
(2003) 01 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13964 of 2002

Mykala Subbamma

APPELLANT

Vs

N. Srinivasa Rao and Others

RESPONDENT

Date of Decision : 29-01-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 5, 7

Criminal Procedure Code, 1973 (CrPC) — Section 129, 151, 154, 154(3), 164

Penal Code, 1860 (IPC) — Section 302, 304, 343

Citation : (2003) 2 ALD 49 : (2003) 3 ALT 223

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V. Raghunath, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner seeks a writ of mandamus directing the second respondent namely, the Superintendent of Police, Mahbubnagar, to register a criminal case u/s 343 and 302 of the Indian Penal Code (IPC), to investigate the said offence by the Crime Branch, Criminal Investigation Department (CBCID) and initiate disciplinary action against the first respondent and other policemen who are responsible for allegedly causing the death of her husband. She also prayed this Court to award appropriate compensation to the family of the deceased and pass such other orders as are deemed fit.

2. The petitioner is the wife of one Mahadev and resident of Karni village in Makthal Mandal, Mahbubngar District. She alleged in the affidavit accompanying the writ petition that her husband was taken into police custody by the first respondent on 9-5-2001, confined him in illegal detention and subjected to severe torture and ill-treatment, as a result of which he died in the police lock up. She pleaded that on 9-5-2001, at about 3.00 p.m. the Sub-Inspector of Police, first respondent herein, the Assistant Sub-Inspector of Police and other policemen came to the village in connection with Crime No.31 of 2001 and

arrested her husband. At the time of arrest, the Sarpanch of the village, relatives, neighbours and village-men and herself were present. Mahadev was taken into custody in connection with a criminal case. He was taken away to the police station with handcuffs. Immediately, herself, Sarpanch and others rushed to the police station and requested the first respondent to set Mahadev free. They were informed that Mahadev was taken into custody in connection with culpable homicide case and as investigation is in progress, Mahadev will be produced before the Court after the investigation. Believing the police, they left for their village. On the next day, when she visited the police station and begged the Sub-Inspector and others, they did not allow to see her husband. After some time, she was allowed to see her husband and she found Mahadev in the lock up without dress and was severely tortured. She provided food to her husband, who cried saying that the police have severely beaten up and ill-treated him for the whole day. Knowing the pathetic situation she requested the police not to torture him and produce before the Court. But the Sub-Inspector of Police informed her that if she pays money her husband will not be tortured and he will be set free. She requested the Village Sarpanch and brother of her husband to help her. She also alleged that the Sarpanch of the village and her brother-in-law went to the police station and found Mahadev with handcuffs chained to the window. He told his brother that he was subjected to severe torture and that he will be killed if money is not paid to the Sub-Inspector and other policemen. He requested to sell away the land and pay money to the Sub-Inspector. The brother of Mahadev witnessed the cruelty and inhuman treatment meted out by the police.

3. It is further alleged that on 14-5-2001, police informed that her husband is absconding from the police station and asked her to find out the whereabouts of her husband. When she went to the Sarpanch, she was informed that the dead body of her husband was lying at the outskirts of Makthal village. She rushed to the spot and found the body of her husband lying in the topes. She found torture marks on the body and cement marks under the foot. Some of the villagers, Sarpanch and brother of the deceased came to the spot and requested the police not to shift the body as it was a suspicious death. She also alleged that her husband was tortured from 9-5-2001 as a result of which he died in the police custody. When various organizations raised hue and cry, a magisterial enquiry was conducted by the Mandal Revenue Officer, who submitted a report to the District Magistrate on 16-5-2001 holding that Mahadev has had been in the police custody since 9-5-2001 and that it is surprising as to how Mahadev escaped from the police custody. She also alleged that she lodged an oral complaint before the respondents to register a criminal case against the Sub-Inspector and other policemen, in vain. They only registered Crime No.33 of 2001 u/s 174 of the Code of Criminal Procedure (Cr.P.C.) on 14-5-2001 and also refused to supply a copy of the FIR. She also approached the Superintendent of Police and lodged a complaint. But the second respondent neither directed to register the case nor taken any action against the police.

4. Therefore, she alleged violation of fundamental rights under Articles 14 and 21

of the Constitution of India are violated and filed a writ petition.

5. When the writ petition was listed before me on 1-8-2002, having regard to the seriousness of allegations, I passed the following order directing the Chief Judicial Magistrate-cum-I Additional District Judge, Mahbubnagar to conduct enquiry in camera and submit a confidential report.

6. Having regard to the allegations that the petitioner's husband died while he was in custody as evidenced by the report of the Mandal Revenue Officer, Makthal sent to the Collector & District Magistrate and also having regard to the cases decided by the Supreme Court in NEELABATI BAHERA v. STATE OF ORISSA (1) 1997 CCR 81) and D.K. Basu Vs. State of West Bengal, , I deem it proper to direct the Chief Judicial Magistrate-cum-I Additional District Judge, Mahbubnagar to conduct an enquiry, in camera, and submit a confidential report to this Court within a period of four weeks from today. The learned Chief Judicial Magistrate is requested to examine the representatives of the A.P. Civil Liberties Committee, Kula Nirmoolana Porata Samithi, Ambedkar Yuvajana Sangam and other dalit organizations who appear to have agitated in relation to the death of the petitioner's husband. It is open to the learned Chief Judicial Magistrate to examine the Sub-Inspector of Police and the Mandal Revenue Officer, Makthal who conducted inquest u/s 174 of the Code of Criminal Procedure. It is also open to the petitioner to produce all the witnesses before the Chief Judicial Magistrate who shall record their statements. Adequate opportunity shall be given to the police of Makthal police station.

7. Pendency of this W.P.M.P. and the writ petition does not preclude the Director General & Inspector General of Police and the Superintendent of Police, Mahbubnagar district from taking necessary action against police who are alleged to be responsible for the death of Mahadev including registering case under Sections 343 and 302 of the Indian Penal Code.

8. In pursuance of the order passed by me on 1-8-2002, the Additional District Judge, Mahbubnagar, conducted enquiry after giving notice to the petitioner and A.P.Civil Liberties Committee, Ambedkar Yuvajana Sangham and Kula Nirmulana Porata Samithi, Mahbubnagar. The learned Additional District Judge examined P.Ws.1 to 8 for the petitioner who also marked Exs.A1 to A6. On behalf of the Sub-Inspector of Police, the first respondent herein, R.Ws.1 to 11 were examined besides marking Exs.B1 to B33. The report of the magisterial enquiry conducted by the Mandal Revenue Officer was marked as Ex.C1 and the Mandal Revenue Officer was examined as C.W.1. The Medical Officer who conducted autopsy was examined as C.W.2 and postmortem report was marked as Ex.B23. After considering the evidence, the learned Additional District Judge arrived at the following conclusion.

a) On 9-5-2001 at about 4.00 p.m., R.W.10, the S.I. of Police, Sri S.Srinivasa Rao and his staff picked up the deceased Mahadev as a suspect in the death of his first wife Yellamma, from the house of P.W.1, the Sarpanch of Karni village in

a case relating to Cr.No.31/2001 of P.S., Makthal covered by FIR Ex.B.3.

b) Mahadev was seen in the police station by P.W.1, the Sarpanch of the village, P.W.2 Sabamma, the wife of Mahadev and a resident of Karni P.W.3.

c) Mahadev remained in the police station from 9-5-2001 some time after 4.00 p.m. till 4.00 a.m. on 14-5-2001.

d) The apprehension of Mahadev and keeping him in the police station for 5 days is not recorded either in the G.D. or in the case diary.

e) There is likelihood of Mahadev having escaped from the police station on the pretext of attending to calls of nature around 4.00 a.m. on 14-5-2001 with only his under-wear (inquest report Ex.B.22 Col.No.7)

f) The deceased Mahadev was being chased by the parents and relatives of his first wife Yellamma as a murderer of Yellamma. They have also beaten Bheemamma, the mother of Mahadev (as spoken to by P.W.1). Mahadev was under mortal fear from the parents and relatives of Yellamma. He was also under strain because he was in the police station for prolonged period.

g) Mahadev was not tortured during his stay in the police station.

h) At about 6.00 or 6.30 a.m. on 14-5-2001 Mahadev climbed an electric tower situated about 2 km. from the police station, only with his under-wear on, up to a height of more than 60 ft. and jumped to his death which is a case of suicide.

9. After receiving the enquiry report, copies of the same were supplied to the petitioner and respondents, who filed their objections. The petitioner mainly objected to the finding of the learned Additional District Judge that the deceased was not tortured in the police station and that he died committing suicide. The first respondent in his objections finds fault with the finding of the learned Additional District Judge that late Mahadev remained in the police custody from 9-5-2001 till 4.00 a.m. on 14-5-2001. It is the contention of the first respondent that Mahadev was never arrested. It is further stated that the first wife of Mahadev died and a case being Crime No.31 of 2001 u/s 174, Cr.P.C. was registered. The Doctor who conducted autopsy on the body of Yellamma, the first wife of Mahadev, opined that the death was due to throttling on 11-5-2001. Then only after that date that he altered the Section in the FIR as Section 302 IPC on 11-5-2001 and there is no question of picking up Mahadev on 9-5-2001. It is the case of the first respondent that Mahadev was never arrested by him, that he was never in the police custody and that he himself was approaching the police seeking protection as he apprehended that the parents of the first wife and others may take vengeance. He, therefore, contends that the conclusion reached by the learned Additional District Judge that Mahadev remained in the custody is unjustified.

10. Sri V.Raghunath, learned counsel for the petitioner, submits that before the learned Additional District Judge, who conducted enquiry, P.Ws.1 to 4 gave

evidence that they saw Mahadev in the police station and they were informed by Mahadev that the police tortured him in the candle light. From this, the learned counsel would like this Court to infer that Mahadev died of torture and his body was thrown nearer to Karni village. The finding recorded by the Enquiry Officer that from 9-5-2001 to 14-5-2001, Mahadev was in the police custody at P.S. Makthal, and therefore, the burden is on the police to show that he did not die of mental torture and/or that Mahadev was not tortured to such an extent that he was forced to commit suicide. He also submits that when the petitioner gave oral complaint to the police alleging that it is the first respondent who is responsible for the death of Mahadev, no action was taken on the complaint. He relies on Section 154, Cr.P.C. and submits that the offence u/s 302 IPC and/or u/s 304 IPC ought to have been registered by P.S. Makthal and investigation should have been conducted to find the persons responsible for death. He relies on the findings of the Enquiry Officer and the magisterial enquiry report. He also relies on other provisions of Cr.P.C. in support of the submission that whenever an unnatural death occurs, a cognizable offence ought to be registered u/s 302 IPC, but instead of that the police registered Crime No.33 of 2001 u/s 174 Cr.P.C. He lastly urges that as Mahadev was not seen in the custody of the police and as there was a finding by the learned Additional District Judge that for about five days Mahadev was in the police custody, the Police and the State should alone be held responsible for the death of Mahadev and the petitioner should be paid adequate compensation.

11. The respondents have not filed any counter affidavit in spite of giving notice. The first respondent submitted objections to the enquiry report along with an affidavit. As noticed, he denied the arrest of Mahadev on 9-5-2001. He also denied that Mahadev was tortured in the police station. Sri C.Padmanabha Reddy, learned Senior Counsel appearing for the first respondent, submits that the allegation that the deceased Mahadev was tortured by the police is belied by the evidence of P.W.2, the Doctor, who conducted postmortem. He also submits that the allegation that Mahadev was picked up by the first respondent and other Constables as he is connected with the case of murder of his first wife, is belied by the evidence of R.W.1, R.W.2 and R.W.8. He further submits that when Mahadev's mother was not well, she was taken to the hospital by Mahadev himself two days prior to his death, and, therefore, the theory that he was arrested cannot be believed. He, however, submits that if a complaint is made against the police making allegations against them, it is for the authorities to register the crime and that without approaching the higher officials as required u/s 154(3) of Cr.P.C., a writ petition cannot be filed. The learned Senior Counsel lastly contends that a complaint was registered at the instance of R.W.8 only to enable the petitioner to take assignment of land as well as ex gratia amount which was duly given and there is no truth in the allegations made by the petitioner.

12. Sri M.Rama Rao, learned Govt. Pleader for Home, submits that after investigating Crime No.31 of 2001 given by R.W.8, a final report was already

filed u/s 173(3) of Cr.P.C. informing the Judicial Magistrate of I Class that the investigation is completed.

13. The various contentions and rival contentions made by the petitioner and respondents' counsel, may be conveniently considered under three headings: i) the arrest of Mahadev in connection with Crime No.31 of 2001 of P.S. Makthal; ii) the reasons for the death of Mahadev; and iii) relief to the petitioner.

14. The arrest of Mahadev in connection with Crime No.31 of 2001 of P.S. Makthal.

15. The learned Additional District Judge, who was directed to enquire into the allegations, in his report, concluded that on 9-5-2001 at 4.00 p.m., the first respondent and his staff picked up Mahadev as a suspect in the death of his first wife Yellamma from the house of P.W.1 and that Mahadev remained in the police station some time after 4.00 p.m. on 9-5-2001 till 4.00 a.m. on 14-5-2001. The learned Additional District Judge also recorded a finding that the arrest of Mahadev and his detention in the police station for more than four days is not recorded in general diary or case diary. These findings and conclusions are very well supported by the evidence of P.W.1, P.W.3 and P.W.4. The Sarpanch, P.W.1, the wife of Mahadev, P.W.2 (petitioner herein) deposed that Mahadev was picked up by the police on 9-5-2001. They also stated on oath before the learned Additional District Judge that they found him in the police station on two occasions. The fact that the police visited Karni village on 9-5-2001 is established by the FIR in Crime No.31 of 2001, which is Ex.B3. P.W.1 even speaks that when he went to the Makthal police station on 10-5-2001, he found Mahadev with handcuffs and again he saw him on 12-5-2001 in the police station when he requested the first respondent (who examined himself as R.W.10) to relieve him or to produce him before the Court. To the same effect is the evidence of P.W.2 before the inquiring authority. She saw Mahadev on 10-5-2001 and 13-5-2001 when Mahadev, according to her, informed that he would be killed if money is not paid to the police. P.W.3 also corroborates P.W.1 and P.W.2. He stated that when he went to the police station and talked to Mahadev, he found his mother (Bheemamma) being shifted in a rickshaw to Government Hospital and saw Mahadev and Constables by her side. After Bheemamma was admitted to the hospital, Mahadev was again taken to the police station, when he offered tea for Mahadev and also spent with him in the police station for 1 1/2 hours. P.W.1 and R.W.10 were examined, but the veracity of the deposition remained unchallenged. Therefore, it is safe to conclude that as found by the Additional District Judge, Mahadev was arrested on 9-5-2001 and was found in the police station from 4.00 p.m. on 9-5-2001 till 4.00 a.m. on 14-5-2001 when he escaped from the police station.

16. The first respondent denied that he arrested Mahadev. Having regard to the finding of fact recorded by the learned I Additional District Judge, whose finding is accepted by the Court, it must be held that the first respondent followed the provisions of law under the Code of Criminal Procedure, 1973 more in breach and

flouted the various dicta laid down by the Supreme Court. I will deal with this aspect while considering the relief to be given to the petitioner.

17. Reasons for the death of Mahadev The first respondent was examined as R.W.10 before the learned Additional District Judge. He stated that when he and other Constables were searching for Mahadev right from 9-5-2001 and that they sighted his body on 14-5-2001 in the morning and registered a case in Crime No.33 of 2001 u/s 174 Cr.P.C. The FIR was marked as Ex.B14, which was registered on the complaint made by the Village Administrative Officer R.W.8. The learned Additional District Judge recorded a finding that till 4.00 a.m. on 14-5-2001 Mahadev was in the police station. How he left the police station and escaped the constant vigil of the Constables is not known? When the villagers and police found his body, he was having only underwear as recorded in the inquest report Ex.B22. It is probable, as observed by the learned Additional District Judge that police of Makthal might have released him for attending calls of nature when he might have slipped away. He was obviously under great stress and strain by being in the police station for more than four days and the relatives of his first wife Yellamma were vigorously searching for him. Therefore, the theory that he committed suicide due to frustration, prima facie, holds good having regard to Ex.B23 autopsy report and the evidence of Medical Officer C.W.2, Dr.A.R.Saratchandra, the autopsy report revealed the following ante mortem injuries on the dead body of the deceased.

1. Laceration 5x2x1 cm. Over the right side of the mandible.
2. Fracture of the right femur middle 1/3rd.
3. Fracture of the ribs on the right chest wall posteriorly 2nd and 3rd ribs and on the left side of the chest wall posteriorly 2nd, 3rd, 4th, 5th, 6th and 7th ribs.
4. Laceration of the left kidney 1x1x 1/2 cm.

18. The Medical Officers, Dr.A.R.Saratchandra and Dr.Narasimha Kumar, who conducted autopsy on the body of Mahadev on 15-5-2001, opined that the cause of death was due to shock, hemorrhage as a result of serious injuries and that the said injuries are possible due to fall from height. They also opined that fracture of ribs on both sides is possible when a person falls on one side and shock is transmitted causing corresponding fracture. C.W.2 made a categorical statement that there is no indication of beating or torture as there are no external injuries. R.W.1 and R.W.2 and Exs.B28 and B29, their statements u/s 164 Cr.P.C. would show that Mahadev climbed electric tower and jumped. The finding recorded by the learned Additional District Judge would show that it is a case of suicide and there is no evidence of torture by police in the police station. He climbed an electric tower situated at 2 k.m. from the police station only with an underwear up to a height of 60 ft. and jumped to his death. The evidence of the Doctor who conducted autopsy and postmortem report would disprove the theory of death of Mahadev due to torture in the police station. For these reasons, the finding recorded by the Additional District Judge that Mahadev died

by jumping from 60 ft. electric tower is prima facie justified in the facts and circumstances of the case.

19. Relief for the petitioner

20. The petitioner prayed for a writ of mandamus directing the second respondent to register a case under Sections 343 and 302 of the Indian Penal Code (IPC) and get the case investigated by CBCID. She also prayed for a direction to the second respondent to initiate disciplinary action against respondent No.1 and other policemen, who were responsible for the death of Mahadev. A further relief is sought praying to award compensation to the family of the deceased. I will deal with these one after the other.

21. Registering Criminal Case Section 154 Cr.P.C. requires that every information relating to commission of cognizable offence given orally to an officer in-charge of the police station shall be reduced to writing and a case shall be registered. If the officer in-charge of the police station refuses to register the crime, the person aggrieved may send the substance of the information to the Superintendent of Police concerned. The law requires the Superintendent of Police to investigate himself or direct an investigation to be made by any police officer subordinate to him, if he is satisfied that such information discloses commission of cognizable offence. An offence u/s 302 IPC is a cognizable and non-bailable offence. Therefore, whenever a complaint of commission of a murder is received, it shall have to be registered u/s 154 Cr.P.C. It does not matter a little even if the complaint is made against a Sub-Inspector of Police and other police constables that they are responsible for the death of Mahadev. It is not denied before me that after he came to know that her husband was found dead on 14-5-2001, the petitioner lodged an oral complaint to register a criminal case against the first respondent and other policemen. She was informed that a case u/s 174 Cr.P.C. was registered, but they did not supply a copy of the FIR. Therefore, she approached the Superintendent of Police and lodged oral complaint and she alleges that the S.P. did not take any action on her oral complaint.

22. The police registered a crime u/s 174 Cr.P.C. The said provision requires that whenever an officer in-charge of the police station receives information that a person has committed suicide or has been killed by another person or by an animal or by machinery or by an accident or has died under circumstances raising reasonable suspicion that some other person has committed the offence, the police officer has to give information to the nearest Executive Magistrate who will hold inquest and draw up a report about the apparent cause of the death. On a complaint given by the Village Administrative Officer of Makthal (who was examined as R.W.8 before the Additional District Judge), Crime No.33 of 2001 was registered u/s 174 Cr.P.C. Immediately, the Mandal Revenue Officer, Makthal conducted magisterial enquiry/inquest on 16-5-2001 and submitted a report vide his letter No.F/712/2001. In his report, he recorded that on 15-5-2001, right from the early morning, the relatives, villagers and persons of Peoples

Organisations staged a dharna demanding immediate suspension of the police officers allegedly responsible for the death of Boya Mahadev and to conduct judicial enquiry to know the cause of death of Mahadev and for sanction of ex gratia to his wife. The Sub-Divisional Police Officer, Mahbubnagar, who was also in-charge of Makthal sub-division gave an assurance that impartial enquiry will be conducted and action will be taken against the persons responsible for the death of Mahadev. An assurance was also given that the District Collector will take appropriate action for conducting enquiry and that payment of ex gratia can be considered under Apathbandu Scheme. Be that as it may, after conducting inquest, he recorded that Mahadev had been in police station from 9-5-2001. In spite of this report, curiously, an FIR was registered only u/s 174 Cr.P.C. A true interpretation of Section 154 read with Section 174 Cr.P.C. would lead to the conclusion that whenever there is an allegation that a person has been killed by a police personnel, a case has to be registered u/s 302 IPC. It would be altogether different if the police submit a report u/s 173(2) Cr.P.C. to the Magistrate competent to take cognizance and it is for the Magistrate to pass appropriate orders on giving notice to the de facto complainant either closing the complaint or ordering further investigation. In every case of death in the face of the allegation that police are responsible for the death, registering a case u/s 174 Cr.P.C. would be a breach of law and cannot be justified. A plain reading of Section 174 Cr.P.C. would show that it only casts a duty on the police officer to give information to Executive Magistrate about the death of a person for conducting inquest. An offence is to be registered as per Section 154 Cr.P.C. mentioning the nature of offence. The learned Senior Counsel, Sri C.Padmanabha Reddy, does not dispute this legal position. He mainly submits that in an appropriate case this Court can give a direction to take appropriate action in the matter.

23. Therefore, a direction shall issue to the Superintendent of Police, Mahbubnagar, the second respondent herein, to register a case u/s 302 IPC and other appropriate provisions of law against the first respondent and other Constables on duty during the period from 4.00 p.m. on 9-5-2001 till 4.00 a.m. on 14-5-2001 and investigate the case without being influenced by any of the findings or observations made by the learned Additional District Judge as well as this Court in this order. The Superintendent of Police shall also file a report before the Magistrate competent to take cognizance of the case u/s 173(2) Cr.P.C. after completion of the investigation. It shall be open to the Superintendent of Police to avail the assistance of any other police officer not below the rank of Sub-Divisional Police Officer and complete the investigation within a period of four months from the date of receipt of a copy of this order.

24. Disciplinary action against respondent No.1 Police Standing Order 556 requires every Police officer to be thorough and conversant with the powers of arrest without warrant under Sections 41, 42, 60, 129, 151 and 432 of Cr.P.C. After making arrest, every Police officer is to follow scrupulously the provisions of the Constitution and Cr.P.C. intended to protect the citizens from arbitrary

invasion of personal liberty. As seen, the officers in question have neglected to discharge the duty in accordance with law. Mahadev was in the police station from 9-5-2001 and he was kept in lock up to 4.00 a.m. on 14-5-2001. Mahadev was hand cuffed. His human rights were violated. The law laid down by the Supreme Court in various decisions as well as the Constitutional mandate is violated. The failure to comply with requirements of law would make the concerned police officer liable for departmental action. It was so held in *D.K.Basu v. State of West Bengal*¹. Therefore, there cannot be any doubt that by their acts of malfeasance and misfeasance, the first respondent and other police constables have committed gross misconduct and they are liable for departmental action. Accordingly, it is a fit case to direct the police officials and/or other competent higher police officials to initiate departmental action under A.P. Civil Services (Classification, Conduct & Appeal) Rules, 1991 and pass appropriate orders within a period of six months from the date of receipt of a copy of this order.

25. Compensation in public law The petitioner claimed appropriate and suitable compensation to the family of the deceased Mahadev, who allegedly died due to torture by the police. As a finding of fact, the learned Additional District Judge, having regard to the medical and non-medical evidence recorded by him, came to a conclusion that the allegation that Mahadev died due to police torture is not correct. It does not, however, mean that human rights and fundamental rights guaranteed under the Constitution are not violated.

26. The Constitution abhors pre-trial remand and imprisonment beyond reasonable time. It treats such imprisonment as violation of Article 21. Under clause (2) of Article 22, every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hrs. from the time of arrest and no such person shall be detained in custody beyond the said period without authority of the Magistrate. He shall be informed the grounds of such arrest and shall be provided the facility of a legal practitioner. Clauses 1 and 2 of Article 22 reads as under.

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

27. Chapter V of Cr.P.C. deals with arrest of person. u/s 41, any police officer may, without an order from Magistrate and without warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made of having been so concerned with any cognizable

offence. An arrested person shall not be subjected to more restraint than necessary to prevent his escape (See Section 49 Cr.P.C.), and every police officer arresting any person without warrant shall have to indicate full particulars of the offence for which he is arrested or grounds of such arrest. When a police officer arrests without warrant, as per Section 56 Cr.P.C., such officer shall have to send the person arrested to the Magistrate having jurisdiction in the case without unnecessary delay. It is also laid down in Section 57 Cr.P.C. that a person arrested shall not be detained for a longer period than is reasonable and such period shall not exceed 24 hrs. exclusive of the time necessary for journey from the place of arrest to the Magistrate's court. This is subject to any order of remand passed by the Magistrate u/s 167 Cr.P.C. When it is not possible to complete the investigation within 24 hrs., the person arrested can be detained by a special order of Magistrate which shall not exceed 15 days. The period, however, can be extended by the Magistrate, but the said period of remand shall not exceed 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not exceeding ten years and 60 days where the investigation relates to any other offence. If the person who is remanded furnishes bail, the Magistrate may release him on bail under the provisions of Chapter XXXIII.

28. The Cr.P.C. is a law which is not only intended to provide for investigation and trial for offences under Indian Penal Code and offences under any other law. It is also a law which is intended to protect the rights of the accused at pre-trial stage as well as to some extent at the stage of imprisonment and it is aimed at achieving legal justice.

29. A.P. Police Standing Orders are an amalgamation of both statutory and non-statutory orders. They deal with various aspects of police administration in the State. Standing Orders 556 to 584 deal with arrest and custody. A person arrested cannot be ill-treated. After making an arrest under Police Standing Order 559, an arrest report in Form No.68 shall have to be sent as required u/s 58 Cr.P.C. by the S.H.O. to the Sub-Divisional Police Officer. When the case is taken up for investigation, it is the duty of the investigating officer to ask the arrestee whether he has any complaint to make of ill-treatment by the police and shall enter the question and answer in the case diary. When an allegation of ill-treatment is made, the investigating officer shall examine the body and see if there are any marks of ill-treatment and shall record reasons of examination. Standing Order 580 provides that under-trial prisoners and other accused persons shall not be handcuffed and chained unless there is a reasonable expectation that the arrestees will use violence or will attempt to escape. When investigation is not completed within 24 hrs., Standing Order 588 requires the S.H.O. to forward the person in custody to the Magistrate of I Class and obtain special order for further remand. The remand report shall be supported by officer's case diary.

30. Therefore, provisions of the Constitution, Cr.P.C. and Police Standing Orders

are clear and categorical that no arrested person can be kept and detained in prison for more than 24 hrs. and that every citizen has a right to be produced before the Magistrate within 24 hrs. of the arrest. All these provisions have been violated. Further, as per the evidence of P.Ws.1, 4, 8 recorded by the learned Additional District Judge, Mahadev was found chained to prison window with handcuffs. This is gross violation of Police Standing Orders as well as the judgment of the Supreme Court in Prem Shanker Shukla v. Delhi Administration².

31. Before considering the decisions of the Supreme Court on constitutional tort, a brief reference may be made to the international human rights regime in this regard. Article 5 of Universal Declaration of Human Rights, 1948 declares that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 7 of International Covenant on Civil and Political Rights also declared that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and in particular no one shall be subjected without his free consent to medical or scientific experimentation". To the same effect is Article 3 of European Convention on Human Rights. The Protection of Human Rights Act, 1993 (Central Act No.10 of 1994) defines "human rights" by Section 2(d) as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforced by courts in India. Section 2(f) defines "international covenants" as meaning International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16-12-1966. By reason of the Protection of Human Rights Act, Article 5 of the Universal Declaration on Human Rights and Article of the International Covenant on Civil and Political Rights (ICCPR) form part of Fundamental Rights chapter, especially Article 21 of the Constitution of India. In S.Satyanarayana v. State of A.P.³, I have considered this aspect of the matter.

32. In Francis Coralie Mullin v. Administrator, U.T. of Delhi⁴, the Supreme Court considered Article 5 of the Universal Declaration and Article 7 of the ICCPR and observed as under.

33.Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading

treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to life can concededly be abridged according to procedure established by law and therefore when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration.....

34. The torture on one hand and inhuman degrading treatment on the other depends on severity of suffering involved. In given circumstances, inhuman and degrading treatment could be classified as torture. At what point ill-treatment moves from being inhuman and becomes torture depends on circumstances. Malcolm D Evans* refers to recent cases decided by the European Commission on Human Rights and suggests the following criteria for deciding whether it is torture, cruelty or inhuman degrading treatment of the detenu.

35. This seems to me to suggest an entirely different approach, which is not based on the "severity of suffering" at all. Why not abandon all thoughts of a "vertical model" and replace it with a "horizontal model" in which "torture" and "inhuman" and "degrading" treatment and punishment all stand alongside each other. The first question to be asked would be whether the form of ill-treatment or punishment is sufficiently serious to be deemed "inhuman". If that threshold is met, then the next question is whether the ill-treatment was purposive (in the sense of Article 1 of the UN Convention). If it was, then it should be characterized as "torture". It should not be necessary for the "suffering" to be of a greater severity as well. It is the very fact of its purpose use that is the "aggravating factor". "Degrading" treatment should be reserved for those forms of ill-treatment, the gist of which lies in the humiliation that is felt by the victim. Under this approach, "torture" and "degrading" treatment are species of inhuman treatment. If we choose to place a greater stigma on the purposive ill-treatment of individuals than of the non-purposive humiliation of individuals, then that is a moral and not a legal judgment.

36. The findings recorded by the learned I Additional District Judge that Mahadev was picked up by the first respondent from his village and was kept in the lock up from 9-5-2001 till about 4.00 a.m. on 14-5-2001 is unassailable. It is also in evidence that Mahadev was in such a desperate situation that he requested his wife, petitioner herein and others to sell away his land and pay the amount demanded by the first respondent. His arrest was not reported. He was not produced before the competent Court and his fundamental rights were flouted. He was kept in prison for more than four days ignoring the binding Standing Orders as well as provisions of the Constitution. Police Standing Orders 566, 569, 580 and 588; Sections 49, 50, 56, 57, 58 of Cr.P.C.; and Articles 21 and 22 of the Constitution have been violated. He was even handcuffed in violation of law. Is it suffice to give a declaration that the State represented by the first respondent has grossly trampled the fundamental right under Article 21 of the

Constitution of India? or any further relief is to be given for the constitutional tort committed by the first respondent as well as the State vicariously.

37. "Constitutional tort" is defined as "to deprive someone of constitutional rights under colour of State law". In *K.P.Hussain Reddy v. Executive Engineer, M.I. Division, Nandyal*⁵, I have considered various text books and decided cases on the subject of constitutional tort in *Rudul Shah v. State of Bihar*⁶, *Sebastian M. Hongray v. Union of India*⁷, *Bhim Singh v. State of J. & K.*⁸, *Nilabati Behera v. State of Orissa*⁹, *Consumer Education & Research Centre v. Union of India*¹⁰, *Daulat Ram v. State of Haryana*¹¹, *D.K.Basu v. State of West Bengal (supra)*, *Common Cause v. Union of India*¹², *Shiv Sagar Tiwari v. Union of India*¹³, *People's Union for Civil Liberties v. Union of India*¹⁴, *State of Bihar v. Subhash Singh*¹⁵, *Commissioner v. Rohtas Singh*¹⁶, *Ajab Singh v. State of U.P.*¹⁷ and *M.C.Mehta v. Kamalnath*¹⁸, and summarised the principles that emerge in these authorities as under.

(i) Torts like assault, battery, and false imprisonment which are trespass to person by Police Officer and investigating agencies which are not authorised under law are Constitutional Torts.

(ii). Awarding of compensation is public law remedy and available in a claim for deprivation of life and liberty alone. The compensation awarded is for the pecuniary and non-pecuniary loss suffered by the person due to illegal detention/imprisonment and is given to recompense for the inconvenience and distress suffered by the person.

(iii). The order of compensation is in the nature of palliative and is passed to mulct the violators of the fundamental rights in payment of monetary compensation.

(iv) When a person is arrested and imprisoned with malicious intention his constitutional and legal rights are said to be invaded. The malice and invasion of the right is not washed away by setting the person free and in appropriate cases the Court has jurisdiction to award compensation to the victim.

(v) The public law remedy of monetarily compensating the violation of fundamental rights is part of the constitutional scheme based on strict liability for such contravention of rights and therefore the principle of sovereign immunity does not apply as it applies in private law.

(vi) Judicially evolved right to compensation in public law is available for breach of public duty by the State of not protecting the fundamental right, but it is given for infringement of inalienable right to life and by way of applying balm to the wounds of the deceased family.

(vii). For the tortious acts of the Government Officers and Police Officers, the State is liable to pay compensation for violation of fundamental rights to life and liberty

(viii). The order for awarding compensation need not be in the coercive form. It can be by way of declaration of the right of the person to be paid by the Government certain amount to be assessed by the Court. This is especially so in a case where fundamental right to property is breached in violation of law.

38. By reason of a catena of decisions of the Supreme Court referred to hereinabove, it is now well settled that for a tortious act of the police officers, the State is liable to pay compensation for violation of fundamental right to life and liberty under Article 21 of the Constitution. It is not necessary to refer to all these decisions. Suffice it to refer to *Nilabati Behera v. State of Orissa* (supra) wherein it was laid down that a claim in public law for compensation for contravention of human rights and fundamental freedoms is an acknowledged remedy for enforcement of such rights on the principle of strict liability, by resorting to a constitutional remedy provided for the enforcement of fundamental right. It is a distinct remedy in addition to the remedy in private law for damages for the tort. In *D.K. Basu v. State of West Bengal* (supra), the Supreme Court elaborately considered the constitutional tort for violation of Articles 21 and 22 of the Constitution. While reiterating that the Court, which has given a declaration that the fundamental right is infringed, must proceed further and give necessary relief not by way of damages as in a civil action, but by way of compensation under the public law jurisdiction for the wrong done due to breach of public duty by the State of not protecting the fundamental right to life of a citizen. The Supreme Court also laid down the requirements to be followed in all the cases of arrest and detention till the legal provisions are made in that behalf. These are as under.

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and

the police station of the area concerned telegraphically within period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

39. All the principles of law laid down by the Supreme Court have been violated in this case.

40. The Supreme Court also pointed out in paragraph 37 (D.K.Basu v. State of West Bengal) as under.

41. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High court of the country, having territorial jurisdiction over the matter.

42. It was also laid down that -

.....The claim of the citizen is based on the principle of strict liability to

which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf.....

43. Therefore, the police officers who violate the provisions of the Constitution and the law laid down by the Supreme Court in *D.K. Basu v. State of West Bengal* (supra) are liable for disciplinary action as well as contempt of court besides being compelled to pay compensation. If the State is compelled to pay the compensation, it shall have a right to be indemnified by the wrong doer and can collect the amount of compensation from the wrong doer i.e., the police officer guilty of acts of malfeasance and misfeasance.

44. Mahadev was subjected to unreasonable inhuman and degrading pre-trial and pre-remand detention which is *ex facie* unconstitutional. What would be the appropriate compensation to be given? In *Bhim Singh v. State of J. & K.* (supra), the petitioner was a Member of Legislative Assembly. He was suspended from the Legislative Assembly. The same was stayed by the High Court of Jammu & Kashmir. He was proceeding from Jammu to Srinagar for attending the Legislative Assembly. On the way, he was arrested at 3.00 a.m. on 9-9-1985 at a place about 70 k.m. from Srinagar. His wife filed a writ petition before the Supreme Court having failed to trace him. Sri Bhim Singh was released on 16-9-1985 on bail by the learned Additional Sessions Judge, Jammu before whom he was produced. The Supreme Court directed the Inspector General of Police to inform Smt. Jayamala, the wife of Sri Bhim Singh as to where her husband was kept in custody. Later, Bhim Singh filed a supplementary affidavit to the effect that he was kept in police lock up from 10-9-1985 to 14-9-1985 and that he was produced before the Magistrate only on 14-9-1995. The Supreme Court declared that -

.....We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or other- wise is now established by the decisions of this court in *Rudal Sah v. State of Bihar* (supra) and *Sebastian M. Hongray v. Union of India*

(supra). When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation.....

45. The Supreme Court ultimately awarded an amount of Rs.50,000/- to be paid by the State of Jammu & Kashmir being the compensation for unconstitutional and illegal detention.

46. Therefore, having regard to the principles of constitutional tort and in the facts and circumstances of this case, I direct the fifth respondent to pay an amount of Rs.50,000/- to the petitioner as compensation for the constitutional tort suffered by her husband late Mahadev within a period of six weeks from the date of receipt of a copy of this order. This order is passed having regard to the submission made by Sri Padmanabha Reddy, learned Senior Counsel that the petitioner was also given some amount under Apadbandhu scheme by the Revenue officials, as otherwise I would have awarded more than what is awarded now. Be that as it may, as laid down by the Supreme Court in paragraph 37 of the judgment in D.K. Basu v. State of West Bengal (supra), the first respondent has committed contempt of court by violating the guidelines issued therein. Office shall initiate suo motu contempt proceedings and issue notice returnable by

47. The writ petition, for the above reasons, is allowed with the following orders and directions.

i) The Superintendent of Police, Mahbubnagar, the second respondent herein, shall register a case u/s 302 IPC and other appropriate provisions of law against the first respondent and other Constables on duty during the period from 9-5-2001 to 14-5-2001 and investigate the case without being influenced by any of the findings or observations made by the learned Additional District Judge as well as this Court in this order. The Superintendent of Police shall also file a report before the Magistrate competent to take cognizance of the case u/s 173(2) Cr.P.C. after completion of the investigation. It shall be open to the Superintendent of Police to avail the assistance of any other police officer not below the rank of Sub- Divisional Police Officer and complete the investigation within a period of four months from the date of receipt of a copy of this order.

ii) The Superintendent of Police, Mahbubnagar, is directed to initiate departmental action against the first respondent and other Police Constables under A.P. Civil Services (Classification, Conduct & Appeal) Rules, 1991 and pass appropriate orders without being influenced by any of the observations made by this Court, within a period of six months from the date of receipt of a copy of this order.

iii) The fifth respondent is directed to pay an amount of Rs.50,000/- to the

petitioner as compensation for the constitutional tort suffered by her husband late Mahadev within a period of six weeks from the date of receipt of a copy of this order. The fifth respondent shall be entitled to recover the said amount from respondent No.1.

48. The respondents shall pay the costs of this writ petition to the petitioner quantified at Rs.2,000/-.