

(1999) 04 MAD CK 0127

In the Madras High Court

Case No : Writ Petition No. 1966 of 1992

D. Ranganayagi and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 342, 352

Citation : (2000) 1 LW(Cri) 96

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : P. Rathinam, for the Appellant; S. Vadivel, Government Advocate, for the Respondent

Judgement

P.D. Dinakaran, J.—Dr. Justice A.S. Anand as he then was, in his lecture on Victims of Crime - The Unseen Side"" which is reported in Journal Section of (1998) 1 SCC 3 has observed as follows:

Every crime has a victim and ignoring him and not making any attempt to provide him solace or restitution, would be a challenge to protection of his human rights also.

A victim of crime or his heirs after suffering at the hands of the offender have the choice to either move a court of law or go to the police station to seek redressal of the grievance. For him, unfortunately neither of the two is an attractive proposition. If he is hesitant to approach the police station for the reasons which are by no means unknown, his reluctance to approach the Court is also not without reason.

2. In the instant case, admittedly, one Durairaj the husband of the first petitioner and the father of petitioners 2 to 5 died on 11-6-1981 when he was under police custody at Budalur Police Station at Tanjore. Even though the death of Durairaj was explained as suicide the Revenue Divisional Officer, Tanjore, in his report dated 23.1.1981 submitted to the second respondent the District Collector

concluded that the said Durairaj should have been done to death and all the five police personnel who were on duty at that time were responsible for the offence. Pursuant to the above report dated 23.1.1981, the Government passed G.O. Ms. No. 1215 dated 29.7.1982 directed the Collector to launch a prosecution. Accordingly, a case has been registered against the police personnel in Sessions Case No. 42 of 1983 on the file of the learned Sessions Judge, West Thanjavur Division; the accused were acquitted of the offences punishable under Sections 342, 352 and 302 read with 34 of the Indian Penal Code, but on appeal by the State in Criminal Appeal No. 82 of 1985 before this Court, the police Personnel were convicted for the offence punishable u/s 342 of the Indian Penal Code by an order dated 11.5.1991. Therefore, the fact remains that the said Durairaj died when he was in police custody.

3. Hence, the petitioners seek a writ of mandamus to direct the first respondent to pay a just and reasonable amount of compensation for causing the death of Durairaj, who was the only bread winner of his family at the time of his death.

4. Mr. P. Rathinam, learned counsel for the petitioner invited my attention to the decisions of this Court in (i) *Baggiam Doraiswamy v. State of Tamil Nadu*, rep. by its Secretary, Public Dept (Law & Order), Madras-9 reported in 1994 2 L.W. (Cri) 687, (ii) *Madras High Court Advocates Association rep, by its Secretary v. State of Tamil Nadu*, rep. by its Secretary to Govt, Home Department, Madras and three others (1995 2 L.W.(Cri.) 112): and (iii) *M. Boopal v. State of Tamil Nadu*, rep. by Secretary to Government, Home Department, Madras and others (by order dated 5.11.1998 made in CrI. O.P. No. 17974 of 1997) and claims that the petitioners are entitled for a sum of Rs. 5.00,000/- by way of compensation for the custodial death of Dorairaj in as much as there is no dispute that the said Dorairaj died when he was in the custody of police and that he was the sole bread winner of his family at the time of his death.

5. Mr. S. Vadivel. learned Government Advocate, even though could not dispute the fact that the police personnel were ultimately convicted by this Court for the offences punishable u/s 342 of I.P.C. by order dated 11.5.1991 in CrI. Appeal No. 82 of 1985 and that the said Dorairaj died when he was in police custody, placing reliance on this counter affidavit filed by the respondents contends that since the police personnel were not convicted either for the offence under Sec. 302 I.P.C. or under S. 306 I.P.C. the mere conviction for the offence under Sec. 342 I.P.C. for wrongful confinement by itself would not be sufficient to award the compensation against the respondent State and that the said Dorairaj was. in any event, at the time of his death, was working as an agricultural coolie and earning a sum of Rs. 400/- per month. Even assuming that the petitioners are entitled for compensation, the same could be ordered only as per G.O. Ms. No. 153 Public (Law & Order B) Department, dated 31.1.1998 and G.O. Ms. No. 833. Public (Law & Order B) Department, dated 22.5.1998. wherein the Government had formulated certain guidelines for providing financial assistance to the victim of the circumstances stated therein.

6. I have given my careful consideration to the submissions of both the sides.

7. The substantial issues that arise for my consideration are:

I. Whether the petitioners are entitled to seek the compensation, warranting this Court to issue a Writ as prayed for?

II. To what extent the petitioners are entitled to be compensated?

8. Issue No. I:

Whether the petitioners are entitled to seek the compensation, warranting this Court to issue a writ as prayed for?

We have solemnly resolved to secure Justice. Liberty, Equality and Fraternity to all of us in terms of Human Right a right to life with dignity in spirit and substance. Each pillar of our Democracy, viz. the Legislature, the Executive and the Judiciary are chain linked with Justice. Liberty, Equality and Fraternity; An excess by any one of the powers that negatively affect the ultimate object of our pledge would certainly enable the others maintain equilibrium. In the instant case, where the death of Dorairaj had happened in police custody, in my considered opinion, the petitioners are entitled to seek the relief as prayed for as their right to life with human dignity and personal liberty, fundamentally safeguarded under Article 21 of the Constitution of India. Therefore, to contend otherwise on technicalities, would render our pledge under the Constitution infructuous.

9. To hold so. I am obliged to derive strength from the decision of this Court in *Baggiam Doraiswamv v. State of Tamil Nadu*, reported in 1994 2 L.W. (Crl.) 687, wherein by following the decision of the Apex Court in *Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others*, , it was held as follows:

In view of the law settled by the Supreme Court that the decision of the Criminal Court is not binding on the Civil Court and the instant action of the petitioner seeking compensation being in lieu of common law action of a civil suit and the reasons as noticed by me above, I am inclined to hold that I shall be failing in my duty, if I do not exercise my power to decide whether the petitioner is entitled to compensation unaffected by any finding recorded by the criminal court. The action for compensation has not arisen as consequence of the conviction of the accused person. It has arisen on account of death, which, it is alleged, was caused by the police and if it is so, the State has a liability to compensate the petitioner. There is some attempt before me by the learned counsel for the State that this Court should decline to order any compensation for the reason that the petitioner has moved this Court after an inordinate delay. It is not contended, because such a contention is not available, that there is any period of limitation prescribed for a petition under Art. 226 of the Constitution of India. The Courts, however, have evolved a rule of discretion based on equitable principle that a person who has not promptly invoked the court's jurisdiction for the intended relief and allowed the respondent to alter his position, should not be granted the

relief, which will have the effect of unsettling what has already crystallized. Ordinarily, however, the courts take notice of the delay, even in the cases of enforcement of a fundamental right, at the threshold and not after the notice is issued. This rule is stated by the Supreme Court for the exercise of the power under Article 32 of the Constitution in the case of *S.S. Moghe v. Union of India* (AIR 1981 S.C.1405) in these words:

A party seeking the intervention of this Court under Article 32 of the Constitution for enforcement of his fundamental rights, should exercise due diligence and approach this Court within a reasonable time after the cause of action arises and if there has been undue delay or laches on his part, this Court has the undoubted discretion to deny him relief.

In a Full Bench judgment of the Patna High Court, of which I was a member, the rule of laches and delay is stated in these words in the case of *Jagannatha Mishra v. State* (AIR 1990 Pat 2): "Coming to the next point argued by the learned Additional Advocate General that the writ petition should be thrown put on account of laches, this too has to be rejected as the Supreme Court in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, has laid down as follows: "this rule of laches or delay is not a rigid rule which can be cast in a straight jacket formula, for there may be cases whether despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere (sic) and grant relief to the petitioner:.

In *Naraya Devi Khaitan v. State of Bihar*, C.A. No. 140 of 1964 decided by the Supreme Court on 22.9.1964 (reported in 1964 SC (noted) 259) it was laid down as to when High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches.

In *P.B. Roy Vs. Union of India (UOI)*, the Supreme Court itself had laid down that " delay in filing the petition under Article 226 may be overlooked on the ground that, after the admission of a writ petition and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is positively good.

In my view that writ petition having been admitted, and the case of the petitioner being "positively good", I accordingly overrule the second contention of the learned Additional Advocate General also.

Since the rule of laches or delay is not a rigid rule which can be cast in straight jacket formula, for, there may be cases where despite delay and creation of third party rights, the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner, no hard and fast rule can be laid down as to when High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches, it will not be wrong of the law down by the Supreme Court in the case of *P.B. Roy v. Union of India* (ATR 1972 SC 908) is applied that the delay may be overlooked on the ground that after the admission of a writ petition and hearing of arguments, the

rule that delay may defeat the rights of a party is relaxed and need not be applied if his case is positively good.

10. Of course, realising the responsibility, the Government themselves have come out with a Government Order, viz. G.O. Ms. No. 833, Public (Law & Order B) Department, dated 22.5.1998, formulating certain guidelines for providing financial relief of Rs. 1,00,000/- to the families of victims of caste/communal clashes, police torture, police firing, rape by police and permanent incapacitation. The Government, pursuant to the recommendations of the National Commission for Minorities, by G.O. Ms. No. 833, Public (Law & Order B) Department, dated 22.5.1998, enhanced the compensation to Rs. 2,00,000/-each to the families of all victims of caste/communal clashes. This Court, following the judgment of the Apex Court in Malkiat Singh v. State of U.P., reported in 1988 SCC (Cri.) 1034, by order dated 5.11.1998 made in Crl. O.P. No. 17974 of 1997 awarded a sum of Rs. 5,00,000/- as compensation to the wife of the deceased Mohan, who died while in police custody.

11. The case in hand is in no way different from the facts and circumstances of the cases of custodial deaths referred to above as admittedly it is found by this Court that the said Dorairaj died when he was in police custody. Therefore, following the ratios laid down by the Apex Court and this Court, I am obliged to direct the 1st respondent-State to pay a sum of Rs. 5,00,000/- to the petitioners herein by way of compensation for the custodial death of Dorairaj. The State shall pay this amount to the petitioner within two months from the date of receipt of copy of this order through the Tamil Nadu State Legal Aid Centre, who shall disburse the same equally among the petitioners.

12. Furthermore, I also repose confidence that the State, apart from paying the compensation as directed above, shall draw a scheme with guidelines to provide suitable employment, on compassionate ground, to any one of the eligible dependents of the deceased Dorairaj, which would be a permanent solace to the family members of the deceased Dorairaj, a victim of police excess and pass appropriate orders to that effect.

13. In the result, the writ petition is allowed, with a direction to the 1st respondent to pay a sum of Rs. 2,000/- as counsel fee to the learned counsel for the petitioner. No costs.