

(2015) 07 MAD CK 0276

In the Madras High Court

Case No : Criminal Original Petition (MD) Nos. 4225 and 7759 of 2011

V. Koilpillai and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 154, 173(2), 174, 313, 357(A)
Evidence Act, 1872 — Section 45
Penal Code, 1860 (IPC) — Section 109, 120(B), 201, 302, 34
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(i)

Citation : (2015) 4 CCR 418 : (2015) 4 CTC 561 : (2015) 2 LW(Cri) 145

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Alagumani, for the Appellant; C. Mayilvahana Rajendran, APP,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Nagamuthu, J—This is an unprecedented case where a living woman [Mrs. Manimegalai] has been driven from pillar to post for over a period of four years to establish that she is alive and that the judicial declaration made by a court of session in a judgment that she was murdered on 04.04.2002 is inconsistent with her living body and soul. Whether this woman appearing before this court is, in fact, Mrs. Manimegalai or not is the basic issue in these petitions.

2. There are three petitioners in these Criminal Original Petitions. They are the accused Nos. 1 to 3 in S.C. No. 259 of 2005, on the file of the learned Additional District and Sessions Judge, Fast Track Court, No. II, Tuticorin. The 4th accused, in the case, is one Mr. Dhasan. There were four charges framed in this case. The first charge was under Section 120(B) IPC against all the four accused. The second charge was under Section 302 read with Section 34 IPC against the accused 2 to 4. The third charge was under Section 201 IPC against the accused

2 to 4 and the 4th charge was under Section 302 read with Section 109 IPC against the first accused. The Trial Court, by judgment dated 20.02.2007, acquitted all the four accused. That acquittal has become final. Now, the petitioners have come up with these Criminal Original Petitions seeking various directions, including a direction for registration of a criminal case against the police officials, who investigated the case and filed final report, for payment of compensation and for other reliefs.

3.0. The background facts of these petitions would be as follows:

"One Manimegalai @ Mekala @ Punitha is the daughter of one Mr. Muthu @ Mookan, a resident of Isavankulam Village in Srivaikundam Taluk, Tuticorin District. Her mother was Mrs. Kannimariyal. They were residing at Perur Village in Srivaikundam Taluk. When Manimegalai @ Mekala @ Punitha was hardly three years old, Mrs. Kannimariyal deserted her husband - Mr. Muthu @ Mookan, along with her female child. Thereafter, she developed intimacy with one Dhanraj of Thirupparankundram and shifted to Thiruppur. Mr. Dhanraj was doing painting work in Thiruppur and Kannimariyal was working in a private company as a daily wager. Manimegalai @ Mekala @ Punitha was put in a school in Pattukottai, but, she later discontinued. Thereafter, she also joined a private banyan company in Thiruppur known as, "JJ Company". In course of time, Manimegalai @ Mekala @ Punitha had fallen in love with one Anandan of Thiruppur, who was also working in the same Company. Without the knowledge of her mother and Mr. Dhanraj, she married Mr. Anandan. Hardly for 7 days, she lived with Mr. Anandan as his wife and then, she deserted him and came down to Perur Village. She stayed in Perur Village at the house of one Mr. Shanmugaraj, who was her mother's sister's husband, for few days and thereafter, left Perur Village for Thiruppur. But, she did not turn up in Thiruppur. Her mother also, in the meanwhile, passed away. Her husband Mr. Anandan went in search of her to various places, including Perur Village, but could not succeed. Finally, on the complaint of Mr. Anandan, a case in Crime No. 154 of 2002 was registered on the file of Srivaikundam Police Station for woman Missing. During the course of investigation of the case in Crime No. 154 of 2012, the whereabouts of Mrs. Manimegalai @ Mekala @ Punitha could not be located."

3.1. While so, a half burnt dead body of a woman with injuries, aged about 20 - 25 years, was found near NaaluKani Bridge at Vellakulam Village, within the jurisdiction of Murappanadu Police Station. On the complaint of one Mr. A. Muthurajan, the Village Assistant of Keelavalanadu Panchayat, the Sub Inspector of Police, Murappanadu Police Station, registered a case in Crime No. 147 of 2002 under Section 174 of the Code of Criminal Procedure, on 05.04.2002. The body was highly decomposed and identity could not be made out. Inquest was held on the body and thereafter, it was sent for postmortem.

3.2. One Dr. Subbiah, an Assistant Surgeon, attached to Srivaikundam Government hospital, conducted autopsy on the body of the deceased on 05.04.2002 at 4.30 p.m. He found that the body was half burnt and there were

also injuries on the body. Clotted blood was found on the earth near the dead body. But, there was no bloodstain on the body. Hyoid bone was intact. All the internal organs were also intact. Around the neck, there was a ligature mark indicating that the deceased would have been strangled by using the ligature. The uterus contained a foetus of 6 to 8 weeks old. He preserved the skull for the purpose of superimposition in future. The viscera was sent for chemical examination, which revealed that there was no poison detected in the body. The Doctor finally opined that the external injuries found on the body would have been caused by a weapon, like knife and that the deceased would have died due to cumulative effect of all the injuries including constriction of neck.

3.3. Based on the above, the Inspector of Police, altered the case into one under Section 302 of the Indian Penal Code. During the course of investigation, he examined few persons from Perur Village. The photograph of the body taken was shown to the relatives of Manimegalai @ Mekala. The body had already been buried. From and out of the photographs, the relatives and the villagers could not make out the identity of the deceased. However, a close relative of the deceased, by name, Shanmugaraj, told the police that the cloth materials found on the body were like that of the dress materials of Manimegalai @ Mekala. Therefore, the Investigating Officer had suspected that the body would have been that of Manimegalai @ Mekala. Then, during the course of investigation, the Investigating Officer went to Thiruppur, examined her husband Mr. Anandan and collected a photograph of Manimegalai. Even Mr. Anandan was not in a position to say about the whereabouts of Manimegalai @ Mekala, because he himself was not informed of by Manimegalai @ Mekala before leaving Thiruppur. The photograph of Manimegalai @ Mekala collected by the Investigating Officer was then forwarded to the Forensic Lab at Chennai for superimposition examination with the skull of the dead body. The report revealed that in the superimposition examination, it was confirmed that the skull was that of the person in the photograph, thereby indicating that Mrs. Manimegalai @ Mekala @ Punitha was the one, who was done to death. Having, now, confirmed that the dead body was that of Manimegalai @ Mekala @ Punitha, the Investigating Officer further proceeded with the investigation and arrested the accused 1 to 3. The accused 1 to 3 gave confessions in the presence of the Village Administrative Officer concerned. Out of the disclosure statement made by the 2nd accused, a knife was recovered. On completing the investigation, he laid charge sheet against all the four accused.

3.4. According to the final report, Manimegalai @ Mekala @ Punitha had sold the house belonging to her mother - Kannimariyal to the first accused - Mr. Koilpillai. A sum of Rs. 10,000/- was due from the first accused to Mrs. Manimegalai @ Mekala @ Punitha, on account of the said transaction. Mrs. Manimegalai @ Mekala @ Punitha was repeatedly pressurising the first accused to pay the said amount. In order to get rid off Manimegalai @ Mekala @ Punitha, according to the final report, all the four accused, on 03.04.2002, at about 9.00 p.m., at the house of the first accused, hatched a conspiracy to do away with the deceased.

Thus, according to the final report, all the four accused are liable to be punished for the offence punishable under Section 120(B) of the Indian Penal Code. The final report further proceeded to say that on 25.03.2002, by seducing Manimegalai @ Mekala @ Punitha, the 2nd accused asked her to come to his house. Accordingly, on 04.04.2002, she came to the house of the second accused. He took Manimegalai at 8.00 p.m. from Ayathurai bus stand to Tuticorin. The accused 3 and 4 were already waiting in Tuticorin bus stand. Then, all of them, took Manimegalai in a bus proceeding to Tirunelveli. When the bus reached Muruganpur Village, the accused 2 to 4 got down from the bus along with Manimegalai and took her to Vellakulam near the bridge.

3.5. It is further alleged that the 4th accused strangled her by constricting her neck by a ligature. The 3rd accused closed her mouth to prevent her from making any alarm. The 2nd accused administered injection to make her unconscious. Then, the 2nd accused cut the neck of Manimegalai with knife. Thus, according to the final report, the accused 2 to 4 committed murder of Manimegalai, out of common intention and thus, they were liable for punishment under Section 302 read with Section 34 IPC. The final report further proceeded to say that after the deceased had breathed her lost, the accused 2 to 4, with a view to cause disappearance of the evidence, poured petrol on the body of Manimegalai and set fire. Then, the body was pushed into a bush near the bridge. Thus, according to the final report, the accused had committed offence punishable under Section 201 IPC. So far as the first accused is concerned, according to the final report, he had conspired to kill the deceased along with others and thus, he was liable for punishment under Section 302 read with 109 IPC.

3.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed above. When the accused were questioned in respect of the charges, they denied the same as false. In order to prove the charges, before the trial Court, on the side of the prosecution, as many as 16 witnesses were examined, 22 documents were exhibited and 10 material objects were marked.

3.7. Out of the said witnesses, P.W.1 - Mr. Muthurajan had spoken about the fact that the dead body of a woman aged about 20-25 years was found near the bridge and that he gave complaint to the police. He had further stated that the body was found in a half burnt condition and there were injuries on the body. P.W.2, a villager from Vellakulam, has also stated that the dead body was found near the bridge on the crucial date. P.W.3 one Mr. Perumal, who was examined to speak about the fact that the said woman was found in the company of three men at Murugapuram bus stop, had turned hostile and he had not supported the case of the prosecution in any manner. P.W.4 was also examined to speak about the same facts, but he also turned hostile and thus, he had also not supported the case of the prosecution in any manner.

3.8. P.W.5 - Mr. Shanmugaraj was the star witness for the prosecution in the case. His wife is the sister of the mother of Mrs. Manimegalai. According to him,

Manimegalai came to his house, stayed there for a few days and then left for Thiruppur. But, thereafter, she was not found. He has also spoken about the land dealing between Manimegalai and the first accused. She had further stated that between 24.03.2002 to 25.03.2002, Manimegalai was staying with him at his house at Perur and from 25.03.2002 onwards, she was found missing. During the course of investigation by the Murappanadu Inspector of Police, when the photograph of Manimegalai was shown to him, he identified the same as that of Manimegalai. But, he was not able to identify the dead body, as it was fully beyond recognition. He had further deposed that the dress materials found near the dead body looked like that of the dress materials belonging to Manimegalai.

3.9. P.W.6, one Pechimuthu is the Village Administrative Officer, who has spoken about the recovery of material objects from the place of occurrence, like bloodstained earth, sample earth, Plastic Can, broken syringe etc., on 05.04.2002 by the Inspector of Police of Murappanadu Police Station. P.W.7, one Abdul Khader, was the Village Administrative Officer of Murappanadu. According to him, on 22.05.2004, at 7.00 a.m., at Gnanamadankulam, the accused 1 to 3 were arrested by the Inspector of Police. On such arrest, all the three accused gave independent confessions. The 2nd accused gave a disclosure statement, wherein he stated that he had concealed a knife in his hand bag. In pursuance of the said disclosure statement, he took out the knife from his bag and handed over the same to the Inspector of Police. It was recovered by the Inspector of Police under a mahazar.

3.10. P.W.8, one Radharamani, was the scientific Assistant, Regional Forensic Sciences Lab at Tirunelveli. According to him, on 05.04.2002, on the request of the Inspector of Police, Murappanadu Police Station, he visited the scene of occurrence, where the dead body was found and he assisted the Inspector of Police for recovery of the said material objects. But, he could not extend any more help to the police for further investigation. P.W.9, one Geetha, the Head Clerk of the learned Magistrate Court, has spoken to the fact that she forwarded the skull produced before the Court to the Forensic Lab for superimposition examination. P.W.10, one Suresh, has spoken to the fact that he was a Constable, working in the Dog Squad of Tuticorin District and he had brought one sniffer dog to the place of occurrence, where the dead body was found, but, the dog could not render any help for the detection of the culprits. P.W.11 is the Constable, who assisted the Doctor, when the body was subjected to autopsy. P.W.12 - Dr. Subbiah has deposed that on 05.04.2002, he conducted autopsy on the dead body, opined that the death was due to cumulative effect of the injuries found and that the dead body was half burnt with petrol.

3.11. P.W.13 was the then Sub Inspector of Police attached to Murappanadu Police Station, who had spoken about his handing over the First Information Report and the other documents to the authorities concerned. P.W.14 is the Investigating Officer, who had spoken extensively about the investigation done by him and the report received by him from the Forensic Lab. P.W.15 was the

then Sub Inspector of Police at Srivaikundam Police Station. He had spoken about the registration of the case in Crime No. 154 of 2002 for "woman missing". According to him, since he was not able to find out the missing woman - Manimegalai @ Mekala, he closed the investigation on 03.03.2002. P.W.16 was the Investigating Officer, who made further investigation. He had also spoken about the arrest of the accused and the recovery of the knife. He had finally spoken about the final report filed.

3.12. When the above materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same as false. However, they did not choose to examine any witness on their side nor to mark any documents. Having considered all the above materials, the trial Court gave a specific finding in paragraph No. 30 of the judgment that the dead body found near the bridge was that of Manimegalai @ Mekala @ Punitha. The trial Court also gave a finding that the death of Manimegalai @ Mekala @ Punitha was caused by mechanical violence. Thus, according to the trial Court, it had been clearly proved that Manimegalai @ Mekala @ Punitha was murdered.

3.13. The trial Court, in its judgment from Paragraph No. 31 onwards, proceeded to discuss the evidence in respect of the complicity of the four accused in the murder. The trial Court did not give much weightage for the recovery of the knife at the instance of the 2nd accused. The trial Court found that this being a case based on circumstantial evidence, the prosecution had failed to prove that the accused had committed the murder of Manimegalai @ Mekala @ Punitha by proving the incriminating circumstances against the accused. On this finding, fortunately, the trial Court acquitted all the accused, on 20.02.2007.

4. After the above pronouncement of the Court, the people at large in Perur Village and in the surrounding villages were under the honest impression that Manimegalai @ Mekala @ Punitha was brutally killed by some one, but the killers could not be punished. While so, to the shell shock of the villagers, during first week of February 2011, a woman appeared in the Village and claimed herself to be Manimegalai @ Mekala @ Punitha. Mr. Shanmugaraj, her mother's sister's husband had already died. The villagers were surprised to see the said woman coming alive. The villagers were fully satisfied that the said woman was Manimegalai @ Mekala @ Punitha and thus, the dead body found was that of some one else. It was only during her visit in the month of February 2011, she came to know that it was made to appear to the public by the police, that she was murdered and that the murderers were the accused in the case. Then, on the advice of the villagers, Manimegalai @ Mekala @ Punitha appeared before the District Collector, Tuticorin on 11.02.2011 and made a representation. In the said representation, she wanted action to be taken in this regard. But the District Collector did not take any prompt action to ascertain the truth of the matter. He simply referred the said complaint to the Superintendent of Police, Tuticorin District. The then Superintendent of Police, Tuticorin District also did not take any prompt action in that regard. In the report now submitted by the Superintendent

of Police before this court, it is stated that the said representation of the woman claiming herself to be Manimegalai @ Mekala @ Punitha forwarded to the Superintendent of Police was in turn handed over to the Inspector of Police, Murappanadu Police Station. The Inspector of Police, Murappanadu Police Station also did not take any prompt action to find out the truth. According to him, the petitioners herein told him that they would work out their remedy before the Court and therefore, he closed it, he claimed. In those circumstances, the petitioners have approached this Court with these petitions claiming various reliefs including the relief of compensation and for registration of a case against the erring officials.

5. Though these Criminal Original Petitions were filed in the year 2011, and though they were admitted as early as on 28.11.2011, these two petitions have been kept pending on the file of this Court, approximately, for four years, for which, I take the blame. Mr. R. Alagumani, the learned counsel for the petitioners made a mention before me on 01.07.2015 that these petitions had been pending on the file of this Court for four years without any disposal and he wanted to have early disposal. As requested by him, the matters were ordered to be listed before this Court on 02.07.2015. During the course of hearing on 02.07.2015, I noticed that the then Inspector of Police, Mr. P.K. Ravi, attached to Murappanadu Police Station had only filed a counter. But there were no details in the counter and thus, this Court was not satisfied with the same.

6. Considering the seriousness of the issue involved in this matter this Court, by order dated 03.07.2015, directed the Superintendent of Police, Tuticorin to be present before this Court and to answer the allegations made in these petitions against the Police, more particularly to the fact as to whether the woman, who appeared before the District Collector is really Manimegalai @ Mekala or not. The District Collector, Tuticorin was directed to depute a responsible Officer to be present before this Court. By then, the Secretary, Home Department, Director General of Police, had not filed any counter. Therefore, they were directed to file counter. Thus, the matter was adjourned to 06.07.2015.

7. On 06.07.2015, Mr. Ashwin M. Kotnis, the Superintendent of Police, Tuticorin, was present before this Court. The District Revenue Officer, Tuticorin was also present. The District Revenue Officer submitted that it is true that a woman claiming herself to be Manimegalai @ Mekala W/o. Anandan appeared before the District Collector, Tuticorin on 10.02.2011 and presented a representation that she is Manimegalai @ Mekala, who is stated to have been killed, for which, the accused in this case were all tried and acquitted. He further stated with the reference to the records that by the proceedings of the District Collector in Na.Ka. No. C2/9628/11 dated 14.02.2011, the said representation was referred to the Superintendent of Police, Tuticorin, for necessary action. Mr. Ashwin M. Kotnis, the Superintendent of Police, submitted that the said representation was entrusted to one Mr. P.K. Ravi, the Inspector of Police, who had not taken any action, since the petitioners told him that they would work out their remedy

before the Court.

8. During the course of the hearing on 06.07.2015, the Superintendent of Police, had caused the appearance of the woman who made a representation before the District Collector, Tuticorin on 10.02.2011. She was accompanied by her cousin Mr. Veilmuthu Stalin. Before this Court, she said that she is really Manimegalai @ Mekala @ Punitha. She further stated that when she was three years old, her mother deserted her father Mr. Muthu and left for Thiruppur. She further narrated her stay at Thiruppur, her marriage with Anandan and her returning to the Village Perur for some time and then leaving for Chennai. She vividly spoke before this Court that she confined herself in Chennai until 2011, as she had converted to Islam and married one Shajaghan. She further told that she has got two children also. Mr. Veilmuthu Stalin also identified her as Manimegalai @ Mekala. When the photograph which was used for superimposition was shown to her, she identified the person in the said photograph as herself. The Superintendent of Police, Tuticorin, further submitted that the biological father of Manimegalai @ Mekala by name Muthu had been located in Isavankulam Village in Srivaikundam Taluk. He further submitted that he was prepared to hold a detailed enquiry and to submit a further report, after ascertaining whether the woman in question is really Manimegalai @ Mekala. This Court, therefore, directed the Superintendent of Police to cause the appearance of the woman before the Dean, Government Medical College at Madurai for taking blood samples for the purpose of DNA examination. Similarly, the Superintendent of Police was directed to cause the appearance of Mr. Muthu, before the Dean, Government Medical College Hospital at Tuticorin, for taking blood samples for the purpose of DNA examination. He was further directed to produce the blood samples before the Director of Forensic Science Laboratory, Chennai for conducting DNA examination. While so, on 07.07.2015, he made a request before this Court to modify the order since the DNA examination could be conducted at the Regional Forensic Science Laboratory, Madurai itself. Accordingly, this Court modified the earlier order, by order dated 07.07.2015 and directed the DNA examination to be conducted at the Regional Forensic Science Laboratory, Madurai. The matter was, thus, adjourned.

9. As directed by this Court, the blood samples were taken from both and they were subjected to DNA examination. According to the report of the Deputy Director, Regional Forensic Science Laboratory, Madurai, Mr. Muthu @ Mookan is the biological father of Manimegalai @ Mekala. The Superintendent of Police then submitted a detailed report before this Court on 14.07.2015, wherein he has vividly spoken about the details of the enquiry conducted by him and the report of the Deputy Director of Regional Forensic Science Laboratory on conducting DNA examination. In Paragraph Nos. 14, 15 & 16, he has reported as follows;

"14. I humbly submit that on 11.07.2015, I obtained the DNA result from the Deputy Director of regional Forensic Science Laboratory, Madurai. The result states that "From the DNA typing results of the above blood samples, it is found

that in the absence of identical twins, Mr. Muthu @ Mookan is the biological father of Ms. Mekala @ Manimekala @ Mumtazbegum.

15. I humbly submit that based on the enquiry conducted by me, the statements of the witnesses and by the Paternity test report, it reveals that Tmt. Mumtaz Begum, W/o. Shahjahan who is claiming herself as Mekala @ Manimekala, is in fact Mekala @ Menimekala, the daughter of Mookkan and Kannimarial of Perur Village.

16. I humbly submit that the Inspector of Police, Murappanadu P.S. conducted the investigation in the Murappanadu P.S. Crime No. 147/2002 under Section 174 Cr.P.C. @ 302, 201 IPC on scientific evidence. The trial Court has also given a specific finding that the prosecution had proved that the dead body found near the bridge was that of Mekala @ Manimekala. The above said facts clearly establish that the action has been bonafide. The police had no motive to falsely implicate the above petitioners in the aforesaid case. Hence, the respondents are not liable to pay compensation to the said petitioners."

10. Today, when the matter was taken up, the Superintendent of Police was present. The woman, claiming herself to be Manimegalai @ Mekala, D/o. Mr. Muthu and W/o. Anandan, her biological father Mr. Muthu and her husband Mr. Anandan were present. Few more witnesses, who were enquired during the enquiry by the Superintendent of Police, were also present. As the report has clearly revealed that the woman who is present in the Court is really Manimegalai @ Mekala, it is quite necessary to examine as to whether the judicial declaration made by the learned Additional Sessions Judge, Tuticorin that Manimegalai @ Mekala was murdered needs to be interfered with. But, unfortunately, no appeal has been filed by any one nor has there been any revision.

11. Now, the crucial question is, when there is a judicial declaration declaring that Manimegalai @ Mekala @ Punitha is no more, whether it would be possible for this Court in exercise of its inherent power under Section 482 Cr.P.C. to set aside the said finding.

12. In this regard, I may say that the inherent power of this Court preserved under Section 482 Cr.P.C. is not circumscribed by any of the provisions of the Criminal Procedure Code. The opening words of Section 482 Cr.P.C. viz., "nothing in this Code shall be deemed to limit or affect the inherent power of the High Court" will go to indicate that no other provision in the Act will deter this Court from exercising its inherent power, provided any one of the contingencies enumerated in Section 482 Cr.P.C. subsists. Section 482 speaks of three such contingencies, viz., to give effect to any order under this Code; to prevent abuse of process of any Court, or otherwise to secure the ends of justice. The term "otherwise to secure the ends of justice" came to be interpreted by the Hon"ble Supreme Court on several occasions. The Hon"ble Supreme Court has categorically held that the power of the Court under Section 482 Cr.P.C. is so wide to pass any order to secure the ends of justice, in other words, to undo an

injustice caused to an individual or to prevent the miscarriage of justice. In this regard I may refer to a few judgments of the Hon''ble Supreme Court.

13. In *State of Karnataka Vs. L. Muniswamy and Others*, AIR 1977 SC 1489 : (1977) CriLJ 1125 : (1977) 2 SCC 699 : (1977) 3 SCR 113 , while dealing with the phrase "to secure the ends of justice" employed in Section 482 of the Code, the Hon''ble Supreme Court has held as follows;

"the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed..... The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction".

[Emphasis supplied]

14. Subsequently, a three Judge Bench of the Hon''ble Supreme Court clarified the above legal position in *Krishnan and another Vs. Krishnaveni and another*, AIR 1997 SC 987 : (1997) CriLJ 1519 : (1997) 1 Crimes 97 : (1997) 1 JT 657 : (1997) 1 SCALE 458 : (1997) 4 SCC 241 : (1997) 1 SCR 511 : (1997) AIRSCW 950 : (1997) 1 Supreme 628 . In that case, the Hon''ble Supreme Court has held that although the second revision before the High Court after dismissal of the first one by the Court of Sessions, is barred under Section 397 (3) of the Code, the inherent power of the High Court under Section 482 are nevertheless available albeit with restraint so as to avoid needless multiplicity of the proceedings. The Hon''ble Supreme Court had precisely held as follows;

"(8)..... when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities....

(9) The inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and [it] is preserved by the Code."

15. In *Raj Kapoor and Others Vs. State and Others*, AIR 1980 SC 258 : (1980) CriLJ 202 : (1980) 1 SCC 43 : (1980) SCC(Cri) 72 : (1980) 1 SCR 1081 , the Hon''ble Supreme Court has held as follows;

"10..... Section 482 contradict this contention because nothing [in] the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made easy resort to inherent power is not right except under compelling circumstances. Not that

there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code."

16. In *State of Punjab Vs. Kasturi Lal and Others*, AIR 2005 SC 4135 : (2005) 123 CompCas 147 : (2005) CriLJ 3200 : (2004) 6 JT 137 : (2004) 6 SCALE 303 : (2004) 12 SCC 195 : (2004) 1 SCR 158 Supp : (2004) AIRSCW 1729 : (2004) AIRSCW 4424 : (2004) 5 Supreme 742 : (2004) 4 Supreme 254 , whiling dealing with a similar circumstance the Hon"ble Supreme Court has held as follows;

"It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exists. authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the Court to allow any action, which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceedings if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."

17. From these judgments, it is crystal clear that the inherent power of this Court is to be exercised as and when there is a compelling necessity, such as, to undo injustice caused to any one or to prevent miscarriage of justice. Though the Hon"ble Supreme Court has put a word of caution that the said power shall not be used in a casual manner, the Hon"ble Supreme Court has indicated that in order to do real and substantial justice, the said power should be exercised by this Court.

18. In the instant case, now the question is, in the absence of any appeal or revision challenging the judgment of the trial Court, could it be proper for this Court to exercise the inherent power under Section 482 Cr.P.C to set aside the entire proceedings including the judgment of the trial Court? In my considered opinion, it is not only proper, but also absolutely necessary in this case to do so by exercising its inherent power. The reasons are many. If the inherent power is not exercised by this Court to set aside the entire proceedings, then the judicial declaration that the dead body in question is that of Manimegalai @ Mekala @ Punitha will hold good for ever. This will amount to judicial death of Manimegalai @ Mekala @ Punitha. Worse than this, there can be no injustice caused to the woman viz., Manimegalai @ Mekala @ Punitha. So far as the person whose dead body was found there, there will be miscarriage of justice, because the real culprits, who committed the crime would not be brought to book. Above all, the accused in this case have been acquitted by undergoing the ordeal of trial. When the acquittal is on the ground that the accused are not the murderers, as though the murder of Manimegalai @ Mekala is true, in my considered view, the said finding of the trial Court would also result in injustice to these accused. It will appear as though Manimegalai @ Mekala @ Punitha was murdered, however, these accused were acquitted for want of evidence. The humiliation suffered by them by their implication in the case would be everlasting. These are all, in my

considered view, compelling necessities for this court to invoke the inherent power of this Court.

19. While exercising the inherent power, the next question is, whether this Court could simply act upon the report submitted by the Superintendent of Police on the basis of the ipse dixit statements of the witnesses, who have claimed that the woman, who is present before this Court, is Manimegalai @ Mekala. In my considered view, when there is a judicial declaration on appreciating the evidence recorded on oath that Manimegalai @ Mekala is no more, the same cannot be casually set aside by simply accepting the report of the Superintendent of Police and relying on the statements of the witnesses. The facts stated by the Superintendent of Police and the conclusion arrived by him are to be again tested. In my considered view, that is possible only by recording evidence on oath and on appreciating the same.

20. To my knowledge, in the whole history of this historic High Court, spreading for more than 150 years, this kind of twists and turns would not have arisen ever before. For the first time (subject to correction), a peculiar situation has arisen before this Court to examine the witnesses on oath in exercise of its inherent power under Section 482 Cr.P.C. like a trial court conducting a trial and to decide the issue on appreciating the evidence. Therefore, this court directed the relevant witnesses present before this Court to give evidence in respect of the relevant facts within their knowledge.

21. Today, accordingly, on administering oath, this Court has examined as many as seven witnesses as Court witnesses. The parties were afforded opportunity to cross examine them if they wanted. But, they did not cross examine any witness. CW1 is the woman Mrs. Manimegalai @ Mekala @ Punitha. She has asserted that she is the woman who, according to the earlier Police report, was done to death by the accused. She has narrated in a vivid fashion that she was born to Mr. Muthu and her mother Mrs. Kannimariyal. She has further stated that when she was hardly three years old, she was taken to Thiruppur by her mother by deserting her father. At Thiruppur her mother married CW3 - Mr. Dhanraj, through whom she has got a son. She has further stated that she married Anandan (CW4) at Thiruppur and then, she lived with him hardly for a weeks time. She has further stated that she came to Perur and then after having stayed there for few days, she left for Chennai. In Chennai, she married one Shajakan, after conversion to Islam and she has got two children now. She has stated that she has changed her name as Mumtaz Begum. She has further stated that when she came down to Perur in the year 2011, she came to know about the case and then she made a representation to the District Collector. She has also admitted that on 06.07.2015 blood samples were taken from her by a team of Doctors at Government Medical College, Madurai for the purpose of DNA examination as directed by this court. She identified CW3 and other relatives, who were present before this Court.

22. CW2 - Muthu @ Mookan, who is the biological father of Manimegalai @

Mekala, has stated that he married Kannimariyal and CW1 was born to them out of the said wedlock. He has further stated that when the child was hardly three years old, his wife deserted him and thereafter, her whereabouts was not known. He has further stated that he is not in a position to identify whether CW1 - Manimegalai @ Mekala is his daughter or not, because after she was taken by her mother at the age of three years, he had no occasion to see her at all. He has also admitted that on 07.07.2015 he gave blood samples at the Government Medical College Hospital, Tuticorin for DNA examination as directed by this court.

23. CW3 is one Mr. Dhanraj. According to him, when CW1 was hardly three years old, her mother came to Thirupparamkundram along with CW1 and developed intimacy with him and then he took her to Thiruppur. Out of the intimacy between him and Kannimariyal, a son was born. He has further stated that CW1 was put in a school at Thanajvur and then in Pattukkottai. He has further stated that without his knowledge, CW1 married Mr. Anandan - CW4. He has further stated that after one week of the marriage, Anandan came and told him that Manimegalai @ Mekala was found missing. The search made for her proved futile. Thereafter, he had no occasion to see Manimegalai @ Mekala at all. He has identified her in Court as Manimegalai @ Mekala, his adopted daughter.

24. CW4 is Mr. Anandan, who married Manimegalai @ Mekala. He has stated that CW1 was his wife. He has identified her in open Court. He has further stated that the marital life lasted hardly for a week's time and thereafter, she disappeared. He has further stated that he went in search of her to various places including Perur. Since he was not able to locate her, he made a complaint to the Sub Inspector of Police at Srivaikundam Police Station, on whose complaint the case in Crime No. 154 of 2002 was registered for woman missing. He has further stated that thereafter, he did not see CW1 at all anywhere. He has also identified CW1 in Court. CW6 is one Velimuthu Stalin, who is a relative of CW1. He has also identified CW1 as Mrs. Manimegalai @ Mekala @ Punitha.

25. CW5 is one Mr. R. Rajesh. He is a Scientific Assistant, Regional Forensic Science Laboratory, Madurai. He has spoken to about the DNA test conducted from out of the blood samples of CW1 and CW2. He has deposed fact that according to the analysis, CW2 - Mr. Muthu is the biological father of CW1 - Manimegalai @ Mekala.

26. CW7 is the Superintendent of Police - Mr. Ashwin Kotnis. He has stated about the enquiry held by him as directed by this court and his report. As I have already extracted, in his report, he has categorically stated that CW1 is Manimegalai @ Mekala. He has further stated that the dead body which was found near the bridge is that of some other woman and regarding her death, investigation needs to be reopened and conducted now.

27. From these evidences, I have no hesitation now to hold that CW1 is Mrs. Manimegalai @ Mekala. The oral evidences of these witnesses are duly corroborated by the expert opinion, based on DNA examination conducted by a

team of three experts at the Regional Forensic Laboratory, Madurai.

28. In this case, a peculiar question has arisen for the first time as to what is the weightage that could be given to the superimposition examination often conducted in this State, at the behest of the Police, when the identity of the deceased in any case could not be ascertained by the witnesses. It is a common knowledge that as and when a dead body is beyond recognition, resort is made to send the skeletal remains of the dead body for superimposition. In this regard, I may say that forensic anthropology is best conceptualized, more broadly, as a field of forensic assessment of human skeletonised remains and their environments. [vide W.M. Krogman and M.Y. Iscan - The Human Skeleton in Forensic Medicine, Springfield, 1986 - 2nd Edition]. This assessment includes both the identification of the victim's physical characteristics and cause and manner of the death from the skeleton. The most important application of forensic anthropology is the identification of the human being from the skeletal remains. The photographic supra-projection is a forensic process where the photographs or video shots of a missing person are compared with the skull that is found. It is done by projecting both the photographs on top of each other. But, this method was not found to be accurate. In order to make the process accurate, 3D photographs of the missing person is developed and overlaying of the same is done with the virtual model of the skull. This science is developing across the globe phenomenally. The opinion of a scientist based on superimposition has been accepted by the courts in India under Section 45 of The Evidence Act in order to identify the dead body. Though the Anthropologists claim that to some extent such Superimposition conducted by Forensic Laboratory assures the correctness of the result, shockingly, for the first time, it has been brought to the notice of this Court that in this case, the said report has been found to be incorrect. It does not mean that the scientific process by which the test was conducted is defective. It can only be said that the expert, who conducted the process has erred somewhere, which has resulted in this erroneous report. Therefore, taking a clue from this incident, it cannot be generalised for all days to come that in every case, the opinion based on Superimposition is doubtful. In my considered view, the science will never fail. Scientific truth is a universal truth. But, the scientists, who are after all human beings, may err. Therefore, at the most, the skill of the scientist or the correctness of the process conducted by the scientist may be doubted, but not the science itself. I am saying these words for the simple reason that it is likely that in future arguments may be advanced before the Courts of law requesting to simply disbelieve the Cranio Facial Superimposition results. I only caution that accepting such an argument unilaterally without any strong reasons, would only be calamitous.

29. In this case, as I have already pointed out, the DNA examination which is 99.99999 - - - % accurate, as has been accepted by the world community of scientists, needs to be accepted. DNA examination has clearly established that the woman, who is present before this Court, viz., CW1 is Manimegalai @ Mekala

@ Punitha and there can be no doubt on the same. Therefore, I am inclined to reject the opinion based on the Superimposition results in this case, which was produced before the trial Court based upon which the trial Court concluded that the dead body was that of Manimegalai @ Mekala.

30. If once it is so held that Manimegalai @ Mekala @ Punitha is alive, then, in exercise of the inherent power of this court preserved under Section 482 of the Code, it is absolutely necessary to set aside the final report submitted by the Police, which alleges that Manimegalai @ Mekala was murdered by these accused on 04.04.2002. Similarly, the order taking cognizance and charges framed in this case, which also alleges that Manimegalai @ Mekala, was done to death by these accused in pursuance of conspiracy, should also be set aside. Similarly, the finding of the trial Court that Manimegalai @ Mekala @ Punitha is no more and she has been murdered should also go. Lastly, the acquittal of the accused holding that there is no proof that they committed the murder of Manimegalai @ Mekala should also be set aside. In short, commencing from the final report submitted by the Police under Section 173(2) of the Code, all the consequential proceedings, including the judgment of the trial Court, should be set aside. Consequently, the investigation in Crime No. 147 of 2002 shall get automatically reopened and the same should be taken to the logical end. [See, the judgment of the Hon'ble Supreme Court in State of Kerala v. Puthenkavu N.S.S. Karayogam reported in 2001 (10) SCC 191]

31. Mr. Ashwin M. Kotnis, the Superintendent of Police, would submit that one Mr. Dharmalingam, the Deputy Superintendent of Police, District Crime Branch, Tuticorin, may be directed to take up the investigation of the case in Crime No. 147 of 2002. I agree with the said suggestion. Accordingly, Mr. Dharmalingam, Deputy Superintendent of Police, District Crime Branch, Tuticorin, shall take up the case for reinvestigation. It is made clear that since the final report filed before the lower Court, the order of the lower Court taking cognizance and all other consequential proceedings are set aside by this Court, there is no need for the Police to seek formal permission from the learned Magistrate to further investigate the matter. The trial Court shall remit the case records to the jurisdictional Magistrate who shall conduct further enquiry and entertain the final report to be filed by the investigating officer afresh.

32. Now, turning to the relief sought for in these petitions, the foremost relief sought for by the petitioners is for registration of a criminal case against the police officers, who were responsible for laying of final report in this case against the accused, including the Village Administrative Officer, who had deposed before the trial court that the accused 1 to 3, on arrest, made confessions and out of the disclosure statement made by the second accused, the knife allegedly used for the commission of the murder of Manimegalai @ Mekala was recovered. Regarding this plea, the learned counsel for the petitioners would submit that the accused 1 & 2 were detained in illegal custody by the then Inspector of Police between 05.01.2004 and 06.01.2004. Again between 16.04.2004 and

23.05.2004, they were detained illegally. This illegal detention, according to the learned counsel, is substantiated by the telegrams sent and representations made.

33. The learned counsel would further submit that the act of the accused in creating false records as though Manimegalai @ Mekala was murdered by these accused and in deposing before the Court falsely would attract various offences under the Indian Penal Code warranting registration of a case as per Section 154 of the Code. The learned counsel relied on the Constitution Bench judgment of the Hon"ble Supreme Court in Lalitha Kumari v. Government of U.P. and others reported in 2013 (4) Crimes 243, wherein the Hon"ble Supreme Court has held that if the complaint makes out a cognizable offence, without there being a need for any preliminary enquiry, it is absolutely necessary for the Police to register a case and investigate the same. The learned counsel for the petitioners would submit that in the instant case, the allegations made in the representations of the petitioners to the Police would make out various cognizable offences and therefore, a case should be registered forthwith and the investigation should be entrusted to an independent agency.

34. Mr. K. Chellapandian, the learned Additional Advocate General, would submit that in this case there is no need to register any case against the police officials. He would submit that the case was altered by the investigating officer into one under Section 302 IPC based on the opinion of the Doctor, who conducted autopsy in which no fault could be pointed out. After the case was altered, according to the learned Additional Advocate General, few witnesses identified the cloth materials found near the dead body as the cloth materials of Manimegalai @ Mekala @ Punitha. Because of these statements, the investigating officer had to suspect that the dead body might be that of Manimegalai @ Mekala @ Punitha. In order to ascertain that, sincerely, according to the learned Additional Advocate General, the investigating officer collected the photograph of Manimegalai @ Mekala @ Punitha and sent it for superimposition examination. He would further submit that it was because of the report of the Forensic Lab on superimposition that the dead body was that of Manimegalai @ Mekala @ Punitha, the investigating officer finally concluded that the dead body was that of Manimegalai @ Mekala @ Punitha. The learned Additional Advocate General would submit that thus, there is nothing becoming or unreasonable on the part of the Police Officers in fixing that the dead body was that of Manimegalai @ Mekala @ Punitha. So far as the arrest of the accused is concerned, during investigation, it revealed that these accused had something to do with the deceased Manimegalai @ Mekala and when they were arrested, out of suspicion, they gave voluntary confessions. Though the trial Court disbelieved the recovery of the knife, according to the learned Additional Advocate General, it does not mean that the fact that they gave confessions is false. Thus, according to him, the complaint does not make out any offence, warranting investigation.

35. Mr. M. Subash Babu, the learned counsel appearing for the Police Officers, would submit that there was nothing illegal or irregular on the part of the Police Officers, who investigated the case. He would also reiterate that but for the report of the Forensic Lab, the case would not have taken this turn. As it is the usual practice to believe the superimposition result, in this case also the investigating officer had believed the said report and taken forward the investigation further. Thus, no offence has been committed by the Police officials, he contended.

36. I have considered the above submissions.

37. As I have already pointed out, as and when there is a doubt regarding the identity of a dead body, it is mostly confirmed on the basis of the superimposition examination to be conducted by an independent scientific agency viz., the State Forensic Lab. It has not been brought to the notice of this court that in any case in the past, the Courts have disbelieved such report given by the Forensic Lab. To my knowledge, in most of the cases, the superimposition results are taken as gospel truth and at times, it is even taken as a conclusive proof of the identity. But, under Section 45 of the Indian Evidence Act, such report is relevant as an opinion of an expert. But, law does not say that such opinion is conclusive proof of the fact under dispute. Such opinion of an expert is only an aid to the Court to conclude as to the correctness of the fact under dispute. It is also too well settled that for want of expertise in science or art, the Courts should not venture to simply reject the opinion of the expert, unless it is clearly established before the Court that the opinion of the expert is not correct. In the case on hand, there was no reason for the Police Officials to doubt the correctness of the expert opinion. Even the trial Court had found no reason to doubt the correctness of the superimposition result. The Police officials believed the report in the same way as it was subsequently believed by the court of law on appreciating the evidence. It was only on such honest belief, the Police officials had taken forward the investigation further. Therefore, as rightly pointed out by Mr. Subash Babu, it cannot be said that the investigating officers acted with malice. In this regard, I may refer to Section 76 of the Indian Penal Code, which reads as follows:

"76. Act done by a person bound, or by mistake of fact believing himself bound, by law - Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it."

38. Here, in this case, the question is whether the police officials acted by reason of mistake of fact or not. In my considered view, it can be safely concluded that they acted by reason of mistake of fact regarding the identity of the dead body, because they were guided by the undisputed report of the Forensic Lab. Section 76 of IPC further states that the said person should have acted in good faith. The term "good faith" has been defined in the Code in Section 52 which reads as follows;

"Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."

39. This provision makes it very clear that if a thing is done without proper care and attention, which is required of from him, then, he cannot plead good faith on his part. In this case, it cannot be said that the investigating officer had not taken due care and attention while fixing that the skull was that of Manimegalai @ Mekala @ Punitha. Had it been the case that without such scientific examination, the Police officer had fixed the dead body as that of Manimegalai @ Mekala, it could be possible to say that the investigating officer had not taken due care and attention. But, here, in this case, he had taken every possible efforts to identify the skull by sending the same for superimposition.

40. It may be questioned that as to why DNA examination was not conducted then, in order to conclusively prove that the dead body was that of Manimegalai @ Mekala @ Punitha. In the report submitted and in the records available before this Court, I find that after Manimegalai @ Mekala @ Punitha was taken to Thiruppur hardly when she was three years old, her mother married CW3. From the evidences placed before this Court, it could be culled out that CW1 was not even aware of her father Mr. Muthu. Mr. Muthu, who was present before this Court, would say that he was not in a position to identify whether CW1 is Manimegalai @ Mekala or not. Thus, neither the father is able to identify his daughter nor the daughter is able to identify her father. Mr. Anandan, who originally preferred complaint to the police in respect of missing of Manimegalai @ Mekala, was all along under the impression that Mr. Dhanraj was her father. Therefore, the investigating officer, who conducted the investigation on earlier occasion, was not informed of that the biological father of Manimegalai @ Mekala is Mr. Muthu. It is only on the direction of this Court, the Superintendent of Police has taken efforts to collect these facts and to bring to light that Mr. Muthu is her biological father. For these reasons, I hold that the Police officials have acted in good faith and by reason of mistake of fact that the dead body was that of Manimegalai @ Mekala. Therefore, applying the general exception contained in Section 76 of the Indian Penal Code, I hold that the Police officials have not committed any offence warranting any further action in this matter, that too at this length of time.

41. The learned counsel would submit that the Police officials, by falsely implicating these accused in the case, have committed offence punishable under Section 3(2)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. I find no force in this contention at all, because, the petitioners were not roped in as accused on the ground that they belong to a scheduled caste. It is a coincidence that they belong to scheduled caste. Thus, even prima facie, there is no materials warranting any registration of the case under the said Act. In short, I do not find any material even to make out a prima facie case warranting registration of any case against the police officials and the Village Administrative Officer. Therefore, the first relief sought for is rejected.

42. Now, turning to the compensation prayed for in these Criminal Original Petitions, the learned counsel for the petitioners would submit that the petitioners are entitled for monetary compensation for their agonies, sufferings and time and money spent to prove their innocence. According to him, each petitioner is entitled for Rs. 10 lakhs as compensation.

43. In the counter filed by the respondents, it is stated that the Police Officers cannot be held responsible for the implication of these accused in this case, as the Police Officers had acted out of good faith and by mistake of fact. It is further contended that the taxpayers money cannot be paid to these petitioners by way of compensation.

44. In this case, admittedly the petitioners were implicated in a case of murder, arrested, detained in prison for a considerable time, allowed to undergo the ordeal of trial, put to lot of humiliation, horror, etc. They have spent their valuable time and money to prove their innocence. For the loss suffered by them, the question is whether they are to be monetarily compensated by the State. Undoubtedly, in this case, there were serious human rights violations caused to the accused by the officers of the State Government. The right to life guaranteed under Article 21 of the Constitution of India and the personal liberty guaranteed under Article 19(1) of the Constitution of India are to be ensured to the people of this Country by the State. As and when it is brought to the notice of the State that the State instrumentalities or its officers have caused serious violation of these rights, thereby resulting in loss to a citizen of this Country, as I have already said in a different case, the State should volunteer to rush to the rescue of the victims of such human rights violations, so as to alleviate their sufferings to some extent at least by granting monetary relief.

45. The plea of sovereign immunity is not available for the State to raise when the High Court, considers the question of granting compensation as a public law remedy, either under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. The plea of sovereign immunity, as has been held by the Hon"ble Supreme Court time and again, is available for the State only against a claim by way of Private law remedy. It is needless to point out that the remedy granted by this Court either under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure is not a final remedy as the aggrieved is always at liberty to work out his remedy under the Private Law before the appropriate forum. In other words, the right of the aggrieved to claim compensation by way of Private Law remedy shall not deter the High Court from passing an order for payment of compensation by way of Public Law remedy.

46. In this regard, I may refer to some of the judgments of the Hon"ble Supreme Court. In *Khatri and Others Vs. State of Bihar and Others*, AIR 1981 SC 928 : (1981) CriLJ 597 : (1981) 1 SCC 627 : (1981) SCC(Cri) 235 : (1981) 2 SCR 408 , the Hon"ble Justice Bhagavati, (as he then was), speaking for the Bench, posed the following question while considering the relief that could be given by a

court for violation of constitutional rights guaranteed in Article 21 of the Constitution:--

"... but, if life or personal liberty is violated otherwise than in accordance with such procedure, is the Court helpless to grant relief to the person who has suffered such deprivation? Why should the Court not be prepared to forge new tools and device new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty"

47. The same was expanded in a subsequent order in *Khatri and Others Vs. State of Bihar and Others*, AIR 1981 SC 1068 : (1981) 1 SCALE 531 : (1981) 2 SCC 493 : (1981) SCC(Cri) 228 : (1981) 3 SCR 145 : (1981) 13 UJ 924 , thus:--

"If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without authority of law, can such person not approach the Court for injunction the State from acting through such officer in violation of his fundamental right under Article 21? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence, the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity, a mere rope of sand, for, on this view, if the officer is acting according to law there would be no breach of Article 21 and if he is acting without the authority of law, the State would be able to contend that it is not responsible for his action and therefore there is no violation of Article 21. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who is aggrieved can move the Court under Article 32 for a writ injunction such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the Court under Article 32 and ask for a writ striking down the continuance of such action, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State and tell the petitioner that though the Constitution has guaranteed the fundamental right to him and has also given him the fundamental right of moving the Court for enforcement of his fundamental right, the Court cannot give him any relief."

48. This declaration of law made by the Hon^{ble} Supreme Court in *Bhagalpur Blinding case* was subsequently elaborated and followed in *Rudul Sah Vs. State of Bihar and Another*, AIR 1983 SC 1086 : (1983) CriLJ 1644 : (1983) 2 SCALE 103 : (1983) 4 SCC 141 : (1983) 3 SCR 508 , wherein, the Hon^{ble} Supreme Court has held as follows:

"Article 21 which guarantees the right to life and liberty will be denuded of its

significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this Country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioners' rights. It may have recourse against those officers."

49. Similar view has been taken by the Hon"ble Supreme Court in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, (1993) ACJ 787 : AIR 1993 SC 1960 : (1993) 76 CLT 98 : (1993) CriLJ 2899 : (1993) 2 JT 503 : (1993) 2 SCALE 309 : (1993) 2 SCC 746 : (1993) 2 SCR 581 , wherein Hon"ble Justice J.S. Verma, (as he then was), has held as follows:

"Award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention."

50. Following these judgments, the Hon"ble Supreme Court in Sube Singh Vs. State of Haryana and Others, (2006) ACJ 1138 : AIR 2006 SC 1117 : (2006) 102 CLT 19 : (2006) CriLJ 1242 : (2006) 2 JT 235 : (2006) 143 PLR 746 : (2006) 2 SCALE 161 : (2006) 3 SCC 178 : (2006) AIRSCW 779 : (2006) 2 Supreme 140 , has held as follows:

"a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental rights is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy."

51. In the case on hand, applying the said settled principles of law laid down by

the Hon'ble Supreme Court in the above judgments, it is manifest that the State has to compensate the wronged. The fact remains that the petitioners have been put to lot of mental agonies, horror, sufferings etc. on account of the act of the officers of the State. It may be true that these police officers had acted out of good faith, but that is no defence to say that the petitioners are not entitled for compensation for the loss sustained by them. In my considered view, the petitioners are entitled for compensation suitably from the State exchequer.

52. The fourth accused, in this case, Mr. Dhasan, has not approached this Court. In my considered view, on that score, he cannot be denied justice. For a man not to come to Court, there may be innumerable reasons, like, poverty, ignorance, illiteracy, etc. This Court, being the constitutional Court, enforcing the fundamental rights guaranteed under Part III of the Constitution of India in favour of the citizens as well as non citizens, cannot shut its eyes without ordering for compensation to an individual, even after coming to know that serious violation has been caused to his fundamental rights, simply on the ground he has not approached the Court. In my view, a person, who has not approached this Court also needs be compensated at his door steps. Therefore, the 4th accused, who stands similarly like that of the petitioners herein, is also entitled for compensation.

53. Now, turning to the quantum of compensation to be paid, in my considered view, going by the nature of the allegations, the nature of the sufferings, the amount of humiliation, the money that would have been spent in the legal battle, etc., the quantum of compensation to each accused is to be arrived at. The learned counsel for the petitioners have relied on a judgment of the Hon'ble Supreme Court in Dr. Mehmood Nayyar Azam Vs. State of Chattisgarh and Others, (2012) ACJ 2239 : AIR 2012 SC 2573 : (2013) 115 CLT 230 : (2012) CriLJ 3934 : (2012) 4 CTC 781 : (2012) 7 JT 178 : (2012) 7 SCALE 104 : (2012) 8 SCC 1 : (2012) AIRSCW 4122 : (2012) 5 Supreme 370 , wherein, the Hon'ble Supreme Court, while considering a case of a Doctor, who was falsely implicated in multiple criminal cases for helping weaker sections of the Society against a local coal mafia and others, has ordered payment of compensation to the tune of Rs. 5 lakhs. In this regard, I may take guidance from Section 357(A) of the Code of Criminal Procedure, wherein the legislature has directed the State to formulate a scheme for payment of compensation to the victims of crimes. As per the scheme framed in the State of Tamil Nadu, a sum of Rs. 3 lakhs is the maximum amount, which could be awarded to the victim of a crime in a case of death. Having regard to the said legal position and having taken note of the judgment relied on by the learned counsel for the petitioners and all the other attendant circumstances, I am of the view that directing the Government to pay a sum of Rs. 4 lakhs for each accused as compensation would meet the ends of justice.

54. In the result, these Criminal Original Petitions are disposed of in the following terms:

"(i) The final report submitted by the Inspector of Police, Murappanadu Police

Station in Crime No. 147 of 2002 under Section 173(2) of Cr.P.C. is hereby set aside and consequently, all the consequential proceedings including the order of the lower Court taking cognizance, the trial conducted and the judgment delivered on 20.02.2007 are hereby set aside. The petitioners herein and Mr. Dhasan [the 4th Accused] shall stand discharged from the case in Crime No. 147 of 2002.

(ii) Since the final report filed by the police and all the other consequential proceedings, including the judgment are set aside, the investigation of the case in Crime No. 147 of 2002 shall stand reopened. The Deputy Superintendent of Police, Mr. Dharmalingam, District Crime Branch, Tuticorin, shall take up the case forthwith for investigation, conduct a thorough investigation in respect of the dead body, which was found on 05.04.2002 on the road leading to Vallakulam Village. The Investigating Officer shall ascertain as to whose dead body was that and bring to book the perpetrators of the crime.

(iii) The trial Court shall remit all the case records to the learned Judicial Magistrate, Srivaikundam, who shall hold enquiry, receive the final report, if any, to be filed by the police under Section 173(2) Cr.P.C. and proceed further in accordance with law.

(iv) The request of the petitioners for registration of a case against the police officers and the Village Administrative Officer and others as provided under Section 154 of Cr.P.C. is dismissed.

(v) The Secretary, Home (Police) Department, Government of Tamil Nadu, shall pay Rs. 4 lakhs as compensation to each accused in S.C. No. 259 of 2005 on the file of the learned Additional District and Sessions Judge, Fast Track Court No. II, Tuticorin, namely, Mr. Koilpillai, Mr. Balasubramanian, Mr. Kurunthan @ Jeyakumar and Mr. Dhasan, by means of demand drafts drawn in their respective name within a period of three months from the date of receipt of a copy of this order.

(vi) These Original Petitions shall stand dismissed in respect of all the other reliefs sought for."

55. Before concluding, I would like to mention that this is the rarest case, where a woman, who was declared dead has come alive before the Court seeking justice. This episode, in my considered opinion, will be an eye-opener for the police in this State that in the matter of investigation, they should be extra cautious leaving no stone unturned. I am only hopeful that in the days to come, learning a lesson from this episode, the police department in the State, will try to use all possible scientific means and methods to unearth the truth in the matter of investigation, instead of adopting simply the conventional method of investigation relying only on testimonies of human beings. As the saying goes, men may lie but not the circumstances. Similarly, the science shall never fail. The Courts of law cannot do justice in vacuum. The other stakeholders like, the police, the defence and the prosecutors should all be vigilant and lend their

earnest assistance to the Court to do justice. Let there not be a repetition of this kind of episode in future and let all these stakeholders put their heads together to do justice.

56. Before parting with this case, I would like to place on record my appreciation for the excellent service rendered by Mr. Ashwin Kotnis, the Superintendent of Police, Tuticorin, who, within a short span of time, as directed by this Court, had taken all efforts to secure the witnesses so as to find out the truth, to get the report of the DNA expert and to submit a fair report before this Court within the time frame. I also appreciate the team of officers, namely, (i) Mrs. T. Vanitha Rani, Inspector of Police, All Women Police Station, Pudukottai, Thoothukudi District, (ii) Mr. F. Bernad Xavier, Inspector of Police, Murappanadu Police Station, (iii) Mr. Hariharan, Inspector, Special Branch, (iv) Mr. Kandasamy, Sub Inspector of Police, Sipcot Police Station and (v) Mr. P. Arunsakthikumar, IPS, Assistant Superintendent of Police, who were in the team who shared the burden with the Superintendent of Police to collect all the necessary facts within the time frame.

57. I appreciate Mr. K. Chellapandian, the learned Additional Advocate General, Mr. C. Ramesh and Mr. C. Mayilvahan Rajendran, learned Additional Public Prosecutors, who also rendered good amount of service to this Court to do justice to these poor people. I also appreciate Mr. R. Alagumani and Mr. E. Athisaya Kumar, the learned counsel, for having taken up the cause of these poor people to this Court. Similarly, I appreciate Mr. M. Subash Babu and Mr. R. Anand, the learned counsel appearing for the police officers.

58. Authenticity of the judicial system rests on public confidence and the public confidence rests on legitimacy of judicial system. I part with this case with pain that the time tested criminal justice delivery system has been put to perils in this case degenerating the confidence of the people in the system. Had this woman, Mrs. Manimegalai not gone to the District Collector, the travesty of justice declaring her dead would have been perpetuated. But, for these petitions filed by the petitioners, this mockery would not have been corrected. I am satisfied that though belated, justice is done to the aggrieved at least now. As Mahatma Gandhi, the Father of the Nation preached, "Truth is a powerful weapon which unfailingly triumphs." In this case, at last, truth has triumphed.