

(2000) 03 MAD CK 0029
In the Madras High Court
Case No : Writ Petition No. 20212 of 1992

Mariyappan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 22-03-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (2000) CriLJ 4459

Hon'ble Judges : Y. Venkataharam, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; S. Vadivel, Government Advocate, for the Respondent

Judgement

Y. Venkataharam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for a

writ of mandamus seeking to issue directions to the respondents to (i) launch criminal and departmental action against the policeman responsible for

the killing of Tmt. Mariammal on 22-11-1990, (2) to pay a sum of Rs. 5,00,000/- as compensation for killing of Tmt. Mariammal.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him

to file the present writ petition and requested this court to allow this writ petition as prayed for. Per contra, on behalf of the respondents a counter-

affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they have requested this Court to

dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned Counsel appearing for the parties. I have perused the contents of the affidavit and the counter-

affidavit together with all other relevant material documents available on record in the form of typed set papers. I have also taken into consideration

the various points raised by the learned Counsel appearing for the respective parties during the course of their arguments. I have also considered

the several decisions relied on by the petitioner in support of his claim made in this case.

4. In the above facts and circumstances of the case on hand, the following is the only point that arises for consideration herein :

As to whether there are any valid grounds to allow this writ petition or not?

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner herein is the husband of one Mariyammal. He

has filed the present writ petition praying this Court to direct the respondents to investigate into the killing of his wife the said Mariyammal on 22-

11 -1990 and to take appropriate action against the concerned policemen and also for payment of compensation for the death of his wife.

According to the petitioner herein on 22-11 -1990 some policemen including one Jayaraman P. C. 902 came to their area Burmah colony, for

conducting prohibition raid wherein the petitioner's family is residing. They started to beat people found at sight and began to drag some men into

the police van for filing prohibition cases. At that time one Selvam son of his sister-in-law who was working in the Government Mid-Day Meal

Centre was sent by the petitioner's wife to buy medicine for the ailing granddaughter. The said Selvam was caught hold off by the said P.C.

Jayaraman and was being dragged to the police van. Hearing his cries, the wife of the petitioner herein ran to the police pleading with them not to

apprehend him since he was sent to the Pharmacy for buying medicine. The said police immediately turned rudely on her and assaulted her and

pushed her down with force. The said Mariyammal fell down on the ground thereby sustaining grievous injuries and as a result of which she died. It

is also the case of the petitioner herein that the police who were the cause of the whole tragic incident did not even bother to find out as to what

had happened to the injured, but left the place with some of the men apprehended. The injured succumbed to injuries on the spot. A complaint was

lodged with the South Town police station which was registered as Cr. No. 716 of 1990. As per orders 605 and 145 of Police Standing Orders,

police officer having received the complaint is statutorily bound to proceed to the place of occurrence and shall make investigation into the cause of death and should send the report to the Revenue Divisional Officer. The Revenue Divisional Officer should enquire into the matter and should send the body to Government Hospital for conducting postmortem. But, in this case even after the receipt of complaint by the South Police Station, no effort was taken to investigate the death as per the aforesaid provisions. Thereafter, after patiently waiting for hours for investigating machinery to move, the residents resorted to direct action by themselves taking the body in a cycle rickshaw to the residence of Deputy Superintendent of Police seeking action as per law. The D.S.P. directed the people to approach the Sub Collector since the complaint was against the police and that therefore the people were forced to proceed with the body in a procession to the residence of Sub Collector. There they were informed by the security men that the Sub Collector was sleeping and that therefore they could come only the next day. This only added insult to injury to him and his family members since they were taking the dead body seeking justice from one officer to another. In the said circumstances, the people had no other go than to stage a dharna in the public road against the inaction and insensitive attitudes of respondents herein. Only then, the DSP, the Sub Collector and other officials came to the spot along with the DIG, of the said region Mr. Saravana Perumal. They made arrangements to send the body for postmortem in the Government Medical College Hospital. Thereafter an identification parade was conducted to identify the police constable who was responsible for the killing of the petitioner's wife. Selvam was called for the said purpose and identified the accused police constable. Thereafter finding no response from the respondents after waiting for nearly six months, the petitioner herein caused an Advocate notice dated 9-5-91 to be issued to the R.D.O. and the S. P. with a request to intimate him as to the action taken against the accused police and also for providing him the result of the investigation/enquiry conducted by the RDO and a copy of the post-mortem report. The Sub Collector's Office by their proceedings dated 17-5-1991 sent a reply stating that the enquiry was conducted under PSO 145 and the orders of the Government are awaited and that he would be informed only after receipt of the said order. After waiting nearly 3 months he caused another advocate notice dated

20-8-1991 to the RDO and the S. P. once again making the same request. Again the Sub Collector's office by their proceedings dated 25-8-

1991 informed that the Government Order was still awaited. But thereafter, finding no response from the RDO, he submitted a memorandum to

the Collector on 2-12-1991 on the public grievance day detailing the tragedy that took place and his long wait for justice at the hands of the

respondents. Though acknowledgement was given by the Collector's office with a note that he would be informed of the result of the

memorandum by 2-1-1992 nothing had happened till date. It is the case of the petitioner herein that he has four sons and 2 daughters through his

wife the deceased and having lost his wife under unfortunate circumstances, the entire family is still under enormous mental shock. What is more

unfortunate is the casual and insensitive inaction of the respondents in not even proceeding in accordance with law by taking action against the

guilty person. It is now several years lapsed since the unfortunate killing had occurred and they are left with no relief due to the said attitude of the

respondents, which creates doubts that the respondents are deliberately indulging in delaying tactics to bury the case without any remedy to them.

It is his strong case that if this is allowed to continue, people would lose faith in the administration. Further according to the petitioner all over the

country and especially in this state, the law enforcement agency are exposed to much criticism due to the increasing violence by them against the

poorer and weaker section, and also that a large number of cases are being filed in the Courts against police torture and deaths and in most of the

cases the Courts are granting relief in favour of the victims. It is also his case that he is not aware as to whether the RDO completed enquiry under

145 PSO and submitted his report to the Government for further action even though 2 years had elapsed. The said PSO clearly contemplates that

the RDO should give finding whether a prima facie case has been made out to launch criminal prosecution against the guilty policemen. To his

knowledge, till date no criminal prosecution has been launched would establish that the respondents have failed to discharge their duty. It is also

contended by him that the Supreme Court under the circumstances of these nature has awarded monetary compensation to the relatives of the

victims as a palliative measure and also as a measure of accountability of the institutions to the people and that the Supreme Court in the cases

reported in (i) Peoples' Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters

and Another, and (ii) Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police

Headquarters and Others, awarded compensation payable by the State to the families of the victims for the tortuous acts of the servants of the

State. Therefore it is contended by the petitioner herein that in the present case, the first respondent is liable to pay compensation to him for the

wrong committed by the police. Hence this writ petition.

6. Per contra, in the counter-affidavit filed by the respondents, inter alia it is contended by them that the Sub Collector, during his enquiry could not

arrive at a conclusion as to who pushed the lady to death. Hence he requested orders whether the case may be handed over to the Crime Branch

CID for fixing the responsibility. The Government were addressed on 6-9-91 requesting whether the case may be handed over to Special Branch

for further investigation. It is also stated by the respondents that the Government have passed order fixing up the responsibility on one Jayaraman,

PC 902 as the constable who pushed the lady down. The Government have also asked the Director General of Police to take departmental action

against the police constable concerned. The action is being taken by the Director General of Police. Further according to the respondents the Sub

Collector. Thanjavur commenced an enquiry as contemplated under Order 145 of the police standing order since the enquiry had been done by

the fourth respondent and thus since the 4th respondent had commenced and completed his investigation regarding the death of Mariyammal which

took place on 22-11-90, there is no further necessity of any order to be issued by this Court in the writ petition filed by this petitioner. Further

according to the respondents, on the report submitted by the respondent No. 4 through respondent No. 2, the Government had ordered

departmental enquiry against Police constable Jayaraman No. 902 in their LR. No. 3025/92-2 dated 27-1-1993. According to the respondents

the post-mortem certificate disclosed that the death was due to the natural cause, and hence there was no finding that the death of the said

Mariyammal was due to the push effected by the said police constable 902 Jayaraman, and that the enquiry revealed that the lady had a heart

problem and her death might be due to mental shock of the police securing her nephew Selvam and also might be due to physical agitation caused

by her fall due to tripping and the fall on the ground by the pushing and also that there is no external or internal injuries to the concerned lady.

Therefore it is contended on behalf of the respondents that in the said circumstances there is no need to pay compensation to the writ petitioner as

the death was not the result of any tortious of the acts of the servants of the State as arrived at in the Supreme Court cases relied on by the

petitioner herein. The respondents also deny that on 23-11-1990, the police personnel beat people found at site while conducting prohibition ride

and also that there was no complaint against the police as alleged and the enquiry also did not reveal any such act by the police. It is also the case

of the respondents that when the said Selvam was apprehended by police constable No. 902 Jayaraman and was taken to the police van, where

the additional Superintendent of Police was sitting, and that the evidence disclosed that the said lady was running towards the police personnel

crying and beating her chest requesting them to leave the said Selvam, that though she rushed to the police van she was barred from approaching it

at a distance of 10 to 15 feet from it and that one version is that she tripped and fell down and that it is also stated that she was pushed from

approaching the police van and that she fell down. It is also contended by the respondents that pushing and hitting are different and that in the case

of a push there could not be and would not be any hurt or pain to the victim and hence it could not be stated that there was any assault on the said

individual and also that the post-mortem certificate and the evidence of the doctor who conducted autopsy is clear that there was no external or

internal injuries and that therefore the allegation of the petitioner that she sustained grievous injuries and died as a result of the same is beyond any

presumption and the same is not true. It is also the case of the respondents that only when injury was caused by the act of the police, then they are

bound to accord treatment and since there was no such incident in this case the police force had left the spot. Further according to them, the

witness Selvam identified police constable 902 Jayaraman as the person who pushed her aunt down, whereas witness Marudhamuthu did not point

out the said police constable 902 and he pointed out three police personnels and then one Sankaran, police constable No. 505. But the said police

constable 505 was on leave on the said date of occurrence. Therefore it is their case that it has to be presumed that either Selvam was correct or

that the entire version was incorrect based on the evidence of witness of Selvam and Marudhamuthu. Therefore according to them in the above

said circumstances it was presumed that P. C. 902 was the person who had pushed the lady. It is also their categoric case that prompt action had

been taken by respondent Nos. 4 and 2 and they were waiting for the final orders from the Government of Tamil Nadu. It is also contended by the

respondents that the Government had instructed the Director General of Police, Madras to take appropriate departmental action against the

delinquent police constable 902 Jayaraman who was found responsible only for the pushing of the said lady and except for a push which would not

cause the death of the individual it is not just and proper to claim any compensation. The death was not the direct result of the said push, since she

was already suffering from heart disease and the death was considered to be a natural cause by the doctor who conducted autopsy on the body of

the said Mariyammal and hence the claim of the petitioner for a compensation of Rs. 5,00,000/- is not just and proper and the claim has to be

dismissed in limini.

7. Having seen the entire material available on record and from the facts and circumstances on this case and also from the claims and counter-

claims made by the rival parties, the following are the admitted facts in this case. The petitioner herein along with this wife (deceased Mariyammal)

and children has been living in the area "Burmah Colony". On 22-11-90 some policemen visited that area for prohibition raid. They caught some

people and dragged them to the police van nearby for filing prohibition cases. One of such persons was one Selvam son of the petitioner's sister-

in-law who was going to the medical shop to purchase some medicine as per the request of the petitioner's wife. As he was caught by the police

and taken to the police van, he cried and on hearing the same the petitioner's wife came to the police and pleaded to them to leave the said Selvam

as he was going only to purchase medicine on her request. Without hearing her version the police constable No. 902 pushed her down with force.

The said Mariyammal fell down on the ground and as a result of which she died. That being so without noticing as to what happened to that

women who was pushed down, the police party left the place. That being so, the residents of the area sought justice in the hands of the authorities.

But from the facts of this case it is very clear that even to meet the concerned authorities, they have undergone herculian task and only after they

entered into a Dharna in the public road with the dead body along with them, ultimately the authorities rushed to the spot and arranged for sending

the body for postmortem. Thereafter an identification parade was conducted to identify the police constable who was responsible for the said

incident. The abovesaid Selvam was called for the said purpose identified the accused police constable. With this there was no further progress.

Thereafter the petitioner was made to issue an Advocate notice dated 9-5-91 to be issued to the RDO, and the S. P. with request to intimate him

as to the action taken against the accused police and also for providing him the result of the investigation/enquiry conducted by the RDO and a

copy of the post-mortem report. On 17-5-91 it was simply replied that enquiry was conducted under PSO 145 and the orders of the Government

are awaited and that he would be informed only after receipt of the said order. After awaiting for nearly 3 more months the petitioner caused

another advocate notice dated 20-8-91 to the RDO S. P. once again making the same request. Again he received the same reply. Thereafter he

made a memorandum to the 2nd respondent District Collector, but nothing happened till the filing of this writ petition. Aggrieved by the casual and

insensitive inaction of the respondents in not even proceeding in accordance with law by taking action against the guilty person, the petitioner herein

has come forward with the present writ petition. In this writ petition seeking for a direction to the respondents to take appropriate action against

the concerned P. C. and to award compensation, the petitioner herein expresses his grievance that it is about 9 years since the unfortunate killing

had occurred and they are left with no relief due to the said attitude of the respondents, which creates doubts that the respondents are deliberately

indulging in delaying tactics to bury the case without any remedy to them and also that if this is allowed to continue people would loose faith in the

administration. In the facts and circumstances of the case I see every force in the above contentions of the petitioner herein for the following

reasons.

8. Admittedly in this case on the complaint given by the petitioner's behalf proceedings were initiated by the authorities under PSO 145. That being so, it is the duty of the authorities to intimate the complainant about the result or progress of the same. But in this case even after approaching the authorities concerned several time and that too, by way of Advocate notice, the petitioner herein could not get any information about the fate of the enquiry's fate. Even in the counter the respondents are not able to say the said particulars in detail. They have simply stated that the Government have passed orders fixing up the responsibility on one Jayaraman, PC 902 as the constable who pushed the lady down, that the Government have also asked the Director General of Police to take departmental action against the police constable concerned and that the action is being taken by the Director General of Police. But it is not known even now what is the fate of such action initiated by the DGP. That being so, now it is contended by the respondents that the post-mortem certificate disclosed that the death was due to the natural cause, and hence there was no finding that the death of the said Mariyammal was due to the push effected by the said police constable 902 Jayaraman and that the enquiry revealed that the lady had a heart problem and her death might be due to mental shock of the police securing her nephew Selvam and might be due to physical agitation caused by her fall due to tripping and the fall on the ground by the pushing. It is also their case that there is no external or internal injuries to the concerned lady that therefore in the said circumstances there is no need to pay compensation to the writ petitioner as the death was not the result of any tortious acts of the servants of the State. Such contention of the respondents herein cannot at all be accepted. Because the so called post-mortem certificate has not been produced even before this Court and the copy of the same has been denied even to the petitioner, by saying that the enquiry report and post-mortem certificate are confidential records and it will not be divulge to the public till the departmental enquiry is over by the police department against the alleged police constable. That cannot at all be accepted in the interest of justice. As an aggrieved party the petitioner herein is entitled to get the copy of the enquiry report and also copy of the postmortem certificate. Further it is contended by the respondents that the death was not the direct result of the said push, since she was already suffering from heart decease and the

death was considered to be a natural cause by the doctor who conducted autopsy on the body of the said Mariyammal and hence the claim for a

compensation of Rs. 5,00,000/- is not just and proper. This contention of the respondents also cannot at all be accepted. In this case it is admitted

that because of the rude push made by the said P.C. the lady fell to the ground. That being so, whether such a push caused her death or not can be

decided only in a trial held before a criminal proceedings and that cannot be decided by any other enquiry as contended by the respondents.

Therefore it is a clear case wherein the body of the deceased was taken from pillar to post seeking justice and even after all these years the

petitioner could not even get the copy of post-mortem certificate and unable to know as to what action has been taken against the police constable

who rudely pushed a womanfolk with all force to the ground which ended in her death. As rightly contended by the petitioner herein it is all

because of the casual and insensitive inaction of the respondents in not even proceeding in accordance with law by taking action against the guilty

person. Further in this case it is significant to note that the deceased unfortunate lady was not an accused or even suspected in any case to receive

such a inhuman behaviour in the hands of a police. It is also not the case of the respondents that even the said Selvam was accused of any offence

or that the lady prevented or obstructed the police to take the said Selvam. The only in (sic) committed by the unfortunate lady is to plead the

police not to apprehend him as she only has sent him to bring medicines for the child. In such circumstances, the police constable has no manner of

right even to touch a lady at that odd hours. But in this unfortunate case, the concerned police constable has pushed her down to the ground with

all his force. That apart even after several years, the authorities are dragging on this matter for the reasons best known to them. Therefore in the

above circumstances it is rightly contended by the petitioner herein that the respondents are deliberately indulging in delaying tactics to bury the

case without any remedy to them. Therefore in these circumstances it is rightly contended by the petitioner herein that the respondents are

deliberately indulging in delaying tactics to bury the case without any remedy to them. Therefore in these circumstances of this case having lost his

wife under unfortunate circumstances the entire family would be still under enormous mental shock and hence as rightly contended by them the

petitioner is entitled to receive compensation for the tortuous acts of the servants of the State.

9. In support of his claim for compensation, the petitioner herein relies on the following decisions :

1. Peoples' Union For Democratic Rights Through Its Secretary and Another Vs. Police Commissioner, Delhi Police Headquarters and Another,

wherein it has been held that directions to be made for payment of compensation to victims and family of deceased on the ground of police

atrocities. It has also been observed therein that it is unfortunate that the police to whom the citizen can approach for protection and help acted in

such manner.

2. Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and

Others, , wherein it has been held as follows :

An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death.

In case of assault, battery the false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of

liberty and death. The State is responsible for the tortious acts of its employees. On a conspectus of various decisions of the Court, it is deemed

just and proper to direct the State to pay compensation to the mother of the deceased child a sum of Rs. 75,000/- within four weeks. The Delhi

Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found

responsible, if they are so advised.

3. Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, wherein it has been held thus :""This Court and the High Courts, being

the protectors of the civil liberties of the citizen, have not only the power and jurisdiction under Articles 32 and 226 of the Constitution to the victim

or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by

calling upon the State to repair the damage done by its officers to the fundamental rights of the citizens notwithstanding the right of the citizen to the

remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be

available to it against the wrong doer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under

Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no

other form of appropriate redressal by the Court in the facts and circumstances of the case is possible.

That being so, in the above facts and circumstances of the case, the above decisions squarely apply to the present case and they also justify the

award of compensation to the family of the victim deceased.

10. Therefore, for all the aforesaid reasons and in the facts and circumstances of this case and also in view of my above discussions with regard to

the various aspects of this case and also in the light of the above decisions referred, I am of the clear view that the petitioner herein has clearly

made out a case in his favour warranting award of compensation in his favour and also to expedite the departmental enquiry pending against the

police constable concerned and also to initiate a criminal proceeding against him for his rude behaviour with the lady deceased in this case. Thus

the writ petition succeeds and has to be allowed.

11. In the result, the writ petition is allowed in part. No costs. Consequently the respondents herein are directed to initiate forthwith criminal

proceedings against the police constable concerned for his rude behaviour in his pushing her to ground which subsequently ended in her death

apart from expediting the departmental enquiry pending against him. The 1st respondent is also directed to pay a compensation of Rs. 2,00,000/-

(Rupees Two Lakhs only...) to the petitioner and his family within 3 months, from the date of receipt of copy of this order. However, the

respondents have the right to be indemnified by and take such action as may be available to them against the wrong doer in accordance with law

through appropriate proceedings.