

assessee in default. In the present case, no notice was sent to the petitioner under Section 226(3)(i) of the Act and straightaway a notice was sent by the Assistant Commissioner of Income-Tax, Investigation Circle-II, Chandigarh, to the Bank attaching the amount of the petitioner lying in the Bank.

(11) Had the notice been sent to the petitioner under Section 226(3) (i) of the Act, it would have had an opportunity to file, its objections under section 226(3) (vi) of the Act, denying its liability to pay the amount as it did not owe money to the assessee in default. Petitioner could be declared an assessee in default only if a notice had been issued under this sub section. Petitioner has been condemned unheard and fastened with the liability to the tune of Rs. 5,53,920.00 without following the procedure laid down by law.

(12) The proceedings being without any jurisdiction have resulted in harrasment to the petitioner as the recovery was sought to be made without issuing notice to the petitioner. It is elementary that issuance of notice under Section 226(3) of the Act is a *sine qua non* for initiating the proceedings. Assessing Officer should have known this elementary fact. Petitioner was deprived use of his money to the extent of Rs. 5,53,920.00 during all this period for no fault of his, for which we solely hold the Department to be responsible.

(13) This writ petition is accepted with costs. Notice, Annexure P-1, is quashed. Costs are quantified at Rs. 5,000 in each petition.

J.S.T.

Before Ashok Bhan & N. K. Agrawal, JJ.

BIRMATI & OTHERS,—Petitioners.

versus

STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 13210 of 1995

23rd August, 1996

Constitution of India, 1950—Arts. 21 & 226—Code of Criminal Procedure, 1973—S. 357—Punjab Jail Manual—Paras 399, 566, 567 &

699—*Custodial death—Grant of compensation to heirs of deceased—Undertrial prisoner murdered in jail premises by convict undergoing life imprisonment—Jail authorities negligent in allowing a dangerous convict to move freely with under trial convict—Rupees one lac ordered by Sessions Judge to be paid by selling one acre land out of the holding of murderer—In addition High Court ordering further one lac rupees on the finding of negligence of jail authorities.*

Held, that accused Krishan was a habitual criminal and he was allowed to do gardening with a *kassi*. This act of the warden of the jail resulted in the gruesome murder of Ranbir Singh, due to gross negligence of the jail authorities. Ranbir Singh was an unconvicted criminal prisoner and he should not have been allowed to mix with the convicted criminals.

(Para 8)

Further held, that jails are the institutions owned and managed by the State through its servants. Deaths of Ranbir Singh was caused due to sheer negligence and breach of duty by the jail authorities, who were the servants of the State. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Maintenance of law and order and protection of the life of citizens, even in jails, is the prime responsibility of the State. Jails are under the management of a department of the Government and the incident took place which in the ordinary course of action would not have taken place only because the jail authorities were grossly negligent in the discharge of their duties. They failed to adhere to the simple precautionary measures provided in the Jail Manual to avoid such like incidents.

(Para 9)

Further held, that the State as well as the Jail authorities liable to pay compensation to the dependents of the deceased who was 25 years of age, for the loss of the company and affection of the deceased to his family members. Keeping in view that petitioner No. 1 wife of the deceased has already been ordered to be paid a sum of Rs. 1 lac by the Additional Sessions Judge, Sonapat, by selling one acre of land out of the land holding of Krishan, respondent No. 5, we order payment of another sum of Rs. 1 lac by way of compensation to the dependents of the deceased for his untimely death which has taken place due to the negligence of the jail authorities. Respondent No. 1 to 4 shall be jointly and severally liable to pay the amount of compensation.

(Paras 12 & 13)

Sangeeta Bai Sachdev, Advocate, Gulab Singh A.A.G. (H), for
the Petitioners.

Vandana Malhotra, Advocate, for the Respondents.

JUDGMENT

Ashok Bhan, J.

(1) This petition has been filed for issuance of a writ of mandamus directing the respondents to pay monetary compensation to the petitioners for the loss of life of Ranbir Singh, an undertrial prisoner in the District Jail Sonapat, by a coprisoner Krishan son of Ram Dia, lodged in the same Jail, due to the negligence of the jail authorities. Petitioner No. 1 is the wife, petitioners 2 and 3 are the parents and petitioners 4 to 6 are the minor children of the deceased.

(2) Ranbir Singh was arrested on 13th March, 1994 in an F.I.R. under Section 61/1/14 of the Excise Act. On his remand to the judicial custody, he was lodged in the District Jail, Sonapat. On 2nd October, 1994, Ranbir Singh, deceased was attacked by Krishan, respondent No. 5, who is a habitual and dangerous criminal and was undergoing life imprisonment. He had been sentenced to life imprisonment by the Sessions Judge, Sonapat for committing an offence under Section 302, Indian Penal Code (FIR No. 44 dated 2nd February, 1986, Police Station Sohana).—*vide* judgment dated 21st May, 1987. He had also been sentenced to life imprisonment by the Additional Sessions Judge, Sonapat, for committing an offence under Section 302, Indian Penal Code (FIR No. 153 dated 17th May, 1991, Police Station Sohana).—*vide* judgment dated 3rd February, 1993. He had also been convicted under Section 25 of the Arms Act by the Additional Sessions Judge, Sonapat, for a period of six months on 3rd February, 1993 in FIR No. 162 dated 27th May, 1991.

(3) On 23rd October, 1994, Ranbir Singh was getting a shave from the jail Barber within the jail premises when he was attacked by Krishan with a Kassi. FIR No. 546 dated 23rd October, 1994 was lodged under Section 307, Indian Penal Code. Deceased was got admitted in the Medical College and Hospital, Rohtak. He died on 26th October, 1994 in the hospital and the FIR which had been registered under Section 307, Indian Penal Code, was converted into one under Section 303, Indian Penal Code. In the report of post mortem, the cause of death was stated to be due to coma as a result of head injuries, which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. During the course of inquiry, it was also found that the deceased was brother-in-law of the accused Krishan. It also came to light during the course of inquiry that the cause of attack on the deceased by the accused was due to personal differences and land dispute.

(4) Case set up by the petitioners in this petition is that the jail authorities were grossly negligent in the discharge of their duties as they failed to maintain discipline amongst prisoners. They also failed to keep dangerous prisoners like Krishan separate and entrusted him with a *kassi*, which could be used as a weapon. Accused Krishan, who was undergoing life imprisonment on two counts, was allowed to mix with the undertrial prisoners, which was violative of the prohibition provided under the Punjab Jail Manual. Deceased Ranbir Singh, 25 years of age, was an agriculturist and owned 7 kanals 18½ marlas of land. Besides farming, deceased had kept four buffaloes and was earning Rs. 4,000 per month by selling milk. Sudden death of Ranbir Singh has served an emotional as well as financial set-back to his family, which was fully dependent upon him and had no independent source of income; that the respondents are jointly as well as severally liable for depriving Ranbir Singh of his life. Jail institutions are owned and managed by the State through its servants and the death of Ranbir Singh was caused due to sheer negligence and breach of duty of the jail authorities and, therefore, the respondents are liable to compensate the petitioners for the wrongful death of Ranbir Singh.

(5) In the written statement filed, respondents 1 to 4 have admitted that Ranbir Singh, deceased was killed by Krishan against whom FIR 546 dated 23rd October, 1994 was registered. The stand taken by them is that Ranbir Singh and Krishan were closely related being brothers-in-law, and inimical to each other. They themselves were responsible for the loss of the life of Ranbir Singh because none of them revealed their relationship and enmity to the jail officials; that Ranbir Singh not only failed to reveal his relationship and enmity with Krishan but also committed a jail offence under para 609(13) of the Punjab Jail Manual, which is applicable to the Haryana jails as well. He left his ward and place of detention as an undertrial without permission of the officer of the jail and went to the area meant for convict prisoners. Had Ranbir Singh and Krishan disclosed their relationship and enmity, then one of them would have been transferred to another jail as is the practice in all jails where opposite parties are lodged and isolation facilities are not available. Respondents 1 to 4 disowned their responsibility and shifted the blame on the deceased and the accused.

(6) Respondent No. 5 is represented by Ms. Vandana Malhotra, an Advocate appointed amicus curiae by the Court. Accused Krishan has denied his involvement in the crime and has stated that he has been falsely implicated.

(7) During the course of arguments, a copy of the judgment of Shri P. L. Goyal, Additional Sessions Judge, Sonapat was placed on record. Trial Court convicted accused Krishan for murder and awarded death sentence by hanging by the neck till he is dead subject to confirmation by the High Court. Trial Court also imposed a fine of Rs. 1 lac to be paid to the wife of the deceased (petitioner No. 1). It has also been ordered that the amount of fine may be realised by putting to auction one acre out of the land holding of the accused.

Counsel for the parties have been heard. Para 399 of the Punjab Jail Manual, which read as under caste a duty on the jail personnel i.e. the Warden and the Deputy Superintendent to keep a very strict vigil on the dangerous prisoners and further not to give them any implement which could be used as a weapon :—

“399. Custody of dangerous prisoners.

(1) xx xx xx xx xx
(2) xx xx xx xx xx

(3) Special precautions should be taken for the safe custody of dangerous prisoners whether they are awaiting trial or have been convicted. On being admitted to jail they should be (a) placed in charge of trustworthy warders, (b) confined in the most secure building available, (c) as far as practicable confined in different barracks or cells each night, (d) thoroughly searched at least twice daily and occasionally at uncertain hours the Deputy Superintendent must search them at least once daily and he must satisfy himself that they are properly searched by a trust worthy subordinate at other time, (e) fettered if necessary (the special reasons for having recourse to fetters should be fully recorded in the Superintendent's journal and noted in the prisoner's history ticket). They should not be employed on any industry affording facilities for escape and should not be entrusted with implements that can be used as weapons. Warders on taking over charge of such prisoners must satisfy themselves that their fetters are intact and the iron bars or the gratings of the barracks in which they are confined are secure and all locks, bolts etc, are in proper order. They should during their turns of

duty frequently satisfy themselves that all such prisoners are in their places, and should acquaint themselves with their appearances.”

Accused Krishan was serving rigorous life imprisonment, having been convicted twice under section 302, Indian Penal Code. Accused Krishan was, by all means, a dangerous criminal and the jail authorities are guilty of gross violation of the instructions laid down in para 399 of the Punjab Jail Manual by giving a *Kassi* to the accused for gardening purposes with which he attacked the deceased.

Paras 566 and 567, reproduced below, speak of accommodation for the prisoners :—

“566. *Accommodation for prisoners.*—The Local Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisition of this Act in respect of the separation of prisoners.

567. *Separation required by Act IX of 1894.*—The requisition of the prisons Act with respect to the separation of prisoners are as follows :—

(1) xx xx xx xx xx

(2) xx xx xx xx xx

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners ; and

(4) civil prisoners shall be kept apart from criminal prisoners.”

(8) Para 699 of the Punjab Jail Manual, reproduced below, provides that gardening shall be allowed only to casual prisoners and no habitual prisoner is to be put to garden work except on the recommendation of the Medical Officer or when a sufficient number of eligible casual prisoner is not available :

“699. *Employment of convicts in the garden.*—Only casual prisoners with the shortest unexpired sentences should be employed in the jail garden. They shall be especially passed for such work by the Superintendent. No habitual

prisoner shall be put to garden work except on the recommendation of the Medical Officer or when a sufficient number of eligible casual prisoner is not available. A gang of five prisoners and a convict officer may be employed in the garden of the Inspector-General of Prisons, Superintendent of a Central or District Jail and Superintendent, Borstal Institution and Juvenile Jail when these officers reside in quarters near the jail premises. If the Factory Manager or Deputy Superintendent is allowed to keep a garden the work in such garden shall be done by the regular gang and not by a detachment of it.

Note (i)—If the concession results in an escape or abuse it will be permanently withdrawn.

Note (ii)—For the purpose of District Jails this concession will apply only to the Jails at Ambala, Sialkot, Rawalpindi, Ferozepur and Lyallpore, Mianwali.”

In the present case, accused Krishan was a habitual criminal and he was allowed to do gardening with a *kassi*. This act of the warden of the Jail resulted in the gruesome murder of Ranbir Singh, due to gross negligence of the jail authorities. Ranbir Singh was an unconvicted criminal prisoner and he should not have been allowed to mix with the convicted criminals.

(9) Jails are the institutions owned and managed by the State through its servants. Deaths of Ranbir Singh was caused due to sheer negligence and breach of duty by the jail authorities, who were the servants of the State. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Maintenance of law and order and protection of the life of citizens, even in jails, is the prime responsibility of the State. Jail are under the management of a department of the Government and the incident took place, which in the ordinary course of action would not have taken place only because the jail authorities were grossly negligent in the discharge of their duties. They failed to *adhere* to the simple precautionary measures provided in the Jail Manual to avoid such like incidents. Prisoners or the undertrials as observed by their Lordships of the Supreme Court in *Smt. Nilabati Behera alias Lalita Behera v. State of Orissa and others* (1), are not denuded of their

rights under Article 21 and only reasonable restrictions as provided by law can be imposed on the enjoyment of fundamental rights by such persons. It is obligatory on the State to ensure that there is no infringement of the indefeasible rights of a citizen to life except in accordance with law, while the citizen is in its custody. It was further observed by their Lordships as under :—

“The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is “not deprived of his right to life”. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong doer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.”

(10) While adverting to the grant of relief to the heirs of a victim of custodial death, it was held that it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law is indeed available to the aggrieved party; that a victim or his dependents are entitled to get relief under the public law by the courts exercising writ jurisdiction, which are the primary source of public law proceedings. A compensation of Rs. 1.5 lacs was granted to the dependents of 22 years old deceased, who was killed while in police custody.

(11) Similarly, in *Smt. Kewal Pati v. State of U.P. and others* (2), a case similar to the present one where a prisoner/undertrial was killed by a co-prisoner, Apex Court held the State or its functionaries liable to adequately compensate the death of a prisoner under their custody, which had taken place due to their negligence. It was held :—

“Ramiit Upadhaya was convict and was working as a Nambar-dar in the jail. He was strict in maintaining discipline

(2) 1995 (2) All India CrL. L.R. 207.

amongst the co-accused. It was due to his strictness in his behaviour as Nambardar that he was attacked and killed by Happu a co-accused. Even though Ramjit Upadhaya was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law (See *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others*, AIR 1981 SC 746 and *A. K. Roy v. Union of India*, AIR 1982 SC 710). Therefore, he was entitled to protection. Since killing took place when he was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him we are of opinion that they are entitled to be compensated."

(12) For the reasons recorded above, we hold the State as well as the Jail authorities liable to pay compensation to the dependents of the deceased, who was 25 years of age, for the loss of the company and affection of the deceased to his family members.

(13) Keeping in view that petitioner No. 1, wife of the deceased, has already been ordered to be paid a sum of Rs. 1 lac by the Additional Sessions Judge, Sonapat, by selling one acre of land out of the land holding of Krishan, respondent No. 5, we order payment of another sum of Rs. 1 lac by way of compensation to the dependents of the deceased for his untimely death which has taken place due to the negligence of the jail authorities. Respondents 1 to 4 shall be jointly and severally liable to pay the amount of compensation.

(14) The writ petition stands allowed in the above terms with no order as to costs.