

**Pooran Singh Vs. State of Madhya Pradesh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/501476](http://sooperkanoon.com/501476)

**Court :** Madhya Pradesh

**Decided On :** Mar-16-2009

**Reported in :** AIR2009MP153; 2009CriLJ3073; 2009(2)MPHT435

**Judge :** A.K. Patnaik, C.J. and ;Ajit Singh, J.

**Appellant :** Pooran Singh

**Respondent :** State of Madhya Pradesh and ors.

**Disposition :** Petition allowed

**Judgement :**

**Ajit Singh, J.**

1. By this letter, which has been registered as writ petition, the petitioner has prayed for a direction against the State Government to pay him compensation for his illegal detention of almost five years in jail.
2. Since the petitioner was not assisted by any lawyer, we thought it proper to appoint Shri P.K. Kaurav as Amicus Curiae who willingly agreed to provide all possible legal assistance in the matter.
3. The facts in short are these. The petitioner is a villager. He lives in Village Shrinagin-Umaria in District Narsinghpur. His trouble started from 25-5-2000 when the Police of Narsinghpur police station searched him at Itwara market on

information that he was involved in drug peddling. During search the police recovered 150 grams of opium from his possession. He was, therefore, arrested on that day itself and after investigation put to trial in the Court of Special Judge, Narsinghpur, vide Special Case No. 6/2000. The Special Judge by his judgment dated 15-9-2000 held the petitioner guilty of the offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to ten years Rigorous Imprisonment along with an additional sentence of fine of Rs. 1,00,000/-. The petitioner challenged his conviction and sentence by filing Criminal Appeal No. 2478/2000 before this Court. A learned Single Judge upheld the conviction of petitioner vide judgment dated 30-10-2003 but reduced the sentence of imprisonment to three years and five months. He also reduced the sentence of fine to Rs. 500/- or, in default of payment of fine, to undergo one month imprisonment.

4. On 7-11-2003 a copy of the judgment of this Court delivered in the criminal appeal of petitioner along with a certificate was sent to the Court of Special Judge under Section 388 of the Code of Criminal Procedure for information and further action. The record of the Special Judge which we summoned reveals that both these documents were received by the Reader of that Court on 11-11-2003 and on 10-12-2003 the presenting clerk sent the record to the Record Room of District Court. Further, as per the record of criminal appeal, on 11-11-2003 a similar copy of the judgment and certificate were also sent by the High Court to the Superintendent, District Jail, Narsinghpur, for information.

5. Thus, in the normal course, even if the petitioner did not deposit the fine, he ought to have been released from jail in the month of November, 2003. But he was not so released. Neither the modified warrant, as required under Rule 315 of the Criminal Courts Rules and Orders, was issued by the Special Court for his release nor the Jail Authorities approached the Special Court in this regard. The petitioner was finally released after almost five years of illegal detention on 30-8-2008 when his brother Kamal filed an application in the Special Court pursuant to which modified warrant was issued. The petitioner, shattered by his prolonged illegal detention for no fault of his, has therefore, approached this Court for being compensated by the State Government on the ground of violation of his

fundamental right guaranteed under Article 21 of the Constitution of India.

6. The respondents, who are essentially the Jail Authorities, in their return have denied any negligence on their part in releasing the petitioner from jail before 30-8-2008. According to them neither any intimation regarding the judgment passed in criminal appeal by this Court was received in jail nor any modified release warrant was issued by the Special Court earlier to 30-8-2008 and, therefore, the petitioner could not be released. The respondents have also stated in their return that the petitioner, after his conviction was transferred to the Central Jail, Sagar, on 17-9-2000 as Narsinghpur Jail at that time was only a Sub-Jail and in the year 2008 when the Sub-Jail was upgraded as District Jail, he was again retransferred to Narsinghpur Jail on 17-5-2008. In the return the respondents have, however, not denied that the petitioner was a victim of illegal detention for almost five years in prison.

7. There is, thus, no dispute in this case nor there is any doubt that the petitioner was detained illegally in prison for almost five years after his sentence was reduced in criminal appeal by this Court. By which officer or the employee of State this damage was done to him is a matter of enquiry which we will order hereinafter. But the fact remains he was incarcerated in jail for no fault of his by the State Government or by its officers while acting in the course of employment. The question, therefore, which calls for our consideration is what relief the petitioner can be granted in this petition.

8. The liability of the State to pay compensation for deprivation of the fundamental right of life and personal liberty is a new liability in public law created by the Constitution and not vicarious liability or a liability in tort. For this reason, this new liability is not hedged in by the limitations, including the doctrine of sovereign immunity, which ordinarily apply to State's liability in tort. This view is strongly supported by the decision of the Privy Council in *Maharaj v. Attorney-General of Trinidad and Tobago* (1978) 2 All ER 670. Section 1 of the Constitution of Trinidad and Tobago recognizes amongst other 'the right of the individual of life, liberty, security of person and the right not to be deprived thereof except by due process of law'. Any person alleging contravention of this right and other human rights and

freedoms recognized under Sections 1 and 2 can apply under Section 6 for redress to the High Court which is empowered to issue appropriate orders, writs and directions for enforcement or securing the protection of provisions of the aforesaid sections. The appellant in the case was a barrister and was committed to seven days imprisonment by a Judge of the High Court which committal was set aside by the Privy Council in appeal on the ground that particulars of the specific nature of the contempt were not told to the appellant and the Judge had thereby failed to observe a fundamental rule of natural justice. The appellant had in the meantime applied for redress under Section 6 on the ground that he was deprived of his liberty without due process of law. This application was dismissed by the High Court, but appellant again came up in appeal, to the Privy Council. The Privy Council held that Section 6 of the Constitution impliedly allowed the High Court to award compensation as that may be the only practicable form of redress in some cases. The Privy Council also held that as the appellant's committal was in violation of the rules of natural justice, he was deprived of his liberty without due process of law in contravention of Section 1 of the Constitution and was entitled to claim compensation from the State under Section 6 thereof. In meeting the argument that a Judge cannot be made personally liable for anything done or purporting to be done in the exercise or purported exercise of his judicial functions, Lord Diplock speaking for the majority observed : 'The claim for redress under Section 6(1) for what has been done by a Judge is a claim against the State for what has been done in the exercise of judicial power of the State. This is not vicarious liability : it is liability of the State itself. It is not a liability in tort at all: it is a liability in public law of the State, not of the judge, which has been created by Sections 6(1) and (2) of the Constitution.' As to the measure of compensation Lord Diplock said : 'The claim is not a claim in private law for damages for the tort of false imprisonment under which the damages recoverable are at large and would include damages for loss of reputation. It is a claim in public law for compensation for deprivation of liberty alone. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration.'

9. The above view was accepted by the Supreme Court in *Nilabati Behra v. State of Orissa* : 1993 CriLJ2899 . In that case, the petitioner's son died as a result of

injuries inflicted on him while he was in police custody. A letter sent by the petitioner to the Supreme Court was treated as a petition under Article 32 of the Constitution. The Supreme Court directed the State of Orissa to pay Rs. 1,50,000 as compensation to the petitioner. In directing so, J.S. Verma, J. observed : 'Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies'. Verma, J. further explained that the State's plea of sovereign immunity for tortuous acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. Concurring with Verma, J., Dr. A.S. Anand, J. in the same case observed : 'The purpose of the public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights-This Court and the High Court 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 32 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 citizens, notwithstanding the right of the citizen to the remedy by way of a 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'. Dr. Anand, J. also observed : 'There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his rights to life'.

10. The case of Nilabati Behra (supra) was followed in D.K. Basu v. State of West Bengal : 1997 CriLJ743 , which lays down general principles relating to custodial death cases. The judgment in this case was delivered by Dr. Anand, J., who reviewed the earlier authorities. It was reiterated that the relief of compensation against the State based 'on the principles of strict liability' under the public law is one to which the defence of sovereign immunity does not apply and that this relief is in addition to the traditional remedies and the compensation awarded in a given case is adjusted against any amount awarded to the claimant by way of damages in civil suit. It was also held that in the assessment of compensation under Article 32 or 226 'the emphasis has to be on the compensatory and not on the 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 Court in which the offender is prosecuted, which the State in law is duty bound to do.

11. Although the cases of Nilabati Behra and D.K. Basu discussed above which laid the basis for the concept of public law wrong, related to violation of Article 21, the observations in them are general that violation of fundamental rights will be public law wrong redressable under Articles 226 and 32. A three Judge Bench of the Supreme Court, however, in Hindustan Papers Corporation v. Ananta Bhattacharjee : (2004)6SCC213 , has held that 'the public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 is violated and not otherwise'. The Court further said that 'it is not every violation of the provisions of the constitution or a statute which would enable the Court to direct grant of compensation'.

12. Earlier also, in the case of Rudul Shah v. State of Bihar : 1983 CriLJ1644 , which arose on a petition under Article 32 of the Constitution complaining prolonged detention of the petitioner even after his acquittal, the Supreme Court directed the State to pay Rs. 30,000 as interim measure without precluding the petitioner from bringing a suit to recover further damages. The Court while overruling the objection that the petitioner should be left entirely to the remedy of a suit and no damages or compensation should be allowed even as an interim measure observed : 'The petitioner can be relegated to the ordinary remedy of a

suit if his claim to compensation was factually controversial, in the sense that a Civil Court may or may not have upheld his claim. But where the Court has already found, as in the present case, that the petitioner's prolonged detention in prison after his acquittal was wholly unjustified and illegal, there can be no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit'. Similarly, in *Bhim Singh v. State of J& K* : 1986 CriLJ192 , which was again a case under Article 32 of the Constitution, the Supreme Court directed the State of Jammu & Kashmir to pay Rs. 50,000 as compensation to the petitioner who was an M.L.A. and was illegally arrested and detained to prevent him from attending the Assembly Session.

13. A survey of the cases referred above goes to show that it is now well settled that the defence of sovereign immunity is not available when the State or its officers, acting in the course of employment, infringe a person's fundamental right of life and personal liberty as guaranteed by Article 21 of the Constitution and the State can be directed in a writ jurisdiction under Articles 32 and 226 to repair the damage done to the victim by paying appropriate compensation. We, therefore, having regard to the fact that petitioner was kept under illegal detention for almost five years in prison, direct the State Government to pay him compensation of rupees three lac within two months from today. We have awarded this amount as compensation feeling that the amount is just and proper. While doing so, as held by the Supreme Court in the case of *D.K. Basu (supra)*, we have not taken into account the punitive element as the objective is to apply balm to the wounds of petitioner and not to punish the transgressor. We, however, make it clear that if the petitioner feels dissatisfied with the amount awarded, he will be at liberty to resort to traditional remedies and the compensation awarded in the present case will be adjusted against any amount awarded to him by way of damages in civil suit.

14. In order to prevent similar victimization of prisoners by the Jail Authorities and the Courts, we direct the State Government to hold an enquiry into the matter and take necessary action against the erring officers, if any. We also direct the Registrar (Vigilance) of this Court to immediately hold an enquiry and submit a report within a month to the Registrar General as to why the modified warrant was not issued from the Court of Special Judge, Narsinghpur, after passing of the

judgment in the criminal appeal of petitioner and if any person is found responsible for the lapse suitable action permissible under law be taken against him.

15. Before parting, we wish to acknowledge the assistance rendered by Shri P.K. Kaurav as he put all the relevant considerations before us. We also acknowledge the valuable assistance we received from the discussion on the topic of Public Law Wrongs in the Law of Torts (25th Edition) edited by Justice G.P. Singh.

16. In the result, with our directions made in Paragraphs 13 and 14 of the order, the petition is allowed. No order as to costs.

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