

The Secretary,Hailakandi Bar ... vs State Of Assam And Another on 9 May, 1996

Equivalent citations: 1996 AIR 1925, JT 1996 (5) 88, AIR 1996 SUPREME COURT 1925, 1994 AIR SCW 1969, 1996 (11) OCR 547, 1996 SCC(CRI) 90, 1996 (5) JT 88, 1995 (3) SCC(SUPP) 736

Author: S.C. Sen

Bench: S.C. Sen, A.M Ahmadi

PETITIONER:

THE SECRETARY,HAILAKANDI BAR ASSOCIATION

Vs.

RESPONDENT:

STATE OF ASSAM AND ANOTHER

DATE OF JUDGMENT: 09/05/1996

BENCH:

SEN, S.C. (J)

BENCH:

SEN, S.C. (J)

AHMADI A.M. (CJ)

CITATION:

1996 AIR 1925 JT 1996 (5) 88

1996 SCALE (4)290

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SEN, J.

This case arises out of a notice issued to A K. Sinha Cassyap, Superintendent of Police, Hailakandi to show cause why he should not be held guilty of Contempt of Court. The allegation against the contemner is that a shocking case of police brutality leading to the death of an undertrial prisoner

was sought to be covered up by him by an untrue and misleading report sent to this Court followed by a false affidavit.

The Secretary, Hailakandi Bar Association, forwarded to this Court a copy of the resolution passed by the Association at an emergent meetings held on 16th March, 1993 condemning the brutal assault leading to the death of an undertrial prisoner Nurul Haque.

Having regard to the serious nature of the complaint, this Court by an order dated 20th August, 1993 decided to treat the copy of the resolution forwarded by the Secretary, Hailakandi Bar Association as Writ Petition under Article 32 of the Constitution of India. The Director General of Police, State of Assam, was directed to inquire into the matter and send a detailed report in regard to the events leading to the death of Nurul Haque. Pursuant to the said order, the Director General of Police forwarded his report under letter No.C-150/91/107 dated 13th September, 1993. In the letter it was stated that the Director General of police got the matter investigated by the Superintendent of Police, Hailakandi, who prepared a report which was forwarded to this Court along with a medical certificate dated 10th March, 1993 and particulars of medical examination of Nurul Haque done on 11th March, 1993. In the report prepared by the Superintendent of Police, it was specifically stated, "Nurul Haque neither died in police lock-up nor in police custody. He died while in judicial custody as UTP (undertrial prisoner). He was not tortured during the period of police custody."

To say the least, the report was not satisfactory. The inconsistency in the statement of facts made in the report was pointed out in the Order of this Court dated 24th January, 1994. It was noted in the Order that the report of the Superintendent of Police that "the P.M. Report did not indicate any external injury over the dead body" was factually incorrect and misleading. The Superintendent of Police, A.K. Sinha Cassyap, was asked to explain the same by affidavit and he stated the word 'not' had inadvertently appeared for which he tendered apology. This explanation was also found to be unsatisfactory. It was pointed out that deletion of 'not' will leave the sentence grammatically incorrect. The senior police officers were reminded to show extra care while forwarding their comments to this Court and not to mechanically forward the information collected by their subordinates. The Court had called for the report of the Director General of Police because the Court reposed confidence in the objectivity of a person holding such a high office. It was further noted in the Order that another disturbing feature of the case was that the police had registered the offence under Section 302 I.P.C. against unknown members of the public. The story given out by the police that the members of the public had beaten Nurul Haque before he was apprehended by the police was not borne out by the reaction of the public and also the Bar Association which had taken up the cause of Nurul Haque. Neither the report of medical examination done on 12th March, 1993 nor the laboratory report on the viscera had been forwarded. Having regard to the facts and especially to the fact that the deceased had suffered a fracture, the possibility of the injuries having been caused by the police could not be ruled out altogether. It was ordered:-

"Since the local police at the highest level have taken a stand that the assault on the deceased was by members of the public and not the police after the apprehension of the deceased, it is futile to expect an independent and wholly objective investigation

by the State Police. Even otherwise, the people will have little confidence in the investigation no matter how honest and objective the investigation be. In the circumstances, we deem it most appropriate that the investigation of the crime in regard to the murder of the deceased under CR Case No.275/93 and/or F.I.R. No.120/93 should be undertaken by the Central Bureau of Investigation (CBI). In doing so, the CBI will bear in mind the allegation of the wife and other relations of the deceased that he died on account of the beating given to him after his apprehension on 9.3.1993, without being influenced by the fact that in the F.I.R. No.120/93, it is alleged that the assault was by the members of the public.

The Registrar General will write a letter to the Director of CBI to take immediate steps to take over the investigation of the crime from the local police and try to complete the same at an early date and bring the real culprits to book. This petition will stand so disposed of."

After the Writ Petition was disposed of on 24th January, 1994, a report was received from Superintendent of Police, CBI, SPE Division, Silchar. Along with the report he sent a forwarding letter dated 5th June, 1995 in which he stated that the disdainful role played by Shri A.K. Sinha Cassyap, the then Superintendent of Police, Hailakandi District, was against all tenets of law and morality. He submitted a false/fabricated affidavit/report to the Hon'ble Supreme Court. The falsity of his report submitted to the Hon'ble Supreme Court is evident in every sentence, if not every word of the report of said Shri A.K. Sinha Cassyap, S.P. On consideration of the letter and the report submitted by the Superintendent of Police, CBI, a Show Cause Notice was served upon A.K. Sinha Cassyap for showing cause why he should not be punished for the criminal contempt of this Court for filing a false and fabricated report/affidavit in this Court.

Since the allegation against Shri A.K. Sinha Cassyap is that he had given an untrue report and filed a false affidavit about the death of Nurul Haque to mislead the Court, it is necessary to set out the facts found by the Superintendent of Police, Central Bureau of Investigation, in detail.

On 9th March, 1993 being Tuesday was a market day. It was the month of Ramzan. Nurul Haque, resident of Boalipar under P.S. Hailakandi, was coming back from the market towards his house at about 7.00/7.30 P.M. He was 35 years of age and in good health. A Police party, led by Abdul Hye Choudhury, S.I., arrested Nurul Haque. His house was about 400 yards from the market. As per the version of eye witnesses, Nurul Haque was overpowered by S.I. Abdul Hye Choudhury and party, who were all in plain clothes, and took him into a Police Jeep to Hailakandi Police Station.

Although the Police later claimed that Nurul Haque was assaulted by members of the public at the time of the arrest, neither the villagers nor relatives nor market people, who were eye witnesses to the incident, noticed any such assault, nor was there any record of Nurul Haque being treated for injury on 9th March, 1993.

On 10th March, 1993, in the early morning, Azizur Rahman, brother of Nurul Haque, his wife and mother went to meet Nurul Haque at Hailakandi Police Station, but were not allowed to meet him. On 11th March, 1993, Azizur Rahman and some other relatives of Nurul Haque went to the Court of

the Chief Judicial Magistrate, Hailakandi, where they met Nurul Haque, who told them that he had been brutally beaten up by S.I. Abdul Hye Choudhury, Roy Daroga (Rajan Roy S.I.) and Home Guard Dalim in the lock-up. On 11th March, 1993, Nurul Haque was produced before the Chief Judicial Magistrate, Hailakandi, with a prayer for 72 hours police remand. It was also prayed that since Nurul Haque was assaulted by members of the public, medical treatment may be provided to Nurul Haque. The prayer was granted.

Even before this, on 10th March, 1993 Nurul Haque had been taken to Hailakandi Civil Hospital at about 5.30 P.M. for treatment. He was brought back to the Police Station after receiving treatment. Dr. M.L. Bhattacharjee, the Medical Officer on duty, examined the patient and recorded his findings in the Emergency Register as follows:-

"(i) Abrasion in cheek 1 cm x 1 cm.

This may be caused either by hitting of a blunt object or by falling.

(ii) One abrasion in left leg 2½ cm x 1 cm. This might be due to fall or some blunt object.

(iii) Abrasion on fore-head, 2 cm x 2 cm. It may be due to the same reason as mentioned earlier.

(iv) Deep tenderness on right leg.

The patient was complaining that he was having a severe pain on right leg. As far as he remembers this was just below the medial side. But there was no external injury at the spot."

The patient complained that he had been beaten up by the police. The police said that he was a dacoit and was brought for medical treatment after arrest. The Doctor advised X-Ray, A.P. and lateral view of right Tibia and the Fibula. The Doctor noticed that all the injuries were fresh and had been received within 24 hours. The patient was healthy and could walk freely with a slight limp for pain on the right leg. The patient was treated at Emergency Ward for about 15 minutes and then discharged. As the X-Ray machine of the Civil Hospital was not in order, the Doctor advised the police party to get a X-Ray done outside. There is nothing on record to show that Nurul Haque was given any treatment thereafter nor any X-Ray was done as advised by the Doctor. But, he was interrogated thoroughly.

On 11th March, 1993 at 1.15 P.M. Nurul Haque was taken from Hailakandi Police Station to Civil Hospital for treatment. The Doctor on duty, Dr. H.A. Ahmed, recorded the following injuries suffered by the patient:

"(i) One lacerated injury present over the left thumb of size 2½cm x 1½cm x skin deep.

(ii) One abrasion over the left forearm at middle third of size 1 cm x 2 cm.

- (iii) One abrasion present over the left arm of size 2'5cm x 2cm.
- (iv) One abrasion present over the left leg. Over the tibia of size 2 cm x 2 cm.
- (v) One lacerated wound present over the right leg at upper third over tibia of size 1'5cm x 1'5cm x bone deep and causing severe tenderness."

At 2.15 P.M. Nurul Haque was brought back from the hospital and kept in the lock-up of the Police Station. He was produced before the Chief Judicial Magistrate, Hailakandi, on 12th March, 1993, with a prayer for holding Test Identification Parade. The prayer was allowed. In the order of the Chief Judicial Magistrate, Hailakandi, it was recorded that Nurul Haque had been given medical treatment and that the jail doctor should provide treatment to Nurul Haque. The jail doctor checked Nurul Haque and found that he was suffering from multiple injuries and due to lack of facilities he referred the patient to Civil Hospital, Hailakandi. At 6.45 P.M. Nurul Haque was once again brought to Hailakandi Civil Hospital. He was taken to the Casualty Ward. In the Casualty Ward Register it was recorded that he was suffering from multiple injury. Dr. Tapan Kumar Bhattacharjee was the doctor on duty. However, later on an extra word 'old' was inserted in between 'multiple' and 'injury' to give a wrong impression about the period when the injuries were suffered. He was admitted at 7.20 P.M. in the Indoor Ward. In the treatment report, the time of the injury was apparently corrected from 12 hours to 40 hours. It was recorded that the patient was healthy and fully conscious and the following injuries were found:-

- "(i) One lacerated injury in left thumb.
- (ii) One abrasion over left thumb at middle third.
- (iii) One abrasion over left arm.
- (iv) One abrasion over left leg over Tibia.
- (v) One lacerated injury present in the right leg upper third to Tibia.

And the all injuries were found infected and there was no record/report available for having conducted X-ray examination."

The patient received some treatment but he collapsed on 13th March, 1993 at 5.25 A.M. Dr. Gautam Pal, who was on duty, noted that the patient was deeply unconscious, pulse rate rapid and thready, blood pressure could not be felt. The patient was injected Decadron, a life saving drug. He was put on oxygen and cardiac massage was also given. At 5.30 A.M. Nurul Haque died.

The Superintendent of Hailakandi Civil Hospital informed the Superintendent, District Jail, Hailakandi, that the undertrial prisoner Nurul Haque admitted on the previous day with the multiple injuries had expired at 5.30 A.M. on 13th March, 1993 due to Cardio Respiratory failure as per hospital record. The death was also recorded in the Undertrial Prisoners Register of Hailakandi

District Jail. The deadbody was sent for burial. There was no record of intimating family members.

Hailakandi police registered a case under Section 302 IPC in respect of the death of Nurul Haque against the members of the public on the basis of complaint filed by S.I. A.H. Choudhury. The case was to be investigated by Dinanda Phukan. O.C. The inquest was conducted by N. Borborah, S.I., Hailakandi Police Station on 13th March, 1993 in the Civil Hospital. There were eight injuries in the lower portion of the right hand, in the right hand joint etc. There was swelling and laceration in the right hand and also the right side of the waist. There was swelling on the right and left knees.

On 14th March, 1993 the deadbody was sent to Hailakandi Civil Hospital for post mortem examination which was done by Dr. S.R. Roy who was only an L.M.F. doctor and not qualified for the job. According to his finding the injuries were ante mortem in nature and the death was due to Myocardial Infraction with heart failure.

The deadbody was collected and sent to family members of Nurul Haque. It was refused by the family members. The Superintendent of District Jail, Hailakandi, wrote to the C.J.M., Hailakandi, that as the relatives of the deceased were unwilling to take the deadbody for burial, he may be allowed to dispose of the deadbody as per Jail Manual Rule and Muslim Religious Rite. The prayer was allowed by the C.J.M. On 15th March, 1993, the Superintendent of District Jail, Hailakandi, requested the C.J.M. that no relative of the deceased had come to take the deadbody from the Civil Hospital for burial. The deadbody was getting decomposed gradually and bad smell coming out from it. A prayer was made for disposal of the body as per Muslim Religious Rites. The prayer was allowed. The wife of the deceased, Fatema Begum, filed an application for recalling the order and to pass order for the post mortem examination of the deadbody by a medical team in Silchar Medical College. The C.J.M. called for a report from the Jail Superintendent about the disposal of the deadbody immediately. The Superintendent reported that the deadbody was sent to Government land near Basic Training Centre, but the public of that area strongly objected to the burial of the deadbody. The deadbody was lying in front of Police Station Hailakandi at the time when the matter was reported.

The C.J.M. thereupon passed an order on the application of the widow of Nurul Haque and noted the fact that a number of lawyers appeared in his court and prayed for further post mortem examination at Silchar Medical College. The C.J.M. thereupon directed the deadbody to be sent to Silchar for further medical examination. The wife of the deceased was directed to accompany the deadbody and take delivery of the deadbody after post mortem was over. On 16th March, 1993, the deadbody was brought to Silchar Medical College and the post mortem was conducted by Dr. B.K. Baruah carried out the post mortem examination and sent the viscera for further examination. In the report of the Superintendent of Police, CBI, it has been stated:-

"an accused who was arrested in healthy condition was a dead person at the hands of police and the attending doctors. They neither gave him food nor proper medical treatment throughout this period. In the C.D. of the I. O. nowhere it is mentioned that he was provided with even a glass of water, less to say of food. Despite repeated suggestion of the doctor to get him X-rayed, no X-ray was got done though his right

leg was fractured.

The inevitable result was the death of deceased Nurul Haque at the hand of the Police to which all others including doctors and the Magistracy lent support. The cause of death was ostensibly shown as Cardiac Respiratory Failure which was not a correct fact. The deceased had no history of Cardiac problem, nor any ECG of him was got done during his police custody nor he had ever complained about this problem to the police. However, anything could have happened to a person subjected to physical torture, shock and lack of sleep, lack of food and having been kept in the lock-up for last 72 hours." Commenting on the report submitted by the Superintendent of Police, Hailakandi, to this Court, it has been stated:-

"The report submitted by the S.P., Hailakandi, is full of inaccuracies, lack of evidence and false instances some of which are as follows:-

1) Para 1, page-1 of the report says that Bheru Mia, Akkadas Ali and others have confessed that under the leadership of Nurul Haque they committed 5/6 dacoities cannot be proved and name of Nurul Haque does not appear in any of the charge sheet or FIR of the cases. The above mentioned persons were examined by the I.O. and by the Hon'ble Court and they have not stated the above allegation.

2) The allegation of the S.P. that Nurul Haque committed many dacoity and rape in the locality and he was beaten by the members of the public do not have any evidence to support it. That he was arrested on 10.3.93 is also wrong and clearly shows wrongful confinement. The C.J.M., Hailakandi, allowed police custody for 72 hours and not 24 hours. The statement of the SP that Nurul Haque was again forwarded to the Court on 12.3.93 after completing his interrogation is slightly mistaken because Nurul Haque was reproduced before the Court only to conduct TIP for which the C.J.M. Hailakandi fixed the date on 15.3.93. The report of the SP that the UTP was referred to Hailakandi Civil Hospital on making complaint of chest pain is also false.

3) The statement of the S.P. that the P.M. report revealed that death was due to Myocardial Infarction with Heart Failure and that the P.M. report did not indicate any external injury over the dead body is also false as mentioned earlier.

4) That the re-post mortem examination is conducted by a team of doctor and that no opinion could be given because of highly decomposed state is also wrong/inaccurate. In fact the re- post mortem examination was conducted by Police Surgeon and Mediocolegal Expert Professor B.K. Borah of S.M.C.

5) On para 1 page 3 the S.P. has written that the viscera was preserved and sent to F.S.L. for chemical examination is not correct because it was never sent to S.F.S.L. It was kept at P.S. Hailakandi only. Recently, it has been traced at Police Station, Hailakandi, itself and seized by CBI and now it has been sent to C.F.S.L. for opinion."

In reply to the notice why action should not be taken for contempt of court against him, A.K. Sinha Cassyap has stated that he never intended to disobey or defy an order of the Court or to mislead the Court. He has tendered his unconditional and unqualified apology for this. It has been stated that he was in a shocked state of mind because of certain developments, particulars of which have been stated in the affidavit. He has referred to a final report of the CBI dated 24/25.8.1995 in which prosecution has been recommended against certain police officers, but so far as A.K. Sinha Cassyap is concerned, only recommendation is conveying of displeasure by Government. It has been stated by A.K. Sinha Cassyap that he was on leave at the time when this incident took place. When he joined service, he got only 48 hours time to make his report. He has made his report on the basis of the material available. But A.K. Sinha Cassyap has not only sent a report but has also filed an affidavit pursuant to the order of this Court when the report was found unsatisfactory. He had ample time to bring the facts to the notice of the Court by that affidavit.

There is no explanation for the reason why he did not bring the true facts to the notice of the Court which was his duty to do, It is true that the CBI Report has not recommended any criminal proceeding against him. But the allegation against A.K. Sinha Cassyap is that he suppressed true facts from the Court and gave a false report to mislead the Court as to what was the real cause of the death of Nurul Haque. It has been stated by A.K. Sinha Cassyap that he had no personal knowledge of the sequence of events from apprehension to the death of Nurul Haque. He had returned from leave and had resumed duty only in the afternoon on 16th March, 1993 when Nurul Haque had already died. This explanation on the face of it is not acceptable. As a responsible police officer it was his duty to make proper investigation and give a report to this Court. Assuming within the time frame of 48 hours he could not prepare a report properly, he should have stated that in his report. He could have even prayed for longer time for furnishing a report. But the allegation against him is that he deliberately gave a false report. In the affidavit filed by him he had ample opportunity to make good the lapses made in the report and bring the true facts to the notice of the Court which he did not do. The affidavit filed by A.K. Sinha Cassyap in this Court is dated 26th November, 1993 pursuant to the direction given by this Court on 29th October, 1993. As a responsible police officer it was his duty to bring to the notice of the Court the police brutality that had taken place and the false documentation that was prepared by the various police personnel to suppress the truth and to give a misleading picture. The glaring inconsistencies in the affidavit filed by him have been pointed out in the report of the CBI, particulars of which have been set out hereinabove. A.K. Sinha Cassyap has not dealt with those particulars. He has only stated that that was not the final report of the CBI. The final report does not contain anything to the contrary to what has been stated in the report submitted to this Court. In our view, A.K. Sinha Cassyap, the contemner, has committed gross contempt of court by trying to mislead the Court as to the cause of death of Nurul Haque. He has also tried to cover up the excesses committed by the police which brought about the death of Nurul Haque by narrating untrue facts and giving false particulars.

We, therefore, hold that A.K. Sinha Cassyap is guilty of contempt of this Court. The belated apology given by A.K. Sinha Cassyap cannot be accepted because it has not been given in good faith. He has tendered this apology only after his report was found out to be misleading and his affidavit was

found to be false. He had unnecessarily highlighted in his report that Nurul Haque was a dacoit for which there was no clear evidence. He had stated in his report categorically after reciting some misleading fact, "From the above facts and circumstances, it is clear that, Dacoit, Nurul Haque neither died in Police Lock-up nor in Police custody. He died while in Judicial custody as UTP. He was not tortured during the period of Police custody."

A.K. Sinha Cassyap has stated that he had to make his report on the basis of the records of the case as he had no personal knowledge of this case. But the records reveal that the particulars of injuries noted by Dr. H.A. Ahmed on 10th March, 1993 at 1.50 P.M. were more than what were noticed by Dr. M L Bhattacharya on 10th March, 1993 at 5.30 P.M. This can only mean that more injuries had been inflicted upon Narul Haque after he was examined by Dr. M L Bhattacharya. It appears that the contemner has ignored even tell-tale evidence available on the record.

We are of the view that this was a highly irresponsible report regardless of the truth and also against the records of the case. In spite of the nature of the injuries detected and reported from time to time by Various doctors who examined Nurul Haque after his apprehension by the police and regardless of the recommendations for X-ray examination of the injured leg, which was never done, the contemner has boldly reported to this Court that Nurul Haque was not tortured during the period of police custody. His report begins under the heading "Death of veteran dacoit Nurul Haque" and ends with the summing up "Dacoit, Nurul Haque died neither in Police Lock-up nor in Police Custody".

This goes to show that the contemner was trying to highlight the fact that Nurul Haque was a veteran dacoit and possibly deserved the treatment that he got at the hand of the police. The CBI report indicates that there is no record of any conviction of Nurul Haque in any dacoity case. Not only that the story of saving Nurul Haque from public wrath by the police party on 9th March, 1993 is also not borne out by facts. He was not taken for medical examination on the 5th March immediately after the alleged assault by the members of the public. He was taken to Hailakandi Civil Hospital at 5.30 p.m. on 10th March when various fresh injuries were noted on his body by the doctors. No case of assault was also registered after rescuing Nurul Haque from alleged public wrath. This case was made only after Narul Haque's death. The report from the very beginning has tried to mislead the Court as to the cause of death of Nurul Haque and the alleged events that led to his apprehension by the police. The emphasis that he was a veteran dacoit was also obviously with a view to create prejudice. Far from trying to help the Court to do justice in this case, his report has tried to mislead the Court and prevent the Court from finding out the truth about the allegations made by the Bar Association of Hailakandi.

We, therefore, hold that the contemner deliberately forwarded an inaccurate report with a view to misleading this Court and thereby interfered with the due course of justice by attempting to obstruct this Court from reaching a correct conclusion. In the facts and circumstances of the case, we cannot accept his apology and hereby reject it. We hold him guilty of contempt under Article 129 of the Constitution read with Section 12 of the Contempt of Courts Act, 1971. Having regard to the gravity of the case, we sentence the contemner A.K. Sinha Cassyap to undergo simple imprisonment for a term of three months. The contempt rule is disposed of finally as above.

The Director General of Police, Assam is directed to ensure that this order is carried out forthwith and the contemner is taken into custody and imprisoned to serve the sentence. The Registrar General will communicate this order to Director General of Police, Assam, with a direction to report compliance to him.