e., CBI and, hence, present appeal is devoid of any merit and, therefore, dismissed with cost of Rs. 10,000 to be paid by the appellant to the respondent/writ petitioner.

20. The Central Bureau of Investigation is accordingly directed to complete the investigation and submit the final report before the competent court of jurisdiction as expeditiously as possible preferably within three months from the date of receipt of the copy of this order. We may, however, hasten to add that the observations made by the learned Single Judge and as well as the observations made, if any, in this order shall have no bearing whatsoever in the investigation. The investigation which shall be on its own merits. The observations, if any, made shall cause no prejudice whatsoever.