

(2012) 04 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No. 3468 of 2009 and M.P. No. 1 of 2009

V. Valli

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32
Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 04 MAD CK 0097

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Subburam, for the Appellant; RM. Muthukumar, GA, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner who is the wife of Venkatesan received a telegram from the Superintendent of the Central Prison, Puzhal on 31.01.2008 informing that her husband Venkatesan who was kept in the prison was admitted to the Government Royapettah Hospital, Chennai on 31.1.2008 at 1.00 a.m. for treatment. On the same day, she had received a second telegram stating that her husband who was admitted to the Government Royapettah Hospital expired around 2.30 a.m. An inquest done by the Sub Divisional Magistrate-cum-Personal Assistant (General) to the District Collector, Chennai found that the petitioner's husband who belonged to Adi Dravidar community, was brought to the Government Royapettah Hospital around 1.50 a.m., as a dead person. It was noted that on 31.01.2008, he developed chest pain. The jail Doctor recommended his admission to the outside hospital. But the Doctor at Government Royapettah Hospital found that he was brought dead. In the report, the learned Sub Divisional Magistrate recorded that the deceased Venkatesan was a Painter by profession and engaged on daily wage basis. Subsequent to his

death, the body was handed over to the petitioner. It was buried at Velankadu Burial Ground in New Avadi Road on 03.02.2008. The petitioner's husband was accused of the offence u/s 302 IPC. He was tried before the II Additional Sessions Court, Chennai in S.C. No. 259 of 1995 and was convicted with life imprisonment. An appeal filed by the petitioner's husband was rejected by this court in C.A. No. 326 of 1996 on 23.6.2004. He was kept initially in the Central Prison at Vellore and on 17.01.2007, he was brought to the Central Prison, Puzhal. The report sent by the Superintendent of Central Prison-I, Puzhal informed the Sub Divisional Magistrate that around 00.40 hours on 31.01.2008, late Venkatesan complained of chest pain and he was given treatment in the jail hospital. But on the request of the jail Doctor, he was taken to the Government Royapettah Hospital through an Ambulance kept in the jail. But the authority at the Government Royapettah Hospital informed that the deceased would have died around 01.50 a.m. Therefore, he requested the Sub Divisional Magistrate to conduct inquest and sent the report to the State Government. It is pursuant to the same, a report was sent by the Sub Divisional Magistrate-cum-Personal Assistant (General) to the District Collector to the District Collector on 04.02.2008 stating that he had conducted an enquiry with the fellow prisoners and the Doctor who gave the first aid and also obtained a report from the Forensic Laboratory. He had observed that the late Venkatesan was hale and healthy and even the parents of the late Venkatesan informed the Executive Magistrate that he must have been tortured by the jail authorities. There have been injury marks on his body. In fact, in their monthly visit made, he was found healthy and did not complain any ailment. There was also complaint that his left hand was broken and there was also beating mark on the spinal cord. The Executive Magistrate on observation of the body found that his mouth was slightly open and froth was coming out with a tinge of blood. There has been scratch on the right side and also there was an injury on the lower back side near the spinal cord including swelling. On the back side, there was an injury. There was also blood clot on the back side of the prisoner.

2. It is pursuant to the same, on further orders of the District Collector, Chennai, dated 15.2.2008, an enquiry was conducted under PSO 151. The Magistrate found that the death was due to ailment and there was no torture either by the police or by the jail department. The allegation made that there was an injury found on the body was explained by stating that there was possibility of the prisoner-cum-patient falling down while he was taken to one place to another place. There were no injuries leading to cause of death. There were no internal injuries. In some of the parts, there were blood clots and swelling can be explained by stating that if a person who was 39 years old, having heart ailment and his heart was malfunctioning, there was possibility of death as informed by the Doctor who conducted postmortem. The Executive Magistrate in his final report did not examine any independent person, but only went by the report of the Jailor supported by other co-accused. However, the respondents have agreed with the report submitted under PSO 151 by holding that late Venkatesan died

due to congestive cardiac failure due to valvular heart disease. Therefore, the Government took a decision to drop further action in the matter.

3. The petitioner being a widow and left with two minor daughters, sent a report to the first respondent State on 31.01.2008 stating that she is suffering with two minor daughters and she has no means to go to any court to claim justice. By a further letter, dated 16.4.2008, she had stated that during the life time of her husband, he was doing painting work and was supporting the family. After his imprisonment, she was doing domestic work in four houses. With this meager income, she was not even able to pay back the dues accrued on account of the ceremony conducted for the death of her husband. When there was no reply, she had filed the present writ petition seeking for a direction to the first and second respondents to pay compensation of Rs. 5 lakhs due to the death of her husband while in custody of the fourth respondent, i.e., Superintendent of Central Prison and for further orders.

4. The writ petition when it came up on 03.03.2009, notice of motion was ordered. Subsequently, it was admitted on 25.2.2010. Pending the writ petition, in her application for interim direction, no orders have been passed. On notice from this court, on behalf of the respondents, a counter affidavit, dated 22.6.2009 has been filed. As this court was not satisfied by the order dated 16.8.2011, directed the original file to be produced. Accordingly, the original file was produced before this court for perusal.

5. In the counter affidavit filed by the first respondent, in paragraph 7, the circumstances that led to the death of late Venkatesan were set out which are as follows:

7.... it is submitted that the life convict prisoner No. 42, Venkatesan, S/o. Sadasivam, was referred to Government Royapettah Hospital, Chennai, by the Prison Doctor on 31.01.2008 at 01.00 A.M. for treatment on complaint of severe chest pain. He was sent through warder escort by Prison ambulance. A message was received from the Government Royapettah Hospital at around 02.20 A.M stating that the life convict prisoner was brought dead on 31.01.2008 at 01.50 A.M. A telegram was issued to Tmt.Valli, W/o. Venkatesan, on 31.01.2008 at 02.20 A.M., informing that her husband was admitted in Government Royapettah Hospital, Chennai and she may interview him at her own cost. Another telegram was sent to her on 31.01.2008 at 06.17 A.M. stating that her husband expired on 31.01.2008 at 01.50 A.M.

6. For the purpose of testing the veracity of those averments, it can be seen from the two telegrams sent by the Jail Superintendent on 31.1.2008. The first telegram read as follows:

Your husband Venkatesan S/o Sadasivam who was admitted G R H Chennai on 31/1/08 at 1 AM for treatment you interview at your own cost.

The Superintendent, Central Prison I, Pyzhal, Chennai 600066.

(Emphasis added)

7. The second telegram read as follows :

Your Husband convict number 42 Venkatesan S/o Sadasivam who was admitted in G R H Chennai expired on 31/1/08 at 2 30 AM This is for your kind information.

(Emphasis added)

8. Therefore, these two telegrams will reveal that the respondents' stand that he was admitted to the Government Royapettah Hospital at 1.00 a.m. and died at 2.30 a.m. was totally false. On the other hand even the PSO report both final and preliminary showed that the hospital authorities had stated that the husband of the petitioner was brought dead to the hospital. Therefore, the earlier information that he was admitted at 1.00 a.m. in the Government Royapettah Hospital and died at 2.30 a.m. is not only false, but contrary to the records. Even as per the records as gathered by the Executive Magistrate, the letter sent by the Superintendent of Prison to the Executive Magistrate, dated 31.01.2008 referred to already showed that he had developed chest pain during 00.40 hours and was taken to the hospital. But as per the statement given by the Residential Medical Officer (RMO) of Government Royapettah Hospital through telephone that he already died at 1.50 a.m. Therefore, when a person died even before admission, it is unthinkable as to how the Superintendent of the Central Prison, Puzhal can state that he was admitted to the hospital and thereafter, died in the hospital. The Executive Magistrate did not explain the contradictions which were found in the earlier information given by the jail authorities. Even during the PSO 151 enquiry, no independent persons were examined. The explanation given by the Sub Divisional Magistrate regarding injuries found on the body is not only unsatisfactory, but contrary to any scientific medical evidence. Therefore, when the State filed the counter affidavit, at least they should refer to the documents which were already available in their hand regarding true state of affairs. On the other hand, it is unfortunate that the Additional Secretary to the Government (Prisons), Home Department should make a false statement. They could not explain the telegram sent by the Superintendent of Prison. On the other hand, the police as well as the Prison department have jointly tried to deny the torture given to the petitioner's husband before his death. It may be so that the injury found on the body might not be responsible for the actual cause of death. But at the same time, the statement that he never had the previous history of heart ailment and he was hale and healthy as informed by the family members was not denied. No medical records were produced to show that during the incarceration of the petitioner for more than two years he had history of any heart ailment.

9. In this context, the original file contained a letter sent by the Peoples Watch, dated 24.4.2008 complaining about the unnatural death of late Venkatesan. The said letter was signed by the Director of the National Campaign Against Torture, by name B. Parthasarathy. In fact when the postmortem was done, though it

was agreed that it will be done under the video coverage, they did not conduct any postmortem by taking video coverage of the same. Subsequently when protest was made by the family members of the petitioner's husband and other local public, the relatives were taken to mortuary. They were shown some video coverage which showed that the pictures were separately taken with still photographer and combined as video picture. All these facts showed that the death of late Venkatesan was not due to any natural cause and it must be triggered by torture inflicted on him while he was in custody of the fourth respondent.

10. When once it is proved that there was torture inflicted on the prisoner who was kept inside, the State must take responsibility for the well being of the prisoner. In such circumstances, if there is a finding that there was gross negligence or lack of supervision, then the court can certainly order compensation as it has been enshrined under Article 21 that no person's liberty can be deprived except by due process of law. The petitioner's husband, who was given life sentence has now been inflicted with death sentence which sentence was never imposed by a judicial court. When a person is under custody of the jail authority, the jail officials instead of acting like a guardian of the prisoner cannot ill-treat or torture the person for whatever reason which was not authorised by law.

11. In this context, it is necessary to refer to a judgment of the Supreme Court in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , wherein the Supreme Court held that in case of public tort, the court in exercise of power under Article 226 of the Constitution can certainly order compensation. In paragraphs 10,17 and 22, the Supreme Court had observed as follows : 10. In view of the decisions of this Court in *Rudul Sah v. State of Bihar*¹, *Sebastian M. Hongray v. Union of India*², *Sebastian M. Hongray v. Union of India*³, *Bhim Singh v. State of J & K*⁴, *Bhim Singh v. State of J & K*⁵, *Saheli: A Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters*⁶ and *State of Maharashtra v. Ravikant S. Patil*⁷ the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that 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. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion

of this principle.

17. It follows that "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 right 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. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah*¹ and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah*¹ 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*¹ and others in that line have to be understood and *Kasturilal*⁸ 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.

Under these circumstances, the claim made by the petitioner that she should be given compensation of Rs. 5 lakhs is fully justified. Hence the writ petition is allowed as prayed for. The first respondent State is hereby directed to give compensation of Rs. 5,00,000/- (Rupees five lakhs only) to the petitioner within a period of eight weeks from the date of receipt of copy of this order. However, the parties are allowed to bear their own costs. Consequently connected miscellaneous petition stands closed.