
(2002) 12 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17278 of 2001

Puppala Seetaramaiah

APPELLANT

Vs

Superintendent, Sub-Jail and Others

RESPONDENT

Date of Decision : 24-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2003) 2 ALD 584 : (2003) 4 ALT 549 : (2003) CriLJ 2978

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : K. Balagopal, for the Appellant; Government Pleader for Home, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The short question that arises for consideration in the present writ petition is whether the State is liable for damages for the voluntary act of a prisoner who committed suicide while he was in judicial custody.

2. The undisputed facts, in nutshell are as under: The petitioner's son by name Puppala Anji Babu who was an accused for the offence punishable u/s 304B IPC in Cr.No. 149/96 of Bapatla Town Police Station was remanded to judicial custody on 25-11-1996 and was admitted in Sub-Jail, Bapatla on the same day. The deceased-prisoner's uncle Puppala Prasad Rao and his wife Subbayamma and his cousin brother Puppala Srinivasa Rao, who were co-accused were also lodged in the said jail in connection with the same crime. The deceased prisoner committed suicide by hanging himself in one of the bathrooms of Sub-Jail on 4-1-1997 when the prisoners were taken out of the cells for evening meal. The I Additional District and Sessions Judge, Guntur who conducted judicial enquiry recorded the statements of fellow prisoners who were confined along with the deceased-prisoner. Basing on the said enquiry report, a case has been registered against the co-accused of the deceased-prisoner, namely, his uncle Puppala Prasada Rao, his cousin brother, Srinivasa Rao, and his uncle Ramachandra Rao,

in Cr.No. 2/97 u/s 306 IPC of Bapatla Town Police Station. On committing the case to the Sessions Court, the case was tried by Assistant Sessions Judge, Bapatla and were acquitted by the Assistant Sessions Judge holding that there was no material before the Court with regard to the conduct of the accused at the time of commission of suicide by the deceased or even subsequent thereto. The accused are related to the deceased and have been facing the same charge while they were in Sub-Jail, Bapatla and there is no material placed by the prosecution, which constitutes an act of abatement intended to operate on the mind of the deceased to commit suicide. Accordingly, they were acquitted of the charges levelled against them.

3. On such acquittal, the petitioner filed the present writ petition seeking compensation to the estate of the deceased-prisoner contending that the Jail Authorities were negligent in preventing the prisoner from committing suicide and for the omission committed by Jail Authorities in preventing the harassment by the co-prisoners.

4. Opposing the writ petition, the first and second respondent filed separate counters. In the counter-affidavit filed by the first respondent, it is stated that prisoner did not complain to the Sub-Jail Superintendent at any time from the date of admission till the date of committing suicide that he was subjected to harassment by the co-accused nor complained to the Jail staff in that regard. The fellow prisoners who were also confined in the same Cell No. 3 have not brought such news to the notice of either to the Sub-Jail Superintendent or Jail staff at any point of time. The petitioner never visited his son during his confinement in Jail i.e., 21-11-1996 to 4-1-1997. One P. Venkateswaralu said to be the petitioner's brother availed interview with the deceased-prisoner on 24-12-1996. The Sub-Jail authorities were not at all informed of any such harassment either by the deceased-prisoner or co-accused or by the fellow prisoners. Even when the prisoner was produced before the Magistrate on the dates of hearing, he never complained about the harassment meted out to him in the Cell by the co-accused. Acquittal of the co-accused also strengthens the fact that there was no harassment of the deceased-prisoner by the co-accused, which lead to his committing suicide.

5. Learned Counsel for the petitioner Sri K.Balagopal contends that prisoner can make only oral complaint but not written complaint as he was not supplied with any paper and pen. Jail authorities have constructive knowledge "of harassment in view of the statement made by the co-prisoners during the course of judicial enquiry by the I Additional District and Sessions Judge into the cause of the death of the deceased-prisoner, therefore, the Jail authorities are under an obligation to protect the life of the prisoner and prevent him from committing suicide. The very fact that all the co-accused harassed the deceased which lead to the deceased to commit suicide, which amount to violation of fundamental rights guaranteed u/s 21 of the Constitution and the State is under an obligation to compensate the estate of the deceased as held by this Court in Challa

Ramkonda Reddy and Others Vs. State of Andhra Pradesh by District Collector, Kurnool, . The relief now sought is, not that can be claimed in a suit for damages for violation of fundamental rights guaranteed under Article 21, therefore this Court can award compensation irrespective of limitation and placed reliance on R.S. Deodhar v. State of Maharashtra, (1992) 2 SCC 598 , Smt. Sudama Devi Vs. Commissioner and Others, and Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, .

6. On the other hand, learned Government Pleader for Home contends that the present writ petition cannot be entertained due to laches, namely, when the prisoner died on 4-1-1997, the present writ petition has been filed in the year 2001, nearly after 4 1/2 years. It is further contended that in view of the acquittal of co-accused, who were charge-sheeted for the harassment, there is no evidence to show that the deceased committed suicide due to the harassment by the co-accused, therefore in the absence of any other evidence, the State cannot be made liable for compensation and the proper remedy for the petitioner is to approach the Civil Court for damages and in view of such remedy barred by limitation, damages cannot be granted in a summary proceedings under Article 226 of the Constitution of India and placed reliance on the following judgments:

1. A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, .

2. Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, .

7. In the case of Ramakonda Reddy (supra) cited by the learned Counsel for the petitioner, where though the damages claimed by the plaintiff was assessed, suit was dismissed by the Trial Court as the same was barred by the period of limitation in view of Article 72 of the Limitation Act. On appeal, this Court decreed the suit for damages holding that Article 113 of the Limitation Act is applicable to the claim and the claim was within the period of limitation. The sovereign immunity claimed by the State was not accepted holding the under trial prisoner deprived of his life due to negligence of prison authorities which violates Article 21 of the Constitution. But the principle on which, the suit was decreed was a case that liability arises as a consequence of the deliberate acts of third parties but which the defendant had a duty to prevent or take reasonable care to prevent such acts. The same was affirmed by the Apex Court in State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others, .

8. In Dehri Rohtas Light Railway Company Limited, (supra) the Apex Court held that the delay in each case has to be judged from the facts of the case only. Once the lapse of time is not attributable to any laches or negligence, the High Court was not justified in dismissing the writ petition in limine and refusing to grant the relief sought for.

9. Learned Counsel for the petitioner contends that due to the pendency of the Sessions case, negligence cannot be attributable to the petitioner and only on

the acquittal, the present writ petition has been filed, which is within time. But the Constitution Bench judgment cited by the learned Counsel for the petitioner in *Tilokchand Motichand (supra)* will not support the contention of the petitioner. Justice Bachawat and Justice Mitter by their separate judgments categorically held as follows:

"..... The extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation. Where the remedy in a writ application under Article 32 or Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in the writ jurisdiction.....Likewise, the High Court acts on the analogy of the statute of limitation in a proceeding under Article 226 though the statute does not expressly apply to the proceeding. The Court will almost always refuse to give relief under Article 226 if the delay is more than the statutory period of limitation, see *State of Madhya Pradesh v. Bhailal Bhai (supra)* at pp.273-274" (para 37).

"...On grounds of public policy the Court applies the principles of *res judicata* to writ petitions under Article 32. On like grounds the Court acts on the analogy of the statutes of limitation in the exercise of its jurisdiction under Article 32. It follows that the present petition must be dismissed" (Para 37-A).

"The Limitation Acts do not in terms apply to claims against the State in respect of violation of fundamental rights..... Although the Limitation Act does not apply, the Courts have refused to give relief in cases of long or unreasonable delay. As noted above in *Bhailal Bhai's* case (*supra*), it was observed that the "maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured". On the question of delay, we see no reason to hold that a different test ought to be applied when a party comes to this Court under Article 32 from one applicable to applications under Article 226. There is a public policy behind all statutes of limitation and according to Halsbury's Laws of England...." (para 51).

".....As the petitioners have come to this Court long after the date when they could have properly filed a suit, the application must be rejected"(para 53).

Chief Justice Hidayathulla agreed with the opinion expressed by Justice Bachawat and Justice Mitter in para 12 of his judgment and dismissed the writ petition. Justice S.M. Sikri through his separate judgment on the point of limitation observed as under:

"It is said that if this was the practice the guarantee of Article 32 would be destroyed. But the Article nowhere says that a petition, howsoever late, should be entertained and a writ or order or direction granted, howsoever remote the

date of infringement of the fundamental right. In practice this Court has not been entertaining stale claims-by persons who have slept over their rights. There is no need to depart from this practice and tie our hands completely with the shackles imposed by the Indian Limitation Act....." (para 18)

But however allowed the writ petition on different ground i.e., writ petition was within the time from the date of knowing the mistake.

10. The Supreme Court in Shri Vallabh Glass Works Limited (supra) held as follows:

".....This is an alternative remedy provided by the Constitution in addition to but not in supersession of the ordinary remedy by way of suit in the absence of any provision which would bar such a suit either expressly or by necessary implication. While there are different periods of limitation prescribed for the institution of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable....." (para 9)

While holding so, the Apex Court granted the relief only for refund of excess payment which falls within three years from the date of filing of the writ petition.

11. In the backdrop of the above legal position, whether the petitioner is entitled to invoke the extraordinary jurisdiction of this Court for seeking compensation.

12. It is an admitted fact the deceased, being of sound mind, voluntarily performed an act intending to kill himself, knowing the nature and extent of the risk. He thereby implicitly agreed to absolve others from the consequences of his own act by consenting to and taking advantage of the lack of reasonable care, if any by the Jail authorities, which preceded it.

13. There is no evidence which was adduced by the petitioner, except the statements which were made by the inmates of the jail during the enquiry by the I Additional District Judge, Guntur that co-accused of the deceased-prisoner harassed him, when the prisoners were taken out of the Cell, his uncle abused him saying that he was in jail only because of the deceased-prisoner and pressurized him to confess crime so that they can be released from the jail and they believe that the deceased hanged himself out of the mental suffering and they learnt that the deceased died in the hospital while undergoing treatment. It is also relevant to notice that the deceased and co-accused are kept in separate Cell. The Sessions Court has not believed the prosecution evidence of

harassment/ abatement and acquitted the co-prisoners who were accused in Cr.No. 19/97.

14. It is no doubt true that a prisoner enjoys all his civil/Fundamental rights except those expressly removed by statute/prison rules. It was held by English Courts that there is a substantial overlap between the maxims *novus actus interveniens* and *volenti non fit injuria*. In principle both can apply to the suicide of a sane adult. A free, deliberate and informed act or omission by a sane person, which is intended to exploit the situation created by the negligence of the defendant, negatives the casual connection between the negligence and the harm. The failure of the prison authorities to take reasonable care provided only the opportunity or the setting for the act of suicide. The initial negligence was the *causa sine qua non* but the direct and proximate cause of the suicide was the deceased's own decision and act and any other approach would extend the law of negligence beyond its proper boundaries. In view of the fact that prisoners are more than usually likely to attempt suicide or self injury the risk of suicide is particularly high among prisoners on remand facing a new environment and an uncertain future and in England in between 1971 and 1982, 45 per cent of suicides in remand prisons were remand prisoners, although they made up only 10-15 per cent of the prison population. Necessary instructions were issued to the prisoners by the Director of Prisons to the Governors. Even prior to the said survey, the England Parliament enacted law known as "Law Reform (Contributory Negligence) Act, 1945". There is no such law enacted in India to assess the damages and its apportionment between the remand prisoners who inflicted injuries. But the contributory negligence is well recognized in India for assessing the damages/compensation for such injuries under the Motor Vehicles Act and Workmen's Compensation Act.

15. Before the Suicide Act, 1961 was enacted in England the maxim *ex turpi causa non oritur actio* was applied for assessing damages. On enactment of Suicide Act, 1961 which permitted damages to be claimed as a result of suicide. In *Kirkham v. Chief Constable of the Greater Manchester Police* 1990 (2) QB 283, damages were awarded to the widow of a prisoner who had committed suicide shortly after being handed over to the prison authorities from police custody. When the police knew that Mr. Kirkham was a suicide risk and had made a serious suicide attempt only two days before, he was taken before the Magistrate and police objected bail stating that he had attempted suicide by hanging within the last week, he was remanded in custody, *inter alia*, for his own safety. When the police knew about the suicide risk but did not communicate that information to the prison authorities, in particular failing to complete the appropriate form which would have identified the prison authorities that the deceased was a suicide risk. When he committed suicide, his wife as Administratrix brought an action in negligence against the Chief Constable of Police. The Judge awarded damages of ?5000 under the Fatal Accidents Act, 1976 and ?1717 under the Law Reform (Miscellaneous Provisions) Act, 1934. On appeal, while confirming the awarding of damage, the Court of Appeal held that neither the defence of *volenti*

non fit injuria nor ex turpi causa non oritur actio could be available to the police.

16. In *Reeves v. Commissioner of Police of the Metropolis* 2000 (1) AC 360, the issue was cropped up for consideration, where the prisoner was brought to the Police Station and after midnight having tried to kill himself in the cell and was examined by a Doctor who certified that he do not suffer from any mental illness or other mental disturbance and treated him to be suicide risk he should be observed frequently and within a few minutes of his being returned to his cell after examination by the Doctor, he had managed to hang himself in the prison. In view of the same, the Judge concluded that the police had negligent but however held that the deceased had been of sound mind and in those circumstances suicide was *novus actus interveniens* and dismissed the action. On appeal, the Court of Appeal, by majority allowed the appeal by reducing the damages to 50% as there was prisoner's contribution for his own death.

17. Recently in *Orange v. Chief Constable of West Yorkshire Police* 2002 (QB) 347, after considering both the judgments *Kirkham* and *Reeves* (*supra*), where the prisoner committed suicide by hanging himself with his own belt from cross bar in cell whilst in police custody, and when his wife brought an action against the police alleging that the Chief Constable had been negligent, *inter alia* in allowing the deceased to retain his belt and in failing to provide a safe environment, the Judge dismissed the claim on the ground that no duty of care was owed to protect the deceased from suicide since the police had no reason to believe he was a suicide risk. The Court of Appeal, while dismissing the appeal observed that obligation to take reasonable care to prevent a prisoner from taking his own life deliberately only arose where the custodian knew or ought to have known that the individual prisoner presented a suicide risk. In the absence of the same, difficulty in recognizing the risk does not make suicide either more or less foreseeable in any given case.

18. The Apex Court in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, , while considering the correctness of awarding compensation under Article 226 of the Constitution for the death of electrocution allegedly caused due to negligent maintenance of transmission line by the Grid Corporation, held that the High Court committed an error in entertaining the writ petition and went wrong in proceeding on the basis that as the death had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission line of the appellants, that "admittedly *prima facie* amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had

come in contact with the wire.

19. In view of the conspectus discussion and law enunciated as above, the principles deducible are (1) State is liable to compensate for the death of a remand prisoner, if died, due to the negligence of the prison authorities; and (2) The police/prison authorities owe a duty of care to an arrested person and must take reasonable care to ensure that he does not suffer physical injury as a consequence of his own acts, or the acts of a third party (3) Negligence on the part of prison authorities for an action in tort has to be established by claimant in a properly constituted civil suit. But the question here is whether they owed any duty to protect him from himself, in circumstances where the conduct of the claimant involves the omission of a criminal offence at common law. How far the negligence can be attributable to prison authorities in preventing the prisoners from committing suicide and pave way for them to commit such suicide, can be decided if an action is brought with sufficient pleadings and evidence adduced in a properly constituted civil suit. The Section 161 Cr.PC, statements, which are too remote, have no criteria to presume that Jail authorities have neglected in taking proper care to protect the lives of the prisoners. Even assuming that the High Court can determine compensation on the slightest evidence of negligence, but once the remedy of the petitioner for civil action is barred under the Limitation Act and the petitioner moved this Court after expiry of period of limitation, no such enquiry, with regard to ascertainment of compensation, is warranted in the present case, as the exercise of the discretion under Article 226 has to effectuate the regime of law but not abrogating it.

20. In the result, the Writ Petition fails and it is accordingly dismissed. No costs.