

### **Custodial violence- Grant of compensation to the victim**

Recently, in **CWP No. 3684 of 2009-H., titled as Sakshi Sharma and Ors. Vs. The State of Himachal Pradesh and Ors., Decided on: 18.06.2012,** which was a case of custodial violence, the Hon'ble High Court has granted compensation to the victim, directed the suspension of the erring police officials and initiation of the Departmental enquiry against them. The Hon'ble High Court also directed the C.J.M.'s and the S.D.M.'s to visit the police stations and submit the reports to the Sessions Judges, who would take action against the persons who violated the constitutional and legal mandate.

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#### **Coram:**

**The Hon'ble Mr. Justice Rajiv Sharma, Judge.**

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#### **Important observations:**

“King John was forced to sign the Magna Carta in 1215 and it was demanded that: *“Ne Corpus liberi hominis capiatur nec imprisonetur nec dissaisetur nec utlagetur nec exuletur nec aliquot modo destruator nec vex eat vel mittat super eum vi nisi per iudicium parium suorum vel per legem terre”* which means, “No free man shall be taken, or imprisoned or disseised or outlawed or banished or any ways destroyed, nor will the King pass upon him or commit him to prison, unless by the judgment of his peers or the law of the land”.

2. In the petition of grievances, 1610, it was stated thus:

“Among many other points of happiness and freedom which your Majesty's subjects have enjoyed under your royal progenitors, there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of law,.....and not by any arbitrary form of government.....Out of this root hath grown the indubitable right of the people of this kingdom, not to be made subject to any punishment... other than such as are ordained by the common laws of this land, of the statutes made by their common consent in Parliament.”

44. Their Lordships of the Hon'ble Supreme Court in **Dagdu and others Vs. State of Maharashtra** (1977) 3 Supreme Court Cases 68 have held that the police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. ....

45. The Apex Court in **Raghubir Singh Vs. State of Haryana**, AIR 1980 Supreme Court 1087 has held that the State, at the highest administrative and political levels, must organize special strategies to prevent and punish brutality by police methodology. Otherwise, the credibility of the rule of law in our Republic vis-à-vis the people of the country will deteriorate.....

46. Their Lordships of the Hon'ble Supreme Court again in **Kishor Singh Ravinder Dev etc. Vs. State of Rajasthan**, AIR 1981 Supreme Court 625 have held that nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights.....

47. Their Lordships of the Hon'ble Supreme Court in **Rudul Sah Vs. State of Bihar and another** (1983) 4 Supreme Court Cases 141 have further held that compensation for illegal detention can be granted under Article 32 without affecting his right to sue for damages.....

48. Their Lordships of the Hon'ble Supreme Court in **Bhim Singh , MLA Vs. State of J & K and others** (1985) 4 Supreme Court Cases 677 have held that police officers should have greatest regard for personal liberty of citizens.....

65. Their Lordships of the Hon'ble Supreme Court in **D.K. Basu Vs. State of W.B.** (1997) 1 Supreme Court Cases 416 have held that torture, rape, death in police custody/lock-up infringes Article 21 as well as basic human rights and strikes a blow at the rule of law.....

82. According to the disability certificate placed on record, issued by the Postgraduate Institute of Medical Education and Research, Chandigarh, the petitioner No. 2 has suffered head injury with severe left upper & lower limb weakness with very severe urinary incontinence with speech problem with inability to see. He was physically handicapped and has suffered 100% impairment in relation to his whole body. There is no direct evidence of the age of petitioner No. 2. However, at the time of filing of the petition, the age of petitioner No. 1 was 39 years in 2009. Thus, it can safely be presumed that the age of the petitioner No. 2 at the relevant time was 41/42 years. He was working as a Guide in Vatika Hotel. But, now he cannot work as a Guide, since he cannot see and he has speech problem. There is weakness in

lower limb with very severe urinary incontinence. The petitioner No. 2, with this disability, cannot have any alternative employment.”

**Important Directions :**

“83. Accordingly, in view of the discussions and analysis made hereinabove, the writ petition is allowed by issuing the following directions:

“(i) Respondent No. 1 is directed to pay a sum of Rs`15,60,000/-, as compensation to the petitioners, within a period of one month from today. This amount shall be deposited in the Registry of this Court and thereafter the amount shall be put in a fixed deposit and petitioners will be entitled to receive interest accruing on the same on monthly basis.

(ii) It shall be open to respondent No. 1 to recover this amount from the erring officials, i.e., respondent No. 3, namely, Shiv Kumar, SI Kanwar Singh, ASI Rattan Singh and HC Mahender Singh.

(iii) Respondent No. 1 is directed to initiate disciplinary proceedings against respondent No. 3 within a period of two weeks from today and conclude the same within a period of 12 weeks.

(iv) The Additional Director General of Police, CID is directed to take action against SI Kanwar Singh under Rules 8 and 9 of the CCS (Pension) Rules within a period of eight weeks from today and submit the report to the disciplinary authority.

(v) The Superintendent of Police, Mandi is directed to initiate disciplinary proceedings against ASI Rattan Singh and complete the same within a period of 12 weeks and submit the report to the disciplinary authority immediately thereafter.

(vi) The Commandant 5th Indian Reserve Battalion is also directed to initiate disciplinary proceedings against HC Mahender Singh and to complete the same within a period of 12 weeks and submit the report to the disciplinary authority immediately.

(vii) The disciplinary authority in the case of respondent No. 3, SI Kanwar Singh, ASI Rattan Singh and HC Mahender Singh shall take immediate action after receipt of the inquiry reports.

(viii) Since the matter is of a very sensitive and grave in nature, respondent No. 3, namely, Shiv Kumar Chaudhary, ASI Rattan Singh and HC Mahender Singh shall be put under suspension forthwith and remain under suspension during the trial and also till the disciplinary proceedings are completed against them.

(ix) The trial court is directed to complete the trial within a period of three months from today by holding day-today proceedings.

(x) Respondent No. 1 is also directed to issue instructions to all the Police Stations in the State of Himachal Pradesh that no police personnel shall indulge in custodial violence and no third degree method shall be used by the police personnel against any person in the

police custody in order to ensure due compliance of Article 21 of the Constitution of India. No physical or mental torture will be caused to the persons brought to the Police Stations by giving them beatings, kicks, fist blows, by using *dandas* and any other method of subjugation. The police personnel should not use filthy and foul language in the Police Station and, if used, it will amount to physical and mental torture.

(xi) The Superintendents of Police/Deputy Superintendents of Police are directed to carryout the periodical inspections in the Police Stations to ensure that no person is detained in the Police Stations without authority of law and also to ensure that if any citizen/person is arrested without warrant, he be produced before the Illaqua Magistrate within 24 hours.

(xii) In order to ensure due compliance of directions No. (x) and (xi) the following committee of Judicial Officers/Sub Divisional Officers is constituted:

(i) **The Chief Judicial Magistrates** of all the Divisions; and

(ii) **The Sub Divisional Magistrates** of all the Divisions.

The committee shall visit all the Police Stations weekly and report whether any person has been detained without authority of law. The committee shall also ensure that whether a person brought to the Police Station without warrant has been produced before the Illaqua Magistrate within 24 hours or not. The committee shall furnish reports to the Sessions Judges. The Sessions Judges are permitted to make recommendations for taking suitable disciplinary action against the persons who violated the constitutional and legal mandate. The recommendations made by the Sessions Judges would be binding on all the disciplinary authorities.

(xiii) The respondent No. 1 is suggested to separate investigation from the Law and Order Wing to make the investigation scientific by re-modelling the police to increase the efficiency in the police force. The investigating agency should be properly trained and they should be taught how to uphold the Constitutional and basic human rights.

(xiv) Respondent-State is directed to keep holding refresher courses to apprise the new developments and techniques in investigation.

(xv) Respondent No. 1 is also directed to issue directions to the Superintendents of Police throughout the State of Himachal Pradesh that no matter of civil nature is compromised in the Police Stations, as it amount to intimidation.

(xvi) Respondent No. 1 is further directed that no police officer/ official is put on duty at a stretch beyond eight hours.

(xvii) Respondent-State is directed to constitute the following committee to improve the conditions of service of the police personnel:

(a) Principal Secretary/Secretary (G.A.D.), Government of Himachal Pradesh.

(b) The Secretary (Finance), Government of Himachal Pradesh.

The committee shall undertake the exercise the manner in which the conditions of service of police personnel can be improved by providing time bound promotions, incentives to those police personnel who improve their educational qualification, their duty hours, housing problems and over time allowances etc. The committee shall make its recommendations within a period of three months from today to the State Government. Thereafter, the State Government shall take necessary action within a further period of three months. It shall be open to the committee to make other recommendations concerning welfare of police personnel.

(xviii) Respondents No. 1 and 2 are directed to file compliance reports separately within a period of three weeks. They are also directed to file status report(s) with regard to direction No. (viii) within 24 hours.

84. The pending application(s), if any, also stands disposed of.

The authenticated copy of this judgment be sent forthwith to the Chief Secretary, Govt. of Himachal Pradesh, Principal Secretary (Home), Govt. of Himachal Pradesh, Director General of Police, Himachal Pradesh and the Registrar General of this Court. In addition to this, the operative portion of this judgment be supplied to Mr. Vikas Rathore, learned Deputy Advocate General by the Court Master, for its due compliance.”

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