

(1998) 11 MAD CK 0132
In the Madras High Court
Case No : H.C.P. No. 768 of 1998

Mrs. Krishnamma

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 20-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (1999) CriLJ 1915

Hon'ble Judges : N.K. Jain, J; M. Karpagavinayagam, J

Bench : Division Bench

Advocate : T.K. Sampath, for the Appellant; S. Anbalagan, Assistant Public Prosecutor, for the Respondent

Judgement

N.K. Jain, J.—The petitioner, mother of two detenus herein, has filed this petition alleging that her sons viz. Raja Reddy and Narayanan alias Narayana Reddy have been detained in Sub Jail, Tiruvellore illegally and prays to produce them before this Court and set them at liberty.

2. It is alleged that the petitioner's son Raja Reddy got married one Malliswari alias Sujata, who left the house on 12-4-1998 on her own, and subsequently, a complaint was lodged with Edurukuppam Police Station, Chittoor District, Andhra Pradesh state, in Cr. No. 33 of 1998 for an offence u/s 498-A, I.P.C. and "women missing". It is alleged that on 29-4-1998, the Village Administrative Officer of Tiruttani taluk approached the Sub Inspector of Police, Pallipet Police Station and informed about the finding of the half burnt body of a woman in the forest area and the Sub Inspector of Police, after verification registered a case in Cr. No. 216 of 1998 u/s 302, I.P.C. and informed the same to the second respondent herein. It is further stated that the said Malliswari was seen alive on 26-5-1998 at Tirupati and she had been handed over to the Karvet Nagar Police Station and in her statement u/s 164, Cr. P.C. she had stated that the detenus were in no way responsible for her leaving the matrimonial home. A news item was published in

English daily on 1 -6-1998 and the petitioner sent telegrams to the Chief Justice of India, New Delhi and to the Chief Justice, High Court, Madras on 5-6-1998, regarding the illegal detention of the detenus and about the fact of the victim girl seem alive. Still the petitioner's sons are in illegal detention. In this H.C.P. the petitioner prays to produce the detenus before this Court and to set them at liberty and also claims compensation.

3. A detailed counter-affidavit has been filed. It is stated in the counter-affidavit that on the information of the Village Administrative Officer, a case was registered and investigation took place. It has been stated that Raja Reddy, one of the detenus herein, gave a voluntary statement and a knife, a gunny bag and a motor cycle were seized, that on the basis of the voluntary statement of Raja Reddy, his brother Narayanan alias Narayana Reddy was interrogated and both the detenus were arrested on 24-5-1998 and produced before Judicial Magistrate No. 1, Tiruttani for remand, and they were remanded till 15-6-1998. It has been further stated that Sengaya Reddy, the father of Malliswari, has further stated that the girl should have been murdered by her husband, Raja Reddy and his family members. Malliswari and Raja Reddy were seen together at 8.00 p.m. on Sunday on 16-5-1998. Other witnesses also reiterated the same statement. It is further stated in the counter-affidavit that on 9-6-1998, when it came to the notice that the said Malliswari is not dead, but alive, she was enquired. It is also stated that Malliswari had stated that unable to bear the ill treatment and the harassment at the hands of the detenus, she left the matrimonial home. On 10-6-1998, a report had been filed before the Judicial Magistrate No. I, Tiruttani requesting to drop the proceedings and accordingly actions were dropped against the detenus and bail was granted to the detenus in Cri. O.P. No. 8447 of 1998 on 11-6-1998.

4. Learned counsel for the petitioner submitted that on the basis of the voluntary statements given by the detenus, they have been falsely implicated in the commission of the offence of murder and they have been in illegal custody for about 45 days and as such, they are entitled to get compensation. Learned counsel relies on the decisions in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , Punjab & Haryana High Court Bar Association v. State of Punjab 1996 SCC 858; D.K. Basu Vs. State of West Bengal, and in Chandra, B. v. State (1996) 1 LW (110 in support of his contention.

5. Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, is a case relating to a custodial death. In that case, the deceased was taken into police custody, and on the next day the dead body of the deceased with a handcuff and multiple injuries was found by some railway men lying on the railway track. The explanation of the State was that the deceased managed to escape from police custody by chewing off the rope with which he has tied, and that the dead body of the deceased was found on the railway track with multiple injuries which indicated that he was run over by a passing train. The Apex Court did not accept the explanation of the State and held that the Court can direct the

State to pay compensation to the victim or his heir by way of "monetary amends" and redressal. It has also held that the State has strict duty to ensure that a citizen in custody of police or prison is not deprived of his right under Article 21, except in accordance with law. In *Punjab & Haryana High Court Bar Association v. State of Punjab* 1996 SCC 858 in a case of abduction and alleged murder of an advocate his wife and minor child, the Apex Court considered various decisions and Article 9(5) of the International Covenant on Civil and Political Rights, 1966 that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation" and awarded compensation. In *Chandra v. State* (1996) 1 LW 110 on an earlier occasion, in H.C.P. this Court directed that the detenus would have to seek their remedy in a proper Court of law. It was agitated before Supreme Court. The Supreme Court sent back the matter holding "that if it is found that the said Balaraman had been illegally detained during this period as claimed by the appellant, the High Court may give appropriate relief in the said proceedings". Then this Court found that the detenu was in illegal detention and awarded compensation. In *D.K. Basu Vs. State of West Bengal*, in a case of torture and cruel inhuman or degrading treatment, Their Lordships issued the requirement to be followed in cases of arrest or detention till legal provisions are made in that behalf as preventive measures. Their Lordships observed that any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution whether it occurs during investigation, interrogation or otherwise. Their Lordships further observed that "it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. On the basis of these decisions, the learned counsel for the petitioner prayed for the award of compensation.

6. Learned Additional Public Prosecutor has not disputed the principle laid down in the above cases, but submitted that the above mentioned cases will not be helpful and useful to decide the controversy of compensation in the instant case, as those cases arose on account of custodial death, abduction and murder, torture, cruel, inhuman or degrading treatment etc. whereas in this case, on a reasonable suspicion existed and on the basis of the evidence of the witnesses and also on the identification made by the father of Malliswari and villagers only, the detenus were arrested. Learned Additional Public Prosecutor further submitted that the investigating Officer had acted in good faith only. He relied on the decisions in *Kartar Singh v. State of Punjab* : 1994CriLJ3139 while considering the vires of 3 Acts, and upholding the said Acts, it has been held that the classifications have rational nexus with the object sought to be achieved by the TADA Act and Special Court Act and consequently there is no violation of Article 14 and that where two procedures exist for two classes of persons both must satisfy the test of Articles 14 and 21 of the Constitution. It is also observed

that if one process is harsh, oppressive, unconscientious, unfair, unjust and unreasonable the same would be unconstitutional". In *Kabir Chawla v. State of U.P.* 1994 SCC (Cri) 577 the detention order was passed on 9-2-1993 under the National Security Act and the order of detention was not confirmed by order dated 18-2-1993. But, inspite of the said order of the State Government, the petitioner was not released immediately and was kept in illegal detention till 22-2-1993. The Apex Court, without expressing any opinion on the merits of the claim left the petitioner to take recourse to the appropriate remedy available to him in law for redress of this grievance. In *State of Tamil Nadu v. R. Arasu* 1998 SCC 847, in a preventive detention case, compensation was awarded on coming to the conclusion that "the sponsoring authority was responsible in not furnishing all the relevant materials before the detaining authority but furnished incorrect (if not false) information to the detaining authority on the basis of which the order of detention had been passed. The Apex Court agreed with that contention. Learned Additional Public Prosecutor, in support of the cases mentioned above, prays for the dismissal of this petition.

7. We have given our careful consideration to the arguments advanced by the learned counsel for the petitioner and the learned Additional Public Prosecutor. We have perused the materials on record. We have gone through the case laws cited by the learned Counsel appearing on either side.

8. So far as the legal position is concerned, there is no doubt that this Court has got power to grant compensation on the public law, in addition to private law. In an appropriate case, compensation can be awarded by this Court. But, each case depends upon the facts of its own.

9. So far as the power of the investigating officer is concerned, investigating officer is duty bound to investigate and to find out the real culprit and on the basis of the evidence so collected and on reasonable suspicion existed he can arrest a person. This is also not in dispute. In the backdrop of these, it is to be seen whether investigation has been conducted in a fair and bona fide manner. According to learned Additional Public Prosecutor, the accused/detenus have been arrested as there was information that Malliswari was missing, that a partly burnt body of a woman found in the forest area, was identified by the father of the said Malliswari and villagers and the bangles and cloth seized from the body of that partly burnt woman was identified as that of Malliswari, by seeing the photograph of that partly burnt woman. There is also evidence that the said Malliswari was last seen with her husband Raja Reddy. To this extent, the arrest of Raja Reddy, on a reasonable suspicion, at the most, can be considered to be a bona fide one. But as per the counter-affidavit of the second respondent, Raja Reddy gave a voluntary statement to the effect that he, with the help of his brother Narayana Reddy, murdered his wife, by stabbing her with a knife, buried in a pit in Kandavanapalli village and later exhumed the body and put it in a gunny bag and carried it to Kanavaymedu village and set fire, and on that basis, the said knife, a gunny bag and motor cycle said to have been used for the

commission of that offence, were seized. It is also seen in the counter affidavit, that Narayana Reddy, in his statement has ""stated that Raja Reddy and he murdered Malliswari. It is settled that confession is an admission of a guilt as the person making said against him. No doubt, the voluntary statement given before Police is not admissible in law, and the admissibility and the relevancy of the material so seized, will ultimately be decided by the Court. The question as to whether the investigation conducted is proper and bona fide, has to be tested on the facts, the victim girl who has been alleged to have been murdered was really found alive later. As culled out, these accused have been arrested for the offence of committing a murder, as stated above, alleging that the body of a partly burnt woman was seen in the forest area and it was identified, on seeing photograph, by Sengaya Naidu and others, as that of Malliswari. But, one thing is clear. Arrest of the detenus, on the basis of the investigation conducted in this case is not fair. The Police have not investigated as to who was the partly burnt woman found in the forest area of the second respondent and so also the real culprit in that case. Had the said Malliswari not been arrived at a later point of time, the position of the accused would have been different. In any case, the real culprit who was responsible for the partly burnt woman, had gone scot free. As investigation played its part, in the absence of Malliswari's presence, prima facie it would proceed to prove the charge framed against the accused. Since Malliswari, who was alleged to have been murdered, was seen alive, it is clear that the so called voluntary statement to the extent stated above, are. not recorded with free will and atmosphere. Such type of interrogation in the facts of the case excites suspicion on its voluntariness. It clearly reveals that the voluntary statement from Raja Reddy, and also from Narayana Reddy, was extorted by resorting torture and threat. Even though the detenus have never raised objections regarding the non-compliance of the provisions while arresting the detenus and also not said at any point of time that the girl was alive, it will not help the case of the prosecution in connecting the accused to the crime, on the basis of voluntary statement, more particularly when Malliswari was alive. The act of connecting Narayana Reddy to the crime, on the basis of voluntary statement obtained from Raja Reddy, is not convincing and the possibility to hold that the brother of Raja Reddy has also been falsely implicated in the crime is not ruled out. It is also seen that the investigation was not supervised properly.

10. No doubt, the paper news, by itself, is not admissible, but the fact remains that the victim Malliswari was ultimately found alive. A cursory perusal of the news report and the copies of the telegrams would reveal that the petitioner, a hapless woman, had gone pillar to the post and knocked the doors of the temple of justice with tears and helplessness. Even though as per paper news, everything came to light much earlier, the detenus were granted bail only on 11-6-1998. So we have no hesitation to hold that because of the inaction of the police, such miserable thing had happened. On considering the overall facts and the legal position, we are fully convinced that this is a fit case where personal liberty of two persons, has been deprived of by the carelessness, inaction and

unfair investigation of the police, which cannot be said to be bona fide even no bias has been pleaded. In the facts and circumstances of the instant case and even in the absence of any specific allegation of mala fide, the petitioner cannot be deprived of from getting compensation. The decisions cited by the learned Additional Public Prosecutor are not helpful to the facts of the present case. Therefore, the detenus are entitled to get monetary compensation, to compensate their redress.

11. As stated earlier, the State is liable to pay compensation to the detenus, who are the sons of the petitioner herein, in view of the above discussion and the decision of D.K. Basu Vs. State of West Bengal, . We are of the view that ends of justice would be met if we grant compensation to each of the detenus, a sum of Rs. 50,000/-(Rupees Fifty thousand only) each. The State is free to take action against the Officers/Officials concerned, so that Police personnel will discharge duty/obligation in right direction and without involving innocent persons in grave crimes, as in this case, and will bring transparency and accountability so that the confidence of the public be reposed on police.

12. A copy of this order be sent to Chief Secretary, Government of Tamil Nadu, Madras and Director General of Police, Madras for necessary action.

13. The H.C.P. is ordered accordingly. The detenus are directed to be set at free. The bail bonds executed by the detenus shall stand discharged. The payment of compensation to be made to the detenus directly, within two month from the date of receipt of a copy of this order.