2019 INSC 818

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3669-3670/2015

Union of India and others ..Appellants

Versus

Junu Gayary ..Respondent

J U D G M E N T

M.R. SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 9.6.2006 passed by the Gauhati High Court in Writ Petition(C) No. 9709/2003, by which the High Court has directed for CBI investigation with respect to the death of one Someswar Gayari alias Sombrom, as also, dismissal of review petition vide order dated 5.12.2008, the original respondents – Union of India and others have preferred the present appeals, by way of special leave petitions.

2. That the respondent herein – Smt. Junu Gayary, a young widow of deceased Someswar Gayari alias Sombrom filed a writ petition before the High Court under Article 226 of the Constitution of India for an appropriate writ, directions or order against the appellants herein – the original respondents directing them to institute a judicial enquiry

into the cause and the persons responsible for the death of her husband – Someswar Gayari alias Sombrom. Further directions were also sought for compensation of rupees six lakhs to her and her family for their survival.

2.1 It was the case on behalf of the original writ petitioner that when her deceased husband was at his relative's house at village Koilamaila under Bijni Police Station, he was taken away to Bhabanipur Army Camp by the personnel of 8th Madras Military Regiment at about 3:00 a.m. on 26.08.2003 and thereafter his whereabouts were not known until she was informed by the Officer Incharge of Amguri Police Outpost informing her that her husband had died on 30.08.2003 in an encounter with army near Bhabanhipurgaon.

2.2 The writ petition was opposed by the appellants herein – the original respondents. The stand taken by the original respondents in their affidavit was that no civilian as such was brought to Bhabanipur Army Camp as claimed by the original writ petitioner. They took the specific stand that the husband of the writ petitioner was killed in an encounter, which took place at about 3:50 hrs on 30.08.2003.

2.3 That vide order dated 4.4.2005, the High Court directed the learned District & Sessions Judge, Bongaigaon to hold an enquiry with regard to the circumstances leading to the disappearance and death of

the original writ petitioner's husband, Someswar Gayari. The High Court directed the learned District & Sessions Judge to submit the report. The High Court also directed the learned District & Sessions Judge to issue appropriate notice to all the parties and provide them an opportunity of hearing in the matter. Thereafter, holding necessary enquiry and giving opportunity to all concerned and after examining the concerned witnesses and on appreciation of the entire material available on record, the learned District & Sessions Judge submitted its report holding that the deceased Someswar Gayari was picked up from the house of Dilbahadur Chetry by army personnel in the night that followed the day of 26.08.2003. The learned District & Sessions Judge also opined that no Assam Police Personnel were involved in the act of picking up of the deceased from the house of Dilbahadur Chetry. The learned District & Sessions Judge further observed that whereabouts of the deceased was not known to the original writ petitioner till she was informed by the Bijni Police Station that the deceased died in an encounter with army. Upon appreciation of both direct and circumstantial evidence, the learned District & Sessions Judge came to the conclusion that the deceased was in the custody of the Indian Army since the time of his picking up by the army till the time of production of the dead body and handing over the same to the

police in the police station. The learned District & Sessions Judge specifically observed that the death of the deceased was in the hands of army and an attempt, however, has been made by the army to show the death of the deceased as if in the course of encounter between the army and the deceased.

2.4 That thereafter the High Court gave the opportunity to the appellants herein to file their objections, if any, to the Enquiry Report submitted by the learned District & Sessions Judge. However, no such objections were preferred by the appellants herein – the original respondents. That thereafter after considering the submissions made by the learned counsel appearing on behalf of the appellants herein - the original respondents on the enquiry report submitted by the learned District & Sessions Judge, the High Court came to the conclusion that the deceased – Someswar Gayari was taken into custody by the army for whatever purposes and probably may have been killed while in the custody. Therefore, the High Court by the impugned judgment and order has directed that in view of the specific and categorical finding recorded by the learned District & Sessions Judge, the matter requires for further investigation in accordance with law for which purpose a criminal case shall be registered for the offence punishable under Section 302 of the IPC. The High Court has

directed the Central Bureau of Investigation to undertake the investigation so that the real culprits do not get away unpunished.

2.5 Having found that there is a violation of the Article 21 of the Constitution of India and that the original writ petitioner is a young widow required to look after her three minor school going children and that the deceased was the only bread earner of the family, the High Court has further directed original respondent nos. 1 and 3 – Union of India and Commandant, 8th Madras Regiment to pay Rupees three lakhs to the original writ petitioner by way of compensation for the death of the deceased Someswar Gayari.

3. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the High Court, the appellants herein – original respondents – Union of India and others have preferred the present appeals.

4. We have heard Shri R. Balasubramanian, learned Senior Advocate appearing on behalf of the appellants. Service of notice is complete on the respondent as per the service report received from the concerned District Court but no one has entered appearance on behalf of the respondent.

4.1 Having heard the learned Senior Advocate appearing on behalf of the appellants and considering the impugned judgment and order

passed by the High Court, as such, we see no reason to interfere with the impugned judgment and order. The High Court has rightly directed to register a criminal case for the offence punishable under Section 302 of the IPC with respect to the death of Someswar Gayari alias Sombrom and looking to the gravity of the offence committed the High Court has rightly directed the CBI to undertake the investigation. For the aforesaid, the High Court has taken into consideration the report submitted by the learned District & Sessions Judge who categorically recorded that the deceased Someswar Gayari alias Sombrom was picked up from the house of Dilbahadur Chetry by army personnel in the night that followed the day of 26.08.2003; that the deceased was in the custody of the Indian Army since the time of his picking up by the army till the time of production of the dead body and handing over the same to the police in the police station; that the death of the deceased was in the hands of army and an attempt, however, has been made by the army to show the death of the deceased as if in the course of encounter between the army and the deceased. The aforesaid findings recorded by the learned District & Sessions Judge were on considering the material on record and after examining some witnesses and after giving an opportunity even to the appellants also. Under the circumstances, the impugned judgments

and orders passed by the High Court directing to register a criminal case for the offence punishable under Section 302 of the IPC and directing the CBI to undertake the investigation do not warrant any interference.

5. Now so far as awarding rupees three lakhs by way of compensation to the original writ petitioner is concerned, it is required to be noted that there is a specific finding recorded by the learned District & Sessions Judge and even by the High Court that there is a violation of Article 21 of the Constitution of India. The persons who are responsible for the death of Someswar Gayari shall be ultimately investigated by the CBI. However, the fact remains that Someswar Gayari has died and there is a *prima facie* finding against the appellants. In fact, the High Court has awarded rupees three lakhs only which, according to us, is on a lower side. According to us, if rupees five lakhs is awarded towards compensation, at this stage, the same shall be in the interest of justice. Therefore, in exercise of powers under Article 142 of the Constitution of India and to do substantial justice to the deceased and his family members, we enhance the amount of compensation to rupees five lakhs, which shall be deposited by the appellants with the Registrar General of the Gauhati High Court within a period of four weeks from today, which

shall be paid to the original writ petitioner on her being properly identified. The assessment of compensation of ours shall not preclude the original writ petitioner to avail such remedy as is available to her in law whatsoever which may have to be decided on its own merits.

6. In view of the above and for the reasons stated above, the present appeals challenging the impugned judgments and orders passed by the High Court directing to register a criminal case and directing the CBI to undertake the investigation deserve to be dismissed and are accordingly dismissed.

7. Since the matter is very old, the CBI is directed to undertake and conclude the investigation at the earliest so that the real culprits are punished. It goes without saying and as held by this Court in the case of *General Officer Commanding v. CBI and another, reported in (2012)6 SCC 228*, that after the charge sheet is filed by the investigating agency and not after the cognizance is taken by the court, the competent authority in the army shall take a decision within a period of eight weeks from the date of filing of the charge sheet as to whether the trial would be by the criminal court or by a court martial and communicate the same to the Chief Judicial Magistrate concerned immediately thereafter. In case, the option is made to try the case by a court martial, the said proceedings would commence immediately

and would be concluded in accordance with law expeditiously. It is further observed and directed that in case the option is made that the accused will be tried by the criminal court the CBI shall make an application to the Central Government for grant of sanction within a period of four weeks from the receipt of such option and in case such an application is filed, the Central Government shall take a final decision on the said application within a period of eight weeks from the date of such an application. In case, sanction is granted by the Central Government, the criminal court shall proceed with the trial and conclude the same expeditiously.

8. With the aforesaid observations and directions, the present appeals are disposed of.

.....J.
[M.R. SHAH]

NEW DELHI; **.....J.**
JULY 26, 2019. **[A.S. BOPANNA]**