
(2001) 08 MAD CK 0092
In the Madras High Court
Case No : Writ Petition No. 18219 of 1994

S. Sivagami

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Citation : (2001) CriLJ 4618 : (2001) WritLR 808

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant; S.V. Durai Solaimalai, G.A., for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is the wife of one Sekar who was killed In the police firing on 12-7-93 at about 7,15 p.m. within the limits of Mecheri Police Station. According to the petitioner, her husband the deceased Sekar was a tailor having a tailor shop near the police station in Dharmapuri Main Road, Mecheri, Mettur Taluk, Salem District and was earning around Rs, 3,000/- per month. He was the only bread winner of the family consisting of the petitioner, her mother-in-law and two children. The husband of the petitioner was killed by indiscriminate firing by the police and, therefore, she has approached this Court for a direction in the nature of a writ of mandamus directing the respondents 1 to 3 to pay Rs. 3 lakhs towards compensation for the death of her husband.

2. The said claim of the petitioner is resisted by the respondents on the ground that on 12-7-93 at about 1.30 p.m. one person by name Kannari was murdered. One Allimuthu was suspected to be the accused for the said murder. Demanding the arrest of the said Allimuthu, a group of persons about 1000 in number assembled in front of the Mecheri Police Station on 12-7-93 at about 5.30 p.m. with cycle chain, crow bar, sticks and bricks in their hands and shouted slogans against the police and conducted dharna to arrest the said Allimuthu. The group was pacified by the Deputy Superintendent of Police, Mettur and the Revenue

Divisional Officer, Mettur and other revenue officials and the crowd was assured that the said Allimuthu will be arrested. Not satisfied with such assurance, the crowd numbering about 2000 continued their unlawful activities till 7.30 p.m. and blocked the entire traffic on the main trunk road between Bhavani Town and Dharmapuri Town and the entire traffic was paralysed. The attempts made by the Revenue Divisional Officer and the Deputy Superintendent of Police to pacify the crowd proved futile and the mob started attacking the police personnel and caused damage to the public property in the police station and also in fact made an attempt to damage the jeep belonging to the police department. In view of the lesser number of police personnel available in the police station, the mob was warned and even then the mob did not stop 2001 the violent activities and started throwing soda bottles and damaged the motor bike belonging to one of the police officer. Therefore, the Revenue Divisional Officer ordered police firing. The husband of the petitioner was one of the members of the unlawful assembly and was killed in the police firing. The said firing was ordered only to save the lives of police personnel and the revenue authorities Including the Revenue Divisional Officer from the hands of the unlawful gathering and by way of self-defence, Hence, the respondents defended the police firing and contended that the petitioner is not entitled to the compensation as claimed in the writ petition.

3. Mr. V. Ayyathurai, learned Counsel for the petitioner submitted that the police firing was indiscriminate without even proper warning and following the procedures before firing is ordered. In fact, before firing there was no lathi charge and not even a warning to the crowd was given. Therefore, the learned Counsel submitted that based upon the judgment of Delhi High Court reported in P.V. Kapoor and Another Vs. Union of India and Another, the petitioner is entitled to compensation as prayed for.

4. The learned Government Advocate on the other hand would submit that the Revenue Divisional Officer ordered police firing only to save the lives of the police officials and also to save the property belonging to the Government since there was no sufficient police force available to order lathi charge before the police firing was ordered. The husband of the petitioner is also a member of unlawful assembly and, therefore, the learned Government Advocate submitted that the petitioner is not entitled to compensation.

5. The issue of payment of compensation to the dependant/legal heirs of the deceased who is killed in police firing or is killed in police custody, came up for consideration before the Supreme Court in the judgment reported in Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, wherein the Supreme Court even when a public interest litigation is initiated challenging the police action where there is a loss of life and the action of the police is wholly unjustified and in excess of the power has held that adequate and reasonable compensation can be awarded. The Supreme Court in yet another judgment, reported in Rudul Sah Vs. State of Bihar and Another, held that when the Court

comes to the conclusion that the detention was illegal, an order of compensation in favour of the detenu could be made, In view of the above Judgments, the law is settled that whenever the action of the police is found wholly unjustified and in excess of the power, more particularly, the death was caused due to the indiscriminate firing without sufficient warning to the crowd, the Court can issue adequate compensation. Coming to the facts of the present case, one Kannan was murdered at 1.30 p.m. on 12-7-93 within the Mechari Police Station limits. From the communication of the Tahsildar, Mettur made in ROC. No. BI/93, dated 12-7-93 addressed to the District Collector, Salem, it is seen, that the said Kannan was murdered in front of Mecheri Police Station by (1) Ayyanar, s/o Chinnathambi, Mecheri and (2) Allirnuthu, s/o Karuppanna Gounder, Kukkalpatti village. The said murder was witnessed by one Head Constable namely Rathnam of Mecheri Police Station and the said Plead Constable brought both the accused to the police station. After a few minutes, Allimuthu had left the station and he was not taken into custody presumably, he was let off by the police in-charge of Mecheri Police Station. On coming to know of the above that the accused who was taken by the police constable who witnessed the murder of Kannan was let off by the police without any action, people started gathering in front of the police station at 5.30 p.m. on the same day raising slogans against the police and demanded the arrest of the said Allimuthu. Admittedly, by the said proceedings it is also clear that on coming to know of the above assembly of crowd in front of police station, the Deputy Superintendent of Police, Mettur arrived at the spot and assured the crowd of arrest of the said Allimuthu. Even thereafter, the crowd did not relent and started insisting upon the arrest of the said Allumuthu. Till 7.30 p.m. the police did not take any action to bring sufficient police personnel to the spot as admittedly, by 5.30 p.m. nearly 1000 persons had assembled in front of the police station. The crowd brought the body of the murdered Kannan to the police station around 7.15 p.m. and again started demanding the arrest of the said Allimuthu. The Deputy Superintendent of Police, Mettur who had arrived at the police station at 5.30 p.m. should have anticipated the law and order problem and ought to have secured sufficient police strength to contain the mob. From the above report of the Tahsildar, it is clear that no such attempt was made by the Deputy Superintendent of Police, Mettur. It is also to be noted that the Revenue Divisional Officer was also present at that time. The reason adduced by the Revenue Divisional Officer in ordering police firing is that, there was no sufficient police force. Even though it is contended that sufficient warning was given to the mob to disperse, the police in all probability ought to have anticipated violence as the mob was in front of the police station from 5.30 p.m. onwards more particularly, when the mob was insisting on the arrest of one Allimuthu who was admittedly brought to the police station by the Head Constable Rathnam who witnessed the murder. There is no explanation as to how this Allimuthu, who was brought to the police station for murdering the said Kannan was let off. Therefore, the mob in all expectations assembled before the police station demanding the arrest of the said Allimuthu. In the absence of any explanation as to why the Deputy Superintendent of Police and the Revenue

Divisional Officer, Mettur did not take sufficient precautions to bring the police force to contain the mob, the explanation, offered by the respondents that since there was no sufficient police force to order lathi charge before police firing was ordered, cannot be accepted. Moreover, even in the F.I.R., it has not been explained as to why the police did not take precautions to contain the mob from 5.30 p.m. onwards except the Deputy Superintendent of Police and Revenue Divisional Officer of Mettur made an attempt to pacify the crowd. Admittedly, even at 5.30 p.m. there were 1000 persons assembled in front of the Mecheri Police Station and the police ought to have in all probabilities anticipated law and order problem. Without taking any precautionary measures, ordering straightway the police firing without resorting to lathi charge followed by bursting of tear gas, in my view, would amount to police excess and the action of the police is wholly unjustified.

6. Coming to the contention of the respondents that the deceased, husband of the petitioner was also one of the member in the unlawful assembly, it is the specific case of the petitioner that her husband is a tailor having a tailor shop near the Mecheri Police Station and in the F.I.R. it is not specifically stated whether he was also one of the members in the unlawful assembly. Only in the counter-affidavit filed by the respondents 2 and 3, it has been stated by naming the deceased, husband of the petitioner as a member of the unlawful assembly. Neither in the F.I.R. nor in the subsequent enquiry conducted by the Tahsildar it is stated that the husband of the petitioner, even though a member of the unlawful assembly, was also violent at the relevant point of time. In this connection, it is to be further noted that from the report of the Addl. District Collector, Salem dated 5-9-93, the Additional Collector has examined 30 persons as to the police firing. One M. Subramanian, s/o Muthu Gounder of Amaram village has deposed that since some persons pelted stones and uprooted the name board of the police station suddenly, the police without due warning, lathi charge or tear gas, opened fire. One Raju, s/o Kolandai Gounder of Pappireddiyur village has also spoken in the same line. One Elayaperumal, s/o Pathagounder of Amaram village also has spoken of the sudden firing by the police at the mob. None of the witnesses examined by the Addl. Collector have spoken to the participation muchless the active participation of the husband of the petitioner forming a member of the unlawful assembly. From the above statements, it can be easily presumed that even though he may be also one of the persons in the crowd, he may not be called as a member of the unlawful assembly. Since I have found that the firing by the police was wholly unjustified and excess of its power even though it was because of the attack of the public on the police, the death of the petitioner's husband has occurred due to such action of the police. It is to be further held that in view of my further finding that the husband of the petitioner cannot be termed as a member of the unlawful assembly, the petitioner is entitled to a reasonable and adequate compensation for the loss of the life of her husband.

7. In view of the above finding, it is to be now considered as to the actual

quantum of compensation to which the petitioner is entitled to. The State Government has already paid a sum of Rs. 50,000/- to the petitioner for the loss of the life of her husband in the police firing. According to the petitioner, her husband was the only bread winner and the petitioner has to look after her mother-in-law and two children. The compensation of Rs. 50,000/- already paid to the petitioner would not be adequate as the husband of the petitioner was earning a sum of Rs. 3,000/- per month and he was aged about 32 years at the time of death. Therefore, I find force in the contention of the learned Counsel for the petitioner that the petitioner is entitled to the compensation of Rs. 3 lakhs in addition to a sum of Rs. 50,000/- paid already. The said amount of compensation would be adequate and reasonable to meet the ends of justice. Accordingly, the writ petition is allowed and the respondents are directed to pay the sum of Rs. 3 lakhs to the petitioner by way of demand draft within a period of two months from the date of receipt of a copy of this order. No costs.