
(1988) 12 MAD CK 0007
In the Madras High Court

Lalitha

APPELLANT

Vs

Director-General of Police and Others

RESPONDENT

Date of Decision : 07-12-1988

Acts Referred:

Citation : (1990) 1 ACC 190 : (1989) ACJ 655

Hon'ble Judges : S. Ratnavel Pandian, O.C.J.; David Annoussamy, J

Bench : Division Bench

Judgement

S. Ratnavel Pandian, Offg. C.J.

1. An order was pronounced on 3.5.1988, directing the issuance of a writ of habeas corpus to the respondents commanding them to produce

Vadivelu, who had been admittedly taken into custody by respondent Nos. 3 to 6, before this Court on 11.7.1988, and file return. At that stage,

we observed:

In view of this direction, we are not issuing any other direction with regard to the plea for costs and compensation at this stage.

2. Thereafter, this matter was called on 29.7.1988, on which date respondent Nos. 3 to 6 appeared. The present Inspector of Police,

Kanchipuram Taluk circle, filed an affidavit stating:

(4) I respectfully submit that in pursuance of the directions of this Hon'ble Court, the police made serious efforts to apprehend Mr. Vadivelu and

produce him before this Hon'ble Court, but he could not be traced.

(5) I respectfully submit that the Superintendent of Police, Chingleput District West, directed me as well as the present Sub-Inspector (Law and

Order), Walajabad police station, to make special efforts to trace Mr. Vadivelu

who is absconding from the afternoon of 5.3.1985.

(6) In spite of all the best efforts, Mr. Vadivelu could not be apprehended.

(7) I most respectfully submit under the above circumstances that we are unable to produce Mr. Vadivelu before this Hon''ble Court as directed

by the Hon''ble Court.

3. It was also represented on behalf of the respondents who were present at the time of the hearing, that Vadivelu could not be traced in spite of

best efforts taken by them.

4. So far as the plea of the respondents that Vadivelu, the alleged detenu, was released on the afternoon of 5.3.1985 and that he is absconding, is

concerned, we have already given our finding in paragraph 29 of the earlier order dated 3.5.1988 repelling the said plea and observing:

For all the discussions made above, we without any compunction on our part, hold that the explanation given by the respondents that Vadivelu had

been let off from the police station on the evening of 5.3.1985, that they did not know as to what happened to him and that Vadivelu might be

absconding fearing prosecution in the double murder case, is not at all convincing, satisfactory and acceptable. It is for respondent Nos. 3 to 6,

who had taken Vadivelu into custody to give an acceptable and satisfactory explanation as regards the whereabouts of Vadivelu or as to what has

happened to him, especially when there are abundant materials to draw the legitimate inference that there was something despicable in the conduct

of respondent Nos. 3 to 6, in that they would not have let him off after they had secured him with great difficulty.

5. In view of the above observations, we are of view that the respondent Nos. 3 to 6 cannot escape from their responsibility by merely repeating

that the alleged detenu is still absconding and they have to face the consequences arising out of the facts and circumstances of the case. For all the

reasons given above, we direct the Director-General of Police, Madras, to direct the concerned C.B., C.I.D., to register a case on the missing of

Vadivelu from 5.3.1985, who was admittedly taken into custody as pointed out in the order and investigate the matter and take proper action

according to law.

6. During the course of the arguments, Mr. Venkataraman very emphatically and at the same time in a very appealing manner, advanced an

argument that the writ petitioner standing before this Court after losing the company of her life partner and the only bread-winner of her family, is

beseeking this Court to declare her either a widow or a sumangali (a woman with her husband alive). He further made a fervent entreaty that the

petitioner and her family should be adequately compensated for the loss of Vadivelu.

7. It is true that the petitioner, who is a desolate woman in distress, is tapping at the doors of this Court for justice with a heavy heart and tears

rolling on her cheeks, holding her children in tenders years, viz., Annamalai aged about 14, Jayavelu aged about 11, Kamakshi aged about 9, and

Naresh Babu aged about 5, and seeking succour from this Court with folded hands to ameliorate her misery and sufferings. It is an undeniable fact

that this Court has got the bounden duty to protect the life of every individual of this country, whether poor or rich, and repair any damage done to

their rights by any instrumentality of State.

8. The learned Advocate General advanced an argument that, even conceding but not admitting, that the respondent Nos. 3 to 6 had done

anything wrong, they alone should be held liable for their misdeeds, if any, and the Government cannot be held responsible for the acts done

beyond the powers vested in them. We are unable to accept this argument. Respondent Nos. 3 to 6 are the instrumentalities of the State and they

have acted only under the powers vested in them by the State holding the powers as a shield. But for the powers vested by them by the State,

respondent Nos. 3 and 6 would not have taken Vadivelu into custody under the guise of interrogation during the course of an investigation in the

double murder case. Therefore, the State has to answer for every unlawful act committed by its instrumentalities and should be held responsible for

the same. In this connection, we would like to refer to the observations made by the Supreme Court in Rudul Sah Vs. State of Bihar and Another,

to the following effect:

Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing

orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance

with the mandate of Article 21 secured, is to mulct its violators in the payment of

monetary compensation. Administrative sclerosis leading to
flagrant infringements of fundamental rights cannot be corrected by any other
method open to the judiciary to adopt. The right to compensation is
some palliative for the unlawful acts of instrumentalities which act in the name of
public interest and which present for their protection the powers of
the State as a shield. If civilisation is not to perish in this country as it has
perished in some others too well-known to suffer mention, it is necessary
to educate ourselves into accepting that, respect for the rights of individuals is
the true bastion of democracy. Therefore, the State must repair the
damage done by its officers to the petitioner's rights. It may have recourse
against those officers.

This observation of the Supreme Court, in the background of our finding given
above, answers the submission made by the learned Advocate

General.

9. The petitioner, who was 28 years as on the date of the filing of the writ
petition, is deprived of the company of her life partner and the family, the
bread-winner. It is represented that Annamalai, ever since the missing of his
father, has discontinued his studies and is now working as a cooly in a
weaver's family at Kanchipuram on a daily wage of Rs. 21-. Similarly, Jayavelu
also has discontinued his studies and is doing cooly work on a
daily wage of 50 paise. According to the petitioner, her husband was earning a
sum of Rs. 1,500/- p.m. for maintaining her family and educating
her children. Taking all these facts into consideration we hold that the petitioner
has to be reasonably compensated. On this aspect, we have
bestowed our anxious consideration. Taking into consideration the great harm
done to the petitioner and her family as a result of the unlawful acts
of respondent Nos. 3 to 6, being the instrumentalities of the State under the
cloak of the power vested in them by the State, we are of the opinion
that the seventh respondent, the State, should pay the petitioner a sum of Rs.
50,000/- as compensation, as an interim measure. The said amount
shall be paid within six weeks from today. We further observe that this order will
not preclude the petitioner from bringing a suit to recover
appropriate damages from the State and its erring officers, if she so chooses.
This order of compensation passed by us is in the nature of a
palliative, lest the petitioner should be left penniless until she succeeds in any

suit that she maybe advised to file and in the many appeals and the execution proceedings. In case the civil court fixes the quantum of compensation for the loss sustained by the petitioner on account of the missing of her husband, mental agony etc., from 5.3.1985 then this amount directed to be paid to the petitioner will be adjusted, there will be an order accordingly in the writ petition.