
(2010) 08 MAD CK 0095
In the Madras High Court
Case No : H.C.P. No. 2108 of 2009

G. Swarnalatha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 380

Citation : (2010) 08 MAD CK 0095

Hon'ble Judges : M. Sathyanaranayan, J;M. Chockalingam, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; P. Kumaresan, Public Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.—Invoking the writ jurisdiction of this Court one Mrs. Swarnalatha has brought forth this application for issuance of

Writ of Habeas Corpus alleging that her husband Arunkumar, a real estate broker was taken by the 2nd respondent into the custody for

interrogation purpose on 23.11.2009 at 2.00 p.m. but she was not informed as to the grounds of arrest and the detenu was tortured by the second

and third respondents without producing him before any Court of law and the telegraphic message sent by her on the very day to the first

respondent was of no avail and that the illegal detention, following the torture was violative of Article 21 of the Constitution of India.

2. After taking the application on file, notice was ordered to the State. The said writ application was countered by the State stating that the case

was actually registered by the Sub-Inspector of Police, Avadi Police Station on 30.03.2009 in Crime No. 242 of 2009 for the offence u/s 380

I.P.C. On 29.3.2009, a case came to be registered on a complaint given by one Usha and her husband Ramu that while they were sleeping in the house there was commission of theft of gold chain from the neck of the complainant. The investigation was taken up by one Mr. G. Sankaran, Sub-Inspector of Police,(Crime) Avadi. Subsequently, further investigation was taken up by Mr. Srinivasa Rao, Inspector of Police (Crime), Avadi, who made enquiry about the accused. On information, on 27.11.2009, the Inspector arrested one Arun @ Arunkumar and seized the stolen property from him before the witnesses under a cover of mahazar. After following the procedural formalities, the accused who is the alleged detenu in the writ application was produced before the Judicial Magistrate-II, Poonamallee on 28.11.2009. At the time of producing the accused, he acted as a lunatic and hence, he was referred to the Institute of Mental Hospital, Kilpauk, Chennai, for observation. On examination, he was, thereafter, referred to the Government Royapettah Hospital, for examination and a scan was taken. He was admitted in the Royapettah Government Hospital on 28.11.2009 night. After medical examination, he was again produced before the Mental Hospital along with the report. The Medical Officer, Kilpauk Mental Hospital, on perusal of the medical documents opined that the condition of the detenu was normal. Then, the accused was produced before the Judicial Magistrate-II, Poonamallee and after interrogation he was remanded for 15 days judicial custody. Then, the detenu was lodged in the Central Prison, Puzhal, Chennai. All the averments found in the affidavit of the petitioner are false.

3. It is also seen from the available records that the accused/detenu was produced before this Court on 07.12.2009 and this Court, on finding that the police acted in excess and the atrocity caused to the detenu, directed the Principal Sessions Judge, Tiruvallur, to enquire into the matter and file a report, but at the same time, ordered that the detenu Arunkumar should be set at liberty.

4. Pending enquiry, the Principal Sessions Judge, Tiruvallur, has made a requisition to this Court that he should be relieved since he was put in embarrassing situation while conducting the enquiry. Under such circumstances, the Court thought it fit to change the Enquiry officer and appointed the Principal Sessions Judge, City Civil Court, Chennai to continue the enquiry and examine further witnesses.

5. The Enquiry report is also perused which would indicate that 17 witnesses were examined and several documents like registers, case diaries, medical records and other records were also placed for scrutiny and the written statement put forth by all sides were also perused. When the learned Principal Sessions Judge filed a report and when the same was placed before the Court, on 13.7.2010, this Court, recording the finding that the detenu was actually kept under illegal custody and also he was actually implicated in Crime No. 242 of 2009, gave opportunity by the 3rd and 4th respondents to raise objection to the enquiry report on the request made by them. The copies of the statement of witnesses were ordered to be furnished to the respondents and the same were also served. After doing so, now the matter was taken up for enquiry this day.

6. Advancing the arguments on behalf of the petitioner, Mr. Sankara Subbu learned Counsel for the petitioner would submit that it is specifically averred in the application that the detenu was taken by the second and third respondents and he was kept under illegal custody from 23.11.2009 to 28.11.2009 and during that time, he was tortured. In order to substantiate the averments, elaborate enquiry was conducted by the Principal Sessions Judge as per the direction of this Court and a report was also received. On perusal of the same, it would indicate that the detenu was kept under illegal between 23.11.2009 and 28.11.2009 and he was tortured. Under such circumstances, he is entitled for compensation from the State.

7. Added further learned Counsel, it was an admitted position that the gold jewels were received from the detenu which has got to be termed as robbery but under the guise of pendency of the criminal case registered against him, the detenu was tortured. Therefore, criminal action has to be initiated against the officials and suitable orders have to be passed.

8. In answer to the above contentions, it is contended by the learned Public Prosecutor, in the instant case, there is no involvement of either the second respondent or the third respondent. The case was actually registered by one Sankaran, Sub Inspector of Police, Avadi, pursuant to the complaint given by one Usha and her husband Ramu stating that her gold chain was stolen from her neck and the case was registered on 30.3.2009 and one Srinivasa Rao, Inspector of Police, (Crime) Avadi, took up

investigation and pending investigation, the gold chain was seized from the alleged detenu and he was remanded. The arrest was legal and insofar as the seizure was concerned, it was the subject matter of the case of theft and the detenu was produced before the Court. Under such circumstances, the alleged involvement of the second and third respondents was not correct. Hence, the contention put forth by the petitioner's side regarding the second and third respondents has got to be rejected.

9. Learned Public Prosecutor would further submit that insofar as the order passed by the Court is concerned, on enquiry by the Commissioner of Police, departmental action has been initiated, pursuant to which, a report was filed by the Principal Sessions Judge. Mr. Srinivasa Rao, Inspector of Police (Crime), Avadi was the person who investigated the case. Under such circumstances, once departmental action has been initiated, till the time the departmental proceedings are over, there is no need for passing any orders. Even if any of the officials are found fault with, once the charges were initiated under Rule 3(b), there is all possibility of awarding compensation to the victim. Therefore, in view of the departmental action initiated, no orders need be passed and the Habeas Corpus petition may be disposed of.

10. The Court paid its anxious consideration on the submissions made.

11. It is not in controversy that the husband of the petitioner, by name, Arunkumar was taken into custody on 23.11.2009. What are all stated by the petitioner is that under the guise of criminal case, the detenu was taken for the purpose of enquiry to the police station and was tortured and he was kept under illegal custody from 23.11.2009 to 28.11.2009. This contention is countered by the respondent State by stating that the detenu was taken into custody on 27.11.2009 by one Mr. Srinivasa Rao, Inspector of Police, who investigated the case in Crime No. 242 of 2009 and not before that date.

12. After looking into all the materials available, in particular, the detailed report given by the Enquiry Officer and after making a thorough elaborate enquiry into the matter, it would be quite clear that the detenu was taken into custody on 23.11.2009 as contended by the petitioner's side and also kept under custody till 28.11.2009. The Court is unable to notice any reason to differ from the factual findings recorded by the

Enquiry Officer as found in the report. Pointing to the statement recorded and also the medical evidence, the Enquiry officer has also recorded the finding that the detenu was tortured during the said period and hence, the contention put forth by the State that he was taken into custody only on 27.11.2009 pursuant to the registration of the criminal case of theft, cannot be countenanced. It is needless to say that the custody of the detenu from 23.11.2009 to 28.11.2009 cannot but be termed only as illegal. It is also noticed that during the relevant period, he was tortured by the police personnel.

13. Learned Additional Public Prosecutor would contend that after the enquiry made by the Principal Sessions Judge, pursuant to the orders of this

Court, charge memos were issued to the erring Officers and they are kept under suspension and hence, no more orders are required at the present

stage. As could be seen from the materials placed by the State, it is evident that charge memos are issued to three Police Officers viz., (1) R.

Kanan, Inspector of Police, T-1 Ambattur, Crime, formerly T-7, Avadi Tank Factory Police Station (2) R. Riyasudin, Inspector of Police, Law &

Order, T-10, Thirumullaivoyal Police Station and (3) K. Srinivasa Rao, Inspector of Police, then T-6 Avadi, Crime and K. Srinivasa Rao,

Inspector of Police was kept under suspension. It is pertinent to point out that the department enquiry initiated should be proceeded with against

those Police personnel. It is contended by the State that the second and third respondents had no role to play in the entire episode since

investigation was taken by Mr. Srinivasa Rao, Inspector of Police, who is kept under suspension. Contrarily, it is contended by the learned

Counsel for the petitioner that the second and third respondents are mainly responsible for the illegal detention and also torture. In respect of this

aspect, already department action has been initiated and hence, it depends on the result of the enquiry to be made. But the factum of illegal

detention between 23.11.2009 and 28.11.2009 and the torture on the detenu during the relevant period is noticed from the materials, which are

suffice in the opinion of the Court and for the same, the detenu is entitled for compensation. Keeping a citizen under illegal detention is in violation

of his fundamental right for personal liberty guaranteed by the Constitution. In appropriate cases where there has been denial for fundamental rights

of the citizen by keeping him under illegal detention, the Court has to award the compensation.

14. After taking into consideration the facts and circumstances, the compensation is fixed at Rs. 25,000/- payable by the State to the detenu.

Further contention putforth by the learned Counsel for the petitioner that the detenu was under illegal custody till 2.12.2009 is concerned, it

cannot be countenanced in view of the reply made by the State that the detenu, on production before the Judicial Magistrate on 29.11.2009, was

actually taken for medical examination and treatment. It is also made clear that the compensation awarded in this petition will not stand in the way

of the petitioner seeking other and appropriate remedies before the appropriate forum in accordance with law.

15. It is represented by the learned Public Prosecutor that there are eight cases pending against the detenu. The Court is of the opinion that there

cannot be any impediment for the State to proceed against the detenu in respect of those cases. It is kept open to the State to proceed with the

enquiry against the concerned police officials.

16. It is made clear that the compensation awarded above has to be paid by the State within a period of four weeks from the date of receipt of a

copy of this order. So far as the departmental action taken against the concerned police officials, it is open to the police officials, if so advised, to

challenge the report of the Enquiry Officer.

17. Accordingly, the habeas corpus petition is disposed of .