

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

WRIT PETITION (CRIL) NO.24 OF 2009

Smt. Nongmaithem Ongbi Neena Devi
W/o late Nongmaithem Michael Singh of
Keishampat Keisham Leikai, P.O. & P.S.
Imphal, Imphal West District, Manipur.

...Petitioner.

-Versus-

1. The State of Manipur through
the Principal Secretary(Home)
to the Govt. 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.

...Respondents.

BEFORE
HON'BLE CHIEF JUSTICE MR.L.K .MOHAPATRA
HON'BLE MR.JUSTICE N. KOTISWAR SINGH

For the petitioner :: Mr. M. Rakesh Singh
Advocate

For the Respondents :: Mr.R.S. Reisang, Sr.G.A

Date of hearing :: 11.11.2014

Date of Judgment & Order :: **13.11.2014**

JUDGMENT AND ORDER

Chief Justice,

The wife of late Nongmaithem Maichel Singh has filed this writ application praying for payment of compensation on the allegation that her deceased husband had been killed by the Manipur Police Officials in a fake encounter.

2. It is alleged by the petitioner that she married the deceased and had been blessed with two sons. On 4.11.2008 after having lunch, the deceased went out of the house saying that he would be attending a Saradha Ceremony held for the death of one Wahengbam Udoichand Singh. At about 3.00 p.m. while the deceased was having some kind of conversation with his local friends in the house of late W. U. Singh in course of the Saradha Ceremony, he received a call in his mobile phone and left the place. Subsequently, at about 3.32 p.m. the petitioner received a call from her deceased husband and was informed that her deceased husband has been apprehended by the Manipur Police Commandos at Wahengbam Leikai area and she was advised to consult the Superintendent of Police, Imphal

East District to secure his release. After hearing the news from her deceased husband, she was little puzzled and again tried to contact her husband but it was not picked up. After repeated attempts, the mobile phone of her deceased husband was picked up by another person and the petitioner was informed that her deceased husband is in the latrine. Subsequently, when she tried to contact her deceased husband she found the mobile phone of her deceased husband had been switch off. They started searching for the deceased in different areas but could not get him in any place. On the same day at about 9 p.m. in the news bulletin of ISTV, the dead body of her deceased husband was shown and it was said in the news that her deceased husband had been killed in an encounter at Yen-kao-bung, Kameng, Imphal West District by the Manipur Police Commandos and the dead body had been kept in the mortuary of Regional Institute of Medical Sciences (RIMS). It was also stated in the said news bulletin that one Chinese made hand grenade had been recovered from his possession.

3. From the record, it appears that on 4.11.2008 at about 6 p.m, one Sub-Inspector of Police of Manipur Police Commando, Imphal West lodged a report before the Officer-in-Charge, Lamsang Police Station, Imphal

West District alleging *inter alia* that on that day at about 4.00 p.m. he received a reliable information about the presence of some suspected KCP(MC) in and around Kameng with a view to carry out prejudicial activities, such as extortion from the general public of Kameng by threatening them with arms, bombs, etc. Thereafter a Police Commando Team accompanied by him rushed to the area to carry out search operation and detection of the suspected persons. On reaching Yen-kao-bung, the Commando Team saw three persons riding towards them in a motor bike. When they were asked to stop the vehicle, one of the pillion riders fired upon the Police Commandos with a small arm. When the Police Commandos retaliated, an encounter ensued and the second pillion rider who tried to hurl a hand grenade by jumping out from the motor bike was shot dead at the spot. The other two youths managed to escape. On searching the place of incident, one Chinese hand grenade, 3 empty cartridges of 9mm pistol along with the dead body were found at the spot.

4. On consideration of the allegations made by the petitioner and the stand taken by the respondents in the FIR, the Court by order dated 10.11.2009 directed the learned District Judge, Manipur East to conduct an

Inquiry and submit the report. In compliance of the said direction, the learned District Judge conducted an Inquiry and has submitted his reported dated 12.07.2012.

4.1. The learned District Judge, after consideration of the evidence placed before him came to a conclusion that the deceased husband of the petitioner was killed by the Manipur Police Commandos on 4.11.2008 at about 4.45 p.m. at Yen-Kao-bung, Kameng and there was no exchange of fire between the Police Commandos and the deceased husband of the petitioner. He also found that there was no encounter between the Police Commandos and the deceased husband of the petitioner.

5. Relying on the report of the learned District Judge, Mr.M. Rakesh Singh, learned counsel appearing on behalf of the petitioner submitted that the said report be accepted by the Court and appropriate compensation be awarded. It was also contended by the learned counsel that the report of the learned District Judge is based on oral and documentary evidence adduced before him and there was no infirmity in the said report and therefore the Court should accept the same. Mr.R.S. Reisang, learned Sr.GA appearing for the respondents challenged the report only on the ground that the evidence adduced on

behalf of the respondents was not given due weightage by the learned District Judge while coming to such conclusion.

6. We have carefully perused the report of the learned District Judge dated 12.07.2012. On consideration of the claim of the petitioner as well as the stand taken by the respondents, the learned District Judge had framed 3(three) issues and examined six witnesses from the petitioner's side and also accepted five documents from the side of the petitioner. The respondents also examined six witnesses but did not produce any document. On analysis of the evidence adduced, the learned District Judge came to the conclusion that there was no encounter between the deceased husband of the petitioner and the Police Commandos and that the deceased husband of the petitioner was killed by the Manipur Police Commandos. We perused the evidence of the witnesses examined on behalf of both sides. PWs 1,2 & 3 have stated that on 4.11.2008, the deceased had gone to attend a Saradha Ceremony and on that day at about 3.32 p.m. he had informed the petitioner that the Manipur Police Commandos have taken him to custody. They had also stated that the deceased also requested the petitioner to approach the Superintendent of Police,

Imphal East for his release. PW 4, who is an independent witness, stated before the learned District Judge that at about 4.00 p.m. on 4.11.2008 while he was standing on the side of his grocery shop he saw a Maruti Gypsy coming from Khonghampat side and proceeding towards Yen-kao-bung side. The said vehicle was occupied by some Manipur Police Commandos along with one civilian. The said civilian was wearing a tracksuit, blue in colour, and was sitting at the rear side of the vehicle along with the Police Commandos. After some time he heard sound of gun firing and later on they learnt that a person was killed by the personnel of Manipur Police Commandos. A month later, he was informed that the said deceased person was the husband of the petitioner. PW 5 is another independent witness who stated that in the evening of 4.11.2008 while she was busy in the house she heard the sound of gun firing from the southern side of her house. She came out from the house and called villagers to find out what had happened. Subsequently they started moving towards Yen-kao-bung and on the way they came across some Manipur Police Commandos who prevented them from proceeding further. When they asked them as to whether any person belonging to their village had been shot at or not, they were told that the

deceased did not belong to their village. She also stated that the Commandos blocked the road and did not allow any one to pass on the road. PW 6 is a Doctor who conducted the post mortem examination. He found bullet injuries in the body of the deceased and opined that the cause of the death was due to shock, haemorrhage as a result of fire arm injuries to lungs and liver.

6.1. Though 5(five) witnesses have also been examined on behalf of the respondents, it appears that there are discrepancies in material particulars in the evidence of these witnesses. DWs 1 & 2 have stated that they saw three suspected youths proceeding on a black motorcycle without number plate from Kameng side towards Khamarang side at a distance of about 30-40 meters from their vehicle. When the suspected youths were asked to stop they turned their motorcycle sliding the rear wheel and tried to drive towards Kameng side. DW 1 warned them to stop and Driver also shouted to stop. Suddenly the first pillion riders drew out a pistol and fired towards them and Driver stopped their vehicle. Thereafter the Police Commandos in retaliation fired gun towards the attackers. A moment thereafter the first pillion rider jumped out from the motorcycle and tried to hurl a hand grenade towards them. There was burst of firing from the

Police side causing the death of the first pillion rider. However, the other two youths managed to escape. A Chinese hand grenade, 3 empty cartridges of 9mm pistol and some documents were found from the possession of the deceased. DW 2, in his statement, said the first pillion rider fired from the pistol and the second pillion rider tried to hurl a hand grenade. DW 3 also similarly stated that the first pillion rider (i.e. the deceased) fired from the gun and second pillion rider tried to hurl hand grenade. They have not stated that the first pillion rider jumped from the bike and tried to hurl a hand grenade.

7. Considering such discrepant evidence in material particulars, the learned District Judge did not accept the stand taken by the respondents and held that there was no encounter.

8. Having analysed the evidences, we also do not find any reason to interfere with the conclusion arrived at by the learned District Judge. We, therefore, accept the report submitted by the learned District Judge and hold that the deceased husband of the petitioner was killed by the Manipur Police Commandos while he was in their custody and it was given a colour of encounter. The petitioner is, therefore, entitled to compensation as prayed for. The deceased had two sons and was

managing the family. He was killed at the age of 35 years leaving behind the petitioner and two sons. Considering the income the deceased might be having for managing the family in the year 2008, we are of the view that compensation of Rs.5,00,000/- (Rupees five lakhs) would be just and proper. We accordingly allow the writ petition and direct the respondents to pay a compensation of Rs.5,00,000/- to the petitioner within 3(three) months from the date of communication of this order.

8.1. If the petitioner feels dissatisfaction with the quantum of compensation allowed, she will be at liberty to approach the competent Civil Court for higher compensation.

JUDGE

CHIEF JUSTICE

Surchandra