

HIGH COURT OF TRIPURA
AGARTALA
WP(C) (PIL) No.25 of 2021

Court on its own motion

----- Petitioner(s)

Versus

- 1. The State of Tripura**, represented by the Chief Secretary, Government of Tripura, New Secretariat Complex, P.O. Secretariat, Agartala, West Tripura, PIN- 799010.
- 2. The State of Tripura**, represented by the Secretary, Government of Tripura, Department of Home, Civil Secretariat, New Capital Complex, Agartala, PIN- 799010.
- 3. Director General of Police**, Government of Tripura, Police Head Quarters, Fire Brigade Chowmohani, P.O. Agartala, West Tripura, PIN- 799001.

----- Respondent(s)

For Petitioner(s) : Ms. A. Debbarma, Amicus Curiae

For Respondent(s) : Mr. D. Bhattacharya, Government Advocate
Mr. S. Saha, Advocate

Date of Hearing : **31st August, 2022.**

Date of Pronouncement : **21st September, 2022.**

Whether fit for reporting : YES

_B_E_F_O_R_E_

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

[Per S.G. Chattopadhyay], J

On October 28, 20021, a news item came to be published in a local daily namely, Pratibadi Kalam reporting custodial torture on a 28 years'

old woman namely, Smt. Priyashi Datta (Debnath) of Chanmari in the police lockup of GB TOP on 26.10.2021 as a result of which she was admitted in AGMC & GBP Hospital at Agartala. The Chief Justice took suo motu notice of this grave and serious issue on the basis of the said newspaper report and pursuant to his direction this Public Interest Litigation came to be registered. Notices were issued to the State-respondents including the Secretary, Home Department, Government of Tripura and Director General of Police.

[2] On 18.12.2021, the Under Secretary to the Home Department filed an affidavit contending as under:

"2. That, this affidavit is prepared to apprise the Hon'ble Court by furnishing facts in regards to the present situation of the aforementioned case as stated below:

On 23.10.2021 at about 1600 hrs a telephonic information was received by GB TOP as well as OC NCC P.S regarding missing of 8 (eight) bhori Gold ornaments from the house of one Laxmi Rani Ghosh of East Chanmari and there was a strong suspicion that her immediate neighbours Babul Debnath 37 years, S/o Lt. Jagadish Debnath of East Chanmari and his wife Smt. Piyushi Datta (Debnath) 28 years were involved in the matter.

On 26.10.2021 at 1155 hrs while Smt. Piyushi Datta (Debnath) was examined at GB TOP by women officer and staff namely W/ASI Hemlata Debbarma and W/C Pushpa Rani Sarkar in connection with the matter. This refers to GB TOP GDE No 10, dated-26-10-2021. Suddenly during examination at about 1215 hrs she reported that she was not feeling well. Thereafter, she was immediately shifted to GBP Hospital. This refers to GB TOP GDE No.12, dated-26-10-2021. After careful medical examination the attending doctor of Emergency OPD namely Dr. Anish Majumder had opined that she was fit, healthy and mentally alert. After completion of medical examination, she was allowed to go home at about 1240 hrs. This refers to GB TOP GDE No.13 dated-26-10-2021. It is also to mention here that no CCTV camera is available at GB TOP.

Again, on the same day at about 2240 hrs, a group of local people of East Chanmari under the leadership of one Sri Mithun Das Baishnab appeared at NCC P.S and alleged that Smt. Piyushi Datta (Debnath) was called at GBP outpost and she was beaten by W/ASI Hemlata Debbarma and W/C Pushpa Rani Sarkar on 26.10.2021. The matter was entered in the GD

of NCC P.S vide No-38 dated 26.10.2021 and an enquiry was initiated.

During enquiry, it was learnt from the family members of Smt. Piyushi Datta that on 26.10.2021 in the evening time Smt. Piyushi Datta was admitted to GB Hospital by her family members due to some health complications. She was under treatment at GB Hospital w.e.f 26.10.2021 and discharged from the Hospital on 01.11.2021. During her treatment, Police talked to her attending doctors of Female Surgical Ward-II and it was learnt that Smt. Piyushi Datta was suffering from deficiency of hemoglobin for which 2(two) units blood was given to her along with other medicines. No other medical report is available with police. For this, a requisition has been submitted to the Medical Superintendent of AGMC & GBP Hospital to provide the "Bed Head Ticket" of Smt. Piyushi Datta, which is not yet received."

[3] In view of the statements in paragraph 2 of the affidavit, the following order was passed by this Court on 20.12.2021:

" Perused the reply affidavit filed by the State. In paragraph-2 at running page-9, it is stated that though a requisition has been made to the Medical Superintendent of AGMC & GBP Hospital to provide the bed head ticket of Smt. Piyushi Datta, the same has not yet been received. In view of such statement, we direct the Medical Superintendent of AGMC & GBP Hospital to provide the bed head ticket as well as the report of the doctors who had examined Smt. Piyushi Datta from 26.10.2021 till her discharge on 01.11.2021. We call upon the Superintendent also to inform this Court by affidavit the names of the doctors who supervised Smt. Piyushi Datta's treatment by the next date.

Matter shall be taken up on 04.01.2022.

In the meantime, if the police received a copy of the bed head ticket, they are at liberty to file further affidavit to bring the same on record."

[4] Ms. A. Debbarma, learned advocate was appointed as amicus curiae to appear and assist the Court in the matter.

[5] On 07.01.2022, the Under Secretary to the Home Department, Government of Tripura filed an additional affidavit asserting as under:

"2. That, this additional affidavit is prepared to apprise the Hon'ble Court by furnishing facts in regards to the present situation of the afore mentioned case as state below:

3. That, the S.P, West Tripura District furnished detail information as directed by the Hon'ble High Court vide order dated-20.12.2021 along with supporting documents.

- (i) OC NCC PS has collected photocopies of the Bed Head Ticket of Smt. Piyushi Datta (Debnath) containing total 20 (twenty) sheets from the Medical Superintendent of AGMC & GBP Hospital.
- (ii) On 26-10-2021 while Police took Smt. Piyushi Datta to AGMC & GBP Hospital for treatment at about 12.30 pm, at that time Dr. Anish Majumder of AGMC & GBP Hospital medically examined her.
- (iii) On 2nd occasion i.e. on 26-10-2021 evening she was again admitted to the same hospital at Female Surgical Ward, Unit-II, by her family members and undergone treatment w.e.f. 26-10-2021 to 01-11-2021 reportedly by the internship doctors of the said hospital under the supervision of Dr. Mani Ranjan Debbarma, MBBS, M.S, Associate Professor, Dept. of General Surgery of AGMC & GBP Hospital. A requisition also submitted by the OC NCC PS to the In-Charge of Female Surgical Unit-II of AGMC & GBP Hospital to identify the signatures of the medical officers in the collected Bed Head Ticket of Smt. Piyushi Datta and to provide their details which is not yet received.
- (iv) The details of treatment provided to the patient Smt. Piyushi Datta is also mentioned in her Bed Head Ticket.

A copy of the letter dated 22.12.2021 submitted by SP(West) alongwith photocopy of Bed Head Ticket containing other medical documents are annexed hereto and marked as Annexure- R/7

A copy of the letter dated 21.12.2021 submitted by O/C NCC PS is annexed hereto and marked as Annexure- R/8"

[6] Thereafter, the Medical Superintendent, AGMC and GBP Hospital submitted an additional affidavit on 05.05.2022 in which he stated as under:

- "1. That, I am holding the post of Medical Superintendent, AGMC & GBP Hospital, Government of Tripura, and as such I am competent to affirm this affidavit. Accordingly, I am affirming this affidavit in pursuance to the Order dated 20-12-2021 passed in W.P.(C) (PIL) 25 OF 2021.

2. That, the affidavit is prepared to furnish some facts before the Hon'ble Court in pursuance to the Order dated 20.12.2021 passed in W.P.(C) (PIL) 25 OF 2021.
3. That, the name of doctors who supervised Smti. Piyushi Dutta's treatment is also to be mention in this Court by affidavit. The Medical Report of Smt. Piyushi Dutta has been prepared by the Deptt. of General Surgery, AGMC & GBP Hospital, Agartala.

A copy of the Medical Report of Smt. Piyushi Dutta is annexed herewith and marked as Annexure- R/1."

[7] Thereafter, pursuant to the request made by learned amicus curiae, Smt. Priyashi Datta, victim was allowed to file an affidavit. She filed the affidavit on 27.06.2022 in which she asserted as under:

"1. That, on 24.10.2021, one police constable namely Biswajit Das and another police official of G.B outpost came to my house at around 6.30/7 pm and took my husband Babul Debnath to G.B Outpost for inquiry regarding theft in the house of Laxmi Rani Ghosh. In the outpost Biswajit Das, severely beaten and tortured my husband as a result he was unable to walk. At about 3.30/9 pm as my husband was not coming home, I along with Kartik Debnath, S/o: Nani Gopal Debnath, Mira Debnath, W/o: Kartik Debnath, Rita Deb, W/O: Swagatam Deb, Rina Das, W/o: Babul Das, Sabitri Debnath, W/o: Kanu Debnath to make inquiry about my husband. At that time my husband was in lockup he was crying in pain but we were not allowed to talk to him. Thereafter at around 10/10:30 pm my husband was taken to AGMC and GBP Hospital for Medical checkup and from there he was brought back to the G.B Outpost and was released.

2. That, thereafter on 25.10.2021, I along with my husband was called to G.B outpost. We went there at around 10.30 am, where we were again inquired about the incident of theft in the house of Laxmi Rani Ghosh. After inquiry we were released. Again on the same day at around 3 pm we were called and after questioning, we were asked to visit on the next day at around 10 am.
3. That, on 26.10.2021, at around 10 am, I along with my husband went to the G.B. outpost. On that day, I was inquired by W/ASI Hemlata Debbarma and W/C Pushpa Rani Sarkar. Smt

Hemlata Debbarma and Pushpa Rani Sarkar took me into a room inside the outpost and forced me to take the liability of the incident of theft in the house of Laxmi Rani Ghosh and when I did not agree with their proposal they have ripped off my saree and started have beating me with a wooden stick and as a result of that, I was not able to stand. They have also assaulted me and abused me in filthy language. Thereafter, Hemlata Debbarma and Pushpa Rani Sarkar took me to the AGMC & GBP Hospital for Medical checkup. I was threatened by them, that, if I utter anything about the torture/assault, I will again be brought to the Outpost and will be beaten. After medical checkup, I was brought back to the G.B outpost at around 4/4.30 pm. From there after putting signature in the ledger book, I was released.

4. That, after going home, I was feeling ill and I fainted several times. Seeing my condition, my family members took me to the Emergency Ward of AGMC and GBP Hospital and after checkup, I was admitted at the Female Surgical Ward from 26.10.2021 to 01.11.2021 and was treated there.

A copy discharge Certificate, dated 01.11.2021, is annexed herewith and is marked as Annexure: P/1

5. That, on 26.10.2021, my husband along with almost 40 neighbours went to NCC P.S for submitting complaint regarding the torture made by ASI Smt. Hemlata Debbarma and Constable Pushpa Rani Sarkar.

A copy of the Complaint, dated, 26.10.2021, is annexed herewith and is marked as Annexure: P/2

6. That, Laxmi Rani Ghosh is my next neighbor. From past 2 years there has been dispute regarding the boundary wall. We have no other dispute with Laxmi Rani Ghosh and her family. Laxmi Rani Ghosh is an influential person.
7. That, lastly on 14.05.2022, at around 10 pm Babul Debnath and Sabitri Debnath were talking in front of our gate suddenly Laxmi Rani Ghosh and her daughter Sukla Ghosh approached furiously towards my husband as to why they were chatting at such late hours. Hearing the commotion, when I went there to stop the argument Laxmi Rani Ghosh and Sukla Ghosh both have beaten me and then I was rescued by my husband. Subsequently on that night at around 11 pm I was taken to the AGMC and GBP Hospital for treatment. In the Hospital, I was suggested Xrays and CT Scan but due to monetary issue I was not able run the tests.

Copies of the prescription, dated, 14.05.2022, CT Scan, Xray requisitions, are annexed herewith and is marked with as Annexure:3"

[8] We have heard Mr. D. Bhattacharya, learned G.A. appearing along with Mr. S. Saha, learned advocate for the State-respondents. We have also heard Ms. A. Debbarma, learned amicus curiae. Perused the affidavits submitted by the parties and the documents adduced on their behalf.

[9] The State-counsel has contended that there is no proof of custodial torture on Smt. Priyashi Datta in police lockup. Counsel contends that she was called to GB TOP for interrogation in connection with a theft case and during interrogation she fell ill for which, she was taken to AGMC and GBP hospital where she was given adequate medical treatment. The State-counsel submits that the newspaper report about custodial torture of the woman in police lockup is not true.

[10] Ms. Debbarma, learned amicus curiae, on the other hand, submits that the facts stated by the victim in her affidavit dated 27.06.2022 are shocking which reveal that on the basis of a false and unverified allegation of theft, Smt. Priyashi Datta was called to GB TOP where she was physically tortured in the name of interrogation. Counsel contends that the victim has categorically stated in her affidavit that Smt. Laxmi Rani Ghosh, an influential neighbour of her maliciously lodged a false case of theft against her owing to their boundary dispute. Without even registering any case on such complaint and without verifying the

veracity of the allegation, she was called to the police station where she was physically tortured by two woman constables of police and as a result of their torture she was hospitalized in AGMC and GBP hospital. Counsel contends that in the medical report dated 06.04.2022 submitted along with affidavit dated 05.05.2022 of the Medical Superintendent, AGMC and GBP hospital, Agartala, it has been clearly stated that abrasions were found over both buttocks of the victim after she was brought to the hospital on 26.10.2021 with a history of physical assault. Counsel further contends that the Indoor Patient Admission Ticket dated 26.10.2021 of the victim which has been submitted by the State-respondents also revealed that swelling and bruises were found in the gluteal region of her body when the victim was taken to the hospital on 26.10.2021 with a history of physical assault. Referring to the medical report dated 06.04.2022 of the Associate Professor of the Department of Surgery, AGMC & GBP hospital, Agartala, learned amicus curiae submits that the doctor has clearly opined in his report that the cause of injury was impact of hard and blunt force. Counsel submits that the materials available on record are sufficient to establish the fact that this innocent woman was beaten in police custody, as a result of which, she suffered those injuries. Counsel, therefore, urges the Court to provide adequate compensation to the victim besides issuing other directions as the Court may deem fit and appropriate.

[11] Admittedly, the victim was called to GB TOP on 26.10.2021 at around 11:55 hrs. for her interrogation in connection with a telephonic information which was received from Smt. Laxmi Rani Ghosh, next door neighbour of the victim who alleged that her gold-ornaments (measuring 8 bhor) were missing from her home and she suspected the involvement of the victim and her husband in the matter. Apparently, no case was registered on the said complaint received from said Smt. Laxmi Rani Ghosh. The veracity of the facts was not even verified by police. But the victim was called to the police outpost on 26.10.2021. As per police version, during police interrogation, she was feeling unwell. Therefore, she was produced before the Emergency Medical Officer, AGMC and GBP hospital, Agartala for medical checkup. The Emergency Medical Officer on examination of Smt. Priyashi Datta opined as under in his report dated 26.10.2021:

"On formal medical examination of the above noted person, brought by police, it is found that, presently she is fit & healthy & mentally alert."

[12] It is the case of the respondents that, during interrogation at GB TOP, she felt unwell. She was then taken to the emergency unit of AGMC and GBP hospital and after primary treatment, she was allowed to go home along with her family members. Later on the day, her neighbours appeared in NCC Police Station and complained that the victim was physically assaulted by police in police custody in GB TOP, as

a result of which, she was admitted in hospital on 26.10.2021. Admittedly, she was in hospital till her discharge on 01.11.2021.

[13] As stated, when she was examined by a doctor in AGMC and GBP hospital on 26.10.21 after she was produced in the hospital by police, she was found completely fit, healthy and mentally alert. But, the Indoor Patient Admission Ticket dated 26.10.2021 issued from the Department of Orthopaedics, Unit-II would reveal that the following injuries were present in her body:

"Diffuse swelling over the gluteal along with bruises mark over both gluteus".

[14] Even the medical report dated 06.04.2022 of Smt. Priyashi Datta issued by Dr. Nilotpal Chakma, Associate Professor and In-charge of Unit-II, Department of Surgery, clearly indicates that abrasions were found over both buttocks of the victim on 26.10.2021 and the said doctor has also opined that cause of injury was impact of hard and blunt force. As such, injury recorded in the Indoor Patient Admission Ticket dated 26.10.2021 matches with the report of Dr. Nilotpal Chakma. In these circumstances, her allegations that she was tortured in GB TOP during police interrogation on 26.10.2021 stand established.

[15] From the facts and circumstances presented before us, it is absolutely clear that merely on the basis of a telephonic information received from a neighbour of the victim about her involvement in a theft case, police called her to GB TOP even without registering a case on the

complaint received from Smt. Laxmi Rani Ghosh, neighbour of the victim and without verifying the facts. From the medical reports available on record, it stands established that she was physically assaulted during interrogation in police custody.

[16] In the case of **Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa and others** reported in **(1993) 2 SCC 746**, the Hon'ble Apex Court held that the convicts, prisoners or under-trials must not be denuded of their fundamental rights under Article 21 and only such restrictions as are permitted by law can be imposed. The prison authority and the police would have the responsibility to ensure that the person in custody is not deprived of his right to life, even if his liberty is circumscribed by the fact that the person is in confinement. The Hon'ble Court held that even limited liberty is precious and it is the duty of the State to ensure that even a person in custody is dealt with in accordance with the procedure established by law. It was further held by the Hon'ble Apex Court that the Courts are under an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizens. Observations of the Hon'ble Apex Court in paragraph 35 of the judgment are as under:

"35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law- through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with *Rudul Sah v. State of Bihar* granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law....."

[17] In a later decision in the case of **Mehmood Nayyar Azam vs. State of Chhattisgarh and others** reported in **(2012) 8 SCC 1**, it was held by the Hon'ble Apex Court that the police officers are under obligations to protect human rights of a person in custody and prevent all forms of atrocities to him/her. The Hon'ble Apex Court reiterated the principles laid down in the case of **Nilabati Behera (supra)** and held as under:

"38. It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from D. K. Basu [*D.K. Basu V. State of W.B., (1997) 1 SCC 416*]: -

"33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty...The action of the State, however, must be 'right, just and fair'. Using any form of *torture* for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime suspect must be interrogated - indeed subjected to sustain and scientific interrogation-determined in accordance with the provisions of law. He cannot, however, be *tortured or subjected to third degree methods or eliminated* with a view to elicit information, extract confession or derive knowledge about his accomplishments, weapons etc. His constitutional right cannot be abridged [except] in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal."

(emphasis in original)

39. In the case at hand, the appellant, while in custody, was compelled to hold a placard in which condemning language was written. He was photographed with the said placard and the photograph was made public. It was also filed in a revenue proceeding by the fifth respondent. The High Court has recorded that the competent authority of the State has conducted an enquiry and found the erring officers to be guilty. The High Court has recorded the findings in the favour of the appellant but left him to submit a representation to the concerned authorities. This Court, as has been indicated earlier, granted an opportunity to the State to deal with the matter in an appropriate manner but it rejected the representation and stated that it is not a case of defamation. We may at once clarify that we are not at all concerned with defamation as postulated under Section 499 of the IPC. We are really concerned how in a country governed by rule of law and where Article 21 of the Constitution is treated to be sacred, the dignity and social reputation of a citizen has been affected.

40. As we perceive, from the admitted facts borne out on record, the appellant has been humiliated. Such treatment is basically inhuman and causes mental trauma. In "*Kaplan & Sadock's Synopsis of Psychiatry*", while dealing with torture, the learned authors have stated that intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. We have referred to such aspects only to highlight that in the case at hand, the police authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment.

41. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. As Pithily stated in *Jennison v. Baker* [(1972) 2 QB 52]:-

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

42. Presently, we shall advert to the aspect of grant of compensation. The learned counsel for the State, as has been indicated earlier, has submitted with immense vehemence that the appellant should sue for defamation. Our analysis would clearly show that the appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy.

43. In this regard, we may fruitfully refer to *Nilabati Behera v. State of Orissa* [(1993) 2 SCC 746] wherein it has been held thus: -

"17.....A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only

practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.””

[18] In the case of **Dr. Ashwani Kumar vs. Union of India and another** reported in **(2020) 13 SCC 585**, the Hon’ble Apex Court reiterated that a person detained in custody is entitled to live with human dignity and any form of torture would violate the right to life and is prohibited under Article 21 of the Constitution. The Apex Court observed as under:

“37. However, this is not to state that the courts would not step in, when required, to protect fundamental rights. It is indisputable that the right to life and the right to liberty are of foremost importance in a democratic state and, therefore, any form of torture would violate the right to life and is prohibited by Article 21 of the Constitution. Such action would be unconstitutional under Article 21 and would fail the test of non-arbitrariness under Article 14 of the Constitution. Indeed, the courts have been at the forefront in protecting and safeguarding individual rights. In 1982, on the basis of a letter written by a journalist complaining of custodial violence suffered by women prisoners in police lock-ups in the city of Bombay, this Court in *Sheela Barse v. State of Maharashtra* [(1983) 2 SCC 96] had issued the guidelines to safeguard the rights of arrested persons including female prisoners to afford them protection in police lock-ups from possible torture or ill-treatment. A person detained in a prison is entitled to live with human dignity and his detention in prison should be regulated by a procedure established by law which must be reasonable, fair and just. This can be done by applying, elucidating and even creatively expanding existing laws and principles on case to case basis. Judiciary while exercising its jurisdiction in this manner is not enacting or legislating but applying the Constitution and protecting fundamental rights under Article 21 of the Constitution.

38. This human right aspect was again highlighted in *Nilabati Behera v. State of Orissa* [(1993) 2 SCC 746] to state that the convicts, prisoners or under-trials must not be denuded of their fundamental rights under Article 21 and only such restrictions as are permitted by law can be imposed. It is the responsibility of the prison authority and the police to ensure that the person in custody is not deprived of his right to life, even if his liberty is circumscribed by the fact that the person is in confinement. Even limited liberty is precious and it is the duty of the State to ensure that even a person

in custody is dealt with in accordance with the procedure established by law. In the *State of Madhya Pradesh v. Shyamsunder Trivedi* [(1995) 4 SCC 262] this Court had highlighted that a sensitive and realistic rather than a narrow technical approach is required while dealing with cases of custodial crime. The court must act within its powers and as far as possible try that the guilty should not escape to ensure that the rule of law prevails.”

[19] In **D.K. Basu vs. State of West Bengal** reported in **(1997) 1 SCC 416**, the Hon'ble Apex Court laid down the following directions/guidelines with respect to rights of persons arrested/detained in police custody for interrogation:

- (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
- (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
- (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor

injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

- (8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the ILLAQA Magistrate for his record.
- (10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- (11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

[20] In the instant case, admittedly, the victim was not formally arrested by police but, undisputedly, she was detained in the police custody for a considerable period of time for the purpose of interrogation. She was therefore entitled to all the safeguards provided under the guidelines issued in the case of **D.K. Basu (supra)**. But, apparently, she was deprived of those safeguards and she was tortured and maltreated in police custody.

[21] Having observed thus, we are of the considered view that she is entitled to monetary compensation for the wrongs done to her. In view of the given facts and circumstances of the case, we direct the State-respondents to pay a sum of Rs.2,50,000/- (Two Lakh Fifty Thousand) to the victim namely, Smt. Priyashi Datta (Debnath). The said amount of compensation be deposited by the respondents with the

Registry of this Court within one month from today. On deposit of the said compensation, Registry shall disburse the whole amount to Smt. Priyashi Datta, wife of Babul Debnath of East Chanmari, P.S. NCC, Agartala, Tripura.

[22] We make it clear that the observations made herein-above, shall not have any bearing on any prosecution/proceeding, if any, in connection with the alleged incident.

[23] At the end, we record our appreciation for Ms. A. Debbarma, learned amicus curiae appointed by us for her sincere assistance in the matter. She will be paid a sum of Rs. 12,000/- (Twelve Thousand) by the High Court Legal Services Committee as honourarium. A copy of this order be communicated to the Secretary to the High Court Legal Services Committee immediately. A copy of this order shall also be communicated to the Director General of Police to ensure strict compliance of the directions/guidelines issued by the Hon'ble Supreme Court in the case of **D.K. Basu (supra)** with respect to the rights of the persons arrested or detained and held up in police custody or interrogation-center or other lockups.

In terms of the above, the matter stands disposed of.

Pending application(s), if any, shall also stand disposed of.

(S.G. CHATTOPADHYAY), J

(INDRAJIT MAHANTY), CJ