

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WRIT PETITION (CRIL) NO. 18 OF 2009

1. Shri Ningombam Brojen Singh, aged about 45 years, S/o (Late) Ningombam Kulla Singh, a resident of Heirangoigthong Makha Mutum Leirak, P.O. & P.S. Singjamei, Imphal West District, Manipur.
2. Shri Ningombam Dolen Singh, aged about 34 years, S/o (Late) Ningombam Kulla Singh, a resident of Heirangoigthong Makha Mutum Leirak, P.O. & P.S. Singjamei, Imphal West District, Manipur.

...Petitioners.

-Versus-

1. The State of Manipur through the Principal Secretary (Home) to the Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur.
2. The Director General of Police, Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur.
3. The Superintendent of Police, Imphal West District, P.O. & P.S. Imphal, Imphal West District, Manipur.
4. The Union of India represented by Home Secretary, Ministry of Home Affairs, Govt. of India, North Block, New Delhi-11.
5. The Defence Secretary, Govt. of India, South Block, New Delhi-11.
6. The Commanding Officer, 32 Assam Rifles, C/O 99 APO

...Respondents.

JUDGMENT & ORDER

Both the writ petitioners are natural brothers of late Ningombam Gopal Singh who was, according to the petitioners, killed by the personnel of Manipur Police Commando and 32 Assam Rifles in a fake encounter. This writ petition has been filed for payment of compensation on account of death of their brother.

2. The case of the petitioners is that on 23rd December, 2008 in the evening at about 3.25 p.m., the deceased had gone to a local tea shop located at Heirangoithong Makha Leikai Bokul Makhong run by one Smt. Maibam Ongbi Gambhini Devi. When the deceased was served with tea with sauced food, two unknown persons suspected to be police in civil dress with small fire arms rushed inside the tea shop and asked the deceased to come out of the shop to have a talk. The deceased was over powered by the two unknown persons and dragged out from the said tea shop and was taken towards a Santro Car which had been parked on the road. The distance between the tea shop and the place where the car was parked as about 30 metres. Even though the deceased resisted, he was dragged by the said two unknown persons, put into the car and the car was driven towards the Manipur University side. Local women folk witnessed the incident and tried to intervene but

in vain. After a short while, one Maruti Gypsy of Manipur Police Commando followed the said Santro Car towards Manipur University Side. This incident was reported to the petitioners on the same day in the evening whereafter they tried to locate whereabouts of the deceased. In the news bulletin of ISTV news of 9 p.m. of the same day, it was telecast that at around 5 p.m. of that day, an unknown youth suspected to be a member of PREPAK (GS) was killed in an encounter with Manipur Police Commando and 32 Assam Rifles along the inter village road between Heinoupok and Sadokpam Village. On the next day, news report of killing of the said deceased was reported everywhere. It was also reported that the dead body was kept in the Morgue of Regional Institute of Medical Sciences (RIMS) for identification. One of the petitioners visited the Morgue and identified the dead body of the deceased. It was also observed subsequently that after the death of the deceased, one of the Subedars of Manipur Police Commando had lodged a report with the Officer-in-Charge of the Lamphel Police Station, Imphal alleging therein that on 23rd of December, 2008 at about 4.30 p.m. receipt of a credible information regarding movement of armed PREPAK (GS) cadres in general location of Sagolband Heinoupok for carrying out subversive activities. Based on the said information, a team of Imphal West Commando and 32 Assam Rifles moved into the said area at around 4.50 p.m. While approaching the inter village road between Heinaobok and Sadokpam, they observed two to three youths near the culvert. The youths on observing their vehicles' light, tried to move away from the spot by entering into a nearby house. Immediately, those two youths were ordered to prove their identify. At that point of time, one of them tried to escape by firing small arms towards the police personnel. The police personnel and personnel of 32 Assam Rifles immediately

returned fire and in such firing the said youth died. When the area was searched, one 0.32 pistol loaded with two live rounds, one fired empty case of 0.32 pistol and one leaver of high explosive hand grenade was recovered from the place of incident.

3. On consideration of the claim of the petitioners and the stand taken by the State respondents as well as 32 Assam Rifles, the Court directed an enquiry to be conducted by the District & Sessions Judge, Manipur East. In compliance of the said order, the District & Sessions Judge, Manipur East has submitted a report on 30th April, 2012 and the finding recorded by the learned District & Sessions Judge, Manipur East in paragraph 19 of the Report is quoted below:-

"19. In the result, the circumstances leading to the death of late Ningombam Gopal Singh on 23rd December, 2008 at about 5.30 p.m. are that he was forcibly dragged by two persons wearing civil dress with small arms suspected to be Police from a local hotel run by one Smt. Maibam Ongbi Gambhini Devi while he was ready to have tea and pushed him forcibly in a Santro Car and driven towards the Manipur University side followed by one Maruti Gypsy of Manipur Police Commando after a short while. Thereafter, N. Gopal Singh was killed on 23rd December, 2008 by the combined force of Manipur Police Commando and 32 Assam Rifles in a fake encounter at the inter village road between Heinoubok and Sadokpam village."

4. Since the learned District & Sessions Judge, Manipur East has specifically found that the deceased was killed in a fake encounter by the Manipur Police Commando and 32 Assam Rifles an objection has been raised to the said Report by Shri R.S. Reishang, learned sr. G.A. appearing for the state respondents and Mr. S. Rupachandra, learned ASG appearing for the Union of India. It was submitted by learned counsel appearing for the respondents that in course of inquiry, not a single eye witness was examined on behalf of the petitioners. Four witnesses were examined on behalf of

the petitioners including the two petitioners who are brothers and admittedly they were not eye witnesses to the occurrence. Fourth witness was the doctor who conducted the post mortem examination. Third witness Sarangthem Ibemhal Devi who was examined as PW No.3 is also not an eye witness to the occurrence and she had heard about the incident. Though the petitioners' claim that there were several eye witnesses, not a single witness was examined as eye witness and on the basis of hear say evidence, the learned District & Sessions Judge has rendered his finding holding the Manipur Police Commando as well as the 32 Assam Rifles guilty of killing of the deceased in a fake encounter. Objection having been raised by the learned state counsel, we examined the evidence of the PW No.3. The said witness in a statement-in-chief, in the form of an affidavit has stated that at about 3.30 p.m. on the date of incident, she saw the deceased being taken away by two unknown youths holding his upper arm and shoulder on the Canchipur Road just adjacent to eastern side of her house situated at the western side of the said road. Both the youths were wearing civil dress and the deceased was shouting to leave him and save him. When she asked the two unknown youths as to why they were taking the deceased, they said they wanted to have a discussion with him and will bring him back. Thereafter, the said two unknown youths took the deceased in a Santro Car which was parked facing south along the Canchipur Road. In paragraph 7 of the evidence-in-chief, she stated that she came to learn that two unknown youths forcibly took the deceased from the tea shop of Maibam Gambhini Devi when the deceased was ready to have a cup of tea. Relying on the said statement in paragraph 7 of the deposition, it was contended by the learned counsel appearing for the respondents that she is not an eye witness of the occurrence. We are unable to accept

such contention of the learned counsel for the respondents for the reason that this witness had first seen deceased being dragged by two unknown youths from her residence and she had no knowledge at that point of time whether the deceased was being dragged from the tea shop or some other place. She had seen the incident from the stage when the deceased was dragged by the two unknown youths near her house. Therefore, in paragraph 7 of the deposition, she has said that later on she came to know that the deceased was taken away by two unknown youths from the tea shop of Maibam Gambhini Devi. We are therefore, unable to accept the contention of the learned counsel appearing for the respondents that PW No.3 is not an eye witness to the occurrence. It is also found that this witness has not been cross examined on material facts. Relying on the above evidence of the witness corroborated by the affidavit of PW No.4, learned District & Sessions Judge has rendered the above finding. We, therefore, find no justification to differ with the finding arrived at by the learned District & Sessions Judge, Manipur

5. Having accepted the report of the learned District & Sessions Judge, Manipur East, the Court is now called upon to decide the quantum of compensation to be paid to the petitioners. Shri Kh. Mani Singh, learned counsel appearing on behalf of the petitioners placed reliance on two decisions of the Apex Court. In the case of ***Rubabbuddin Sheikh –vs- State of Gujarat & ors*** reported in ***(2009) 17 SCC 653***, considering a case of fake encounter, the Supreme Court granted compensation of Rs. 10 lakh. In the case of ***Rohtash Kumar –vs- State of Haryana through the Home Secretary, Govt. of Haryana, Civil Secretariate, Chandigarh & ors*** reported in ***2013(2) SCALE 482***, Supreme Court awarded Rs. 20 lakh as compensation. Relying on the above two decisions, Shri Kh.

Mani Singh, learned counsel appearing for the petitioners prayed for payment of compensation of Rs. 10 lakhs.

6. The deceased was working as Grade-IV employee of the High Court at the time of his death. In the case of Ajab Singh & anr –vs- State of UP & ors reported in 2000(3) SCC 521, Supreme Court awarded compensation of Rs. 5 lakhs considering the income of the deceased @ Rs. 5000 per month. Though it is stated that the deceased was working as Grade-IV employee in the High Court, neither his income is mentioned in the writ application nor any particular amount is claimed as compensation. The deceased is said to be 38 years of age and unmarried at the time of his death. On consideration of the above, we are of view that in the facts and circumstances of the case compensation of Rs. 5 lakh would be just and proper. We, therefore, allow the writ application and direct that both the petitioners be paid compensation of Rs. 5 lakh. Out of the said amount, state respondents shall pay Rs. 2.5 lakhs and 32 Assam Rifles shall pay Rs. 2.5 lakhs as compensation to the petitioners. If the petitioners are not satisfied with the above amount of compensation, it will be open for them to approach the Competent Civil Court to establish a case for higher compensation.

7. With the above direction and observation, the writ application stands disposed of.

JUDGE

CHIEF JUSTICE