

Before Bal Raj Tuli, J.

THE STATE OF PUNJAB AND OTHERS (Defendants)—Appellants

versus

LAL CHAND (Plaintiff)—Respondent.

Regular First Appeal No. 17 of 1962

February 10, 1975.

*Indian Limitation Act (IV of 1908)—Articles 2 and 22—Code of Criminal Procedure (V of 1898)—Section 149—Police Act (V of 1861)—Section 23—Law of Torts—Police Officers carrying detained persons to disperse them at some place—Such Officers—Whether acting in performance of duties imposed by section 149 or section 23—Police van meeting with accident and injuring a detained person—Suit by such person for compensation—Whether governed by Article 22—State—Whether liable—Driver of Police van—Whether exercising delegated sovereign power of the State.*

*Held*, that under section 149 of the Code of Criminal Procedure, 1898 a Police Officer has a right to interpose for the purposes of preventing the commission of any cognizable offence, but where a person has already been arrested and detained and is being carried in a Police van to be dispersed at some place and not for being produced before a Magistrate then the Police Officer cannot be said to be acting in performance of the duties imposed on the State and Police by the Code. Sections 127 and 128 of the Code are also inapplicable at that time. The action of the Police in taking the detained person is not in pursuance of any enactment in force for the time being in India. Similarly section 23 of the Police Act, 1861, has also no applicability in such circumstances. If the Police van while carrying the detained persons meets with an accident thereby injuring any one of the detained persons then the suit filed by such injured person for compensation would be one for compensation for the injury to the person and would be governed by Article 22 of the Limitation Act 1908. If such a suit is filed within one year of the date of accident it will be within time.

*Held*, that it is true that the preservation of law and order in the State is the sovereign function of the State, but conveyance of an arrested or a detained person to a place of the choice of the State with a view to his dispersal cannot be said to be a sovereign act. Where a person is arrested or detained he is to be dealt with under the law of the land and not according to the whims of the officers of the State. There is no provision in any statute authorising the State Government or its Officers to take a detained person some where with a view to disperse him. Thus the conveyance of a

detained person in a Police van to an unknown destination cannot be said to be in performance of the sovereign functions of the State. The State Government will, therefore, be liable for the injury caused to the detained person as a result of the accident which is caused by the negligence of the driver of the Police van.

*Regular First Appeal from the decree of the Court of Shri H. S. Ahluwalia, Additional Sub-Judge 1st Class, Ambala City, dated the 3rd day of October, 1961, granting the plaintiff a decree for payment of Rs. 40,000 against defendants Nos. 1 and 3 and dismissing the suit for Rs. 10,000 in respect of malicious arrest and ordering that the defendant No. 1 would pay the proportionate costs of the amount decreed in the suit and would recover the costs in respect of the amount for which it had been dismissed and further dismissing the plaintiff's suit against Shri Kaul and passing no orders as to costs.*

J. S. Wasu, Advocate-General (Punjab), with S. K. Sayal, Advocate, for the appellants.

D. C. Ahluwalia, Advocate, for the respondent.

#### JUDGMENT

Fuli, J.—Lal Chand Sabharwal (plaintiff-respondent) filed a suit for the recovery of Rs. 50,000 on account of damages on the following counts :—

- (1) Rs. 10,000 for loss of professional practice and actual medical expenses,
- (2) Rs. 30,000 on account of permanent disability of left arm, including weakness to the left shoulder, elbow, hand, eyesight and all mental and physical sufferings therefrom, and
- (3) Rs. 10,000 on account of illegal arrest, wrongful confinement, insulting and inhuman treatment and harassment caused to him during the course of his wrongful confinement.

The facts pleaded were that the plaintiff was the Vice-President of Bhartya Jan Sangh, Punjab State, which started 'Save Hindi' agitation in the State of Punjab in May, 1957, in collaboration with some other organisations. The plaintiff offered himself for this peaceful mission and reached Chandigarh Railway Station by train at about 4 A.M. on July 15, 1957, accompanied by a batch of 250 volunteers. On arrival, he and the members of his party were put under arrest and taken to different police stations under the escort

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of police force under the orders of Shri A. K. Kaul, Assistant Inspector-General of Police, defendant No. 2. The plaintiff and his six companions were unlawfully detained in Chandimandar Police Station in an area infested with snakes, without service of any water and meals and were meted out a most inhuman treatment. At about midnight, the plaintiff and his companions were taken from Chandimandar Police Station to an unknown destination towards Ambala City in a bus under police escort, under the orders of Shri A. C. Tuli, Magistrate 1st Class. On the way they were forced to board police van No. PNE 4615 and the plaintiff was made to sit on the front seat and the driver was directed by Shri A. C. Tuli, Magistrate, to follow his jeep. When they reached Ambala City, the police van in which the plaintiff was travelling, turned towards Jullundur City, but the driver of the van was instructed by Shri Tuli to turn towards Karnal side. When the van reached Shahbad following the jeep of the Magistrate, another bus carrying Shri Jagdish Narain and others also arrived and then the Magistrate directed both the vehicles to proceed towards Jullundur City. At that stage, defendant No. 3, Gian Chand, Constable, who was driving the police van, expressed his inability to perform his duties as a driver any longer on account of fatigue caused by constant duty without any rest, respite or refreshment for several hours, and requested for being relieved. His request was not accepted in spite of the plaintiff's pleadings for him and he was directed to drive the police van towards Rajpura. At about 4 A.M. on July 16, 1957, the driver lost control over the vehicle which struck against a tree on one side of the road. As a consequence of that accident, the left arm of the petitioner was crushed and fractured followed by profuse bleeding. The Punjab State and its police force escorting the van did not render any first aid to the plaintiff in spite of the request made by him and his companions and he was admitted in Rajpura Civil Hospital in a precarious condition at about 5 A.M. His condition grew so serious that he had to be removed to Rajendra Hospital, Patiala, at 8.15 A.M. The petitioner then narrated the course of treatment and claimed the amounts as stated above. The suit was resisted by the defendants and the following issues were framed:—

1. Did the plaintiff and other members of his party go to Chandigarh on 15th July, 1957, with a view to commit some cognizable offence ?

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2. Was the plaintiff not kept in illegal confinement and unlawful detention by the defendants from 15th July, 1957, till his release ?
  3. Was the plaintiff maltreated by the defendants while in their custody as alleged in para No. 5 of the plaint and did it tantamount to infliction of mental torture on the plaintiff ?
  4. Whether the accident occurred due to the gross negligence and carelessness of defendant No. 3, in driving the van carrying the plaintiff ?
  5. If issue No. 4 is proved, is defendant No. 1 not liable for the damages, if any, suffered by the plaintiff on account of the accident ?
  6. Did the plaintiff and defendant No. 3 bring it to the notice of Mr. Tuli, representative of defendant No. 1, that defendant No. 3 was incapable of driving for reasons stated in para 6 of the plaint and para No. 6 of the written statement of defendant No. 3 and still the van was ordered to be driven by Mr. Tuli for reasons given in para 13 of the plaint, and if so, what is its effect ?
  7. Whether the accident was an act of God ?
  8. What injuries the plaintiff suffered on account of the said accident ?
  9. To what amount of damages is the plaintiff entitled and from whom ?
  10. Whether the suit is time-barred ?
  11. Whether the plaintiff served a valid notice upon the defendants under section 80, Civil Procedure Code ?
  12. Whether the Civil Court has no jurisdiction to determine the dispute ?
  13. Relief.

The findings of the learned trial Court on the above issues were as under :—

1. While there was no proof that the plaintiff and other members of his party went to commit a cognizable offence, the Government and its employees were justified in presuming that it was their intention.

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2. Though there were some technical irregularities in the procedure, the plaintiff's interception and detention were not wholly improper in order to effectively control the situation and at least there was nothing *mala fide* in the mind of the officers who took those proceedings.
3. The treatment meted out to the plaintiff at the Chandimandar Police Station was not very proper when it was certain that the plaintiff was a man of high status, had not committed any offence till then and was not charged of any matter involving moral turpitude.
4. The negligence was of the employees for which the State was liable.
5. Even if the accident was due to the negligence of the driver alone, the State was certainly liable for it.
6. The Driver, Gian Chand, had made a request to be relieved from his duty as driver due to fatigue, etc., but his request was not accepted. The rejection of his request, however, had no bearing on the decision of the case.
7. The accident could not be called an act of God.
8. The injuries were suffered by the plaintiff on account of the accident.
9. The plaintiff was held entitled to Rs. 10,000 on account of loss of professional income as a lawyer and on account of the amount spent on medicines, etc. He was also entitled to Rs. 30,000 on account of permanent disability of the arm and pain and suffering as a result of the accident. He was not entitled to any amount on account of his arrest and detention in Chandimandar Police Station.
10. The suit was within time under Article 22 of the First Schedule to the Limitation Act and Article 2 of that Schedule did not apply.
11. A valid notice under section 80, Civil Procedure Code, had been served by the plaintiff on the defendants.
12. This issue was not argued by the learned counsel for the defendants and was thus decided against them.

In the result, a decree for Rs. 40,000 was passed in favour of the plaintiff and against defendants 1 and 3. The suit against Shri A. K. Kaul, Assistant Inspector-General of Police (defendant No. 2)

was dismissed. The State of Punjab was held liable to pay proportionate costs to the plaintiff in respect of the amount decreed in the suit and to recover the costs in respect of the amount for which it was dismissed. Against that decree the State of Punjab has filed the present appeal.

Three points have been argued by the learned Advocate General, namely, (1) the suit was barred by time; (2) the State of Punjab was not liable because the accident, as a result of which injuries were caused to the respondent, occurred when the driver was acting in the performance of delegated sovereign functions of the State and (3) the amount of Rs. 30,000 awarded by way of damages on account of permanent disability of the arm, etc., is excessive. No other point has been argued and, therefore, I need not refer to the other points which were canvassed before the learned trial Court.

As regards limitation, it has been contended by the learned Advocate-General that the case is governed by Article 2 of the First Schedule to the Indian Limitation Act, 1908, which reads as under:—

Description of suit.	Period of limitation.	Time from which period begins to run.
2. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India.	Ninety days.	When the act or omission takes place.

The other Article, which has been held applicable to the case, is Article 22 which reads as under :—

Description of suit.	Period of limitation.	Time from which period begins to run.
22. For compensation for any other injury to the person.	One year.	When the injury is committed.

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The burden of the argument is that the respondent was being taken in the police van in the performance of the duties imposed on the State and the police by the Code of Criminal Procedure and the Police Act. Reference has been made to section 149 of the Code of Criminal Procedure, 1898, and it is submitted that it was in exercise of that power that the respondent had been arrested and detained and was being conveyed to another place. This section reads as under :—

“149. Police to prevent cognizable offences.—Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.”

Under this section the police officer has the right to interpose for the purpose of preventing the commission of any cognizable offence. That power was exercised in the morning of July 15, 1957, when the respondent was arrested at Chandigarh Railway Station and taken to Chandimandar Police Station. Thereafter he was detained there till midnight and then he along with his companions was taken in a bus towards Ambala, and on the way he was transferred into a police van which met with the accident. The respondent had been arrested and detained without any order of a Magistrate or in pursuance of any warrant of arrest issued by a competent Court. Although there was ample time to produce him before a Magistrate, he was not so produced till midnight. Shri A. C. Tuli, Deputy Secretary, Finance, Punjab Government, who was invested with the powers of Magistrate Ist Class of Ambala District, received orders from the Government to assist the police for scattering the intercepted agitators of the Hindi Raksha Samiti. In pursuance of those instructions, Shri Tuli was to take a *jatha* from Chandimandar Police Station to Jullundur while Shri Kapoor was to take a *jatha* to Karnal. In pursuance of that arrangement the respondent was seated in the police van and when the party reached Ambala, Shri Tuli, who was in a jeep which was going ahead of the police van, turned towards Jullundur, but the police van went towards Karnal. When Shri Tuli had covered some distance, he looked behind and found that the van was not following his jeep. He, therefore, returned to Ambala and went towards Karnal under the impression that the van might have gone towards that side. He met that van at Shahbad and asked the driver to proceed towards Jullundur instead of Karnal. On the way from Shahbad to Rajpura, the driver dozed off with the result that the van struck against a tree which

resulted in various injuries to the respondent. It is thus evident that the purpose of conveying the respondent and his companions in the police van was to disperse them at some place and not to produce them before a Magistrate. At that time there was no apprehension of the commission of any cognizable offence by the respondent or his companions and, therefore, the action of the police and the Magistrate in taking the respondent from Chandimandar Police Station towards Ambala and then towards Jullundur, could not be said to be in pursuance of section 149 of the Code of Criminal Procedure. Sections 127 and 128 of the Code of Criminal Procedure were also inapplicable at that time. It cannot, therefore, be said that the action of the Magistrate and the police in taking the respondent from Chandimandar Police Station was in pursuance of any enactment in force for the time being in India.

Section 23 of the Police Act, on which reliance has been placed by the learned Advocate-General, reads as under :—

“It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence effecting the public peace; to prevent the commission of offences and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gambling-house or other place of resort of loose and disorderly characters.”

This section also had no application because the respondent had already been apprehended in the morning of July 15, 1957. In my opinion, therefore, Article 2 of the Limitation Act has no application and the case is governed by Article 22 of that Act and having been filed within one year of the date of accident, the suit cannot be thrown out as barred by time.

The next point for consideration is whether the police van was being driven by Gian Chand, driver, in the exercise of any delegated sovereign power of the State. It is, no doubt, true that the preservation of law and order in the State is the sovereign function of the State, but the conveyance of an arrested or a detained person to



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a place of the choice of the State with a view to his dispersal, cannot be said to be a sovereign act. After a citizen is arrested or detained, he has to be dealt with under the law of the land and not according to the whims of the officers of the State. There is no provision in any statute authorising the State Government or its officers to take a detained person somewhere with a view to disperse him. If he has been lawfully arrested, he has to be produced before a Magistrate within 24 hours as has been provided in Article 22 of the Constitution. Admittedly there was no warrant issued by any Court for the arrest or apprehension and detention of the respondent in police custody or elsewhere, and therefore, his conveyance in the police van for an unknown destination could not be said to be in the performance of sovereign function of the State. The State Government is clearly liable for the injuries caused to the respondent as a result of the accident which was caused by the negligence of the driver of the police van.

That the driver was at fault and negligent in the performance of his duties, is abundantly clear on the record. He had complained to the Magistrate, Shri A. C. Tuli, to be relieved of the duty of driving the vehicle on the ground that he was suffering from fatigue and exhaustion as he had been given no rest or respite during the previous two or three days. That request was not granted with the result that under the influence of exhaustion he dozed off and lost control of the vehicle. The dozing off of the driver cannot be said to be an act of God as was pleaded by the State Government before the learned Court. The accident resulted as a result of negligence on the part of the driver and the State Government, as his employer, is clearly liable to compensate the respondent for the injuries caused to him in that accident. The suit has been rightly decreed against the State Government and the driver of the vehicle.

The only other point requiring consideration is whether the sum of Rs. 30,000 awarded to the respondent on account of permanent disability suffered by him as a result of the injuries and physical and mental pain and suffering during the period of his treatment in the hospital, is excessive. The respondent had suffered the following injuries on his person :—

1. Big lacerated wound on posterior aspect of left upper arm in its lower part and it extended down the elbow up to the middle of forearm. There was fracture of ulna in its upper part and dislocation of upper radio ulnar joint and

the head of the radius and upper end of the lower fragment of broken ulna were projecting out of the wound. There was a detached portion of the bone about  $1\frac{1}{4}$ " long lying fallen from the bone but attached to muscle. There were few other smaller pieces of bone lying in similar way. The muscles were badly torn. Dimensions of lacerated wound were  $10" \times 5"$ .

2. Fracture of left humerus about its middle.
3. Lacerated wound elliptical,  $3" \times 1\frac{1}{2}"$  on postrolateral aspect of left forearm. Muscles were torn in places. Certain muscles bellits were not reaching to Stimuli and not bleeding. X-Ray for fracture was advised and done by the department, which revealed :—
  - (i) Communated fracture humerus bone near its mid shaft. No callus formation at the level.
  - (ii) Communated fracture of upper part of ulna bone at the junction of alecronon process with its shaft. No callus detached.
  - (iii) A comunated fractures upper hand of radius bone involving its head and neck. No callus detected.

He had remained under treatment for a long time. The statement of the respondent on this point is as under:—

"The treatment that was given to me in Police Station Chandimandar, as referred to was insulting and inhuman. I could not even sit for about one month during the period I remained in the V.J. Hospital to much so I could not move from my bed even for the calls of nature and to ease myself. I had to remain on bed throughout for that month. As a result of the medical treatment I had to lie absolutely flat with my arm in bandages tied upwards in vertical shape. The blood and the pus oozed out from the wounds of my arm gave such a stinking smell that no body could even pass by my room. The wounds were washed about one month after the previous washing done to them. I ran temperature of about 104 degree fahrenheit to 105 degree fahrenheit continuously during a period of  $1\frac{1}{2}$  months that I remained in Rajindra Hospital, Patiala, in the beginning. It came down from 104 degree to 102 degree fahrenheit when I left Rajindra Hospital. I was administered treatment by a number of injections every day and the injections turned my hips black. The

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slightest movement of my body gave me an acute pain while I was in the Rajindra Hospital.

There is no movement in my little finger and the index finger even now. All the four fingers of my left arm cannot be moved backward. They always remained in bended position. The wrist has ceased to move i.e. there is no wrist movement left. There is absolutely no movement in the elbow of my left arm on either side. Shoulder of my left arm is always in an 'N' position. I cannot move my shoulder upward or backward. I cannot touch my head, face, right shoulder and right side of the waist and back. I thus feel a great difficulty at the time of bathing. In case my right hand is occupied, I cannot even help in removing mosquitoes, fly and other insects if they sit on my body or stick to it. As there is absolutely no movement in this arm, a peculiar pain starts when it is in a stand-still position for about continuous 15 minutes. I have as such always to keep pressing my left arm while talking, moving, sitting and doing any other work. My sleep breaks after about every two hours as I cannot take a left side turn while sleeping. This arm remains in vertical 90 degree angle position while sleeping, as the forearm muscles had been fixed on the back of the arm by the medical men instead of fixing it in the front side of the forearm. I feel constant pain in the arm."

In view of the above evidence, the mental and physical suffering undergone by the respondent, the injuries suffered and the resultant permanent disability of his arm, it cannot be said that the amount of Rs. 30,000 awarded to him as compensation, is, in any way, excessive or on the high side. The respondent is a practising lawyer and an eminent leader of an important political party and has to work pretty hard and, therefore, he has to be adequately compensated for the sufferings undergone by him.

The sum of Rs. 10,000 awarded to the respondent on account of loss of professional income and the costs of medicines, etc., has also been duly supported by the evidence and has not been disputed before me by the learned Advocate-General.

In the result, the appeal is without any merit and is dismissed with costs.

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N.K.S.