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

Prabir Kumar Das Vs. State of Orissa

Prabir Kumar Das Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/534480

Court : Orissa

Decided On : Sep-06-2007

Reported in : 2007(II)OLR573

Judge : A.K. Ganguly, C.J. and; I. Mahanty, J.

Appellant : Prabir Kumar Das

Respondent : State of Orissa

Judgement :

A.K. Ganguly, C.J.

1. A petition was filed by one Prabir Kumar Das which was taken up by the Court as a writ petition on behalf of the petitioner. The said writ petition was initiated on the basis of a letter dated 2.1.2004 of the petitioner addressed to the Hon'ble Chief Justice of this Court to the effect that there was a custodial death of one Narayan Behera of Badajoranda village in Kalinga Police Beat House, Talcher, Dist. Angul on 31.12.2003. The said letter reveals that on 29.12.2003 said Narayan Behera was brought by the police to Kalinga Beat House for interrogation in connection with the murder of Kumuda Pradhan, Sarpanch. For three days thereafter, he was kept confined in Kalinga Beat House for interrogation and on 31.12.2003, he was found hanging in the Inspection Room of the Beat House. This action raised vehement public protest and the State Govt. handed over the case to the State Human Rights Protection Cell and declared an ex-gratia payment of Rs. 50,000/-

to the family of the deceased. Xerox copy of the relevant news item which appeared in the Oriya local daily 'The Sambad' has been annexed as Annexure-1 to the petition. On the basis of such a petition being filed, this matter was taken up and converted to a writ petition bearing number W.P.(C) No. 8373 of 2004.

2. The matter was heard by a Division Bench of this Court presided over by the Hon'ble Chief Justice and by an order dated 4.12.2006, the said Division Bench after hearing the parties and perusing the report dated 13.2.2004 submitted by the Human Rights Protection Cell, State Police Headquarters, Orissa, Cuttack, passed an order for interim compensation of Rs. 1,00,000/- to be given by the State by way of A/c Payee Cheque through the Addl. Sessions Judge, Talcher in favour of Kastu Behera, the father of the deceased Narayan Behera. It is made clear that this interim compensation shall be in addition to the amount which has already been paid. This Court has been given to understand that the aforesaid amount of interim compensation of Rs. 1,00,000/- and the ex gratia payment of Rs. 50,000/- have been paid by State Government.

3. By the said order dated 4.12.2006, the Division Bench also directed the Addl. Sessions Judge, Talcher to make an enquiry about the circumstances in which the unfortunate death of Narayan Behera had taken place. Pursuant to such order, an enquiry was conducted by the Addl. Sessions Judge, Talcher and on perusal of the report, it appears that the Addl. Sessions Judge, Talcher, Dist. Angul examined. 13 witnesses and also perused the unnatural death case report in question and Station Diary Entry of Kalinga P.S. during the period from 28.12.2003 to 31.12.2003 and ascertained that there was no other person except Narayan Behera in the custody of Kalinga Beat House during the said period. From the said report, it appears that in the night of 28.12.2003, house of Narayan Behera at Badajorada was raided by S.I., Sobha Patnaik and A.S.I., Dwari Muduli along with other police staff and Narayan was brought from his house to the house of Nityananda and all of them were later brought to Kalinga Beat House for interrogation. Ultimately, Narayan admitted that he had transported his mother and sister in the vehicle of Nityananda to Sanatribida village. To verify the truth of the same, the driver of the Marshal Jeep of Nityananda was asked to be produced by Nityananda at Beat House but Nityananda told that the driver had gone to his

village and had not returned as yet. It appears that Nityananda was directed to produce the driver next day and was allowed to go, but Narayan was detained in Beat House. On 29.12.2003, C.I. Sri R.N.Deo came to Kalinga Beat House with other police officers. The said C.I. also interrogated Narayan and took him to Sanatribida village but they could not apprehend any accused person there and left Narayan there in the beat house and went away with instruction to Dwari Muduli, A.S.I. of Police-in-charge of Kalinga Beat House to confront Narayan with the driver of the Marshal Jeep. On 30.12.2003, the driver of Marshal Jeep did not arrive and there was no confrontation. On 31.12.2003, Narayan was to be confronted with the driver but died in the said Beat House.

4. After considering the aforesaid facts, the findings have been reached by the Addl. Sessions Judge, Talcher and he has clearly held that Narayan was detained in the Beat House from 28.12.2003 till his death on 31.12.2003. Thereafter, learned Addl. Sessions Judge has come to a finding that the dead body of Narayan was not hanging from the ceiling fan but was found in a sitting posture on the cot and the death was found to be due to asphyxia due to hanging and mode of death is suicidal.

5. Even if it is assumed that the death was caused due to suicidal hanging, the fact remains that Narayan was confined in the Beat House from 2.8.12.2003 till 31.12.2003.

6. It has also been submitted by the learned Counsel for the State that Narayan is not an accused in the murder case nor was he arrested. Therefore, at best, he can be a witness. After certain witnesses are examined by the Police in connection with any criminal case, the witness can be called to the police station for interrogation. But nothing has come on the record to show that there was any reason to raid the house of Narayan and lift him from his house. Nothing has been brought on record to show that despite request by the police, Narayan did not come to the Police Station for the purpose of interrogation. High handed ness of the police is apparent from the manner in which the house of Narayan was raided by the police. The fact that Narayan was not allowed to move out of the Beat House once he was lodged there i.e. from 28.12.2003 till 31.12.2003 during which

he died shows that the deceased was kept illegally in detention for the aforesaid period.

7. Learned Counsel for the State submitted that Narayan was not arrested but even assuming that to be true, there is no doubt that he was illegally detained. In this connection, a reference may be made to the decision of the Supreme Court in the case of Directorate of Enforcement v. Deepak Mahajan and Anr. : 1994 CriLJ2269 . In paragraph-48 of the said judgment, the learned Judges have explained the connotation of the word 'arrest'. After considering various judgments, the learned Judges have come to the conclusion that the word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The learned Judges have further clarified that the question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go wherever he pleases.

8. Following those principles, this Court is bound to come to a conclusion that Narayan was deprived of his personal liberty to go whenever he pleased, when he was detained in the Beat House for three days. Therefore, there is no escape from the conclusion that Narayan was kept in illegal detention by the Police. If an accused is arrested, he has certain rights under the Constitution and also under the Cr.P.C. His arrest cannot be prolonged beyond 24 hours without authority of the Magistrate. In the instant case, Narayan was virtually arrested and detained in the Beat House without any orders from any Judicial Authority even though Narayan was not an accused.

9. It is a Public Interest Litigation. Therefore, the question arises whether the police by virtue of its high-handedness had invaded the personal liberty of Narayan which is granted to him under the Constitution. It is a clear case of Infraction of personal liberty of Narayan, guaranteed under Article 21 of the Constitution. Learned Counsel for the State has not been able to justify such illegal detention of Narayan for a period of three days though he was not an accused and such detention was without any order of the Magistrate. Learned Counsel for the State refers to Section 160 of the Cr.P.C. which empowers the Police Officer to

require attendance of witnesses. Such a requisition for attendance must be made by the Police Officer in writing. In the instant case nothing in writing is produced before us to show that the attendance of Narayan was required by the Police Officers. Hence, Section 160 of the Cr.P.C is not attracted in the instant case. On the other hand, it is clear on perusal of Section 160 Cr.P.C that Narayan's attendance was enforced by the Police Officer without complying with the provisions of Section 160 Cr.P.C.

10. Narayan was working as a driver, which comes from the evidence of his mother who says that Narayan was Tipper driver and was forcibly taken from his house and detained for three days in the Beat House where he very unfortunately died. It is one of the salutary principles under the Constitution of India that a person cannot be deprived of his personal liberty except in a procedure established by law. In the instant case, deprivation of personal liberty of Narayan has been made in a manner, which is totally unauthorized and not sanctioned by law. Therefore, this Court holds that the police is guilty of causing an infringement of fundamental right of Narayan under Article 21 of the Constitution by keeping Narayan illegally in their custody and Narayan died by allegedly committing suicide in course of such illegal detention. At the time of death, Narayan was aged about 26 years as it appears from the Post Mortem report. Therefore, we have to assess the compensation amount, which must be paid by the Police to the family of Narayan for such atrocities and illegal detention. Apart from 1,50,000/- which has already been paid, we assess that the police must pay another amount of Rs. 3,00,000/-(Rupees three lakhs) to Kastu Behera, the father of Narayan. The said amount of Rs. 3,00,000/- shall be given by the Home Secretary by way of an A/c. Payee cheque in favour of Kastu Behera, father of Narayan Behera and the same shall be deposited in the name of Registrar (Judicial) of this Court on or before 8.10.2007. This Court makes it clear that the State after making the aforesaid payment is at liberty to realize the amount from the erring Police Officer who are responsible for such illegal detention of the deceased for three days in a Beat House. The order which is passed today would not in any way affect the criminal proceeding which is pending over the murder of Kumuda Pradhan and the death of Narayan Behera.

The petition is disposed of accordingly.

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