

AMOL VITTHALRAO KADU

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v.

STATE OF MAHARASHTRA & ORS.

(Criminal Appeal No. 1585 of 2018)

DECEMBER 10, 2018

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[UDAY UMESH LALIT AND R. SUBHASH REDDY, JJ.]

Compensation:

Compensation for custodial death – Granted by High Court – Directing the State to pay at the first instance and then to recover the same from the Investigating Officer-in-Charge – Appeal by the Investigating Officer-in-charge taking plea that unless and until liability is fixed, court should not have directed recovery from him – Held: Direction of the High Court is modified to the extent that as and when the liability for the crime in question is fastened, the State shall be at liberty to recover the compensation amount from the concerned erring officials.

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Delhi Airtech Services Private Limited and Anr. v. State of Uttar Pradesh and Anr. (2011) 9 SCC 354 : [2012] 12 SCR 191 – relied on.

D.K. Basu v. State of West Bengal (1997) 1 SCC 416 : [1996] 10 Suppl. SCR 284 – referred to.

E

Case Law Reference

[1996] 10 Suppl. SCR 284 referred to Para 5

[2012] 12 SCR 191 relied on Para 6

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1585 of 2018.

From the Judgment and Order dated 04.07.2016 of the High Court of Judicature at Bombay, Aurangabad Bench at Aurangabad in Criminal Writ Petition No. 39 of 2015.

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Subodh S. Patil, Lokesh K. Choudhary, Debashish Mukherjee, Advs. for the Appellant.

Nishant Ramakantrao Katneshwarkar, Ms. Suvarna Ganu, Anoop Kandari Advs. for the Respondents.

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A The Judgement of the Court was delivered by

UDAY UMESH LALIT, J.

1. Leave granted.

B 2. Criminal Writ Petition No.39/2015 was preferred by parents and daughter of one Pravin alleging that said Pravin met with unnatural death while he was in police lock-up, Vajirabad Police Station, Nanded.

C 3. After considering the relevant documents, the High Court directed the State to make over a sum of Rs.7 lakhs by way of compensation to the writ petitioners. The compensation has been made over by the State to the writ petitioners. The High Court also directed that said amount be recovered from the Investigating Officer-In-charge as under:

D “6. The amount ordered shall be recovered from the Investigating Officer/in-charge at the relevant time in Crime No.104 of 2013, Vimantal Police Station, Nanded. The State shall also pay costs of this petition to the petitioners.”

4. The Investigating Officer-In-Charge has appealed against the aforementioned direction contending, inter alia that unless and until the liability or responsibility is fixed, the appellant ought not to have been directed to make over the payment.

E 5. The law on the point has been summarized by this Court in *D.K. Basu vs. State of West Bengal*¹:-

F “54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the *established* infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts

H ¹(1997) 1 SCC 416

in which the offender is prosecuted, which the State, in law, is A
duty bound to do. The award of compensation in the public law
jurisdiction is also without prejudice to any other action like civil
suit for damages which is lawfully available to the victim or the
heirs of the deceased victim with respect to the same matter for
the tortious act committed by the functionaries of the State. The B
quantum of compensation will, of course, depend upon the peculiar
facts of each case and no strait-jacket formula can be evolved in
that behalf. The relief to redress the wrong for the *established*
invasion of the fundamental rights of the citizen, under the public
law jurisdiction is, thus, in addition to the traditional remedies and
not in derogation of them. The amount of compensation as awarded C
by the Court and paid by the State to redress the wrong done,
may in a given case, be adjusted against any amount which may
be awarded to the claimant by way of damages in a civil suit.”

6. In a case² dealing with default on part of the officials in
depositing the amount in terms of the Land Acquisition Act, Swatanter
Kumar, J. had observed: D

“(iv) In this case, the claimants would be entitled to the costs of
Rs 1,00,000 (Rupees one lakh only) which shall be deposited at
the first instance by the State Government of Uttar Pradesh and
then would be recovered from the salaries of the defaulting/erring
officers/officials in accordance with law. The inquiry shall be E
completed within a period of six months from today and a report
shall be submitted to the Secretary General of this Court on the
administrative side immediately thereafter.”

7. Learned counsel for the State accepts that in connection with
the death of the said Pravin, proceedings are pending in which the question
of liability will be gone into and determined. F

8. We therefore modify the aforesaid direction of the High Court
and state that as and when the liability for the crime in question is fastened,
the State shall be at liberty to recover the amount of compensation from
the concerned erring officials.

9. The appeal is disposed of in the aforesaid terms. G

10. Pending applications, if any, also stand disposed of.

Kalpana K. Tripathy

Appeal disposed of.

²Delhi Airtech Services Private Limited and Anr. Vs. State of Uttar Pradesh and Anr. H
(2011)9 SCC 354