

**(2001) 06 AP CK 0003**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 2326 of 1993**

Noorunissa Begum and another

APPELLANT

Vs

District Collector, Khammam and others

RESPONDENT

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**Date of Decision : 27-06-2001**

**Acts Referred:**

Andhra Pradesh Prisoners (Attendance in Courts) Rules, 1977 — Rule 10, 2, 3, 4(1), 4(2)  
Constitution of India, 1950 — Article 14, 19(1), 21, 226, 47  
Penal Code, 1860 (IPC) — Section 323, 326

**Citation : (2001) CriLJ 3857**

**Hon'ble Judges : E. Dharma Rao, J**

**Bench : Single Bench**

**Advocate : Mrs. N. Shoba, for the Appellant; Government Pleader for Home, Counsel, for the Respondent**

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## **Judgement**

1. One Noorunissa Begum aged about 28 years wife of the late Shaik Chand, and Shaik Saida, wife of late Karnal aged about 60 years, the mother of Shaik Chand filed the writ petition to issue writ of mandamus to declare the action of the respondents in not conducting enquiry and failing to pay compensation to the petitioners as illegal, arbitrary and unconstitutional and for consequential direction to the respondents to conduct enquiry and pay compensation for death of Shaik Chand husband of the first petitioner and son of second petitioner in judicial custody.

2. It is submitted that the first petitioner's husband Shaik Chand was an auto-driver and having seven children and aged parents and was maintaining his family solely on the earnings from auto-driving. Shaik Chand was falsely implicated in criminal Case No.2 of 1991. According to the case of the prosecution on 24-12-1990 he quarrelled with some boys with the result one of the boys lost teeth. On this ground he was arrested and kept in judicial custody and later transferred to Sub-Jail, Khammam. On the date of trial of the above criminal case the first petitioner went to the Court to see her husband but he was

not produced before the Court. When enquired she was told by one of the prisoners of the Sub-Jail, Khammam that her husband suffered with chest pain for three days and therefore she requested the Jail Superintendent to send him to hospital for treatment. He was not sent to the hospital even after repeated requests made by her to the jail authorities and that apart he was not given proper food. He was abused and beaten by the jail authorities when they were requested to take him to hospital. On 2-12-1991 at about 10 p.m. or 11 p.m., her husband died due to ill health due to non-availability of medical treatment. She has no other source of income to feed her family members and herself and her family members are purely dependent on the income of late Shaik Chand. For simple injury i.e., loss of two teeth the deceased was falsely implicated in the criminal case and kept in jail from 24-12-1990 till the date of his death on 2-12-1991. Even if he is convicted for the offence punishable u/s 323 IPC the sentence would be imprisonment for an year or fine of Rs.1,000/- but he was kept in jail from 29-12-1990. The death of the husband of the first petitioner was also not intimated to her but the body was handed over on 3-12-1991. It is alleged that her husband died due to negligence on the part of the authorities of the Sub-Jail for not providing medical treatment. Thereafter she made representation to the Chief Judicial Magistrate, Khammam and on the request of her advocate the I Additional Judicial Magistrate of I Class, recorded the statements of other prisoners who were brought to the Court that her husband died only due to negligence on the part of the authorities. The other prisoners wrote an open letter to Eenadu Newspaper that they were going on hunger strike from 3-12-1991 on the ground that they were not treated properly when a co-prisoner died for not providing medical treatment. It is further stated that on the basis of the complaint given by the petitioner the Revenue Divisional Officer conducted an oral enquiry in the Sub-Jail on 3-12-1991 and 4-12-1991 and her statements were recorded. The Revenue Divisional Officer conducted a magisterial enquiry. Then the authorities have managed to see that some persons give statements against the first petitioner's complaint made to the Revenue Divisional Officer and pending enquiry the Revenue Divisional Officer was transferred and a new Revenue Divisional Officer has taken up charge. Therefore it is submitted that for committing simple injury the deceased was falsely implicated in criminal case and kept in jail from 24-12-1990 till 2-12-1991 on which date he died due to chest pain and for not providing any medical treatment and as on the date of filing of the writ petition the magisterial enquiry was not completed and therefore the present writ petition was filed to grant the above relief.

3. In response to the above allegations made by the petitioners one Sri K. Chrisostham, Superintendent of Sub-Jail, Khammam filed his counter affidavit. It is stated that he is not aware of the relationship between the petitioners and the deceased Shaik Chand and he is also not aware of the occupation and earnings of the deceased but admitted that the deceased was arrested by the II Town Police, Khammam for the offence u/s 326 IPC in CC No.2 of 1991 and remanded

by the I Additional Judicial Magistrate of I Class, Khammam on 29-12-1991. It is further stated that the deceased never made any complaint about his ill-health till 2-12-1991 at about 10-30 p.m. He denied the allegations that the deceased was suffering with chest pain for three days and requested him to send him to the hospital for medical treatment and also allegation that on enquiry made by the first petitioner the co-prisoners told her about the deceased's ill-health for three days are false. He emphasised that he has taken immediate steps for the welfare of the deceased and his health after information received from his duty Warder at about 10-30 p.m. on 2-12-1991. He has given food to the deceased and other prisoners as per rules from the date of remanding him to the Sub-Jail. He denied that the deceased died in the Sub-Jail on 2-12-1991 at 10 p.m. or 11 p.m., due to ill-health and non-availability of medical facilities but stated that the deceased informed them about his health condition on 2-12-1991 at about 10-30 p.m. Immediately he has written letter to the Superintendent of Armed Reserve Police, Khammam on 2-12-1991 for providing escort to take the deceased to the Khammam Hospital for treatment. The Superintendent of Sub-Jail is in-charge of the welfare of the prisoners and any complaint received from the prisoners but no such information was received about the deceased's ill-health till 10-30 p.m. on 2-12-1991. Armed Reserve Police sent the death information to the petitioners immediately on the same day. Therefore, the statement of the petitioners that they received the death intimation on 3-12-1991 is far away from truth. There was no negligence on the part of the jail authorities in not providing medical treatment or food etc., to the deceased. He denied the statement of the petitioners that co-prisoners raised their voice against the Superintendent of Sub-Jail for irresponsible and negligent behaviour towards prisoners. He denied the allegation that enquiry was made to the Chief Judicial Magistrate, Khammam on the basis of the complaint given by the mother of the deceased. After receiving complaint on 3-12-1991 the Chief Judicial Magistrate visited the Sub-Jail on 4-12-1991 and enquired about the death of the deceased and about non-providing medical aid, food etc. There is no adverse report against the Superintendent of Sub-Jail and on 4-12-1991 the District Collector also visited the Sub-Jail and enquired about the death of the deceased Shaik Chand for non-providing medical treatment. He denied the allegation that the body of deceased was taken on 3-12-1991 at 3 a.m., for medical treatment but he was sent to the hospital at 2-50 a.m., after providing armed reserved escort as A.R. Police people did not provide escort immediately after receiving his requisition. On 3-12-1991 post-mortem was conducted in the Government Hospital, Khammam and then the Armed Police handed over the body of the deceased to his relatives. Therefore, there is no negligence on his part and no delay in sending the deceased to the hospital for treatment. He has taken immediate steps for treatment of the deceased. The Revenue Divisional Officer has conducted enquiry in Sub-Jail on 3-12-1991 and recorded the statements of the prisoners and also others. There is no finding of negligence on the part of the Superintendent of Sub-Jail as per the statement of the witnesses. He denied the allegation that he managed the prisoners from speaking truth.

4. The District Collector, Khammam also filed his counter-affidavit on 23-11-1998 denying the allegations made by the petitioners in the affidavit and stated that in the conduct of the enquiry by the Revenue Divisional Officer and Sub-Divisional Magistrate, Khammam it was opined that there was no fault on the part of the jail authorities in providing food and medical treatment of the deceased. The Government also accepted the findings of the Enquiry Officer. Hence the contention of the petitioners that the Revenue Divisional Officer and Sub-Divisional Magistrate had only conducted oral enquiry and not recorded the statements of the witnesses is baseless. There is no provision provided for payment of compensation as contended by the petitioner for the death of the deceased.

5. The only issue involved in this writ petition is whether the petitioners are entitled to get compensation for the death of the first petitioner's husband who was an under-trial prisoner lodged in Sub-Jail, Khammam for untimely death on 3-12-1991 as alleged by the petitioners due to chest pain and for not providing medical treatment even though there was a complaint by the husband of the petitioner?

6. During the pendency of the writ petition the Revenue Divisional Officer and Sub-Divisional Magistrate has conducted enquiry and as ordered by the District Collector and submitted his report. As directed by this Court the learned Government Pleader for Home Mr. Mamidi Rama Rao has produced records and enquiry report of the Revenue Divisional Officer and Sub-Divisional Magistrate, Khammam. I have gone through the entire material placed before me. Based on the complaint made by the mother of the deceased Shaik Chand dated 3-12-1991 addressed to the District Collector, Khammam which was received on the same day and placed before the Collector for perusal. The District Collector in his letter dated 3-12-1991 instructed the Revenue Divisional Officer to conduct inquest on the dead body of deceased and on 4-12-1991 as per the instructions of the Collector, Khammam he conducted inquest on the body of Shaik Chand and during inquest statements of Noorunissa Begum, wife of deceased and Md. Karnal, son of Jamaluddin, Khasimuddin were recorded. After recording the statements of the above people it was stated that the blood relatives have expressed a doubt that Shaik Chand has not died while in Sub-Jail and that his death occurred due to sheer negligence on the part of the jail authorities in not providing timely medical treatment to the deceased. After conducting inquest the body was handed over to the father of the deceased for performing last day rites. He also examined and recorded the statements of the jail authorities D. Janardan, Warder B. Appa Rao, Sub-Jail Superintendent, Khammam, undertrial prisoners, M. Venkat Narsu, Chandalavada Rambabu, Krishna Rao, Kommara Gandhi, After examining the statements of the independent witnesses and statements of jail authorities he came to the conclusion that there is prima facie case of negligence on jail authorities in providing medical treatment to the deceased. There is ample evidence that the deceased suffered with severe chest pain from the morning of 2-12-1991 and after 9 p.m., on the day he made

repeated requests to the co-prisoners and jail authorities for sending him to medical treatment but the authorities took no heed of his request and ignored his claim for medical treatment. The deceased is an young man of 32 years of age and he was permitted as undertrial prisoner on 29-12-1990 in Sub-Jail, Khammam. He was taken up by police for not attending the trial and when non-bailable warrants issued in a case u/s 326 IPC. The Sub-Jail authorities cannot absolve themselves for negligence on their part and if timely action was taken the death of the deceased would not have occurred. The most surprising fact is that the jail authorities tried to suppress the fact of death of the deceased although he died within the premises of jail around 11 p.m. on 2-12-1991. On the basis of the inquest report submitted by the Revenue Divisional Officer, Khammam the District Collector ordered magisterial enquiry through proceedings dated 5-12-1991 appointing Revenue Divisional Officer and Sub-Divisional Magistrate, Khammam as Enquiry Officer and directed to hold enquiry and to submit a detailed report within one month from the date of receipt of the orders positively. During the pendency of enquiry the Superintendent of Police, Khammam through his proceedings dated 9-7-1992 addressed to the District Collector for allotment of house and ex gratia to meet the livelihood of widow of late Shaik Chand while he was in remand in Sub-Jail, Khammam on the ground that his widow has no means of livelihood to look after her large family consisting of son and five daughters. This recommendation was made by the Superintendent of Police, Khammam on the basis of request made by the wife of late Shaik Chand. Pending consideration of the above said recommendation of the Superintendent of Police, the District Sub-Jails Officer by his letter dated 21-11-1992 requested the District Collector, Khammam to send copy of District Collector's report to the Director-General and Inspector of Prisons for taking disciplinary action against the officer concerned. Meanwhile the Revenue Divisional Officer and Sub-Divisional Magistrate has submitted his report on 27-12-1993 that the cause of death is chest pain and circumstances leading to death not providing of medical aid and he found no individual was responsible for not providing medical aid since the jail authorities are not provided with medical facility and escort facility within the jail and he found no fault on the side of Armed Reserve Police in providing escort immediately on receipt of requisition from the Jail Superintendent since there was radical bandh on that particular day. With the above said conclusion the report was submitted by examining and recording the statements of as many as 24 witnesses i.e., blood relatives, Assistant Civil Surgeon, Superintendent of Sub-Jail personnel of Armed Reserve Police. Some of the witnesses are not directly connected to the death of late Shaik Chand. The fact that he was suffering from chest pain from 10-30 p.m. onwards on 2-12-1991 and the same was brought to the notice of the Collector who in turn informed to the Superintendent of Sub-Jail. Then he made request to the Reserved Police for giving escort. The statements of some of the Armed Reserve Police who touched the body of the deceased reads as:

"I expressed my doubt to the Jail Superintendent that the man is already dead as

I have touched the pulses and also sensed the breathing I told Jail Superintendent that the man is not in talking position and I cannot shift him to the hospital in this town". The above statement was given by Reserved constable B. Dhan Singh who reached the Jail at 2-45 p.m. along with constable Ramdas and driver Ramanthaiah. Ramdas, Reserved constable also stated that he has touched the body of the prisoner and found that the pulse was not there and tried to know whether breathing air from his nose and found no symptom. According to the statements of co-prisoners of the deceased P. Bamakar Rao who was in the Sub-Jail from 3-10-1991 he was sitting inside the cell on 2-12-1991 at about 10-30 p.m. the deceased complained chest pain and the same was informed to many of the co-prisoners including one Janardhan Rao, Warder. He went to the house of the Superintendent of Sub-Jail and called him inside the premises, after ten minutes the Superintendent came and opened the cell and two persons carried him from the cell and made him laid on the veraodha. According to him Shaik Chand lived around 2-45 a.m. in the early morning of 3-12-1991. Thereafter he was informed that Chand died."

7. A perusal of the entire material placed before me discloses that the Revenue Divisional Officer conducted inquest prima facie found that late Shaik Chand died due to chest pain for not providing medical treatment. Basing on the above said finding a magisterial enquiry was ordered by the District Collector appointing Revenue Divisional Officer and Sub-Divisional Magistrate to conduct enquiry. He recorded the statement of as many as 24 witnesses and according to the statements late Chand suffered with chest pain on 2-12-1991 at about 10-30 p.m. and Head Warder Janardhan who was on duty from 9 p.m. to 12 midnight informed the same to the Superintendent of Jail and the Superintendent came immediately and opened the cell and enquired into the matter with co-prisoners. Thereafter he made a request to the Special Reserved Police for providing escort and the escort came at about 2-50 a.m. on the intervening night of 2/3-12-1991. Thereafter the deceased was taken to the hospital in a van along with escort. According to the Reserved Police, he died in the jail itself. But for authoritative declaration of the death of Shaik Chand he was shifted to hospital and got the certificate obtained about the death from the Civil Assistant Surgeon, District Headquarters Hospital, Khammam. Though the Enquiry Officer has not fixed any liability against any of the officers but found that there is no medical facility provided in the jail. He observed that the Jail Superintendent being a responsible officer has to initiate immediate steps to provide medical aid but the Jail Superintendent had not been provided any medical facilities within the premises of the jail. Therefore, he had to send the person to the hospital under escort. He requested the police to provide escort to shift the prisoner at any time under the circumstances.

8. From the finding of the Enquiry Officer it is clear that the Government has not provided any medical facility in the Sub-Jail, Khammam when the undertrial prisoner Shaik Chand who suffered with chest pain. To complete the formalities of getting the escort and shifting the deceased from the Sub-Jail to hospital he

took time atleast from 10-30 p.m. on 2-12-1991 till 3 p.m. on 3-12-1991. If the medical facilities were provided at the jail the deceased would have survived. Due to non-provision of those facilities to give first aid to the inmates of the Sub-Jail late Shaik Chand died. Therefore, the State cannot absolve its duty to provide medical facility to the inmates of the jail. Due to the inaction of the Government the husband of the first petitioner lost his fundamental right to live as enshrined under Article 21 of the Constitution of India. Due to the untimely death of Shaik Chand the petitioners have lost estate, consortium, love and affection.

9. The Supreme Court of India while dealing with the fundamental rights of a prisoner under Article 21 of the Constitution of India held that it would include his right to bare necessities of life, such as adequate nutrition, clothing, shelter over the head, facilities for reading, writing, interviews with members of his family and friends, subject, of course to prison regulations, if any. It is further held that where a person was convicted and imprisoned under sentence of Court, he does not lose all the fundamental rights belonging to all persons under the Constitution of India, excepting those which cannot possibly be enjoyed owing to the fact of incarceration, such as the right to move freely under Article 19(1) or the right to practice a profession under Article 19(1)(g). Hence, the prisoner can claim to exercise the fundamental right to acquire, hold and dispose of property having been repealed Article 19(1)(f), this right the prisoner shall have to claim under ordinary law; freedom of expression, reading and writing except insofar as it is circumscribed by the fact of imprisonment and it follows that no prior restraint can be imposed on the press to publish the autobiography of a condemned prisoner, and nobody's consent is required insofar as it is based on public records. It is further held that a person cannot be deprived of his right under Article 21 except according to procedure established by law. If one convict is given concessions from prison duties and obligations which are denied to another, the latter may complain of right against discrimination under Article 14. This means that any prison regulation or restriction or punishment, which is sought to be imposed in addition to those resulting from the sentence of Court, must still be tested by the procedural safeguards under Article 21 which involve fairness and natural justice. If the prisoner is subjected to mental torture, psychic pressure or physical infliction beyond the legitimate limits of lawful imprisonment, the prison authorities shall have to justify their action by producing legal sanction or be liable for the excess. Any arrested person or under-trial prisoner should not be subjected to handcuffing in the absence of justifying circumstances, e.g., where there is a reasonable apprehension of the prisoner fleeing justice. If the police escorting the accused to or from Court want to handcuff, the police must report the extraordinary circumstances and seek the directions of the Court. In short a prisoner remains a human being notwithstanding his imprisonment and would be entitled to those minimum human rights such as recreation, freedom from extremes of heat and cold, freedom from indignities like compulsory nudity or other vulgarities over and

above the restrictions which the prison administration are entitled to impose for maintaining internal order, discipline, prevention of escape and the like, which follow from the sentence of imprisonment. He is entitled to constitutional protection against human degradation, so long as life lasts. Thus it is clear from the above dicta, that the under-trial shall not be subjected to handcuffing in the absence of justifying circumstances inasmuch as he remains a human being and he is entitled to such minimum facilities to which the other human beings are entitled to.

10. With the above background of the right to life of a prisoner enshrined in Article 21 of the Constitution of India, let us examine the legal position dealing with providing escort to prisoners to attend the Court. The Government of Andhra Pradesh has framed rules under G.O. Ms. No. 1973 Home (Prisons.B) Department dated 12th December, 1977 titled as Andhra Pradesh Prisoners (Attendance in Courts) Rules, 1977 issued under the Prisoners (Attendance in Courts) Act, 1955.

11. On a query by the Court, the learned Government Pleader for Home submitted that the jail authorities are following the rules to send the sick prisoners to the hospital for medical treatment and back to the jail. Therefore, I shall proceed to examine the said rules in the light of the facts and circumstances of this case.

12. Rule 2 contains definitions of various phrases like confined, prison, etc., Rule 3 contemplates that any civil Court or criminal Court may, if it thinks that the evidence of any person confined in any prison is material in any matter pending before it, make an order in the form set forth in the First Schedule, direct the officer in-charge of the prison; provided that no civil Court shall make an order under this rule in respect of a person confined in a prison situated outside the State, that if the order is passed by a civil Court, which is subordinate to a District Judge shall have effect unless it is countersigned by the District Judge and no order made under this rule by a criminal Court which is inferior to the Court of a First Class Magistrate shall have effect unless it is countersigned by the District Magistrate to whom that Court is subordinate or within the local limits of whose jurisdiction that Court is situated. Rule 4(1) of the rules empowers the Government, having regard to the matters specified in sub-rule (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined/ detained and thereupon so long as any such order remains in force, the provisions of Rule 3 shall not apply to such persons or class of persons. Under Rule 4(2) the Government before making any order under sub-rule (1) shall have regard to the nature of the offence for which or the ground on which the confinement has been ordered in respect of the persons or class of persons, the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed.

13. Rule 5 obligates the Officer in-charge of the prison in which the person

named there is confined, shall cause him to be taken to the Court in which his attendance is required so as to be present in the Court at the time in such order mentioned and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or Presiding Officer of the Court authorises him to be taken to the prison in which he was confined or detained. Rule 6 deals with non-production of the prisoner, who is declared to be unfit to be removed from the prison where he is confined by reason of sickness or other infirmity for which the Medical Officer or the prison shall certify in writing regarding the physical incapacity and state of health of the person confined in a prison, who is found unfit to be removed from the prison and he has to make statement to the Officer In-charge of the prison that he is abstaining from carrying out the order and shall send to the Court from which the order had been issued the reasons for so abstaining. Rule 10 deals with providing escort to the persons confined in a prison to and from Courts in which their attendance is required and their custody during the period of such attendance, shall be undertaken by the police if those persons are confined in a prison in pursuance of an order of a criminal Court; and by the Nazareth if those persons are confined in a prison in pursuance of an order of the civil Court.

14. According to Rule 11, whenever an order for the production of a person confined in a prison to give evidence or to answer a charge is received from the competent Court by the Officer in-charge of a prison, such officer shall send a copy of the Court's order to the local police authority who thereupon shall cause the necessary police guard to be detailed in accordance with the terms of the order; and the person confined in a prison shall be entrusted to the custody of that guard. It further says that whenever person confined in a prison is produced before a Court situated outside the district in which he is confined, the Officer in-charge of the prison shall report the fact to such production to the District Magistrate and the District Superintendent of Police of the District from which the person confined in a prison is so produced.

15. Rule 14 of the rules mandates that if the escort is unable to reach a Central, District or Subsidiary Jail or Police lockup before sunset, the police shall make necessary arrangements for the safe custody of the person in their charge. Rule 15 contemplates that if the person under escort is taken to a Central, District or Subsidiary Jail, the jail or police establishment guarding it shall be responsible for the custody of such person, whenever entrusted for that purpose; provided that no person escorted under these rules shall be admitted into a prison after sunset, not entrusted to the escort before sun-rise. Rule 17 says that the strength of the police guard for the escort of prisoners shall be as follows:

| Strength of Prisoners | Strength of Head Constables | Strength of Constables |
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8-10 ? 4

11-15 — 5

For every two additional prisoners, one more constable shall be added. For every ten additional prisoners, one more Head Constable shall be added. Should special circumstances render the precaution of having a stronger escort desirable, the despatching officer shall use his own discretion in the matter, reporting at once to the Superintendent of Police what steps he has taken. If an escort party is required to halt for the night at a place, at which no secure lock exists, the strength of the escort shown above should be adequately increased, that in case where a female prisoner is to be conveyed under these rules, a female should, whenever possible, be detained to accompany her and the male escort. Sub-rule (2) of Rule 17 mandates that when persons to be escorted are of a desperate character or are likely to attempt to escape or when the number to be escorted exceeds ten, the strength of guard shall be increased at the discretion of the Officer in-charge of the police.

16. The other rules are with regard to the mode of transport.

17. As seen from the above rules, there is no provision in these rules which deal with providing escort to persons confined in prison requiring treatment outside the prison and back to prison from hospital. That's why the prison authorities have not taken late Sheik Chand to the hospital in time and they had to wait for the escort from outside the prison. Noticing the above lacuna in the rules, as seen from the material placed before me, the Inspector-General of Prisons and Director of Correctional Services, Hyderabad, through his letter dated 19-11-1998 addressed the Government proposing to incorporate Rule 10-A which reads as under;

".....10-A: The escort of persons confined in a prison requiring treatment in a hospital outside the prison, and from such hospital to the prison, shall be undertaken by the police. If such a prisoner is admitted as in-patient in any hospital, his custody during the period of such confinement shall also be undertaken by the police."

Based on the above said proposal, the Government in its turn requested the Director-General and Inspector-General of Police, Hyderabad, on 18-2-1999 was asked to offer his views on the proposal of inserting Rule 10-A to the rules, to ensure timely medical attention to the sickly persons. Whether the Director-General and Inspector-General of Police, Hyderabad, submitted his views or not is not known. It appears the matter is pending consideration before the Government. Evidently, as on today, there is no rule empowering the jail authorities to provide escort to the persons confined in prison and requiring treatment in hospital outside the prison and back to the prison from such hospital.

18. Be that as it may, under Rule 14, the Government has given discretionary

power to the person in-charge of the jail, that if the escort is unable to reach Central, District or Subsidiary Jail or police lock up, before sunset, the police shall make necessary arrangements for the safe custody of the person in their charge. In the absence of any specific rule empowering the jail authorities to provide escort for a sick prisoner to send him to hospital for medical treatment, the Officer in-charge of the jail should have acted as per Rule 14 of the said rules, which gives discretionary power to the Officer in-charge of the Jail. Therefore, when Rule 14 empowers the officer In-charge of the Jail to make arrangements, in the absence of receiving escort from the authority, he can make his own arrangements complying the said rule. In the instant case also, the jail authorities having regard to the emergency circumstances should have shifted the deceased Chand to the hospital with police escort, without waiting for the arrival of escort from the office of the Superintendent of Police, in the best interest of the prisoner's life. In these circumstances, pending insertion of Rule 10-A to the rules, by the Government of Andhra Pradesh, I direct the jail authorities in the State of Andhra Pradesh to meet the exigencies and emergency circumstances and to shift the sick prisoner to the hospital for treatment and back to the Jail with police escort, as contemplated under Rule 14 of the rules. If it is necessary to retain the prisoner for long time, if required by the hospital authorities, they can obtain escort as contemplated under the rules.

19. The Supreme Court in *Pt. Parmanand Katara Vs. Union of India (UOI) and Others*, , has considered the aspect of providing medical treatment to injured person who was brought to the hospital should be given instantaneously to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. It is further held that there is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The Apex Court categorically held that every injured citizen brought for medical treatment should instantaneously be given medical aid and the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such as incident or a situation. It is further ruled that preservation human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished, that social laws do not contemplated death by negligence to tantamount to legal punishment. A Doctor at the Government Hospital positioned to meet the State obligation is, therefore, duty bound to extend medical assistance for preserving life. Every Doctor, whether at a Government Hospital or otherwise, has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid or delay the discharge of the

paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. Every Doctor should be reminded of his total obligation and be assured of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him either by himself or being carried by others. Zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules, the victim has to be sent elsewhere or how the police shall be contacted. These observations were made by the Supreme Court in a case where a scooterist was knocked down by a speeding car and seeing the profusely bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital, the doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 KMs. away authorised to handle medico-legal cases and he carried the victim; losing no time to approach the other hospital, but before he could reach, the victim succumbed to the injuries. In these circumstances, the Supreme Court came down heavily saying that the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen, who happens to be connected with the matter or who happens to notice such an incident or a situation, and the medical treatment should instantaneously be given to preserve life and thereafter procedural criminal law should be allowed to operate to avoid negligent death.

20. Applying the observations made by the Supreme Court to the facts and circumstances of the instant case, the Superintendent of Jail, who is charged with the duty of protecting the persons lodged in his prison, should have provided medical aid to the deceased instead of waiting for the arrival of escort for about four hours. The Supreme Court has held that no law or the State action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession, that the obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. The above observations of the Supreme Court in Parmanand's case are not only applicable to the Medical Practitioners but also to the authorities who are entrusted with the duty of safeguarding the interest of persons. Therefore, the action of the jail authorities in not providing medical treatment to late Shaik Chand, on the ground of observing procedures under the rules and statutes, cannot be countenanced and thus they are guilty of negligent death of Sheik Chand, as a result of which irreparable loss and injury was caused to the members of the deceased family.

21. The Supreme Court and High Courts categorically held that for wrongful actions of the servants of the Government the dependents of the deceased who died in judicial custody are entitled for payment of compensation. Due to inaction

of the Government for not providing medical facility in the Sub-Jail the husband of the first petitioner who was the son of the second petitioner met with untimely death and they lost their estate and dependency. Though there was lapse of four and a half hours time for providing medical treatment to late Shaik Chand by the jail authorities I do not appreciate the conclusion arrived in the magisterial enquiry that the Superintendent is not responsible for not providing the medical treatment to late Shaik Chand. Ultimately the blame was thrown on the Government which has not provided any medical facility in the jail. Though the petitioners are entitled to claim compensation by initiating civil proceedings but the High Court has got power to award compensation under Article 226 of the Constitution of India due to the action of the State if any person or citizen is abridged or forbidden to enjoy the fundamental right guaranteed under the Constitution of India. It is established beyond doubt that the death occurred to the husband of the first petitioner for not providing medical facility in the jail premises itself. In the decision reported in *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, , the Supreme Court had an occasion to award compensation for violation of fundamental rights by State and its public functionaries. The right to life includes right to live with human dignity. The Supreme Court in the said decision held as follows:

"The fundamental rights are available to all the citizens of the country but a few of them are also available to persons. The word "life" has also been used prominently in the Universal Declaration of Human Rights, 1948. The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights and also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights to which India is a party having ratified them. That being so, since "life" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948 it has to have the same meaning and interpretation as has been placed on that word by the Supreme Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of the country, but also to a "person" who may not be a citizen of the country. On this principle those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to life in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens".

22. Though initially a petition under Article 226 of the Constitution relates to commercial matters, the law has undergone changes by subsequent decisions and even in contractual matters are amenable to its jurisdictions of the High Courts under Article 226. Public law remedies have also been extended to the

realm of jurisdiction of High Court and the Court can award compensation to the persons who suffered personal injuries amounting to tortuous acts at the hands of the officers of the Government. Therefore, the contention of the respondents that the petitioners should have approached the civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution cannot be accepted. Where public functionaries are involved and the matter relates to violation of fundamental rights or enforcement of public duties the remedy would still be available before law notwithstanding that a suit could be filed for damages under private law.

23. Article 47 of the Constitution contemplates that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. This Article makes improvement of public health a primary duty of the State. Hence the Court should enforce this duty against a defaulting local authority, on pain of penalty prescribed by law, regardless of the financial resources of such authority. The meaning of Article 21 of the Constitution further extended by the rules of the Supreme Court that a prisoner remains a human being notwithstanding his imprisonment and would be entitled to minimum rights such as recreation, freedom from extremes of heat and cold, freedom from indignities like compulsory nudity or other vulgarities over and above those restrictions which the prison administration are entitled to impose for maintaining internal order, discipline, prevention of escape and the like, which follow from the sentence of imprisonment. He is entitled to constitutional protection against human degradation, so long as life lasts. When once the Supreme Court held that prisoner remains human being notwithstanding his imprisonment and would be entitled to those minimum human rights such as recreation and freedom from extremes of heat and cold we can also add medical facilities in jail comes within the ambit and scope of Article 21 of the Constitution for the protection of life of the persons guaranteed under Article 21 of the Constitution. Therefore, as opined in the enquiry report by the Revenue Divisional Officer the deceased Shaik Chand died due to non-providing medical facilities in the Sub-Jail, Khammam by the Government and delay in shifting the prisoner from Sub-Jail to hospital.

24. I am satisfied to hold that late Shaik Chand suffered with chest pain from 10-30 p.m., on 2-12-1991 till 3 a.m. on 3-12-1991 by the statements made by the inmates of the prison and Armed Reserved Police. Secondly it is clear from the conclusion arrived at by the Revenue Divisional Officer and Sub-Divisional Magistrate that there were no medical facilities provided in the jail by the Government and their was delay in providing medical facility to late Shaik Chand about four and-a-half hours. Therefore for lack of providing medical facility in the Sub-Jail and inaction on the part of the Superintendent of Sub-Jail a span of life of late Shaik Chand was curtailed which is otherwise guaranteed under Article 21 of the Constitution of India. If he was provided with medical facility in time he

would have survived. After completion of criminal proceedings once again he should have maintained his family consisting of wife, parents and seven children.

25. Therefore, taking into consideration the facts and circumstances of the case, to meet the ends of justice, as the Superintendent of Police also recommended the case of the petitioner to Andhra Pradesh Housing Corporation and further as the officers of the Sub-Jail requested the District Collector to place the report before the Director-General to initiate disciplinary action against jail authorities who were responsible in not providing medical treatment to Shaik Chand and as the wife, mother and children of Shaik Chand lost the estate, love and affection and dependency due to untimely death of Shaik Chand and as the first petitioner lost her consortium at the age of 28 years due to untimely death of her husband at the age of 38 years, I am inclined to issue writ of mandamus directing the respondents to grant a compensation of Rs.1,50,000/- (Rupees one lakh, fifty thousand) to the petitioners. The respondents are directed to open fixed deposit account in any Nationalised Bank in the name of the first petitioner, wife of the deceased late Shaik Chand for a period of five years and the first petitioner is entitled to withdraw interest accrued thereon every three years and the Deputy Manager of Housing Corporation is further directed to consider the recommendation of the Superintendent of Police, Khammam through letter dated 9-7-1992 which was considered by the District Collector to provide house under his quota. If for any reason the house is not provided to the petitioners as recommended by the Superintendent of Police in the quota of District Collector, Khammam the same may be considered and appropriate orders may be passed within a period of six weeks from the date of receipt of a copy of this order.

26. Before parting with the judgment, I would like to add that though normally the Courts will not generally direct the Government to make legislation in a particular way, but having regard to the facts and circumstances of the case and with a view to prevent such negligent deaths of prisoners confined in the Jails of the State of Andhra Pradesh in future, and since there has already been a proposal to insert Rule 10-A to the rules, to meet the ends of justice I deem it appropriate to direct the Government of Andhra Pradesh to consider the proposal made by the Inspector-General of Prisons and Director of Correctional Services, Hyderabad to insert Rule 10-A as suggested by him, and take a decision in the matter as early as possible within a period of three months from the date of receipt of a copy of this order.

27. Writ petition is accordingly disposed of with the above directions. No costs.