

IN THE HIGH COURT OF MANIPUR AT IMPHAL

W.P. (Crl) 27 of 2010

Smt. Ngangbam Kamalini Devi -Petitioner

-Versus-

The State of Manipur and 3 ors -Respondents

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE MR. N. KOTISWAR SINGH

HON'BLE MR. JUSTICE KH. NOBIN SINGH

(ORAL)

12.10.2017

(Acting CJ)

Heard Mr. M. Rakesh, learned counsel for the petitioner. Heard also Mr. RS Reisang, learned Sr. GA assisted by Mr. Sh. Shyam Sharma, learned Jr. GA for the State.

[2] The present petition has been filed by one Smt. Ngangbam Ongbi Kamalini Devi, the mother of one Ngangbam Naoba alias Phulchand Singh who was allegedly killed by the Manipur Police Commandos in the intervening night of 6th and 7th May, 2009.

[3] It is the case of the petitioner that her son Ngangbam Naoba@ Phulchand Singh was picked up by the Manipur Police Commandos from their residential house in the intervening night of 6th and 7th May, 2009 and was taken out and thereafter, her son was shot by the police without any justifiable reason just behind the back gear of her house.

[4] The aforesaid allegations have been vehemently denied by the State Respondents by filing affidavit-in-opposition contending that the said Naoba was a very active member of the People's Revolutionary Party of Kangleipak (PREPAK) and on specific information received that he was in his house the police raided the house and when he was asked to come out but instead of cooperating with the police he tried to escape by firing at the police and in the ensuing encounter he was killed. Thereafter, the police also recovered on M-20 pistol along with two live rounds, one in the chamber and the other in the Magazine and one empty case of M-20 pistol was also found.

Thus, there had been a dispute as to the circumstances in which the said Naoba was killed. This Court by an order passed on 02.08.2010 directed the learned District & Sessions Judge, Manipur East to conduct an enquiry as to the fact leading to the death of NgangbamNaoba @ Phulchand Singh in the intervening night of 6th and 7th May, 2009. Subsequently, the learned District & Sessions Judge, Manipur East submitted his report on 28.05.2012 copies of which were furnished to all the counsel for the parties.

[5] We have also perused the enquiry report submitted by the learned District & Sessions Judge, Manipur East.

[6] In the said report submitted by the learned District & Sessions Judge, Manipur East it has been concluded that the son of the petitioner namely, NgangbamNaoba @ Phulchand Singh was killed by the Manipur Police Commandos of Imphal West District in the intervening night of 6th and 7th of May, 2016 at about 12.55 a.m. by firing indiscriminately from their service weapons without any admissible reason and without any attempt to arrest the deceased person by following the rule of law prevailing in this democratic country.

[7] The aforesaid conclusion arrived at by the learned District & Sessions Judge, Manipur East was based on the testimonies and records produced before the learned District & Sessions Judge, Manipur East. In course of the enquiry, the learned District & Sessions Judge, Manipur East had framed the following 2 (two) issues :

“1. Whether NgangbamNaoba @ Phulchand Singh of UripokPolemLeikai, P.O. & P.S., Imphal District-Imphal West, Manipur was arrested by the Police Commando of Imphal West District, Manipur from his house on the intervening night between 6/5/2009 and 7/5/2009 from his house? If so, whether the son of the petitioner was killed by the police commandos of ImphalWest ?

OR

Whether NgangbamNaoba @ Phulchand Singh of UripokPolemLeikai, P.O. & P.S. Imphal, Imphal West District, Manipur was killed in the night between 6/5/2009 and 7/5/2009 in an encounter with the Imphal West Police Commando at the backyard of his house?”

[8] In support of the case of the petitioner, the petitioner produced as many as 6 witnesses and 7 documents were relied upon. Respondents also produced 3 witnesses. The present petitioner who was examined as PW No. 1 stated in her deposition that on the fateful night, her son was taken away by the police commando personnel towards the south western corner of her house without disclosing any reasons for doing so and she was also asked to keep quiet and she was threatened not to go out of her house. She also stated that after about 10 minutes she heard 3/4 rounds of gun shots and heard her son crying. She also heard voice of police commandos calling for a vehicle to take the dead body. She managed to see from a window that the police commandos were carrying the bullet riddled body of her son away from the back gear of her house. Other relatives who were in the house also deposed in the similar light about the coming of the police commandos in the house and also about the sound of firing son and dead body being taken away by the police commandos. The learned District & Sessions Judge, Manipur East also examined the post-mortem report which clearly showed firearm injuries and also that the death was caused due to firearm injuries and which was homicidal in nature.

The learned District & Sessions Judge, Manipur East also referred to the deposition of the police who testified before the court that the petitioner's son was an active member of the PREPAK and on receiving specific information that he was in house, the police surrounded the house and asked the said Naoba to come out and surrender before the police. However, instead of surrendering, he tried to run away and fired towards the police and in the retaliatory firing he was killed and from the place of occurrence one M-20 pistol along with two live rounds and other ammunitions were also recovered.

[9] Learned Sessions Judge, however, after considering the materials on record found that that the testimonies of the witnesses produced by the petitioner were more convincing and trustworthy than that of the witnesses produced by the police. The learned Sessions Judge also observed that the alleged incident happened in the backyard of the petitioner's house and the family members of the petitioner were not allowed to come out of the house by the police and as such, they could not exactly narrate how the said Naoba was killed after he was seen being taken away by the police and it was thus the responsibility of the police to satisfactorily explain the circumstances in which the said Naoba was killed.

[10] The learned Sessions Judge observed that though it was the contention of the police that he tried to escape by firing, none of the police commandos was injured. Learned Sessions Judge also noted that there is no evidence to establish whether the said M-20 pistol which was recovered was serviceable one or not and empty cases of M 20 pistol were fired from the said gun itself. The learned Sessions Judge also did not notice any unusual facts and circumstances which would support the claim of the police that there was exchange of fire in a locality which is thickly populated. Learned Sessions Judge also held that it was not proved by the police that the said Naoba was not an active member of PREPAK. Accordingly, after perusal of the evidences before the learned Sessions Judge he came to the above conclusion.

[11] This Court is not sitting as an Appellate Court against the finding arrived at by the learned Sessions Judge. The learned Sessions Judge was not conducting any criminal trial but had made the enquiry to ascertain the facts and circumstances leading to the death of the said Naoba. We have noted that the conclusions arrived at by the learned Sessions Judge is based on testimonies of the witnesses produced before the Court and the conclusion arrived at by the learned Sessions Judge cannot be said without any basis. Therefore, we are inclined to accept the conclusion of the learned Sessions Judge and hold that the said Naoba died in the intervening night of 6th and 7th May, 2009 because of firing by the police.

In that view of the matter and under the facts and circumstances as disclosed in the report, we are of the view that the fundamental right of a person as guaranteed under Article 21 of the Constitution of India was violated and life of a person extinguished without following the due process of law for which we also hold that the petitioner would be entitled to a sum of ` 5 lakhs to be paid by the State Government on account of the death of NgangbamNaoba@ Phulchand Singh her son, at the hands of the police. The aforesaid amount of ` 5 lakhs shall be paid by the Respondents to the petitioner within a period of 4 (four) months failing which it would carry an interest @ 9% per annum.

Petition stands disposed of.

JUDGE

ACTING CHIEF JUSTICE