

(2000) 06 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No's. 11596 and 21470 of 1998

C.A. Thomas Master and etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21
Penal Code, 1860 (IPC) — Section 306, 309

Citation : (2000) CriLJ 3729 : (2000) 3 ILR (Ker) 368 : (2000) 4 RCR(Criminal) 244

Hon'ble Judges : A.V. Savant, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Vincent Panikulangara, for the Appellant; K. Ramakumar, SCGSC (for No. 1) and Jose Theiteyil, Govt. Pleader (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

A.V. Savant, C.J.—Heard all the learned counsel, Dr. Vincent Panikulangara, for the petitioners, Mr. Prasanth, for the first-respondent-Union of India, and Mr. Jose Thetteyil, for the second respondent-State of Kerala.

2. O.P. No. 11596 of 1998 of filed by Mr. C. A. Thomas Master, who was then 80 years old, for very unusual reliefs. The petitioner says that he is a retired teacher. His wife is aged 72 years old; she is also a retired teacher. The petitioner has a daughter, son-in-law, as also his son and grand-children, who are school going. The petitioner says that his family members are well-settled. He is in a good mental and physical state. He enjoys music and plays harmonica. He led a contented life and believes that all his duties and obligations in his life are successfully fulfilled and has accomplished his mission in life. The petitioner, therefore, states that he has no desire to live any further, and it is high time he quits this world. However, as a law abiding citizen, he does not want to commit suicide, but he wants to voluntarily put an end to his life or donate his bodily organs to facilitate voluntary death.

3. The petitioner has referred to the fact that death is the only certainty in life and hence a person who thinks that he has lived enough, and is contented in life, should have the freedom to choose the time and place of his death, as well as the method. The freedom to choose the method of one's death is a part, of the right to life guaranteed by Article 21 of the Constitution, says the petitioner. He says in the ancient Indian and Chinese civilisations, it was customary to permit voluntary death and arrangements should, therefore, be provided by the respondents to facilitate voluntary death clinics. Petition proceeds to distinguish between a suicide which is committed by a person frustrated in life or unsuccessful in life and the right to voluntarily put an end to one's life by a person like the petitioner, who is successful and happy in life and has achieved his mission in life.

4. The petitioner has then referred to the decision of the Apex Court in Smt. Gian Kaur Vs. State of Punjab, . The petitioner has also referred to the decisions of some of the High Courts on the question, but his regret is that the said decisions do not consider the distinction between what is commonly understood as suicide and the right of a person to take a decision regarding voluntarily putting an end to one's life which he says is - an inalienable part of the right to life. The petitioner, therefore, contends that notwithstanding the decision of the Apex Court in Gian Kaur's case, the distinction between "suicide" as commonly understood, and the right to voluntarily terminate one's life needs to be considered by this Court. The petitioner then claims to have approached some of the medical institutions under the control of the State Government, including the District Hospital, Thirssur, seeking help to facilitate his voluntary death and for donation of his organs, including heart, kidneys, eyes, etc. However, his request was not taken seriously and he was told that none of the hospitals under the State Government has such facilities to enable the petitioner to voluntarily cause his death, which would, not be suicide. "

5. Being aggrieved, therefore, by the refusal and inaction on the part of both the respondents, the petitioner has prayed for the issuance of a writ of mandamus commanding the respondents to start "Mahaprasthan Kendra" or Voluntary Death Clinics in each District Hospital so as to facilitate voluntary death and donation of bodily organs as well as their transplantation. There is a further prayer for a direction to the respondents to appoint a commission to study the practice of voluntary death in ancient India and to suggest methods for its practice in the context of environmental changes and technological advancement. The petitioner also prays for a direction to the respondents to set apart funds and set up infrastructure for assisting voluntary organisations which are willing to facilitate voluntary deaths and the donation of bodily organs. There are other consequential reliefs such as setting up of organ bank, etc.

6. O.P. No. 21470 of 1998 is filed by Mr. Mukundan Pillai. He is 69 year old with B.A. degree in Economics, He was a teacher, who later on acquired B.Ed. degree and retired as Headmaster. Thereafter he was the Principal of N.S.S. Public

School, Thiruvanthapuram. The petitioner, his wife, as well as his daughter and her family are leading happy life. He claims to be in good physical and mental condition. He also states that though he is 69 years old, he is absolutely contented and believes that his mission in life is fulfilled. He has no further impetus to live any longer. This petition also, being drafted by the same learned counsel, contains similar averments as in O.P. No. 11596 of 1998, which are summarised above. The petitioner also refers to the decisions of the various High Courts and of the Apex Court in Smt. Gian Kaur Vs. State of Punjab, and similar reliefs are prayed for in this petition; the principal being for the issuance of directions to the respondents to start "Mahaprasthana Kendra" (Voluntary Death Clinic) so as to facilitate voluntary death and donation/transplantation of bodily organs.

7. In O.P. No. 21470 of 1998 a counter has been filed by Mr. R. M. Bhattacharya, Director, Ministry of Health and Family Welfare, on behalf of the first respondent-Union of India. It states that a meeting of an expert body including officers of the Ministry of Health was held to deliberate upon the issues raised in this petition, and having considered the relevant facts it was decided as under:

1. Ethically everyone has a right to live but he has no right to die. To the best of the knowledge no voluntary death clinic exists anywhere in the world.
2. Euthanasia is not provided under the existing law.
3. The experts felt that there is no need to appoint a commission at this point of time as the practice of voluntary death in India is not provided under the rules. The experts also felt that various medical associations in the world have not advocated for practice of voluntary death.

In view of the above, first respondent has opposed the petition as being without merit.

8. In so far as the relief for transplantation of bodily organs is concerned, the question need not detain us longer since we have a legislation on the subject, namely, the Transplantation of Human Organs Act, 1994. Hence, in our view, it is not necessary to express any opinion on the said question, which is covered by the provisions of the Transplantation of Human Organs, Act, 1994.

9. In fairness to the learned counsel, Dr. Vincent Panikulangara, it must be stated that his main emphasis was on the distinction between suicide commonly understood, and the right to voluntarily terminate one's life. According to him, the Apex Court has not considered this distinction while laying down the law in Smt. Gian Kaur Vs. State of Punjab, It must also be stated at the outset that petitioners are not concerned with the constitutional validity of the provisions of Sections 306 and 309 of the IPC, 1860. Section 306 makes abetment of suicide punishable with imprisonment of either description for a term which may extend to ten years, and such a person is also liable to fine. The section obviously contemplates a completed act of suicide which has been abetted by someone.

Section 309 deals with the attempt to commit suicide. Where a person does any act towards the commission of such offence, or makes any attempt to commit suicide, he can be punished with simple imprisonment for a term which may extend to one year or with fine, or with both. In view of the fact that a Constitution Bench of the Apex Court had occasion to consider the question of the validity of the said provisions on the touchstone of Articles 14 and 21 of the Constitution, and the same having been upheld, learned counsel did not address us on the question of constitutionality of either Section 306 or Section 309 of the IPC. The whole emphasis of the petitioners was that this Court should embark upon a novel experiment of directing the respondents to set up voluntary death clinics to facilitate persons exercising their right of voluntarily terminating their life, which, according to petitioners, is not suicide. Towards this end, petitioners want us to issue a requisite direction, including a direction for providing requisite finance, so that infrastructure is made available for setting up of such voluntary death clinics in each of the Districts in the State of Kerala.

10. In his attempt to persuade us to grant the above mentioned reliefs, petitioners criticised the judgment of the Apex Court in *Smt. Gian Kaur Vs. State of Punjab*, as being unduly influenced by the principles of Anglo Saxon Jurisprudence, overlooking the ancient Indian texts like Manu's *Smrithy*. The petitioners distinguished the question of euthanasia from suicide and emphasised the distinction between suicide and the right to voluntarily terminate one's life. Before dealing with the decision in *Gian Kaur's* case, we would like to refer to a few definitions.

11. The word "suicide" is not defined in the IPC. One must, therefore, look at the dictionary meaning of the word. As per *New Webster's Dictionary of the English language, Deluxe Encyclopedic Edition*, the word "suicide" appearing at page 980 means :

One who intentionally takes his own life; the intentional taking of one's own life; destruction of one's own interests or prospects v. i. suicided, suiciding. To commit suicide v.t. to kill (oneself).

In the *Concise Oxford Dictionary, 9th Edn.*, at page 1393, the word "suicide" is stated to mean as under :

n. & v. n.l.a. the intentional killing of oneself; b. a person who commits suicide 2.a. self-destructive action or course (political suicide) 3. designating a highly dangerous or deliberately suicidal operation, etc. (a suicide mission), v. intr. commit suicide.

In the *Halsbury's Laws of England, fourth edn., ninth volume, page 686, paragraph 1124*, the word "suicide" has been dealt with in the following words :

A finding of suicide must be based on evidence of intention. Every act of self-destruction is, in common language, described by the word "suicide", provided it is the intentional act of a party knowing the probable consequence of what he is

about. Suicide is never to be presumed. Intention is the essential legal ingredient.

In *re Davis* (1968) 1 QB 72, the Court of Appeal ruled that suicide required an intention on the part of a person to kill himself, so that to justify a verdict of suicide, it must be shown that he knew what he was doing and was aware of the probable consequences of his acts. The earlier decision in *Cliff v. Schwabe* (1846) 3 CB 437 was approved.

12. In our view, therefore, the word "suicide" in plain English language would mean a person voluntarily putting an end to his life. It is obvious, on a plain reading of the definition of "suicide", that the causes and circumstances leading one to take such a decision are wholly irrelevant for deciding the question as to whether the death was a suicide or not. A person who is frustrated or defeated in life, or considers himself to be frustrated or defeated in life, may, on the spur of the moment or after proper deliberation, come to the conclusion that he needs to put an end to his life. On the other hand, a person who is otherwise happy and claims to be successful in life, and had led a contented life, like the petitioners before us claim, may also take a conscious decision of putting an end to one's life. Such a decision may be taken on a full consideration of the relevant facts. Such a decision, as in the case before us, is stated to have been based in one's own interest with a view to avoid any pain, or misery, or suffering in old age, to himself or one's dependants. Nevertheless, on a plain meaning of the word "suicide" it is difficult to say that the decision taken to voluntarily put an end to one's life, in the latter case where a person claims to be successful in life and happy, is not suicide.

13. It is true that some of the High Courts as also the Apex Court in *P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another*, had taken the view that Section 309 of the IPC was unconstitutional, since it was violative of the provisions of Article 21 of the Constitution. It was held that the right to die was part of the right to life under Article 21 of the Constitution and hence if Section 309 of the IPC was held to be unconstitutional any person abetting a commission of suicide by another was merely assisting in the enforcement of the fundamental right under Article 21, and, therefore, Section 306, IPC penalising assisted suicide was equally violative of Article 21 of the Constitution.

14. The whole controversy centred round the question as to whether the right to die, assuming that such a right existed, was included within the ambit of Article 21 of the Constitution. Since a two-Judge Bench of the Apex Court had decided the question of validity of Section 309, IPC, the Constitution Bench heard a batch of appeals along with *Smt. Gian Kaur Vs. State of Punjab*, The Apex Court elaborately discussed the question on the subject, including the cases decided by the Bombay, Delhi and Andhra Pradesh High Courts, and its earlier decision in *P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another*, We do not think it necessary to reproduce the same here. Suffice it to say that in paragraph 15 of the judgment, the Apex Court has referred to the recommendation contained in the 42nd Report (1971) of the Law Commission of India, which in turn had taken

into account some of the shlokas in the Chapter on "the Hermit in the Forest" in Manu's Code. Shlokas 31 and 32 read as under :

31. Or let him walk, fully determined and going straight on, in a north-easterly direction, subsisting, on water and air, until his body sinks to rest.

32. A Brahmana having got rid of his body by one of those modes (i.e. drowning, precipitating burning or starving) practised by the great sages, is exalted in the world of Brahmana, free from sorrow and fear.

15. The Apex Court also considered the note by F. Max Muller on the Laws of Manu, translated by George Buhler, Sacred Books of the East, edited by F. Max Muller in the following words :

From the parallel passage of Apas tambha II, 23, 2, it is, however, evident that a voluntary death by starvation was considered the befitting conclusion of a hermit's life. The antiquity and general prevalence of the practice may be inferred from the fact that the Jaina ascetics, too, consider it particularly meritorious.

16. The Law Commission of India had taken note of the fact that the British Parliament had enacted the Suicide Act in 1961, under which an attempt to commit suicide has ceased to be an offence. Law Commission, therefore, concluded that the penal provision contained in Section 309 of the IPC was harsh and unjustifiable, and should be repealed. The Apex Court considered the fact that a bill was introduced in 1972 to amend the IPC by deleting Section 309. However, the bill lapsed and no attempt was made thereafter to implement, the recommendation of the Law Commission. We asked the learned counsel appearing for the first respondent as to whether there was any further change in the attitude of the Legislature in this behalf, but counsel for the first respondent could not enlighten us on this point.

17. Be that as it may. The Apex Court in Smt. Gian Kaur Vs. State of Punjab, then considered the question as to whether the right to life would include the right not to live, that is, the right to put an end to, or to terminate, one's life. That was the basis on which the earlier decision in Rathinam's case 1999 Cri LJ 1605 proceeded. The Court then distinguished the nature of rights under Article 21 dealing with the right to life, as against the nature of rights under other Articles, such as freedom of speech and expression in Article 19(1)(a), which includes the freedom not to speak; freedom of movement in Article 19(1)(a) which includes the freedom not to move anywhere; the freedom of practising any profession or to carry on any occupation, trade or business under Article 19(1)(a) which includes the freedom not to do any business. The Court then pointed out the fallacy in the reasoning of the judgment of the Bombay High Court, to which a reference was made in Rathinam's case, and came to the conclusion as under :

19. When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the

protection of the "right to life" under Article 21. The significant aspect of sanctity of life is also not to be overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life be included in "protection to life". Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construe Article 21 to include within it the "right to die" as a part of the fundamental right guaranteed therein. "Right to life" is a natural right embodied in Article 21, but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life". With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to "freedom of speech" etc. to provide a comparable basis to hold that the "right to life" also includes the right to die. With respect, the comparison is inapposite, for the reason indicated in the context of Article 21. The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in *P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another*, qua Article 21.

20. To give meaning and content to the word "life" in Article 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The "right to die", if any, is inherently inconsistent with the "right to life" as is "death with life".

18. The Apex Court in *Smt. Gian Kaur Vs. State of Punjab*, also considered the question of euthanasia which is sought to be justified on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of "sanctity of life" or the "right to live with dignity". It was held that the protagonism of euthanasia was of no assistance to determine the scope of Article 21 for deciding whether the guarantee of "right to life" therein includes the "right to die". The Court emphasised that the "right to life" under Article 21 would include the right to live with human dignity upto the end of natural life, which includes the right to a dignified life upto the point of death including a dignified procedure of death. But the "right to die" with dignity at the end of life is not to be confused or equated with the "right to die" an unnatural death curtailing the natural span of life. In this view of the matter, the Court disagreed with the view expressed earlier in *P. Rathinam/Nagbhusan Patnaik Vs. Union of India and another*, and came to the conclusion that the reason for which Section 309 of the I.P.C. was held to be violative of Article 21 did not withstand legal scrutiny. It was, therefore, held that Section 309 of I.P.C. was not violative of Article 21 of the Constitution.

19. As far as the validity of Section 306 of the I.P.C. is concerned, the Apex Court held that having regard to the distinct nature of the offence u/s 306, where a person abets the commission of a suicide, there was nothing unconstitutional in

the said provision, which was therefore held to be valid.

20. The Court then referred to the Suicide Act, 1961 enacted by the British Parliament, and considered the decisions of some of the Courts abroad, where it was held that euthanasia was not a lawful act, and stated that the desirability of bringing about such a change in euthanasia was considered to be the function of the legislature by enacting a suitable law providing therein adequate safeguards to prevent any possible abuse.

21. The aforesaid decision in Smt. Gian Kaur Vs. State of Punjab, makes it clear that it is not possible to distinguish between the right to voluntarily terminate one's life and "suicide" as commonly understood.

21A. We may now refer to the decision of the Apex Court in Surjit Singh Vs. State of Punjab and Others, . Question was of the claim of the appellant, Surjit Singh, former Deputy Superintendent of Police, for medical reimbursement. Appellant having been operated on for a bye-pass surgery in London, claimed Rs. 3 lakhs which was spent by him for his treatment in London. His claim for medical reimbursement was rejected by the State. When the matter was examined by the Apex Court, the Court has expressed its opinion with reference to the aspect of self preservation of one's life, which is stated to be the necessary concomitant of the right to life enshrined in Article 21 of the Constitution, which was fundamental in nature, sacred, precious and inviolable. In paragraph 10 at page 1391, the Court has quoted versus 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (a dialogue suggested between the Divine and Garuda, the bird) in the following words :

17. Vinna dehana kasyaapi can- Without the body how can one obtain the purushartho na vidyate Tasmaad- objects of human life ? Therefore protecting the deham dhanam rakshetpunyaka- body which is the wealth, one should perform the rmaani Saadhayet. deeds of merit. 18. Rakshayet sarvadaatmaana- One should protect his body which is responsi- maatma sarvasya bhaajariam. ble for everything. He who protects himself by all Rakshane yatnamaatishthejee efforts, will see many auspicious occasions in life. vanbhaadraani pashyati. 20. Sharirarakshanopaayaah kri- The wise always undertake the protective meas- yante sarvadaabudhaiah Necchanti ures for the body. Even the person suffering from cha punastyaagamapi kushthaadi- leprosy and other diseases do not wish to get rid roginah. of the body. 22. Aatmaiva yadi naatmaanama- If one does not prevent what is unpleasant to chitebhyo nivaarayet Konsyo himself, who else will do it? Therefore one should hitakarastasmaadaatnaabnam do what is good to himself. taarayishyati

22. In view of the above discussion, it is not possible for us to accept the petitioners' contention that voluntary termination of one's life is not suicide as understood in ordinary English language in the absence of any specific definition in the I.P.C. If that be so voluntary termination of one's life for whatever reason,

assuming that it is by persons like the petitioners, who say they are successful in life, and had led a contented life, and claim that their mission in life is ended, would nevertheless amount to suicide within the meaning of Sections 306 and 309 of the I.P.C. In our view, no distinction can be made between suicide committed by a person who is either frustrated, or defeated, in life. The question as to whether suicide was committed impulsively or whether it was committed after prolonged deliberation, is, in our view, wholly irrelevant. Similarly, the decision taken by persons like the petitioners to voluntarily put an end to one's life on the footing that one has led a successful life, and the mission of his life was completed, would, in our view, amount to suicide.

23. What the petitioners, have overlooked is the possible loss to the society, when a person who is otherwise bodily and mentally healthy, wants to exercise his right to voluntarily put an end to his life. It may be that his family members or the society at large may stand to gain by his rich experience in life. The possibility of misuse, or abuse, of such a right and exploitation on that count, cannot be ruled out. That apart. In the absence of any legislation in that behalf, and having regard to the discussion in *Smt. Gian Kaur Vs. State of Punjab*, in our view, no distinction can be made between suicide as ordinarily understood, and the right to voluntarily put to an end to one's life, as distinguished by the petitioners. In our view, in either case, it would amount to suicide and thus attract the provisions of Sections 306 and 309 of the I.P.C. depending upon the facts of each case. If that be the true legal position, none of the reliefs prayed for by the petitioners can be granted.

24. Accordingly both the original petitions are disposed of.