

Angoori Devi Vs. Uoi and Others

Angoori Devi Vs. Uoi and Others

SooperKanoon Citation : sooperkanoon.com/948590

Court : Delhi

Decided On : May-18-2012

Judge : M.L. Mehta

Appeal No. : W.P.(Crl.) 1245 OF 2011

Appellant : Angoori Devi

Respondent : Uoi and Others

Judgement :

M.L. MEHTA, J.

1. The present petition is filed under Section 482 Cr.P.C. The Petitioner has prayed for the following reliefs:

(i) Direct the registration of FIR on the complaint dated 9th March, 2011 and transfer of investigation to CBI or to a Special Investigation Team(SIT) constituted by this Hon'ble Court.

(ii) Award the appropriate damages and compensation to the Complainant.

(iii) Initiate the proceedings for contempt and perjury against the responsible officers of the Army for misleading the Court for deliberately suppressing the facts and for filing a false affidavit.

2. The Petitioner is aggrieved of the death of her husband Havildar Ram Swaroop who was posted in Army Intelligence Corp. as Non-Commissioned Officer(NCO) at Redfort, Delhi. When he was availing his leave and was staying at his village, he was summoned to his unit on the ground of immediate requirement on duty. After about a month, the Petitioner heard about the death of her husband. The Petitioner allegedly heard about severe beatings of her husband by the army interrogators conducting interrogation relating to allegations of spying against several army personnel.

3. In a petition filed by Ex. Captain R.S. Rathore against Union of India before the Hon'ble Supreme Court vide criminal writ petition No. 1577/1985, one R.K. Middha, the then Officer Commanding had filed an affidavit stating therein that Havildar Ram Swaroop was murdered by Major S.C. Jolly and Capt. Sudhir. Placing reliance on the said affidavit, the Petitioner filed a criminal writ petition No. 247/1996 in this Court for claiming compensation and other reliefs from the Govt. alleging that her husband had died due to custodial torture and not a natural death.

4. The aforesaid writ came to be dismissed by the Division Bench of this Court on 25th May, 2011. The Petitioner challenged the same by filing a special leave Petition No. 13799/2010 before the Hon'ble Supreme Court. The same was dismissed as withdrawn with liberty to the Petitioner to approach National Human Rights Commission. Consequently, the Petitioner filed a petition before the National Human Rights Commission which came to be dismissed vide order dated 19th April, 2011.

5. Now, the Petitioner has filed the present petition seeking reliefs as noted above. The main plea that has been taken is that in response to the RTI, the Petitioner has got copy of post mortem report of her deceased husband and the same reveals that her husband died of as many as 39 ante mortem injuries. It is alleged in this petition that her husband has been subjected to torture and beatings by his superior officers and his death was not due to drug addiction as was presented by the army authorities. She alleged that on receipt of this post mortem report, she made a complaint to the President of India and Prime Minister of India, but no

action has been taken. Based on these allegations, she filed the instant petition and prayed as noted above.

6. I have heard learned counsel for the parties and also counsel for the Respondent and perused the record.

7. The learned counsel appearing for the Petitioner vehemently argued that this was not only the case of custodial death of the deceased Havildar Ram Swaroop, rather it was a clear case of his murder by the army officers. Further, the army officers responsible for his death had actively conspired to destroy every evidence of this fact and doctored fake evidence in order to cover their tracks and got the post-mortem of the deceased three times for preparation of false post-mortem report so that the real cause of his death may be concealed. It was alleged by the Petitioner that no other similar writ petition has been filed before this Court or Supreme Court on the same facts and cause of action.

8. On the other hand, the learned counsel for the respondent submitted that the petitioner earlier filed a writ being criminal writ petition No. 247/1986 which came to be dismissed on 25th May, 2006 was substantially on the same set of facts and same cause of action. So much so, not only relief of registration of FIR and investigation by the CBI, but that of compensation was also sought. It has been noted that the Division Bench of this Court had taken note of the petition by Ex. Capt. R.S. Rathore against Union of India filed in Supreme Court vide criminal writ petition No. 1577/1985 wherein R.K. Middha had filed an affidavit. The Division Bench specifically noted that the said affidavit was filed by R.K. Middha as an act of self protection as he himself was charged with espionage. In the affidavit, R.K. Middha had also specifically stated that since he was not supporting the army officers S.C. Jolly and Capt. Sudhir for not fabricating evidence, they were implicating him in the case.

9. The Division Bench had also taken note that the General Officer Commanding in Chief , Western Command after due investigation had come to hold on 24th September, 1980 that no one can be blamed for the death of Hav. Ram Swaroop. This opinion was duly concurred by the Chief of Army Staff.

10. Before proceeding further, to note the observation made by the Division Bench of this Court, it would be worthwhile to note here that the Apex Court in R.S. Rathore vs. Union of India dismissed the petition observing as under:-

“We are not satisfied that this is a proper case for calling for the records or for re-opening the matter and hearing it. The writ petition is therefore, dismissed.”

11. With regard to the pleas that the post mortem report now obtained in response to the RTI, showed that her husband had as many as 39 ante mortem injuries and that the said post mortem report was not available before this Court in the earlier petition that was filed by her, it may be noted that notice of this fact was taken specifically by the Division Bench. It was noted that the documents filed before the Apex Court in the case of R.S. Rathore referred to Havildar Ram Swaroop and indicated that he had been murdered and Major R.K. Middha was framed in espionage case as he refused to be part of fabrication of documents to show that Ram Swaroop died because of drug addiction and not because of his having 39 injuries on his body. From these observations, it is evidently clear that not only the factum of Havildar Ram Swaroop having 39 injuries on his body was before the Division Bench of this Court, but this fact was also before the Apex Court in the petition filed by Ex. Capt. R.S.Rathore.

12. As is noted above, the Apex Court did not find anything in the case calling for the records and reopening of the matter and hearing it. Thus, it could not be said that any new fact was revealed as regards to 39 injuries on the body of deceased Havildar Ram Swaroop in response to the RTI application of the Petitioner. Though, the post mortem report as such might not be available or was not called for by the Division Bench, but this plea of the deceased having 39 injuries on his person was very much there on the record and was dealt with by the Division Bench.

13. Having noted above, the averment of the Petitioner as taken in Para 20 of the petition that no other or similar writ has been filed before this Court or before the Supreme Court on same facts, is apparently contrary to the record. In view of the fact that a writ filed by the Petitioner on the similar set of facts and cause of action was dismissed by this Court way back on 25th May, 2001 and special leave

petition filed against the same was also dismissed by the Hon'ble Supreme Court on 7th January, 2002 followed by dismissal of petition by the NHRC, the petitioner seems to have taken course of seeking the same remedy indirectly which she could not get directly. She has now tried to seek the same relief by making out a fresh cause of action based on the response to RTI. It is trite that what one cannot get directly cannot be permitted indirectly.

14. In the instant petition and in view of the decision of the Division Bench and that of the Supreme Court as noted above, I do not consider empowered to entertain the petition in the absence of fresh cause of action. She seems to be bent upon circumventing the decision of the Division Bench of this Court and the Apex Court and trying to find out reasons for digging out the controversy after a lapse of 32 years.

15. In view of the fact that the finality has to be given to the judicial verdicts at some point of time, I do not see the petition has any merit.

16. Consequently, the petition is hereby dismissed.

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