

(1984) 08 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 8538 of 1984

Mohana

APPELLANT

Vs

State of Tamil Nadu and The Superintendent, Central Prison,
Vellore

RESPONDENT

Date of Decision : 27-08-1984

Acts Referred:

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

Citation : (1984) 08 MAD CK 0005

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : K.V. Sankaran for M/s A.U. Elango and K. Rajkumar, for the Appellant;

Judgement

Natarajan, J.—By means of this petition under Art. 226 of the Constitution, the petitioner seeks the issue of a writ of Mandamus directing

the respondents to pay her a compensation amount of Rs. 50,000 for the death of her husband on account of the negligence of the staff of the

Central Prison at Vellore wherein her husband was detained. The petitioner's husband, late Babu, had been convicted for an offence of murder

and was undergoing imprisonment for life in the Central Prison at Vellore. He had a heart attack on 16th March, 1984. The prison authorities sent

the petitioner two telegrams on the same day. Under the first telegram she was informed about the illness of her husband and his hospitalisation.

The second telegram informed her of his death. The petitioner went to Vellore and brought the dead body to Madras and performed the funeral.

The petitioner would say in her affidavit that on making enquiries subsequently, she came to know from a fellow prison mate of her husband by

name Jayakumar (Convict No. 5455) that at about midnight on the night of March, 15/16, 1984, Babu complained of severe chest pain and called for assistance from the prison officials, that there was no her response from the officials, that seeing the plight of Babu, the fellow prisoners also cried out for help, that even then there was no response and that about two hours later the prison officials came and took him away, but by then he was dead. The petitioner would then say that the prison officials took the dead body in a taxi to the hospital, that subsequently, an enquiry was conducted by the Revenue Divisional Officer regarding the cause of death of Babu and the matter was covered up. The petitioner therefore, charges the prison officials with gross negligence and would allege that but for their wanton negligence her husband would not have died. The petitioner then goes on to say that by the untimely death of her husband she has become widow at a young age and she and her one year old son are left with no means of livelihood. The petitioner has calculated the loss of monetary benefit to her on account of the death of her husband at Rs. 50,000. It would appear that Babu was a lorry driver earning about Rs. 800 a month before his conviction. She has further stated that while in prison Babu had worked in the workshops there and earned some money, but even that amount has not been paid to her. Therefore, the petitioner wants the Court to issue a writ of Mandamus to direct the authorities to pay her a compensation of Rs. 50,000 besides the amounts earned by her husband for the work done by him while in prison. The claim for compensation is made on the basis that, by allowing her husband to die, the prison officials have violated her right to life guaranteed under Art. 21 of the Constitution.

2. When the petition came up for admission, learned counsel Mr. K.V. Sankaran was told that the proper course of action for the petitioner is to file a suit in the civil Court, and not to file a petition under Art. 226 of the Constitution. Mr. Sankaran argued that the remedy by way of a suit is an antiquated measure and that the petitioner is entitled to seek relief by filing a writ petition under Art. 226. In support of his contention Mr.

Sankaran cited two decisions of the Supreme Court in Rudul Sah Vs. State of Bihar and Another, and Bandhus Mukti Morcha v. Union of India

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3. On a consideration of the matter, I find that the contention of Mr. Sankaran cannot be accepted. Art. 21 of the Constitution lays down that "no person shall be deprived of his life or personal liberty except according to procedure established by law." As the petitioner is neither deprived of her life nor her personal liberty, I fail to see how she can lay a claim for monetary compensation on the basis of Art. 21. If it is the petitioner's case that her husband had been deprived of his personal liberty and life, it has to be pointed out that her husband had been found guilty of having committed a murder and sentenced to undergo imprisonment for life and it was pursuant to the sentence awarded by Court, he was kept detained in the prison at the relevant time. In so far as the death of the petitioner's husband is concerned, the death, even according to the petitioner, is on account of heart attack, and not due to any violence or unnatural cause. The petitioner would, however, say that her husband's death could have been averted if the prison officials had acted promptly and rushed him to the hospital. But, this is a hypothetical contention. Even assuming that Babu had been rushed to the hospital without loss of time, it cannot be asserted that he would have definitely survived the heart attack. Be that as it may, the question whether the prison officials had acted with alacrity and readiness or had exhibited indifference and acted callously, is a matter which can be determined only after recording of evidence. Without examination of the cellmates of Babu and the concerned prison officials, a court cannot straight way accept the charge levelled by the petitioner about the prison officials having acted in a wantonly negligent manner.

4. Then would come the question whether the negligent conduct of the prison officials, even if proved, would constitute an actionable wrong. It is needless to say that it is not all wrongs that will constitute actionable wrongs, and that a person can claim compensation only for actionable wrongs.

Lastly, the amount of compensation, even granting that the petitioner is entitled to be compensated, is a matter which has to be decided with

reference to various factors, such as, expectancy of life, loss of monetary benefit, years' purchase factor, etc. All these exercises cannot be done in

a petition under Art. 226 of the Constitution. A writ of mandamus, which is the relief sought for by the petitioner, can be issued only where the

State is under a statutory obligation to do an act, and the claimant has got a statutory right to compel the State to perform its duty. In the instant

case, there is no statute which compels the State to provide compensation to the petitioner for the death of her husband or for the loss of

consortium or monetary benefit sustained by her on account of his death.

5. The two decisions of the Supreme Court, cited by Mr. Sankaran can be of no avail to the petitioner. In Rudul Sah's case AIR 1983 S.C. 1086,

the Court found that the petitioner had been detained illegally in prison for over fourteen years after his acquittal by a competent court. The

manifestly illegal detention of the petitioner was put an end to by the Supreme Court by issuing a writ of Habeas Corpus. In view of the peculiar

facts of that case, the Supreme Court, while restoring freedom to him, deemed it fit to award an ad hoc compensation of Rs. 35,000 in two

instalments of Rs. 5,000 and Rs. 30,000. Even there, the Supreme Court observed that "the order of compensation was in the nature of a palliative

and it did not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials". The compensation

awarded there was to a person who had been wrongly deprived of his liberty. But, in the instant case, the petitioner's life and liberty are not

affected in any manner and her only grievance is that by the death of her husband she has been deprived of her monetary benefit and the

consortium of her husband. The second case deals with public interest litigation. In that case, the Supreme Court held that public-spirited

organisations are entitled to file writ petitions under Art. 32 of the Constitution in order to secure the release of bonded labourers. The present

petition is not public interest litigation, but an adversary litigation. For the aforesaid reasons, the issue of a rule is declined and the petition will stand

dismissed.