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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 6242 of 2009

Judgment reserved on 16.07.2019

Judgment delivered on 19.07.2019

1. Ramkhilawan Dansena S/o Late Ghuna Ram Dansena, age 62 YRS.
2. Smt. Keshar Bai W/o Ramkhilawan Dansena, age 60 YRS.

Both Resident of Opp. State Bank Of India, Patharia, Distt. Bilaspur C.G.

---- **Petitioners**

Versus

1. State of Chhattisgarh, Through Chief Secretary, D.K.S. Bhawan, Raipur (C.G.)
2. Secretary, Department of Home (Jail) D.K.S. Bhawan Raipur (C.G.)
3. Inspector General, Jail, Police Head Quarters Raipur (C.G.)
4. Superintendent, Central Jail Bilaspur, Bilaspur (C.G.)
5. Collector, Bilaspur (C.G.)
6. Superintendent of Police, Bilaspur (C.G.)
7. Thana Prabhari, Police Station Civil Lines Bilaspur (C.G.)
8. Smt. Chanda Dansena W/o Late Vijay Kumar Dansena, age around 28 yrs,
9. Rashi D/o Late Vijay Kumar Dansena, Age 7 years, Through Her Natural Guardian Smt. Chanda Dansena

R. No.8 & 9 R/o Gram Durgha Katghora, Distt. Korba CG

---- **Respondents**

For Petitioners : Shri Ali Asgar, Advocate

For Respondents/State : Shri Sudeep Verma, Dy. GA

Hon'ble Shri Justice Goutam Bhaduri

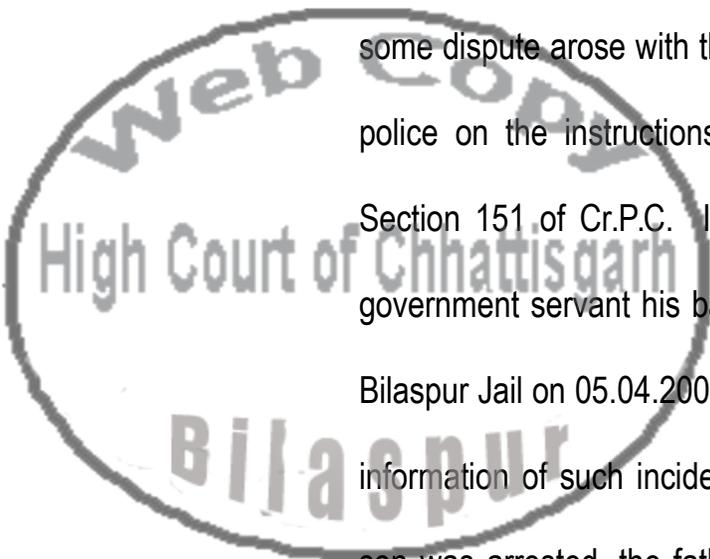
C.A.V. Judgment



1. Heard.
2. The present petition is filed by the father and mother of the deceased namely Vijay Kumar Dansena, who was working as Shiksha Karmi Grade-II (Teacher) at Government High School Padhine, Block Patharia, District Bilaspur (C.G.). In this petition, the wife and daughter have also been arrayed as respondents No.8 & 9.
3. The averments of the petition are that:-

(i) the son of the petitioners, who was working as Shiksha Karmi since 1999 was posted at Government High School, while was attending a pre-poll meeting some dispute arose with the SDM and pursuant thereto he was arrested by the police on the instructions of the then SDM, Patharia on 04.04.2009 under Section 151 of Cr.P.C. It is further stated that though the deceased was a government servant his bail was rejected by the Tehsildar and he was sent to Bilaspur Jail on 05.04.2009. The petitioners being parents, they did not get any information of such incident of arrest. Subsequently, having known that their son was arrested, the father of the deceased tried to search out his son and having known the fact that he was taken to Bilaspur Central Jail, he came to enquire about the whereabouts of his son on 08.04.2009 and he reached to the Central Jail. Initially the officials did not disclose the fact of death but subsequently came to know that the dead body of his son was lying at CIMS Hospital. Thereafter, after all the formalities, his dead body was handed over to him and was cremated.

(ii) The averments are that the Additional Collector held a magisterial enquiry and came to the conclusion that the deceased Vijay Kumar Dansena died





because of the injury inflicted on him while he was lodged in jail. The FIR was registered of such homicide and enquiry was conducted for the criminal case. The petitioners alleged that because of the fact that the son of the petitioners indulged into the arguments with the then government Officer at Patharia, he was arrested and his bail was canceled without any jurisdiction and he was sent to Central Jail, Bilaspur. The allegations are further that because of argument with officer, subsequently at the instance of the officer, he was brutally beaten inside the jail and jail authorities allowed things to happen whereby he succumbed to injuries. The wife of the deceased and one daughter, they were made the respondents and it is stated that they have left the house of the deceased. The petitioners herein claimed that investigation to be carried out by the High Power Committee or by the Central Bureau of Investigation and thereafter actions were prayed against the erring officers. The reply on behalf of the State was filed & signed by Officer-In-charge namely S.K. Mishra, who was then posted as Jail Superintendent and was incharge of Central Jail, wherein the petitioners' son died and he was the one person against whom too the allegations were made.

4. Learned counsel for the petitioner would submit that because of the fact the deceased entered into argument with the SDM, he was taken into custody initially under Section 151 Cr.P.C. Thereafter neither it was informed to the family members of the deceased nor any opportunity was given to get him released on bail. He would further submit that the detention continued and on 05.04.2009 he was sent to Central Jail, Bilaspur without any information to anyone. He would further submit that since the officers i.e. the SDM was annoyed with the deceased, as such, the deceased when was lodged in jail was



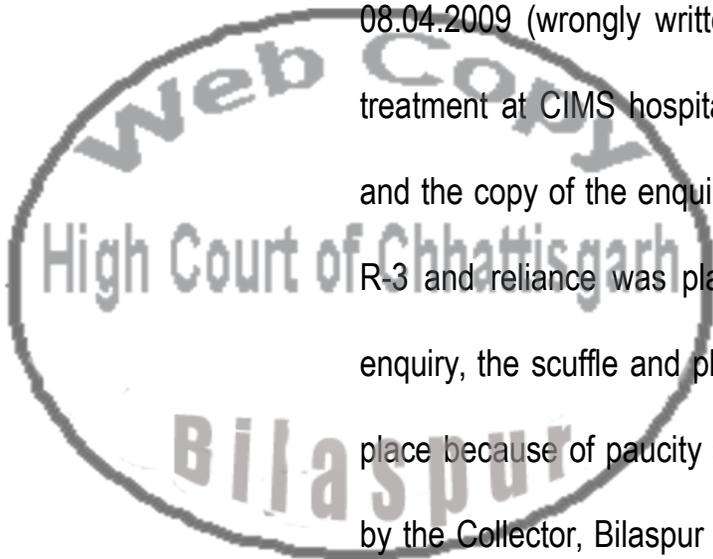
brutally beaten at the instance of the jail officers and eventually he succumbed to the injuries. He would further submit that the State initially had filed the return and along with the return magisterial enquiry report was filed and deliberately the conclusion part was omitted and the return by State was signed by the officer-in-charge against whom itself the allegations were leveled he being the Jail Superintendent. He referred to various judgments and submits that the deceased was illegally detained by the State at the instance of few of the officers and thereafter was brutally beaten so as to teach him a lesson as he landed into argument with the SDM. He therefore, submits that consequently, the deceased family members are entitled for compensation as the deceased who was assaulted and died because of the torture and inhumane behaviour with him inside the jail.

5. State counsel opposes the arguments of the petitioner and would submit that the State has also departmentally punished the officers. He would further submit that in order to get extraordinary compensation, the petitioners should have resorted to filing a civil suit. It is further contended that the State as a sovereign is liable to pay compensation as the act was done at the behest of few of the officers, for which the State cannot be held liable. He would further submit that in respect of the criminal cases, one of the inmates was tried in a sessions case but eventually he has been acquitted as no evidence exist against him.

6. In the reply of the State, it is contended that the death of the deceased was caused by grievous hurt and was caused by himself as he was striking his head on the wall of the jail. It was further stated that such behaviour was due to the fact that the deceased was a drunkard and since he did not get liquor, he was



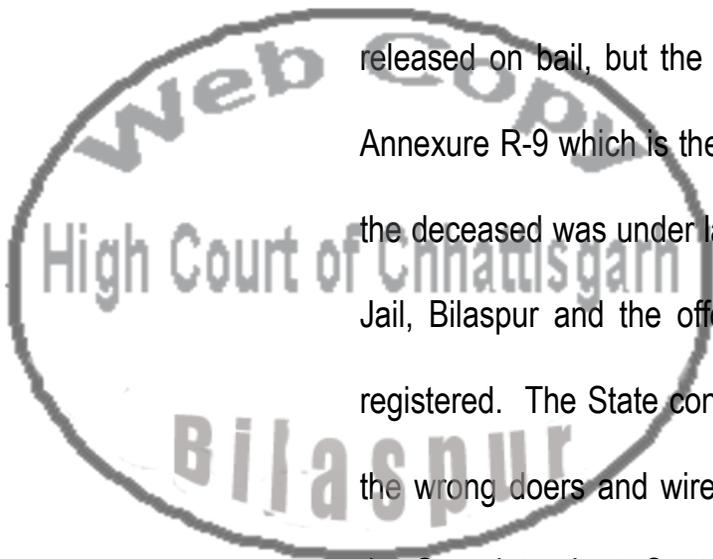
infuriated. The State in the reply further relied on the statement of the co-inmates of jail about the fact that the deceased was under the influence of intoxicant and further lament the fact that the jail doctor too supported the same. The all other averments of the petition were denied. The State further contended that neither in medical report, prepared by the doctors of CIMS nor in the postmortem report, the inquiry was specified by the team of doctors, which caused the ultimate death. It is further contended by the State that how the death was caused inside the jail has not been properly pleaded and cause has been shown, therefore, it would not amount to custodial torture & death. Further the reply purports that death of Vijay Kumar Dansena was on 08.04.2009 (wrongly written as 08.11.2009) and further contends that during treatment at CIMS hospital. The State also referred to a magisterial enquiry and the copy of the enquiry report was filed along with the return as Annexure R-3 and reliance was placed on it. The reply further purports as per the enquiry, the scuffle and physical torture by the under trial prisoners had taken place because of paucity of space and the requisite action was recommended by the Collector, Bilaspur to the Secretary Home Ministry and the other higher officials against the guilty persons. Further the reply of the State purports that on the direction of the Director General of Jail, Raipur, criminal offence was lodged against the guilty persons, who were involved in the crime and also the commencement of departmental enquiry was recommended against the main guard Bharat Lal Sahu, Bal Singh Pakir, Ramesh Kumar and Bharat Lal Tondon and they were issued show-cause notices. It is further stated that taking into the fact the economic condition of the deceased, Rs.50,000/- was given to the petitioners by the State Government and apart from that Rs.20,000/- was given to the petitioners by the Collector, Bilaspur. The State further contended that





the application on behalf of the wife of the deceased to appoint her as Shiksha Karmi was under consideration.

7. In the para-wise reply to the petition, it is stated that the deceased while was attending the pre-poll meeting, some dispute erupted between the deceased and the polling officer i.e. the SDM as the deceased was under very high influence of alcohol and he was disturbing the election process, consequently, in order to maintain the law and order he was detained by the police on instructions of the SDM on 04.04.2009 under the preventive measure and thereafter he was sent to Central Jail, Bilaspur on 05.04.2009. Further the reply purports that the relatives of the deceased were informed to get deceased released on bail, but the family members of the deceased did not turn back. Annexure R-9 which is the jail warrant, was relied on by the State to show that the deceased was under lawful custody and was sent on 05.04.2009 to Central Jail, Bilaspur and the offence under Sections 107, 116 151 (3) Cr.P.C. was registered. The State contended that the sufficient actions were taken against the wrong doers and wireless message (Annexure R-10) has been placed by the Superintendent, Central Jail, Bilaspur dated 07.04.2009 and it states that the deceased was admitted to the Hospital on 07.04.2009 at night for the treatment and the relatives of deceased were directed to be informed. The State further contends that the departmental proceedings were initiated against the responsible officers and the employees of the Central Jail, Bilaspur, who were found guilty and negligent in discharge of their duty and they were departmentally punished. Therefore, it was stated that the petitioners were not entitled for any extraordinary relief.
8. During the course of hearing before this Court on 20.11.2010 after filing of the

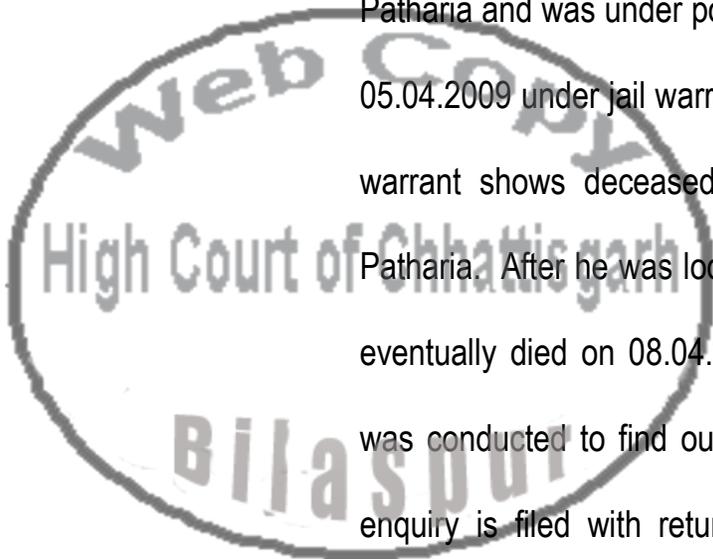




reply by the State, this Court directed the Superintendent of Police, Bilaspur, to file an affidavit explaining the details as various allegations remained unanswered. Pursuant to such direction, the Superintendent of Police, Bilaspur had filed an affidavit on 13.12.2010, along with such affidavit against the judicial enquiry report dated 20th of May, 2009, postmortem report and charge-sheet of criminal case, statements etc. were filed.

9. I have heard learned counsel for the parties at length and perused the documents.

10. It is not in dispute that Vijay Kumar Dansena was arrested on 04.04.2009 at Patharia and was under police custody. He was sent to Bilaspur Central Jail on 05.04.2009 under jail warrant under Sections 107, 116 & 151 of Cr.P.C. The jail warrant shows deceased was sent by the Court of Executive Magistrate-Patharia. After he was lodged in Central Jail, he was subjected to assault and eventually died on 08.04.2009. According to the State a magisterial enquiry was conducted to find out the truth of such death. The report of magisterial enquiry is filed with return of State as Annexure R-3 and is dated 20th of May, 2009. The said enquiry was conducted by the Additional Collector and the Executive Magistrate, Bilaspur. The reading of said report would show that the death of Vijay Kumar Dansena is not disputed while he was lodged in Central Jail, Bilaspur. The report which is filed by the State with their reply fortifies those facts, except the paragraphs which were brought to the notice of the Court when the Superintendent of Police separately filed his affidavit. In such affidavit same enquiry report was filed and relied on (filed as Annexure R-1). In such enquiry the last para exists which is reproduced hereunder:-

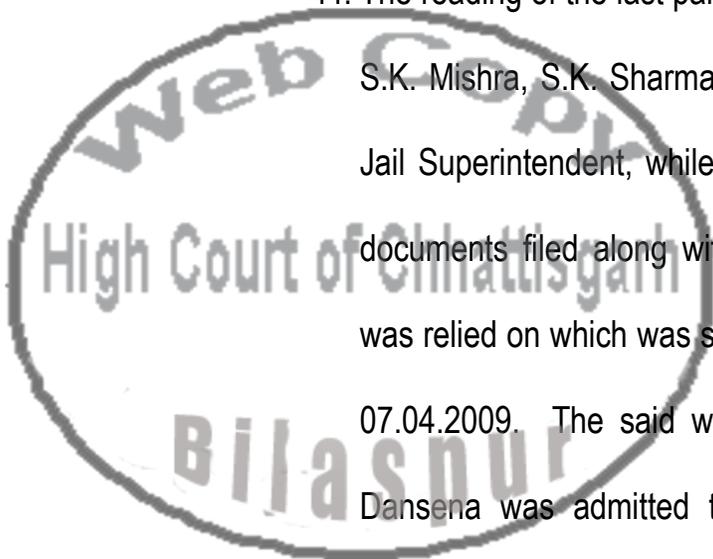




“श्री विजय कुमार के साथ मारपीट की घटना के लिए शाम के समय ड्यूटी में तैनात चक्कर अधिकारी श्री ए.के. मिश्रा, श्री एस.के. शर्मा जिम्मेदार हैं। जेल अधीक्षक भी जिम्मेदार हैं, क्योंकि जेल प्रमुख होने के नाते इनका भी दायित्व बनता है कि जेल में इस प्रकार के होने वाले घटनाओं पर उचित नियंत्रण रखें, जो नहीं रख सके। इसके अलावा प्रहरी, हेड प्रहरी, पहरदार श्री गणेश एवं लम्बरदार को भी इस घटना में संलिप्त होना पाया गया।”

whereas the reply filed by the State which was signed by S.K. Mishra, the Superintendent of Jail, Bilaspur though the same magisterial enquiry report was filed as Annexure R-3 but last para was deleted. The finding only came to fore when the Superintendent of Police, Bilaspur filed the affidavit with the same enquiry report along with other documents.

11. The reading of the last para of enquiry would show that the liability was fixed on S.K. Mishra, S.K. Sharma, Jail Superintendent etc., which was deleted by the Jail Superintendent, while the reply was filed. According to the State and the documents filed along with the return, a wireless message (Annexure R-10) was relied on which was said to have sent to Executive Magistrate, Patharia on 07.04.2009. The said wireless report says that the deceased Vijay Kumar Dansena was admitted to CIMS, Hospital i.e. the government hospital at Bilaspur and relatives of the deceased were directed to be informed. As whereas, the document filed by the Superintendent of Police along with his affidavit a police memo of hospital records shows that on 08.04.2009 at about 4.15 AM one Vijay Kumar Dansena was brought dead from Central Jail, by one Bal Singh warder and G.P. Upadhyay, warden of Central Jail. His dead body was directed to be kept in mortuary. The aforesaid action on the part of the then Jail Superintendent, who filed the return before this Court with affidavit would show that the wireless message were got prepared, so as to fabricate the paper to disown their responsibility. Further the enquiry report purports that the





enquiry officer after examination of statements of the inmates, the officer came to a conclusion that the death of Vijay Kumar Dansena, was due to assault & torture could not be ruled out. In the reply of the State it is contended that deceased was in habit of intoxication and because the deceased was not able to get the liquor, he was infuriated, is completely dismissed by the enquiry report. The report rather speaks that according to the postmortem report, the deceased could not be said to be a heavy drinker.

12. The postmortem report which is also a part of record would bring the lens back to the cause of death. The report suggest that the deceased has suffered 10 injuries which are shown hereunder:-

“1 Swelling on middle of the forehead 11 cm X 9 cm.

2. contusion (one) present on right shoulder region 5cm x 3 cm pink.

3. contusion on right nipple 3cm x 1 cm.

4. contusion on 3 cm x 2 ½ cm below right nipple pink.

5. one contusion on anterior aspect of right upper arm on its lower part, pink.

6. one contusion 3cm x 2cm on left shoulder pink.

7 Bruise 15 cm x 2.5 cm on lower part and a anterior aspect of left upper arm lower part horizontally placed pink.

8. one black colored bruise 2cm x 2cm on lower part and anterior aspect of the left upper arm.

9. bruise 11 cm x 6cm oval in shape pink in color on the left waist region near left Iliac crest.

10. Bruise 4cm x 2cm on front and lower part the left leg – pink

all the injury are ante-mortum in nature caused by hard and blunt objects.

With respect to internal injuries (1) extra collection of blood clot in forehead region; (2) 4th rib (left) found fractured.”



And the cause of death was shown as Vasovagal shock due to multiple injuries. Although the viscera preserved to know the exact and other cause of death and time of death was shown within 12-20 hours and postmortem was carried out at 5.15 pm on 05.04.2019.

13. Therefore, the postmortem report reading it along with the magisterial enquiry clearly goes to show that the deceased was brutally beaten in the jail which resulted into his death. No trick proved to be full proof in hiding the harsh truth. The State has filed a copy of the order of sessions trial dated 22nd of May, 2013 passed in ST No.58/2011, wherein one Sadhelal, one of the inmates of jail, was tried before the Sessions Judge, Bilaspur, and apparently, the prosecution failed to prove that Sadhelal, the jail inmate, had beaten the deceased consequently the trial Court in absence of evidence acquitted him. The fact remained that the deceased had died in jail, the acquittal order of sessions trial of the case and relied on by the State further goes to show that the officials believed to the simple objective that fixing of responsibility is the least popular activity and shelving the magisterial enquiry prosecuted inmates of jail alone.

14. The return of the State and the documents filed along with it would further show that the deceased was detained under Section 107, 116 & 151 Cr.P.C. Admittedly, he was arrested on 4th of April, 2009. As such the detention can be held valid under Section 151 Cr.P.C. for a further period of 24 hrs. up till 05.04.2009. Subsequent detention was continued by the State under Sections 107 & 116 Cr.P.C. at the behest of Executive Magistrate/Tahsildar. The reading of Section 107 & 116 Cr.P.C. show that it do not allow any detention in custody. The jail warrant which is on record shows that while the deceased was shifted to Central Jail, Bilaspur, the charges were under Sections 107, 116



& 151 Cr.P.C. Section 107 Cr.P.C. is only with respect to the security for keeping peace. Likewise, Section 116 Cr.P.C. says that when a person appears or brought before the Magistrate in execution of a summons or warrant, the Magistrate shall proceed to enquire into the truth of information upon which the action has been taken and may proceed to enquire. There is nothing on record to show that any proceedings under Section 111 & 112 Cr.P.C. was drawn against the deceased and any enquiry contemplated. No whisper is made in the return of the State or in affidavit filed by the Superintendent of Police with any document nor any order-sheet is also placed on record to justify the detention. Therefore, how under the provisions of Section 107 & 116 Cr.P.C. the deceased was lodged in jail and was sent to Central Jail, Bilaspur remains a mystery. The detention of deceased was therefore not decided upon the statutory mandate but was on self evolved theory of the officers. There is nothing in legislative corpus to detain a person beyond 24 hours under Section 151 or 107 or 116 of Cr.P.C. as such the source of power of detention, as appears emerged as a result of argument by the deceased with the Executive Magistrate.

15. The Supreme Court way back in the year 1983 in the case of **Rudul Sah Versus State of Bihar and another {(1983) 4 SCC 141}** has held that the Article 21 of the Constitution of India guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders or release from illegal detention and further has held thus in para 10 which is reproduced hereunder:-

“10..... [Article 21](#) which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention.



One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of [Article 21](#) secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the *State* must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.”

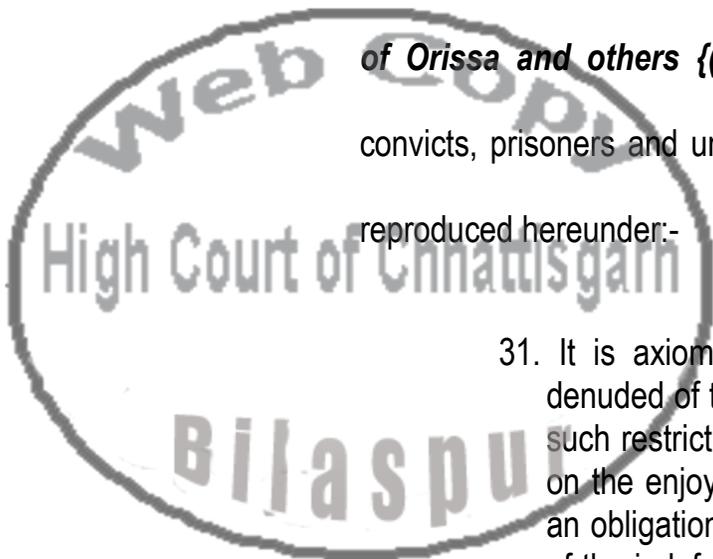
16. Further the Supreme Court in the case of ***Nilabati Behera (SMT) Alias Lalita***

Behera (Through the Supreme Court Legal Aid Committee) Versus State

of Orissa and others {(1993) 2 SCC 746} while dealing with the right of convicts, prisoners and under trials has held thus in para 31 & 32, which are

reproduced hereunder:-

31. It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under [Article 21](#) and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of 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. The precious right guaranteed by [Article 21](#) of the Constitution of India cannot be denied to convicts, under trials 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 wrongdoer 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. I agree with Brother Verma, J. that the defence of "sovereign immunity" in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either.





32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under [Article 21](#) of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under [Article 21](#) of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title 'Freedom under the Law' Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence... This is not the task for Parliament.... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this Country."

17. Further the Supreme Court in the case of ***D.K. Basu Versus State of W.B.***

{(1997) 1 SCC 416} has held thus in paras 22, 40, 45 & 54 which are

reproduced hereunder:-

"22. Custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Articles 21 and 22(1) of the Constitution required to be jealously and scrupulously protected. We cannot wish away the problem.



Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of [Article 21](#) of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen *shed off* his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in *abeyance* on his arrest? These questions touch the spinal cord of human rights' jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by [Article 21](#) of the Constitution of India cannot be denied to convicts, undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

PUNITIVE MEASURES

40. *Ubi jus, ibi remedium* - There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the court and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.

54. Thus, to sum up, it is now a well - accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not



available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait - jacket formula can be evolved in that behalf. The relief to redress the wrong for the *established* invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

18. Further this Court in the matter of **Saroj Shrivastava Versus State of Chhattisgarh & ors {WPCR No.15 of 2012}** while dealing the similar issue has awarded an compensation of Rs.15 Lakhs and has reiterated the view taken in the case of **Santosh Kumari V. State of HP reported in (2011) 3 MPHT81, Amandeep Vs. State of Punjab reported in 2012 SCC Online P&H 19844** and in the case of **Re-inhuman conditions in 1382 Prisons reported in (2017) 10 SCC 658** and has held thus in paras 18, 19 & 20 which are reproduced hereunder:-

18. Likewise, in **Santosh Kumari v. State of HP reported in (2011) 3 MPHT 81** the victim died while he was in police custody and it was found that he had injuries on his head, shoulders, eyes, knees and private parts. He died in hospital as he was not given medical assistance in time. In view of the unnatural death while in custody, the Himachal Pradesh High Court awarded compensation to the next of kin of the deceased.
19. An unnatural death in judicial custody where one person was killed by a co-prisoner was the subject-matter of discussion in **Amandeep v. State of Punjab reported in 2012 SCC Online**



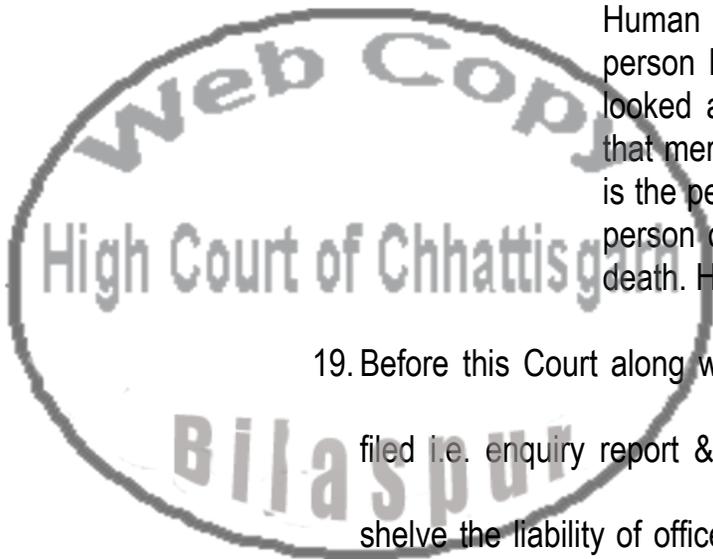
P&H 19844 and the High Court of Punjab & Haryana awarded compensation to the next of kin of the deceased due to the unnatural death in custody.

20. The Hon'ble Supreme Court in its recent judgment in **Re-Inhuman Conditions in 1382 Prisons** reported in **(2017) 10 SCC 658** has discussed the need to compensate in custodial death cases in following pertinent words:-

“55. Over the last several years, there have been discussions on the rights of victims and one of the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims - sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin.”

19. Before this Court along with the return of the State, certain documents were filed i.e. enquiry report & wireless message etc. which were manipulated to shelve the liability of officers but truth came to fore with the set of documents filed by the then Superintendent of Police, Bilaspur. So efforts were made by filing fabricated and manipulated documents to mislead the Court.

20. Considering the principles laid down as above, if the ratio as laid down are translated in the facts of this case, it would show that the deceased was taken into custody on 04.04.2009 thereafter he was illegally detained after 05.04.2009 under Section 107 & 116 of the Cr.P.C., which do not allow arrest and custody, yet because of the fact that he entered into some argument with SDM, as alleges the deceased was placed to custody and sent to Bilaspur Central Jail.





The baton of such aspiration of the officer i.e. the SDM and the Tehsildar were further carried forward by the jail authorities at Bilaspur Central Jail and thereafter horrified devastation precipitated in the form of death. The deceased at the time of death was aged about 32 years and was a government teacher in a school and survived by wife, daughter, father & mother.

21. Taking into the various proposition, therefore, and the fact that the deceased left behind his father, mother, wife and one daughter, it would be proper in the facts of this case to award compensation of Rs.15 Lakhs to the legal heirs of the deceased within a period of two months from today. It is ordered accordingly. In absence of such payment, it will carry an interest of Rs.9% p.a. Out of the compensation amount, if so paid, rupees 4 lakhs would be paid to the petitioners namely Ramkhilawan Dansena & Smt. Keshar Bai, who are the father & mother i.e. 2 Lakhs each and out of remaining 11 Lakhs; 6 lakhs would be paid to the wife i.e. Smt. Chanda Dansena respondent No.8 and 5 Lakhs would be paid to the daughter Rashi respondent No.9.

22. It is further observed that since the amount of compensation as awarded is paid out of the government exchequer for the disastrous act committed by the few of the erring officers, which includes the then SDM, Patharia/Tehsildar, who sent the deceased to custody and thereafter few of the officers of the Central Jail, Bilaspur, who carried forward the cause, which resulted in custodial death, the government would be at a liberty and shall be free to have recourse for recovery against those officers, if so desire following due course of law.

23. With the aforesaid observation, the petition stands allowed.

Sd/-
Goutam Bhaduri
Judge