

(1995) 07 KAR CK 0033
In the Karnataka High Court
Case No : Writ Petition Number 11574 of 1989

Smt. Parvathamma

APPELLANT

Vs

The Chief Secretary and others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 176

Citation : (1995) 2 ACC 665 : (1996) ACJ 1091 : (1995) CriLJ 4148 : (1995) ILR (Kar) 2424 : (1995) 6 KarLJ 8 : (1995) 3 RCR(Criminal) 760

Hon'ble Judges : S. Rajendra Babu, J;Kumar Rajarathnam, J

Bench : Division Bench

Advocate : Katarki B.H, for the Appellant; Udhaya Shankar, for the Respondent

Judgement

1. The petitioner is the wife of one Chennaiah, and it is not in dispute the said Chennaiah died in Subramanyanagar Police Station on 18-5-1988 while in police custody. The petitioner has two female minor children and one male minor child. According to the petitioner, her husband Chennaiah (hereinafter referred to as the deceased) was arrested by the Subramanyanagar Police sometime prior to 18-5-1988 on the allegation that he committed theft of an autorickshaw in Cr.No. 160/88 and while he was in police custody he died on account of police atrocities on 18-5-1988. The petitioner having failed to get any relief from the respondents, has filed the above writ petition for issue of a writ of mandamus directing the respondents to pay compensation of rupees two lakhs and for providing a job to the petitioner as also for further direction to refer the matter to the C.B.I. for investigation.

2. As the matter was contested before this Court and it was alleged by the respondents that the deceased died on account of suicide while in police custody on 18-5-1988, the Principal Sessions Judge, Bangalore, was directed by this Court to nominate one of the Chief Metropolitan Magistrates to hold an enquiry into the matter and report as to whether the deceased had died on account of

the police excesses and if so to assess the damages payable to the petitioner.

3. The enquiry was conducted by the Chief Metropolitan Magistrate, Bangalore, and after examining the witnesses and hearing the submissions of the counsel, the learned Magistrate submitted his report dated 9-5-1995. The finding of the report was that the deceased died by committing suicide. The learned Magistrate also found that the deceased cut off a wollen rug into a long piece and hanged himself. He also further held that in view of this, the family of the deceased was not entitled to any damages. It is this report of the learned Magistrate that is in challenge before us.

4. During the course of enquiry the petitioner, namely, the wife of the deceased and one Narayanappa who was a jail inmate gave evidence on behalf of the petitioner. The police did not choose to examine any witness, except the Sub-Inspector of Police Siddagangaiah who arrested the deceased. At the outset it is pertinent to state that the police did not choose to examine the eye-witnesses to the occurrence, namely, Muniswamy the Head Constable and Beeraiah the Police Constable. The police also did not examine the post-mortem doctor.

5. The petitioner stated in her evidence that she came to know from PW-2 Narayanappa who was an inmate in the police-jail that her husband had been taken away by the police on 13-5-1988 itself. PW-2 stated in his evidence that when he was arrested by the police on 15-5-1988, he was kept in the same lock-up. The deceased narrated to him that about 2 or 3 days prior to that the deceased was being beaten by the police, PW-2 further stated that he informed the petitioner about the arrest of the deceased and the violence caused by the police to the deceased. PW-1 stated that she went to the police station number of times and the police did not allow her to see the deceased. She further stated that the police told her, she can get the deceased released on bail after offering surety in court. She has further stated that on the morning of 18th while she was going towards the court, her neighbours informed her about the death of her husband in the police station. She rushed to the police station, but the police told her that the deceased was suffering from stomachache and therefore had to be admitted to Victoria Hospital. She rushed to the hospital and by the time she went there she found that the post-mortem of her deceased husband was being conducted. According to her, her house is only 50 feet away from the police station and she had not been informed about the death of her husband till she came to know about it at 11 AM on 18-5-88 at the Victoria Hospital. She suspected that the police by completing the post-mortem without informing her were trying to hide the truth.

6. RW-1 the P.S.I. stated in his evidence that at about 6 or 6.30 AM on 18-5-88 the police informed the petitioner about the death of the deceased and the petitioner did not bother to turn up. RW-1 further stated that there was no fan or any such thing in the lock-up. He stated that the deceased was provided with a wollen rug on the night of 17th and he was kept in the lock-up after making a thorough search of his body. He further stated before the learned Magistrate that

in the early hours of 18-5-88 he was informed by the Head Constable Muniswamy that the said Muniswamy and the Police Constable Beeraiah had found that the deceased had died in the lock-up by hanging himself with the help of wollen rug. Curiously RW-1 stated that he does not know the dimension of the lockup or the height or width of the door of the lock-up. It was suggested to him that the height of the lockup door was only five feet and there was only round iron bars which could not facilitate a person to hang himself. This was denied by RW-1. The learned Magistrate strangely approached the matter by stating that the onus is on the petitioner to prove that the deceased could not have died by hanging with the help of wollen rug.

7. We have perused the inquest report conducted with respect to the deceased under S. 176, Cr.P.C. It is seen that two witnesses Head Constable Muniswamy and Police Constable Beeraiah were examined at the inquest. According to the statement of Muniswamy, he came to the police station on 18-5-88 at about 5.10 AM after patrol duty. After entering the station he sat on the bench in the hall and looked towards the lock-up in which deceased Chennaiah had been detained. He noticed the deceased was hanging from the bar of the lock-up with the help of torn piece of wollen rug. He had seen him falling down. Immediately he called Beeraiah, Beeraiah untied the knot of the wollen rug and poured water in the mouth of the deceased, but by then the deceased had died.

8. We have carefully considered the report of the learned Magistrate and we are not satisfied that the Magistrate has applied his mind in bringing out the real cause of death and the act of negligence, if any, on the part of the police. Neither the police nor the learned Magistrate insisted on the doctor who conducted the postmortem to be examined at the enquiry. No opportunity was given to the petitioner to cross-examine the doctor. We have perused the post-mortem report of the doctor and the doctor has given an opinion that the death was due to asphyxia as a result of hanging. The doctor has stated that there was an external injury, an abrasion on the outer aspect of upper part of left arm measuring 3 cms. x 5 cms. transverse, thin scab formed. In this situation it would have been fit and proper that the doctor ought to have been examined to arrive at the whole truth. It was also contended even at the enquiry the two vital eye-witnesses to the occurrence, namely, Head Constable Muniswamy and Police Constable Beeraiah were not examined, even though a point was made by the learned counsel for the petitioner at the enquiry that they ought to have been examined. The learned Magistrate has approached the whole enquiry as if the onus is on the petitioner to prove the entire case. The learned Magistrate did not insist on the two eye-witnesses or the post-mortem doctor to be examined at the enquiry, on a careful perusal of the enquiry report, we are not satisfied that it meets the requirement of law with respect to the nature of enquiry with regard to lock-up deaths.

9. We have given our anxious consideration to this unfortunate episode and we feel that in the circumstances of the case it would have been necessary for the

police to show that there was no negligence on their part. After all when a prisoner is in police custody it is the duty of the police to keep him alive and well till judicial remand. There are some aspects in this case which have caused us anxiety. It is not known in the first place as to why a wollen rug was given to the deceased in the month of May when it is generally warm in Bangalore. We are also not able to understand how the deceased was able to cut the wollen rug into a rope in the presence of the police. We are also not able to understand how and by what means the deceased hanged himself in the very presence of Muniswamy the Head Constable and Beeraiah the police constable. If it is the case of the police that Muniswamy & Beeraiah had left the police station and arrived immediately after the occurrence, then it is not stated why the police station was left unmanned by any person. It is impossible to believe that the police station would have been left empty without any policeman being present in the police station. All these matters could have been cleared if the two alleged eye-witnesses were examined at the enquiry.

10. We are also on a larger issue that when a person is taken into custody, it is the paramount duty of the police to keep him safely. If there is any dereliction of that duty, then undoubtedly the onus will be on the police to show that there was no negligence on their part. Even assuming for a moment that the case before us is one of suicide, we would like to state that there is a duty on the part of the police to show that there was no negligence. However, it cannot be ruled out that there may be some cases where in spite of best efforts by the police a prisoner commits suicide by a method that is beyond the control of the police. In those cases if the police can show that they were not negligent, then it is possible that they may be absolved of the blame. We have in mind, for instance a prisoner in spite of best efforts of the police commits suicide by consuming cyanide immediately on arrest. There may also be other cases where in spite of best efforts of the police the prisoner commits suicide which could not have been prevented by the police. Ultimately it all depends on the facts of each case.

11. However, in all cases of police lock-up deaths whether it is by suicide or on account of atrocities committed by the police, the onus undoubtedly rests on the police to show that there has been no negligence on their part. We may at this stage refer to a decision of the Supreme Court reported in the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, This was a case of lock-up death. While dealing with this case, at para 13 their Lordships have held as follows :

"In this context, it is sufficient to say that the decision of this Court in Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Arts. 32 and 226 of the Constitution which enables award of

compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah Vs. State of Bihar and Another, in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Arts. 32 and 226 of the Constitution. On the other hand, Kasturilal related to value of goods seized and not returned to the owner due to the fault of Government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal is, therefore, inapplicable in this context and distinguishable."

The Court while reiterating the powers of the Court in granting compensation further held at paragraphs 18 to 21 as follows :

"18. This view finds support from the decisions of this Court in the Bhagalpur binding cases : Khatri and Others Vs. State of Bihar and Others, and Khatri and Others Vs. State of Bihar and Others, . Wherein it was said that the Court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., , Misra, C.J. stated that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future there is no reason why we should hesitate evolve such principle of liability". To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case, with regard to the Court's power to grant relief.

19. We respectfully concur with the view that the Court is not helpless and the wide powers given to this Court by Art. 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Art. 42 is also an enabling provision in this behalf. The contrary view would not merely render the Court powerless and the constitutional guarantee a mirage, but may, in certain situations be an incentive to extinguish life, if for the extreme contravention the Courts is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law is to be real, the

enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tampered by judicial restraint to avoid circumvention of private law remedies were more appropriate.

20. We may also refer to Art. 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under :-

"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

21. The above discussion indicates the principle on which the Court's power under Arts. 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah Vs. State of Bihar and Another, and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein do not really detract from that principle. This is how the decisions of this Court in Rudul Sah and others in that line have to be understood and Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son."

His Lordship Dr. Anand J. in his concurring Judgment dealing with the relief to be granted has held as follows at paragraphs 31 to 34 :-

"31. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under Art. 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve "new tools" to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rules of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own

style warned :

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do; and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy ? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up to date machinery, by declarations, injunctions and actions for negligence This is not the task for Parliament the Courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare State; but abused they lead to a totalitarian State. None such must ever be allowed in this country."

32. The old doctrine of only relegating the aggrieved to the remedies available in civil law limit the role of the Courts too much as protector and guarantor of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations.

33. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Art. 32 by this Court or under Art. 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Art. 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Art. 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in the public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law.

34. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Arts. 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Art. 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the Court in the facts and circumstances of the case is possible. The decisions of this Court in the line of cases starting with *Rudul Sah Vs. State of Bihar and Another*, granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Articles 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil "law to" the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrong doer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the Courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."

In the light of the law laid down by the Supreme Court, we have no hesitation to hold that there has been negligence on the part of the police and the police did not take advantage of the opportunity afforded to them in the enquiry in satisfying this Court that there was no negligence. The non-examination of the doctor and the alleged eye-witnesses and the non-furnishing of information as to the mode of hanging have all clearly gone to show that the police had not exercised due diligence and care with respect to the deceased while in their custody. In the light of the decision of the Supreme Court, we propose to assess the damages that the petitioner will be entitled to.

12. It is brought to our notice from the Bar that the petitioner is a widow with

three minor children at the time of the occurrence. It is also brought to our notice that the deceased was aged about 40 years at the time of occurrence and was an autorickshaw driver and was in a position to earn Rs. 300/- per day. Considering the age of the deceased and his income, we hold that a sum of Rs. 2,00,000/- would be a reasonable amount of compensation to be paid to the petitioner and her minor children. We direct the respondents to pay the said sum to the petitioner and her minor children. Half the amount of Rs. 2,00,000/- will be paid to the petitioner and the balance amount will be kept in deposit in a nationalised bank in the name of the children of the petitioner and the petitioner as their natural guardian till the minors attain majority. The interest that may accrue on the amount deposited in nationalised bank will be paid to the petitioner. The petitioner is entitled to draw the interest on the amount deposited in nationalised bank for the maintenance of her children. Time for compliance three months. Rule made absolute accordingly.

13. Before parting with this case we are pained to notice that in recent times there has been an increase in custodial deaths and by the time the family of the victim receives any compensation it takes years and sometimes more than a decade. In the meanwhile, the family is driven to poverty, despair and helplessness. When bread winner is gone, the wife and children invariably become destitute. We also notice that most of the family members with respect to custodial deaths come from the lower economic strata of society. We also find no effort is made on the part of the State to rehabilitate the family. We have not even come across one case where even the funeral expenses have been borne by the State. For these victims Article 21 of the Constitution becomes an empty promise.

14. We find it necessary to state that whenever a victim's family complains of an infringement of an indefeasible right of the citizen while in police custody, the Courts will have to evolve while exercising writ jurisdiction, new tools to give relief in public law by moulding it according to the situations with a view to preserve and protect the rule of law. The old doctrine of relegating the aggrieved to the remedies available in civil law is a hollow right to a poor citizen of the country. The Courts have an obligation to satisfy the social aspirations of the citizens because in the last resort the Courts and the law are for the people and they are expected to respond to their aspirations.

15. The indefeasible rights guaranteed under Article 21 of the Constitution and the remedies available in public law as laid down by the Supreme Court is a strict liability for contravention of basic rights of the citizens. The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights. As we have said earlier, once a prisoner is in police custody, custodial death cannot be treated in casual and cavalier fashion. We find as stated earlier, the legal heirs of the victims do not get any relief for many years.

16. In that view of the matter we do hope that the State will work out a scheme

for payment of interim compensation of not less than Rs. 25,000/- in case of custodial deaths to the legal heirs whether it is due to alleged torture or other acts of atrocities or negligence of the police resulting in death including a case of suicide within a time span of one month from the date of occurrence. We are of this view, because we hold the State to be the ultimate protector of the citizen while he is in police custody. The State cannot escape the liability in providing immediately interim relief for the victim's family whenever the death occurs while in their custody. The amount which is to be paid by way of interim compensation will undoubtedly go towards the immediate needs of the family of the deceased for funeral expenses, education of the children and for the rehabilitation of the victim's family. This direction in all cases of custodial deaths is without prejudice to the rights of the citizen to claim compensation in accordance with law and in accordance with the principles laid down by the Supreme Court in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, We hold that the State to be ultimate custodian of the prisoner and any violation of his fundamental rights will have to be compensated without delay.

17. Order accordingly.