* **THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

+ W.P.Nos.23116 of 2020; 11993 of 2019; W.A.No.34 of 2020; and C.C.(sr).No.53422 of 2022

% 01.03.2023

Between:

Mrs. Timothy T Gonmei

Petitioner

VERSUS

The Principal Junior Civil Judge,
The Acting IV Metropolitan Magistrate, Ms. T.Madhavi,
C/o. The District Judge, Ranga Reddy District,
Ranga Reddy & 6 others.

Respondents

! Counsel for Petitioner : Dr. Eunice Lalnunmawii Chawngthu, petitioner-in-person (also known as Mrs. Timothy T.Gonmei)

^ Counsel for the respondents: Mr. M.Roopender, learned Government Pleader for Home.

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> HEAD NOTE:

? Cases referred

1 1997(4) SCC 496
2 (2014) 8 SCC 273
3 (1983)4 SCC 141
4 (1985)4 SCC 677
5 (1993)2 SCC 746
6 (2000)2 SCC 465
7 (2015)5 SCC 280

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

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W.P.Nos.23116 of 2020; 11993 of 2019; W.A.No.34 of 2020; and C.C.(sr).No.53422 of 2022

COMMON ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This order will dispose of the present bunch of cases.

2. Heard Dr. Eunice Lalnunmawii Chawngthu, petitioner-in-person (also known as Mrs. Timothy T.Gonmei) and Mr. M.Roopender, learned Government Pleader for Home representing the respondents.

3. Though diverse prayers have been made in these cases, the core issue is arrest of the petitioner on 20.05.2019 by personnel of Nacharam Police Station.

4. Petitioner is a practicing advocate of this Court. According to the petitioner, on 20.05.2019 she was proceeding in her vehicle for appearing in the entrance examination for LLM course, which was scheduled at a center called Noma Ion Digital located at Nacharam on the outskirts

of the city. While proceeding to the examination center, petitioner's vehicle went out of control and dashed into the railings of Tarnaka fly over. Because of the aforesaid incident, petitioner reached the examination center belatedly. The security guards guarding the examination center as well as the invigilator did not allow the petitioner to enter into the examination center on the ground that it was too late and that the examination time was about to end. According to the petitioner, the police personnel present in the examination center including one constable by name-G.Ramesh misbehaved with her and was photographing the incident. This was protested by the petitioner whereafter, petitioner was forcibly taken to the Nacharam Police Station. Ultimately, following her medical examination, she was taken into custody on that day itself; she was taken to Chenchalguda Jail late in the evening because of which the jail authorities did not allow entry whereafter, petitioner was brought back to Nacharam Police Station and kept there throughout the night. On the next day, she was taken to Chenchalguda Jail, where she was lodged.

5. It may be mentioned that on the complaint lodged by the Sub-Inspector of Police, Nacharam Police Station, FIR No.235 of 2019 dated 20.05.2019 was registered against the petitioner under Sections 332 & 506 of the Indian Penal Code, 1860 (IPC) read with Section 3 of the Prevention of Damage to Public Property Act, 1984 (for short 'the PDPP Act' hereinafter). Ultimately on orders of the Court, petitioner was enlarged on bail vide the release order dated 27.05.2019. Thus, petitioner was in custody from 20.05.2019 to 27.05.2019.

6. Sri K.Venkat Reddy, Sub-Inspector of Police, Nacharam Police Station has filed counter-affidavit in W.P.No.11993 of 2019. In the affidavit, it is stated that petitioner has a habit of filing one case after the other against various persons. That apart, as per his enquiry, petitioner is accused in more than twenty cases spanning the three police commissionerates of Hyderabad City, details of which have been mentioned in the affidavit. According to him, on 20.05.2019 at 14:30 hours, police constable – G.Ramesh of Nacharam Police Station had lodged a complaint stating that

on 20.05.2019, at about 9:00 hours, he along with home guard-Narsimha were performing bandobust duty at Noma Ion Digital, Mallapur for the ongoing Law cet online examination. This was as per the instructions of the Station House Officer of Nacharam Police Station. At about 12:10 hours, one lady came to attend the Lawcet examination and forced them to allow her to enter the examination hall. Management of the examination center and security personnel tried to stop her by stating that the examination had commenced at 11:00 a.m., and would end at 12:30 p.m.; it was too late to appear in the examination. When she was so obstructed, she picked up a quarrel with the security personnel and created nuisance. She used abusive language and damaged the tab provided by the police department. She thus obstructed the police constable from performing his legitimate duty. Hence, he requested the Station House Officer, Nacharam Police Station to take necessary action. On receipt of such complaint, crime No.235 of 2019 was registered against the petitioner for the offences under Sections 332 and 506 IPC read with Section 3 of the PDPP Act. He has stated that at the time of the incident, he was

present at the spot and “enraged with her arrogant attitude”, she was brought to the police station for enquiry whereafter her identity could be ascertained.

7. In paragraph 5 of the said affidavit, it is stated that the investigating officer tried to issue notice under Section 41A of the Code of Criminal Procedure, 1973 (Cr.P.C.) but the petitioner rejected to take the said notice. Thus, petitioner had committed an offence under Section 41(1)(b)(i) and (d) of Cr.P.C. As such, her arrest was affected on 15.45 hours of 20.05.2019. After explaining to her the grounds of her arrest, petitioner was sent to hospital for medical checkup whereafter she was produced before the IV Additional Metropolitan Magistrate –cum- IV Additional Junior Civil Judge, Cyberabad at L.B.Nagar on the same day at her residence. Learned Magistrate remanded the petitioner to judicial custody. As the jail authorities refused to admit the petitioner into the prison during night hours, she was brought back to Nacharam Police Station and sent to Special Prison, Chenchalguda, Hyderabad on 21.05.2019. Subsequently, she was enlarged on bail.

8. Similar stand has been taken by Sri T.Kiran Kumar, Inspector of Police, Nacharam Police Station in the counter-affidavit filed in W.P.No.23116 of 2020.

9. In the course of hearing, Commissioner of Police, Rachakonda Police Commissionerate submitted written instructions dated 06.12.2022. He has stated that right from the year 2013, petitioner has been involved in filing various frivolous cases against judicial officers, President of Bar Association, police officials, landlords etc; as per their enquiry, she is accused in more than 25 cases in three police Commissionerates of Hyderabad; petition filed by her is merit less; Court may take judicial notice of her tendency to file frivolous cases and put an end to vexatious litigations initiated at her instance. Details of the cases where the petitioner is accused and cases which have been registered on the complaint of the petitioner have been mentioned in the affidavit.

10. We have heard petitioner-in-person as well as the learned Government Pleader for Home at length. In the

course of the hearing, learned Government Pleader for Home had produced the record which we have perused.

11. At the outset, we may briefly advert to the contents of F.I.R.No.235 of 2019 lodged by the complainant-K.Venkat Reddy, Sub-Inspector of Police, Nacharam Police Station.

12. From a perusal of the complaint, it is seen that on 20.05.2019, at about 9:00 a.m., as per the instruction of the Station House Officer, Nacharam Police Station, complainant along with home guard- Narsimha went to perform bandobust duty at Noma Digital Ion, Mallapur, for Lawcet online examination; at about 12:10 p.m., one lady came to attend the said examination and tried to enter into the examination hall. In the meantime, management of the examination hall and security persons tried to stop her by stating that the examination had already started at 11:00 a.m., and would end at 12.30 p.m. When this was told to her, she picked up a quarrel with the security persons and created nuisance. Upon that, complainant came to the spot and tried to explain to her about the examination time. At that stage

petitioner became abusive and intentionally used filthy language; beat with hands and also damaged the tab of the police department while threatening him with dire consequences. Thus, petitioner obstructed the complainant from performing his legitimate duties.

13. From a perusal of the remand application, we find that petitioner was taken into custody on 20.05.2019 at 3:00 p.m., at Mallapur and was arrested on the same day at 3:45 p.m., at Nacharam Police Station. The reasons mentioned for seeking remand are as follows:

> 1. Petitioner was involved in various cases in the past, the information submitted with separate copy.
> 2. She does not have a permanent address in Hyderabad.
> 3. There is a chance to involve in other cases in future.

14. Sections invoked against the petitioner are Sections 332 and 506 IPC as well as Section 3 of the PDPP Act.

15. As per Section 332 IPC, whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with an intent

to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

16. Insofar Section 506 IPC is concerned, whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; However, if the threat is to cause death or grievous hurt, the punishment may extend up to seven years or with fine of with both.

16.1. It is not the case of the prosecution that the threat meted out by the petitioner was to cause death or grievous hurt to the complainant or to anyone else.

17. Insofar Section 3 of the PDPP Act is concerned, it deals with mischief causing damage to public property; as per

sub-section (1), whoever commits mischief by doing any act in respect of any public property other than public property of the nature referred to in sub-section (2) shall be punished with imprisonment for a term which may extend to five years and with fine. Sub-section (2) deals with damage to public property such as oil installation, sewage works, building, installation etc., used for production, distribution or supply of water, light, power or energy etc. Thus, all the three sections invoked against the petitioner carry punishments which are less than seven years.

18. At this stage, we may mention that at the intervention of the Court, petitioner was released from custody on 27.05.2019. Thus, petitioner was in custody from 20.05.2019 to 27.05.2019.

19. In **D.K.Basu v. State of West Bengal**[1], Supreme Court was considering issues relating to death in police custody including the related issue of torture in police custody. It is not necessary to dilate on the entire spectrum of

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[1] 1997(4) SCC 496

the judgment but suffice it to say that Supreme Court took the view that in addition to the statutory and constitutional requirements to which reference was made, it would be useful and effective to structure appropriate machinery for contemporaneous recording of the notification of all cases of arrest and detention to bring in transparency and accountability. In that context, it was observed that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of atleast one witness, who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest should be recorded in the memo, which must also be counter-signed by the arrestee. Thereafter, Supreme Court issued certain requirements in the form of guidelines to be followed in all cases of arrest or detention till legal provisions were made in that behalf as preventive measures. The requirements are as follows:

> (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 atleast 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 centre 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 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 Stare or Union Territory. Director, Health Services should prepare such a penal 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.

19.1. Supreme Court mentioned that failure to comply with the requirements as mentioned therein would render the official concerned liable for departmental action as well as for contempt proceedings before the jurisdictional High Court. Emphasizing that the above requirements flow from Articles 21 and 22(1) of the Constitution, it was declared that those requirements are required to be strictly followed which would be in addition to the constitutional and statutory safeguards and would not detract from various other directions given by the Courts from time to time in connection with safeguarding of the rights and dignity of the arrestee.

20. Section 41 of Cr.P.C. lays down the circumstances when police may arrest any person without warrant. Section 41 reads as follows:

> "41. When police may arrest without warrant.- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person –
>
> (a)x x x x x x
>
> (b)against whom a reasonable complaint has been made, or credible information has been received, or a reasonable

suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-

(i) x x x x x

(ii) the police officer is satisfied that such arrest is necessary –

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest."

21. This provision was explained by the Supreme Court in **Arnesh Kumar v. State of Bihar**[2] whereafter, it has been held that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the case or to prevent the accused from causing the evidence of the offence to disappear or from tampering with the evidence in any manner or to prevent such person from making any inducement, threat or promise to a witness. Supreme Court held that law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions as aforesaid while making such arrest. Supreme Court held as follows:

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[2] (2014) 8 SCC 273

"From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest.

In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In

> fine, before arrest first the police officer should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.PC.

22. By way of amendment, Section 41-A was inserted in the Cr.P.C. with effect from 01.11.2010. Section 41-A of Cr.P.C., provides for notice of appearance before Police Officer. Section 41-A of Cr.P.C. is extracted hereunder:

> "41-A. Notice of appearance before police officer.-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
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> (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
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> (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be

recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

23. This was also explained by the Supreme Court in **Arnesh Kumar** (2 supra) in the following manner:

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.P.C., has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

We are of the opinion that if the provisions of Section 41 Cr.P.C., which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases

> which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C. for effecting arrest be discouraged and discontinued.

24. It may be mentioned that though the decision of the Supreme Court in **Arnesh Kumar** (2 supra) was in the context of apprehension of arrest under Section 498A of IPC and Section 4 of the Dowry Prohibition Act, 1961, we are of the view that guidelines issued thereunder would cover all cases governing Sections 41 and 41-A of Cr.P.C. It was thereafter that detailed guidelines were issued by the Supreme Court in the following manner:

> 1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.PC;
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> 2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
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> 3. The police officer shall forward the check list duly filled and furnish the reasons and materials which

necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

6. Notice of appearance in terms of Section 41A of Cr.P.C., be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

25. As we have pointed out above, Supreme Court clarified that the aforesaid directions issued would not only

apply to cases registered for the offence under Section 498A IPC or Section 4 of the Dowry Prohibition Act, but those would equally apply in respect of offences punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine.

26. Reverting back to the remand report as well as to the statement made in the affidavit that in the course of investigation, LW.6 i.e., investigating officer tried to issue notice under Section 41-A Cr.P.C. to the petitioner but petitioner rejected the same, we are of the view that such a statement is a self-serving one and does not reflect the correct position. The record does not disclose or contain any notice prepared under Section 41-A Cr.P.C. The materials on record also does not disclose any remark by the investigating officer that he had issued notice under Section 41-A Cr.P.C. to the petitioner but petitioner declined to accept the same. Even in respect of invoking Section 41 Cr.P.C., we find that the three grounds given for arrest and remand as already mentioned above are not at all justified or adequate for arrest and

remand of a person, that too, a lady and an advocate for seven days. Admittedly, the requirements of law as contemplated under Sections 41 and 41-A Cr.P.C. were not complied with before arresting the petitioner.

27. That apart, the statement made by Sri K.Venkat Reddy, Sub-Inspector of Police, Nacharam Police Station that he was present at the spot at the time of the incident and enraged with her arrogant attitude, petitioner was brought to the police station is wholly unacceptable. He could not have allowed himself to be enraged by the conduct or the arrogant attitude of the petitioner and therefore brought her to the police station. This is not expected of a professional police officer.

28. Further, as alleged by the respondents, petitioner may be involved in filing frivolous case against various persons and authorities but that cannot be a reason for the police not to follow the procedure laid down under the law.

29. Therefore, we have no hesitation in coming to the conclusion that petitioner's arrest and detention for seven days was in contravention of the law.

30. Resultantly, petitioner's fundamental right under Article 21 of the Constitution of India stood violated by such unlawful detention.

31. When there is violation of Article 21 of the Constitution of India, a writ court exercising jurisdiction under Article 226 of the Constitution of India can certainly award compensation as a public law remedy. This branch of civil rights jurisprudence was acknowledged by the Supreme Court in **Rudul Shah v. State of Bihar**[3] where it was explained that order for compensation in such a proceeding would be in the nature of a palliative and would not preclude the affected person from bringing in a suit to recover appropriate damages from the State and its erring officials. Compensation awarded under the public law remedy is in the nature of exemplary damages for violation of civil liberties of a

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[3] (1983)4 SCC 141

person, which is not compensation as is understood under the private municipal law.

32. This aspect of the law was further elaborated by the Supreme Court in **Bhim Singh v. State of Jammu & Kashmir**[4] where it was stated that a constitutional court would have the right to award monetory compensation by way of exemplary costs or otherwise in the event of breach of a fundamental right.

33. Following the view expressed in **Rudul Shah** (3 supra), Supreme Court in **Nilabati Behera @ Lalita Behera v. State of Orissa**[5] held that a superior court in exercise of its powers under Articles 32 and 226 of the Constitution of India would be competent to award compensation for contravention of a fundamental right. Supreme Court observed as follows:

> It follows that '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

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[4] (1985)4 SCC 677

[5] (1993)2 SCC 746

> 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. This is what was indicated in Rudul Shah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

34. Even in a case of a foreigner, who had suffered the heinous offence of rape within railway premises, Supreme Court in **Chairman, Railway Board v. Chandrima Das**[6], while upholding the compensation awarded by the High Court

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[6] (2000)2 SCC 465

under Article 226 of the Constitution of India held that where public functionaries are involved and the matter relates to violation of fundamental rights or enforcement of public duties, the remedy would still be available under the public law, notwithstanding that a suit for damages can be filed under the private law. This position continues to hold good and has been consistently approved and applied by the constitutional courts of the country in several subsequent decisions including in Sanjay Gupta v. State of U.P[7].

35. Since we have come to the conclusion that detention and arrest of the petitioner for seven days was unlawful and she has suffered infringement of her fundamental right under Article 21 of the Constitution of India, we are of the view that compensation by way of exemplary costs of Rs.50,000/- be imposed on the State, which would be just and adequate in the facts and circumstances of the case.

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[7] (2015)5 SCC 280

36. State in the Home Department shall deposit the aforesaid amount before the Registry of this Court within a period of six weeks from the date of receipt of a copy of this order whereafter it would be open to the petitioner to withdraw the same from the Registry.

37. Before parting with the case file, we would like to place on record our views which we feel we should.

38. Petitioner has argued her case well. However, we have noticed that petitioner has filed number of complaints and cases against various individuals, authorities and institutions. Without expressing any opinion on the merit or otherwise of such complaints and cases, we can only say that most people who may be well-placed in society or not so well-placed carry grievances – some grievances may be perceived; some grievances may be real; but everyone, more particularly those who are in the legal profession are required to exercise utmost restraint. We feel that given her ability and competence, petitioner should ponder over and shift her focus from herself to those who need her services more. We are sure that if the petitioner extends her legal services to people

in distress, particularly those belonging to the depressed and marginalized sections of the society, it will certainly advance the cause of justice. It would be good to herself and also to the community. We say this and no more.

39. Subject to the above observation and direction, all these cases i.e., W.P.Nos.23116 of 2020; 11993 of 2019; W.A.No.34 of 2020; and C.C.(sr). No.53422 of 2022 are disposed of.

40. Record produced by the learned Government Pleader for Home during the course of the hearing shall be returned to him forthwith.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 01.03.2023

Note: L.R. copy to be marked.
(B/o.
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