

(1988) 12 MAD CK 0005
In the Madras High Court

Lalitha

APPELLANT

Vs

The Director General of Police and Others

RESPONDENT

Date of Decision : 07-12-1988

Acts Referred:

Citation : (1989) 1 MLJ 243

Hon'ble Judges : Ratnavel Pandian, O.C.J.

Bench : Division Bench

Judgement

Ratnavel Pandian, Officiating, C.J.—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 has been admittedly taken into custody by respondents 3 to 6, before this Court on 11th

July, 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.

Thereafter, this matter was called on 29-7-1988, on which date respondents 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.

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.

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

In view of the above observations, we are of view that the respondents 3 to 6 cannot escape 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.

3. 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 beseeching this Court to declare her either as 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.

4. 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 tender 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 miserly 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 instrumentalities of the State.

5. The learned Advocate General advanced an argument that, even conceding but not admitting, that the respondents 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 arguments. Respondents 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 in them by the State, respondents 3 to 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 to open to the judiciary to adopt. The right to or

instrumentalities which act in the name of public interest and which present for their protection the powers of the States 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

the, 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.

6. 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. 2. 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. 1500 per mensem 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 respondents 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 may be 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.