

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 5811 of 2023

Petitioner :- Rajat Bajpai

Respondent :- State Of U.P. Thru. Prin Secy. Home Lko. And 4 Others

Counsel for Petitioner :- P.R.S. Bajpai, Abhishek Yadav, Anand Mani Tripathi, Harsh Tripathi, Manoj Kumar Mishra, Ravindra Bajpai

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

- 1.** An affidavit of compliance has been filed today, which is taken on record.
- 2.** This Court had passed the order dated 27.07.2023, operative portion of which is being quoted hereinbelow:-

"This Court is not convinced about the injuries. They do not appear bruises caused due to grazing of skin on the road, therefore, this Court directs that medical examination be conducted of the petitioner by a Specialist Doctor of KGMU, Lucknow. The Commissioner of Police, Lucknow is directed to refer the petitioner's case to the Chief Medical Superintendent of KGMU, who shall do the needful today itself without watching for this order to be signed and uploaded on the website.

Sri V.K. Sahi, learned Additional Advocate General assisted by Sri Shiv Nath Tilhari, learned A.G.A.- I are present in Court and he shall inform the Commissioner of Police, Lucknow of the order passed today and ensure that petitioner is examined properly by the medical expert today itself and a report be submitted to this Court on the next date of hearing.

It has been informed by the learned Additional Advocate General that an enquiry has been set up in the matter by the Commissioner of Police on 25.7.2023, as the petitioner himself had approached him by way of an application. It is clarified that this Court is not interfering in such enquiry being conducted by the team that has been constituted for this purpose by the Commissioner of Police and the said enquiry shall go on. Its report shall also be placed before this Court in a sealed cover on the next date of listing.

List this matter on 17.8.2023.

Let a para-wise be filed by the opposite party no. 5."

- 3.** A sealed envelope has been produced before this Court containing a report of the Medical Officer, Casualty Department, Gandhi Memorial & Associated Hospital, King George's Medical

University, U.P., Lucknow. The examination of injuries of the petitioner has been done and the opinion expressed regarding the cause of injury is physical assault.

4. The Commissioner of Police has submitted the report of Sri Sayyed Ali Abbas, Additional Commissioner of Police, Lucknow Commissionerate (East), dated 14.08.2023 along with covering letter dated 16.08.2023. In the said report, which has been examined by us, the statement of the petitioner Rajat Bajpai, has been recorded as also that of the Police Personnel of Police Station Chinhat, Lucknow, namely, Lady Constable Antima, PNO 182461109, S.I. Devendra Kumar Singh, PNO 832690194, S.I. Mukesh Pal, PNO194071448, S.I. Sandeep Singh Gaur, PNO 194071969, S.I. Ramesh Chandra Yadav, PNO910580063, S.I. Surendra Singh, PNO960600382, Constable Rahul Kumar, Constable Vishal Singh, Constable Rajdeep Mishra, Constable Suraj Bharti, Lady Constable Ruchi Singh, Constable Vinay Kumar Shukla, Lady Constable Hemlata and I/c Inspector Alok Rao, PNO012660562. All of the Police personnel have narrated the same story of the petitioner Rajat Bajpai parking his motorcycle in the middle of the road. When the petitioner was asked by the Police Personnel to remove his motorcycle, the petitioner started misbehaving with the Lady Constable Antima, on which she called the Police Personnel on duty at Matiyari crossing at Deva road. The photograph of the motorcycle standing in the middle of the road was taken for the purpose of challan and the petitioner was asked to hand-over the keys of the motorcycle, which he did not handover and threw them far away which landed on the roof of a tea stall.

5. It is the case of the Police personnel that the petitioner started misbehaving with the Police and also sat on the ground on the middle of the road obstructing the traffic. Some passers by also made video clippings of the entire incident on their mobile phones.

6. It has been further stated that Rajat Bajpai stated that his brother and father were both

Advocates in the High Court. He also talked to someone initially on his mobile phone then on his smart watch. The Police tried to forcibly pick up the petitioner Rajat Bajpai from the middle of the road and put him in the PRV and, during the course of such attempt, petitioner suffered injuries on his legs. All the police personnel have stated that there were two persons Pankaj Kumar and other Rajat Bajpai. Pankaj Kumar and Rajat Bajpai both work in Max Hospital in Gomti Nagar and they had gone out to eat *momos*.

Pankaj Kumar has mentioned in his statement that he did not see exactly what happened because he was in the shop buying *momos*, when he came out, he saw a number of police personnel and the petitioner sitting in the road and his motorcycle standing on the road. Pankaj Kumar and Rajat Bajpai both were taken to the Police Station Chinhath. They were kept in the same lock-up, but Rajat Bajpai did not tell him that he was beaten up. The next day on medical examination, no injuries were found on Pankaj Kumar, however the petitioner, has been shown by the Medical Officer of the Community Health Centre, to have suffered injuries on his legs, thighs and buttocks caused by hard and blunt object.

7. In the statement of the petitioner, there is a mention of two Police personnel in plain clothes. He can identify them on seeing them but cannot name them because they were not wearing their uniform with name plates, being responsible for beating him up.

8. In the enquiry report, it has come out that Constable Vishal Singh and Constable Rahul, were present in civil dress in the Police Station Chinhath and they had taken out the petitioner for five minutes approximately to some other place away from the lock-up. They could not explain that why they took the petitioner out from the lock-up and what they did to Rajat Bajpai in those five minutes. They could not explain as to what they were doing in civil dress in the Police Station concerned.

9. The Additional Commissioner Police has examined the mobile recordings and video

recordings of the entire incident which were collected through independent witnesses/ passers-by, by the Police personnel and he has given an opinion that there was an altercation between the Police personnel and Rajat Bajpai with regard to the parking of his motorcycle which led to Police personnel forcibly taking Rajat Bajpai in their vehicle to the Police Station concerned and because of the petitioner sitting on Dharna on the road and being forcibly taken in the Police vehicle, which resulted injuries caused on his legs due to friction/ skirmish.

10. This Court is not satisfied with the opinion expressed by the Additional Commissioner of Police as there are two medical reports which clearly show that injuries were caused on the petitioner by a hard and blunt object and was a result of physical assault. Two constables Vishal Singh and Rahul could not explain as to why they had taken out the petitioner for five minutes, but the Additional Commissioner of Police has not expressed any opinion at all about the possibility of these two Constables beating up the petitioner. He has only stated that it was not proper for them to have taken out the petitioner.

11. With regard to the C.C.T.V. footage of Police Station Chinhat, the Enquiry Officer has found from the report submitted by Sri Rinku Dubey, Computer Operator, Grade-A, I/c C.C.T.N.S. that the bullet cameras have not been working in the Police Station concerned.

12. This Court is not convinced as it has come across a similar report being submitted with regard to the Police Station S.G.P.G.I. on an earlier occasion when this Court was dealing with a case of road rage where it was alleged that certain lawyers barging into the Police Station S.G.P.G.I. and misbehaved with two residents of a nearby colony.

13. We have been informed that Director General of Police has issued orders that all the Police Stations be covered by C.C.T.V cameras, but this is the second incident in the capital city of the State of U.P. where the Police has informed this Court

that C.C.T.V cameras were not working at the relevant point of time and have not been working for quite some time. It is a matter of great concern and this kind of report of Police cannot be appreciated at all.

14. We have seen the coloured photographs of the petitioner's injuries that have been filed along with the writ petition and we are not convinced at all with the version of the Police personnel of Police Station Chinhaat that such injuries / bruises on the skin occurred due to friction on the road when the Police personnel tried to pick up the petitioner and put him in the police vehicle. Friction cannot cause contusion as has been reported by the two Medical Officers concerned.

15. In the covering letter of Police Commissioner, it has been informed to this Court that although the conduct of two Constables Vishal Singh and Rahul, in civil dress in Police Station Chinhaat as alleged by the petitioner could not be proved, yet they are proposed to be removed from duty at the Police Station and sent to the Police Lines. Disciplinary proceedings are proposed only against the Sub Inspector Ramesh Chandra Yadav and Incharge Inspector Police Station Chinhaat.

16. From the entire enquiry report, it is not clear as to what happened to the petitioner's motorcycle after it was allegedly challaned by the Lady Constable Antima.

17. This Court has gone through the prayers as made in the writ petition which are as follows:-

"i. a writ, order or direction in the nature of mandamus commanding thereby opp. party no.4 to constitute a medical board comprising of eminent doctors to examine the exact nature and description of injuries (as reflected in annexure no.1) caused to the petitioner by police (Chinhaat Police) in police custody and to put the medical report before this Hon'ble Court and also to make photographs and video of said injury as caused by police to petitioner in police custody; and

ii. a writ, order or direction in the nature of mandamus commanding thereby opp. party no.2 to set up a high level enquiry to ascertain the accountability and find out the guilty of causing the custodial violence/ police brutality by police to petitioner in police custody and to preserve all the evidences regarding the incident of custodial violence and to put the report before Hon'ble Court.

iii. to direct the opp. party no.2 to register a case against the guilty police officials and to get the case investigated by some independent agency."

18. The prayer no.1 relates to constituting a Medical Board comprising of eminent doctors to examine the exact nature and description of injuries cause to the petitioner by the Police.

19. The petitioner was medically examined initially at Community Health Centre and thereafter by the Medical Officer on duty of Gandhi Memorial and Associated Hospitals, K.G.M.U. The prayer no.1 in so far as it relates to the medical examination has now become infructuous as a clear opinion has been expressed that there are Abrasions and Contusions on both legs of the petitioner caused due to the injury by hard and blunt object/ physical assault.

20. With regard to the prayer no.2 which relates to the setting up a high level enquiry to ascertain the accountability and find out the guilty Police personnel for custodial violence, the respondent no.3 had already been directed and he has submitted the report of the Additional Commissioner of Police dated 14.08.2023 through his covering letter dated 16.08.2023, detailed mention of which has been made by us in the foregoing paragraphs of this order.

21. There is another prayer made by the petitioner for a direction to be issued to the Director General of Police, U.P., to register a case against the guilty Police personnel and to get the case investigated by some independent agency.

22. This Court is of the opinion that the Commissioner of Police in his covering letter has already proposed the disciplinary action against Sub Inspector Ramesh Chandra Yadav and Incharge Inspector Sri Alok Rao, Police Station Chinhat. However, the Commissioner of Police has not stated as to what he proposes to do with Constable Vishal Singh and Constable Rahul, who have been accused of custodial violence by the petitioner in his statement. He has only proposed taking them off duty at Police Station Chinhat and transferring them to the Police Line.

23. Both the Constables have not been arrayed as respondents in person in this petition, therefore, without hearing them this Court cannot issue any directions for the respondent no.3 to take action against them.

24. This Court however hopes and expects the respondent no.3 to take suitable action against all Police personnel found involved in custodial violence. He shall also take corrective measures with regard to the report of C.C.T.V. cameras not working in the Police Station concerned also and submit his report by the next date of listing.

25. List this case on 20.09.2023 for a detailed counter affidavit to be filed by the State respondents.

26. Further orders can be passed by us only after exchange of pleadings.

27. The petitioner is directed to implead Constable Rahul Kumar and Constable Vishal Singh as respondent nos.6 and 7, by moving an appropriate impleadment application in this regard within a week, showing such Constables as care of the Police Commissioner, Lucknow.

28. The medical examination report and that of Additional Commissioner of Police are both taken on record.

Order Date :- 17.8.2023
Rahul