

STATE OF PUNJAB & ORS.

V.

PARAMJIT KAUR & ORS.

Criminal Appeal No. 554 of 2009

MARCH 25, 2009

[S.B. SINHA AND ASOK KUMAR GANGULY, JJ.]

Constitution of India, 1950 – Article 226 – Writ of habeas corpus – Allegation of custodial disappearance of petitioner's husband – High Court observing the said act attributable to remissness and failure of duty on part of police department – Direction to State Government to pay Rs. 1,50,000/- – On appeal, held: When matter is pending adjudication in a trial before criminal court, High Court should not have made any observation which would have effect on trial – Payment made by State Government pursuant to High Court's order not be construed as concession to allegations made – Criminal court to conduct trial in accordance with law.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 554 of 2009

From the Judgement and Order dated 03.02.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Writ Petition No. 1774 of 1996.

Vivek Goyal, AAG Kuldip Singh, with him for the Appellants.

Sudhir Walia, Mahinder Singh Dahiya, Rajesh Tyagi, Aparna Bhardwaj, Atishi Dipankar, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court

- A allowing the writ petition purported to be a Writ of habeas Corpus. The High Court by the impugned order has directed that the State of Punjab to pay a sum of Rs.1,50,000/- to the writ petitioners and the family as for alleged custodial disappearance of the writ petitioner's husband. It was observed that the said
- B act was clearly attributable to the remissness and the failure of duty on the part of the police department since the police has not been able to find out the whereabouts of the writ Petitioner's husband. It was noted that in cases where police officials are convicted on the basis of the charge sheet submitted by the
- C Central Bureau of Investigation (in short the 'CBI'), the amount of compensation shall be recovered from them.

3. Questioning correctness of the order, learned counsel for the appellant-State and the concerned Police officials i.e. respondents 2 to 4 have submitted that when the matter was

D pending in a criminal court, the High Court's observations about the officials being responsible for the disappearance for the writ petitioner's husband and the conclusions about the remissness and failure of duty are clearly unsustainable. These observations are bound to have effect on the trial. It is pointed

E out that before this Court passed the order of stay on 10.11.2006, the State Government had already made payment of the amount as directed by the High Court on 20.5.2006. We agree with learned counsel for the appellant and the respondent police

F officials that when the matter is pending adjudication in a trial before a criminal court, the High Court should not have made any observation which would have effect on the trial by the trial court. We, therefore, dispose of this appeal with the direction that even if payment has been made pursuant to the High Court's order by the State Government, that shall not be construed to

G be a concession to the allegations made. The trial before the criminal court shall be conducted in accordance with law, without being influenced by any observation made by the High Court about the remissness and neglect in duty is by the police officials. The appeal is accordingly disposed of.