

(2011) 09 MAD CK 0309

In the Madras High Court

Case No : Writ Petition No's. 17327 of 2011 and M.P. No's. 1,2,1 and 2 of 2011

D. Kannagi

APPELLANT

Vs

The National Human Rights Commission, The State Human Rights Commission, Tamil Nadu and The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Madras Prohibition Act, 1937 — Section 4(1)

Citation : (2011) 09 MAD CK 0309

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Mr. G. Jeremiah, for the Appellant; Mr. R. Sreenivas for RR1 and 2 and Mr. R.M. Muthukumar for RR3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K.Chandru

1. Both the Petitioners have come forward to challenge an order dated 17.6.2011 issued by the Superintendent of Police, Kanchipuram District and after setting aside the same seeks for a further direction to the fourth Respondent to furnish copies of documents as requested in their representation dated 13.7.2011.

2. It is seen from the records that the first writ Petitioner was working as a Woman Sub Inspector and the second writ Petitioner was the Head Constable attached to Chunambedu police station. They had registered a case against one Nagalingam in Crime No. 79 of 2008. He was produced before the Judicial Magistrate at Madurandakam. The learned Magistrate had remanded the said accused Nagalingam for judicial custody. He was kept in Puzhal Central Prison. The offence alleged against the said Nagalingam was u/s 4(1)(i) and 4(1-A) of the Tamil Nadu Prohibition Act. Though he was arrested on 12.2.2008 (Tuesday at about 6.00 a.m. in the morning), it was alleged by his wife Vennila that she went to the police station around 10.00 a.m. and met her husband. She was

prevented from speaking to her husband and she was also beaten by the policemen in the station. She did not know where her husband was taken. After she being informed, she also went to the Madurandakam Sub jail and did not find her husband. Thereafter, through her Advocate, she came to know that he was taken to Puzhal Central Prison. She was not given reason for his arrest. When she actually interviewed her husband on 14.2.2008, her husband could not speak to her properly and that he had informed her that he was tortured and only if she pays Rs. 500/- he will be let off. He told her that he should be taken out of jail immediately and his body was paining and both hands and legs are shivering.

3. But, however, on the very next day i.e., on 15.2.2008, she was informed by the prison authorities that he got injured in the prison and was given first aid in the hospital. On recommendation of the jail Doctor, he was taken to the Government Royapettah Hospital escorted by two constables. The Doctor had recorded that the said Nagalingam was brought dead to the hospital. The fact of death was intimated to her through telegram by the jail authorities. The death of the said Nagalingam was enquired by the P.A. (General) to the District Collector, Chennai-cum-Sub Divisional Magistrate under the Police Standing Order 151. The initial report, dated 15.2.2008 was sent by the then Sub Divisional Magistrate to the District Collector. But, however since the family members of the late Nagalingam including his wife and brother and panchayatdars have informed about the torture meted out by the Nagalingam before his admission to the Central Prison, a detailed enquiry was ordered by the District Magistrate-cum-District Collector vide an order dated 21.2.2008. Thereafter, an enquiry was held by the Sub Divisional Magistrate. He had recorded the statements of various persons. On 18.2.2008, he had requested for a detailed enquiry under 151 PSO. The said report was forwarded by the District Magistrate, Chennai-cum-District Collector to the State Government on 21.2.2008. The District Collector had informed the Government that he will get the final report from the Enquiry officer after holding an enquiry under 151 PSO.

4. Subsequently, after conducting a detailed enquiry, the Sub Divisional Magistrate by his report dated 31.1.2009 found that the said Nagalingam was tortured even before admission to the Central Prison and a third degree method was adopted against him. It was stated that a departmental action as well as criminal action should be taken against the Inspector of Police Thirumani, the Sub Inspector of Police Kannagi (petitioner in the first writ petition), the Head Constable Radhakrishnan (petitioner in the second writ petition) and an another Head Constable Athmalingam. Even when the said accused was admitted to the Central Prison, it was recorded that there was no visible mark on the body of the accused and such a false entry was made through jail officials and that an action was also recommended against the jail authorities who were responsible for making false entry and hiding the injury found in the body of the accused. The said report was sent to the District Collector, Chennai. As per the existing rules, a copy was also forwarded to the National Human Rights Commission (NHRC).

5. In the meanwhile, the Government had issued G.O. Ms. No. 113, Public Law and Order, dated 28.1.2011 ordering the Director General of Police to take disciplinary action against the police officials incharge of the station and also criminal action against them. An action was also directed to be taken against the medical officers of Puzhal Central Prison. The NHRC, the first Respondent herein, on receipt of the intimation from the Sub Divisional Magistrate had registered it as a complaint and had issued notice to the Chief Secretary to the Government of Tamil Nadu by its notice dated 16.12.2010. The Chief Secretary was directed to show cause on the report. A reply was sent by the Additional Secretary to the Government, Public Law and Order on 13.1.2011. In that the State Government had informed that they had sanctioned Rs. 1 lakh to be paid as compensation towards the death of remand prisoner Nagalingam as a special case. But the NHRC on considering the reply had found that the deceased was 42 years old and he had sustained injuries during his custody. Therefore, it had recommended compensation of Rs. 3 lakhs to be paid as monetary relief. The Government was directed to pay the said amount to the next kin of the deceased and also to inform the Commission for further consideration. It is only after the Commission's notice, dated 9.2.2011, which was received by the State Government on 3.3.2011, the issue which was kept in dormant got activated. The State Government which originally issued G.O. Ms. No. 220, Public Law and Order, dated 4.3.2011 granting Rs. 1 lakhs, had increased the compensation as per the direction by granting another Rs. 2 lakhs by G.O. Ms. No. 436, Public Law and Order, dated 23.5.2011.

6. Pursuant to the Government order issued, the Inspector General of Police, Establishment wrote to the Superintendent of Police to take an action against the Petitioners as well as one V. Athmalingam and also to recover the proportionate amount from all the six persons including two Petitioners as well as Ramasubramanian, former Inspector of Police and presently Deputy Superintendent of Police, K. Thirumani, Sub Inspector, V. Athmalingam, Sub Inspector of Police and Periasamy, Police Constable by D.O. letter dated 8.6.2011. Pursuant to the report received under PSO 151, the Director General of Police called for service particulars of all the six policemen for further action. It is pursuant to these proceedings, a show cause notice was issued by the Superintendent of Police on 17.6.2011 asking the Petitioners as to why Rs. 50000/- should not be recovered from each of the persons involved, thereby compensating the State for Rs. 3 lakhs which was paid by the State pursuant to the directions issued by the NHRC. It is this show cause notice which is the subject matter of challenge in the present writ petition.

7. The Petitioners have also sent a reply to the show cause notice stating that they were not responsible for the injury suffered by the said Nagalingam. They were not examined in PSO 151 enquiry. The entire incident was fabricated. In the meanwhile, the District Collector incharge-cum-D.R.O., Chennai informed the Director of Prosecution that a criminal action should be taken against those six persons. But the Superintendent of Police has sent a letter stating that one

Athmalingam, the Sub inspector of Police is to retire from service on 30.09.2011. Therefore, necessary instruction was directed to be given to the Additional Public Prosecutor for lodging complaint. It is at this stage the Petitioners have moved this Court challenging the impugned recovery notice.

8. This Court is not inclined to entertain the writ petitions at the stage of show cause notice. The Petitioners have already made some preliminary reply and also sent a communication to the first Respondent NHRC as well as to the State Human Rights Commission, seeking for certain details of their proceedings. The contention raised by the Petitioners was that the order was passed without providing any opportunity. Under the Protection of the Human Rights Act, 1993, a reasonable opportunity should be given to the Petitioners. They were not directed to participate in the proceedings and no direction of the Human Rights Commission is binding. The accused himself never made any complaint before the learned Magistrate. The statutory enquiry conducted by the Sub Divisional Magistrate did not satisfy the minimum principles of natural justice.

9. When the matter came up for admission on 25.7.2011, this Court directed the learned Government Advocate to get instructions from the Respondents. Accordingly the original files relating to the action initiated against the Petitioners have been produced and the above facts were culled out from the said proceedings. Mr. R. Sreenivas, Learned Counsel appearing for the NHRC and SHRC also produced a copy of the NHRC proceedings issued against the State Government.

10. This Court is not inclined to interfere with the show cause notice for recovery of the amount from the Petitioners. The State Government on the basis of the enquiry conducted under PSO 151 gave Rs. 1 lakh as compensation to the family of the deceased Nagalingam. Subsequently, the NHRC did not agree with the State government and had directed the State to pay another Rs. 2 lakhs as compensation. Since the State had suffered loss to an extent of Rs. 3 lakhs for the misconduct committed by the Petitioners and the other policemen, they are bound to compensate the State towards the loss. The Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules provides to recover the amount towards loss suffered by the State.

11. In the present case, it is not as if the State Government was activated by the NHRC. But the action was taken on the basis of the report sent by the Sub Divisional Magistrate holding the Petitioners prima facie guilty and recommended both departmental as well as criminal action. Therefore, the Petitioners cannot derail those actions. Even if any recovery is made, it is only the step towards recuperating the loss suffered by the State. Ultimately, if the Petitioners succeed both in the criminal case as well as departmental action, the amount can be refunded by the State. Even if the Petitioners are aggrieved, they are at liberty to move the NHRC for varying its order and they need not wait for any notice from the NHRC as they are now aware of the proceedings of the NHRC. The conduct of the policemen in treating an under trial and applying a third degree method

against him cannot be condoned.

12. As to how an under trial should be treated came to be considered by the Supreme Court. The Supreme Court had given several guidelines known as 11 Commandments in D.K. Basu Vs. State of West Bengal, . In paragraphs 44, 45 and 54 it had observed as follows:

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.

54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the

wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

13. The Supreme Court in *Central Bureau of Investigation Vs. Kishore Singh and Others*, raised a question in paragraph 1, which is as follows:

What should be done to policemen who "bobbitt" a person in a police station and think that they can get away with it? That is the question to be decided in this case.

14. In the very same judgment, in paragraph 19, it had observed as follows:

19. Also all the accused are guilty of totally flouting and throwing to the winds the directives of this Court in *D.K. Basu Vs. State of West Bengal*, (vide paragraph 35). That decision outlaws third degree methods in police stations, but it is well known that third degree methods are still widely used in many of our police stations, as this case reveals.

15. Thereafter, in paragraph 24, the Supreme Court held as follows:

24. In our opinion, policemen who commit criminal acts deserve harsher punishment than other persons who commit such acts, because it is the duty of the policemen to protect the people, and not break the law themselves. If the protector becomes the predator civilized society will cease to exist. As the Bible says "If the salt has lost its flavour, wherewith shall it be salted? (Matthew 5, Mark 9.50 and Luke 14.34-35)", or as the ancient Romans used to say "Who will guard the praetorian guards?"

16. This court while considering a similar circumstance where the salaries

recovered on the basis of the NHRC's directions, has held that such compensation is only an interim compensation and such policemen are bound to honour such an interim order and ultimately, if they succeed they can get back the amount from the State vide its judgment in *A. Sundaram and two others v.*

NHRC, New Delhi and three others reported in 2010 (1) TLNJ 364 (CrI).

17. The recoveries made from the salaries of the Petitioners shall continue as per the impugned order. However, the findings rendered herein will not prejudice the Petitioners in their departmental action. This will also not prevent the Petitioners from moving the NHRC either for reopening the case before the NHRC or varying for the earlier direction given to the State Government.

18. In the light of the above, there is no case made out. Accordingly, both writ petitions will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.