
(2001) 06 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No. 609 of 1993

Ch. Hymavathi

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 07-06-2001

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302

Citation : (2001) 4 ALD 210

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. G. Vidyasagar, for the Appellant; Government Pleader for Home, for the Respondent

Judgement

1. The petitioner Smt. Ch. Hymavathi widow of late Cft. Venkateswara Rao, a resident of Malluru Village of Konavaram Mandal, Khammam District filed this writ petition to issue a direction to the respondent to pay suitable monetary compensation and also to provide employment to the petitioner in any of the Government Department/agencies in the interest of justice and equity and to pass such other orders which are deemed fit and proper in the circumstances of the case.

2. The facts of the case, in nutshell, are that the petitioner was married to Sri Venkateswara Rao (hereinafter referred as "the deceased") when she was of 19 years without disclosing that he as a epileptic patient, that both of them led normal life and whenever there used to be a epileptic attack, the deceased was given local treatment administering home made medicines as per the customs prevailing in that area, that he was also given burn treatment with turmeric root. While so, on 12-11-1989, the deceased had fits and his father administered Mader root (Jilledu veru) juice with an intention to awake the deceased from the attack, but the deceased vomitted and died sometime later even before any doctor could be consulted. It is further stated that the petitioner was innocent

and she was no way responsible for administering Mader root (Jilledu veru) juice. On report, the Sub-Inspector of Police, Kunavaram, registered a case in Crime No.33 of 1989, investigated into by the Inspector of Police, Bhadrachalam, held inquest over the corpse in the presence of panch witnesses, recorded the statement of father of the deceased and others and also seized vomitted contents in pots and also 3 pieces of bark, marked as MOs.1 to 3 and were sent for chemical examination. The death of the deceased was given wide publicity in Eenadu, a Telugu daily, that the petitioner was responsible for the death of her husband and the mischievous story of the father of the deceased that "musti chekka" poison was administered by the petitioner was also carried, on the fear that he would be involved in the case. The petitioner was arrested by the police and was kept in lockup for five days and was released on bail subsequently. But her parents did not accept her on the ground that she was castigated by the society as murderer, and during that period she got pregnant due to the cruel role played by the society. When she was carrying three months pregnancy, she was re-arrested by the police on 19-11-1989 and remanded to Central Prison, Warangal, and though she intended to terminate her pregnancy, the Executive Magistrate, Kunavaram refused to grant permission for termination of pregnancy and she gave birth to a female child "Swaprui".

3. Meanwhile, the respondents got chemical analysis report from the Director of Forensic Laboratory, Hyderabad which revealed that the deceased died due to Mader (Jilledu) a vegetable poison and as per the statement of LWs.1 and 2 examined by police u/s 161 Cr.PC the deceased was administered Jilledu root by the complainant-father of the deceased, who died during pendency of the criminal case. The petitioner, therefore, submits that the chemical analysis report, post-mortem report and the statements recorded u/s 161 Cr.PC of the complainant evidently proves that the petitioner is innocent. It is further submitted that the Investigating Officer has failed to take into consideration the above facts and foisted a case against the petitioner and due to his negligent and perfunctory investigation, the life of the petitioner was ruined and she was put to humiliation in the society and fell prey to the evils of the society. It is further stated that the Investigating Officer does not know the botanical and generic names of the plants containing varieties of the poisons, that the State Government and the Head of the Police Department were also equally responsible for the agony caused to the petitioner inasmuch as they failed to supply the details of list of poisons referred to by ordinary names, botanical names and generic names thereby the Investigating Officers are handicapped in investigating the case. It is further stated that the plant Jallidu is called Mader in its botanical name and its generic name is "Calotropis Gigantea" which is a vegetable poison, whereas Musti chekka is known as "strychnos Nux Vomica" in its botanical name which is a spinal poison. Thus there is a difference between Jilledu vegetable poison and Musti Chekka spinal poison. It is further submitted that the clinical analysis results establish the presence of "Mader" vegetable poison. Therefore, it is clear from the above that the father of the deceased has

administered Mader poison and the petitioner did not give Musti Chekka. Therefore, the petitioner was falsely implicated in the crime and for the action of the servants, the Government is liable to compensation to the petitioner for the mental agony and sufferance undergone by the petitioner. It is further submitted that the petitioner, who was accused in SC No. 59 of 1991 before the Additional Sessions Judge, Khammam, for the said offence was found not guilty and acquitted of the offence u/s 302 IPC on 8-1-1992.

4. In reply to the above stated facts, the Superintendent of Police, Khammam, filed counter-affidavit denying the allegations made in the writ petition. The marriage of the petitioner with the deceased is admitted but it is denied that both of them lead normal life. It is also denied that the deceased died after his father administered Mader root juice to him, but infact, it is stated that the petitioner gave Musti Chekka poison to the deceased and after drinking the same the deceased vomitted and fell unconscious and then only his father administered Mader root juice to him. The respondents also denied that the petitioner was arrested and kept in lockup for five days, but she was arrested in execution of non-bailable warrant on 19-11-1989 and immediately remanded to judicial custody. It is further stated that the police have seized vomiting contents of the deceased and also some pieces of Mader root at the scene of offence and sent the same for chemical examination. It is further submitted that the prosecution has not examined the Chemical Examiner properly and failed to extract from him as to the dosage of Mader root juice and its effect and its effect on an unconscious man, the effect of Musti Chekka and the duration of death after administering poison. It is stated that the petitioner was disliking the deceased and she left the deceased number of times and this fact is known to the villagers, petitioner and her parents. It is stated that the petitioner is a fickle minded character and wanted to get rid of the marital tie up with the deceased, as such she collected Musti Chekka and gave it to the deceased while he was taking food and killed him and after his death she voluntarily left her in-law's place and enjoyed her life with some one and got pregnancy. It is also stated that as her parents knew about her character, they did not allow her in their house. It is emphatically stated that the Investigating Officer clearly mentioned in the charge-sheet that the deceased died due to poisoning of Musti Chekka and it clearly shows that he acted in good faith and booked the culprit as per law. It is further submitted that at the time of administering the Mader root juice by the father of the deceased, the deceased was almost dead and was in an unconscious state and, therefore, neither the Police Department nor the Police Officers are responsible for the mistakes committed by the Chemical Examiner. Ultimately, requested to dismiss the writ petition.

5. On the basis of the above pleadings, the learned Counsel for the petitioner submitted that the petitioner did not administer Musti Chekka on the fateful day, the father of the deceased gave Mader, but the police have unnecessarily foisted a false case against the petitioner alleging that the petitioner has administered Musti Chekka spinal poison and to save the life of the deceased, his father gave

Mader root juice, and she was made to suffer for her. Thus she was implicated in the criminal case and made to suffer the curses of the society, during which period she became pregnant, and begot a female baby and due to the social stigma, her parents did not accept her and the society castigated her. He also contended that the alleged action of the respondent is contrary to the statements recorded u/s 161 of the Code of Criminal Procedure and the Chemical Examiner's Report and, therefore, for the ignorance of the Investigating Officer with regard to the difference between Musti Chekka and Mader poison and for the unlawful acts of its servants, the Government is liable to compensate the petitioner.

6. On the other hand, learned Government Pleader for Home submitted that the petitioner is not an innocent lady as focussed by her Counsel. He vehemently contended that when the petitioner came to know that her husband is epileptic patient, she wanted to get rid of him and in execution of settled plan, she administered Musti Chekka and the Investigation Officer has correctly charged the petitioner for the offence u/s 302 of Indian Penal Code. He further contended that mere acquittal in the criminal case does not entitle the petitioner to claim compensation from the Government.

7. To appreciate the rival contentions of the both the Counsel, I have gone through the report of the Forensic Science Laboratory, Hyderabad. The Executive Magistrate, Kunavaram, sent a bottle containing stomach and pieces of intestine alongwith food particles, a bottle containing pieces of liver and kidney and another bottle containing pieces of lungs and heart, all in brownish turbid liquid, and another bottle containing turbid liquid, and upon analysis, the Chemical Examiner found that the articles seized from the place of offence i.e., MOs.1 to 3 disclose that Mader vegetable poison was found in item No.1 and 3, but not in item No.2 viz., earthen pot containing earth, etc.

8. I have also gone through the judgment of the learned Additional Sessions Judge, Khammatn in SC No.59 of 1991 dated 8-1-1992 under which the petitioner was tried for the offence u/s 302 IPC for committing murder of the deceased. The learned Additional Sessions Judge, after recording evidence and on scrutiny found that petitioner not guilty and acquitted her of the charge.

9. In all the learned Judge examined 8 witnesses on behalf of prosecution and marked Exs.P1 to P7. On behalf of the petitioner-accused none were examined but Exs.D1 and D2 were marked. PW1 is the mother of the deceased and PW2 is the child witness - daughter of PW1. PW3 the landlord of the deceased stated that the deceased stayed in her house and the deceased told her that whenever he visited his in-laws house, they used to neck him out and take away the money. PW4 is the inquestdar while PW5 is the Medical Officer and PW6 is the Scientific Assistant, Forensic Science Laboratory, Hyderabad. PW7 is the Sub-Inspector of Police.

10. The petitioner denied all the incriminating material found against her in the

evidence of prosecution witnesses and stated that her husband was epileptic patient and he used to get fits and on the fateful day when her husband got hiccups, her father-in-law gave burnings at many places with iron rod and also administered Mader root with an intention to get over the epileptic attack and the deceased got vomitted and died. She further stated that a false publicity was given accusing her that she has killed her husband by administering Musti Chekka poison, that on the next day she was arrested and kept in lockup for five days and by spending amount, she was released by her father and she went back to her parents house and since her parents also neglected her on account of catigation by the society as a murderer of her husband, the society played its cruel role and she became pregnant and when she got permission for termination of the pregnancy, it was refused and she gave birth to a female child Swapna while she was lodged in Central Prison.

11. As per the charge-sheet, the petitioner gave some water in a tumbler and the water was mixed with power of Musti Chekka, consuming which the deceased had hick-ups and thereby got vomittings and became unconscious, and his father gave Mader root juice inasmuch the deceased was epileptic since childhood and ultimately he met his Maker. Father of the deceased gave report to the police on 10-5-1989 stating that the deceased was married to the petitioner and that the deceased was put to lot of insults and hardship by his in-laws and on the fateful night, the petitioner served food to her husband and that she administered some poison in it and Ex.P5, FIR came to be registered. The Investigating Officer recorded the statement of the witnesses. At the time of trial, direct witness PW1 mother of the deceased, state that the marital life of his son with the petitioner was not happy and there used to be squabbles between the couple. She gave several versions against the parents of the petitioner herein. PW2 is daughter of PW1. She stated that in the morning of the fateful day, the petitioner took her to the forest area where she picked up Musti Chekka pieces and when she enquired, the petitioner told her that it will be used for curing lacerations to the feet and that the petitioner grinded the pieces and preserved it in a glass keeping it in her box. PWs.1 and 2 are the direct witnesses. There is medical evidence of the Doctor who conducted post-mortem examination and issued post-mortem report, Ex.P2. He stated that the cause of death was due to Mader poison. According to him, there was undigested food in the stomach and as there was un-digested food, it can be presumed that the death occurred immediately after taking the food. The evidence of PW6, Scientific Assistant of Chemical Laboratory shows that the contents of the stomach which were preserved, contained Mader a vegetable poison and the pieces of liver, kidney, lung and heart sent for analysis were also found to have contained Mader a vegetable poison, on analysis.

12. As can be seen from the judgment, the Inspector of Police who conducted investigation was not examined, but the Inspector who filed charge-sheet was examined as PW8. What all he stated is that he has verified the investigation one by his predecessor and on receipt of postmortem report, he charge-sheeted the petitioner. During the course of cross-examination, PW8 was asked whether he

knows that Jilledu Plant is also called as Mader, for which he expressed his ignorance and that, therefore, he has wrongly charge-sheet the petitioner when he does not know that Jilledu plant and Mader are one and same, to which PW8 has replied that his predecessor investigation is that the Musti Chekka poison was administered by the petitioner to her husband and on that basis investigation proceeded and basing on the Chemical Examiner's report, he filed the charge-sheet. PW8 further stated that as per the statement of PWs.1 and 2, the petitioner secured Musti Chekka which is a poison and gave it to the deceased. PW8 further admitted that PW1 mother of the deceased, in her statement stated that her husband i.e., the father of the deceased by grinding Jilledu root had administered to the deceased. PW8 admitted that he has no knowledge the Musti Chekka is called as Nux Vomica which is a spinal poison.

13. It is observed by the learned trial Judge that nothing was recovered from the possession of the petitioner, though she was present at the house of the deceased, muchless the paper packet sent by the Investigating Officer for analysis. The Inspector expressed his ignorance that he is not aware that Jilledu is otherwise called as Mader plant and therefore, the prosecution has proceeded under the, presumption that the accused has administered the Musti Chekka poison and even in the inquest report the inquestdar could not conclude what was the motive on the part of the petitioner to administer the poison to her husband.

14. The learned Additional Sessions Judge, on appraisal of both the oral and documentary evidence came to the conclusion that the petitioner is not guilty of the offence and acquitted her. While acquitting the petitioner, the learned Judge observed that it is not possible to infer, what was the intention of the deceased's father towards the petitioner. But he had no other option but to give a report to the police as to the death of his son and when the prosecution case itself shows that the death was due to Mader poison and the same was administered by the deceased's father, the petitioner cannot be made liable for the charge framed against her. The learned Judge further observed that it is really unfortunate that the accused had to face the trial and face with the ordeals as pointed by her Counsel and the Investigating Officer ought to have referred the case when there was no substantive evidence against her and when the evidence of the Chemical Examiner is to the effect that the death was due to Mader poison which was administered by the father of the deceased, in order to save the life of his son. It is also observed that there is no provisions to order for damages for the damages while acquitting the accused for the charge u/s 302 IPC and if the prosecution is malicious or wrongful, the petitioner is at liberty to seek redressal in the appropriate forum and the Government may consider to compensate the accused for the hardships faced by her. Thus, when the learned Judge, though satisfied that lot of injustice has been done to the petitioner, could not grant compensation for the reason that there is no provision in the Criminal law. However, he suggested the petitioner to approach the appropriate Forum to seek the redressal of her grievance.

15. After going through the entire material on record, I am immensely satisfied that as per the statement made by the Inspector of Police - PW8, he does not know the difference between Mader and Musti Chekka, that according to the statement of PW1 Mader root juice was administered by the father of the deceased, that though the charge-sheet was filed after obtaining chemical analysis report from the Forensic Science Laboratory, Hyderabad, which clearly reveals that the pieces of liver, kidney, lungs and heart contained Mader poison, therefore, he should not have charge-sheeted the petitioner on the ground that the petitioner has administered Musti Chekka, a spinal poison. Evidently, on the basis of statement of PW1 - father of the deceased alone and ignoring the fact that Mader poison was found during chemical analysis of viscera, which was admittedly administered by the father of the deceased only, the prosecution has charge-sheeted the petitioner falsely and made her to suffer and bear the curses of the society, whereas the allegation of the prosecution is that the deceased died due to Musti Chekka poison. Thus for the negligent act of the Investigating Officer - Government Servant, which culminated into untold sufferings and misery to the petitioner, the State is liable to compensate the petitioner. The Supreme Court in a decision *Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, has ruled that if the employees charged with the discharge of public duties commits an act of tort, the State Government of which they are the employees, can subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees. In the present case, as held by the learned Additional Sessions Judge, the petitioner had to face trial and ordeals as pointed out by her Counsel and the Investigating Officer ought to have referred the case when there was no substantive evidence against her and when the evidence of the Chemical Examiner is to the effect that the death was due to Mader poison, which was administered by the father of the deceased. In view of the above, it cannot be held that the impugned action of the respondents in charge-sheeting the petitioner is bona fide in discharge of their duties. Thus due to the wrong prosecution, the respondents have made the petitioner to suffer untold misery in her life. As stated earlier, the society has criticised her and her parents did not accept her. That apart, she was made to under ordeals by the society and deliver a female child. All the above acts have contributed not to leads respectable life in the society as guaranteed under Article 21 of the Constitution of India. Therefore, the Apex Court in *Chandrima Das's* case, considered the awarding of compensation, under public law dominion, in the cases relating to custodial deaths and those relating to medical negligence, and rejected the contention that the victim should have approached the civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution. It further held that where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law.

16. In the instant case, it is not a mere matter of violation of civil right of the petitioner but it is violation of fundamental right which is involved. The petitioner was victim of wrongful prosecution due to the ignorance/negligence of the respondents, even though the forensic analysis report was available before charge-sheeting the petitioner. Therefore, the respondents should be held liable for payment of compensation to the petitioner. At the cost of repetition, this Court, in proceedings under Article 226 of the Constitution of India, is empowered to grant such compensation.

17. Having regard to the facts and circumstances of the case and for the foregoing discussion, I am satisfied that, granting of a monetary relief to the extent of Rs.1-00 lakh would meet the ends of justice. Therefore, the respondents are directed to deposit a sum of Rs.1-00 lakh in favour of the petitioner. The sum shall be apportioned @ Rs.75,000/- in favour of the petitioner herein and she is permitted to withdraw the same. The remaining award amount of Rs.25,000/- shall be invested in the name of the minor Baby Swapna till she attains majority and the petitioner herein, being guardian, is permitted to withdraw the interest accrued thereon every quarter.

18. I am not inclined to direct the respondents to provide employment to the petitioner, among other reasons, she is overaged now,

19. The writ petition is partly allowed. No order as to costs.