



W.P.No.13488 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.03.2023

Pronounced on: 14.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.13488 of 2005 and
WMP.Nos.14788 & 14789 of 2005

A.G.Subramaniam

... Petitioner

Vs

1.State of Tamilnadu

Represented by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.

2.Srinivasan

Inspector of Police,
R-7, K.K.Nagar Police Station,
K.K.Nagar,
Chennai-600 078.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the First Respondent to investigate and initiate Criminal and Departmental Proceedings against the Second Respondent Mr.Srinivasan, Inspector of Police and concerned police personnel attached to R-7 K.K.Nagar Police Station who are involved in



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custodial torture and harassment of the Petitioner and to pay a sum of Rs.500,000/- as compensation and to provide suitable employment in Government Service to the Petitioner.

For Petitioners : Ms.Poongkhulali B
For Mrs.D.Geetha

For Respondents : Mr.P.Kumaresan, Additional Advocate General
Assisted by Mr.Alagu Goutham
Government Advocate

ORDER

The petitioner is one A.G.Subramaniam, who seeks a mandamus directing the first respondent to investigate and initiate criminal and departmental proceedings against Srinivasan, Inspector of Police/R2 (in short 'R2') in R7 KK Nagar Police Station (in short 'Station') in 2005 when this Writ Petition was instituted as well as concerned police personnel attached to that Station, at the point in time, all of whom, he alleges, were involved in his custodial torture and harassment. He seeks a sum of Rs.5.00 lakhs as compensation.

2. This Writ Petition has been instituted in 2005 relating to an incident that took place on 29.11.2002 and for a few months thereafter. The petitioner was a cook and was selling books part-time eking out his livelihood, he states, along with his mother, younger brother, sister and her husband.



3. The submissions made on behalf of the petitioner are set out date wise in order to provide a chronology of the events that transpired commencing 29.11.2002.

(a) 29.11.2002:

(i) On 29.11.2002, he was woken up by half a dozen policemen accompanied by his friend, one Ragupathy. According to the petitioner, five of the policemen were in civilian attire and one in uniform without cap.

(ii) While he was enquiring with Ragupathy the reason for their visit, the policemen compelled him to accompany them back to the Station and he acquiesced.

(iii) According to him, he was roughly handled and one policeman mentioned to another that '*he is the person*'.

(iv) He was dragged by the collar to the backdoor of the jeep and was taken to the Station. He states that there were seven policemen in the jeep, of whom, five were identifiable.

(v) In transit, one of the constables who was sitting in front of him caught hold of his right hand, bent his fingers backwards and the another constable did the same with his left land. Despite his cries of pain, yet another constable yanked his moustache.



(vi) He was asked if he knew certain persons, and one of the names mentioned was Kannan. The petitioner disavowed knowledge of any of the named persons.

(vii) Upon reaching the Station, he was dragged inside and asked to remove his clothes. The thread that he wore around his waist was yanked off and he was told to sit close to the cement pillar. His hands were pulled backwards along the sides of the pillars leading to intense pain. Likewise, his legs were also pulled backwards around the pillar. Applying pressure on his limbs, kicking his arms and legs and abusing him in filthy language, they repeatedly asked him that he knew the persons who had been mentioned earlier.

(viii) One of the constables stood on his left thigh wearing his boots and jumped on his leg. The others hit him with lathis on his arms and legs. This resulted in intense pain, and he felt giddy.

(ix) After a while, R2 asked him to stand up and move, but the petitioner was unable to and fainted making the attempt. Later, regaining consciousness, he found himself lying near the pillar, unable to move his limbs.

(x) After a while, Ragupathy along with two persons from his locality, Natarajan and Kalandurai were brought to the police station and, on seeing him slumped near the pillar, enquired what had happened. He appraised them of the



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brutal assault by the police. With their help, he achieved a sitting position, finding his limbs and arms swollen and practically immobile. His undergarments were torn. The time was approximately 5.00 a.m. on 30.11.2002.

b) 30.11.2002:

(i) At 8.00 a.m. on 30.11.2002, the petitioner was made to sit on a iron folding chair and it is his say that for three days from 30.11.2002 to 02.12.2002, the three persons would lift him to the chair back to the bench to lie down. The police men did not help him in any way.

(ii) No food was provided on time and even consuming the meagre food that was provided was difficult. He was existing barely on water during this period.

(iii) When he wanted to urinate, he was lifted and held from behind, unable to stand straight or hold that position. He had to lean his forehead on the wall even to pass urine. He was then taken back to the bench.

(iv) No medical treatment was provided despite the evident agony that he was undergoing. During this period several police officials came and made enquiries with him about whether he knew certain persons.



(v) Around 10.00 a.m. when a senior official visited the Station and saw his condition, he enquired with the constable as to what had transpired and was told that he had sustained injury because he had fallen down.

c) 01.12.2002:

(i) On 01.12.2002, yet another senior official enquired about whether he belonged to any organization, to which the petitioner replied in the negative. He was asked whether he knew one Arivoli and the petitioner replied in the affirmative. He said that the said Arivoli had purchased books from the petitioner on several occasions.

(ii) A little later, three officials from the Investigation Department investigated the other persons in the Station, whom the petitioner did not know, but not the petitioner.

(iii) While in the Station he was asked to hold a slate with his name written on it and asked to hold it close to his abdomen. He was held sitting on an iron chair and photographed.

(iv) He was yet again enquired by a senior police officer, and on the same day, the constables and the Inspector in the Station obtained his signature upon a statement to the effect that he had fallen down and injured himself while getting down from a running van near Kasi Theatre in Jaffarkhanpet, Chennai.



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They obtained the signature of his younger brother Venkatesan on the statement.

d) 02.12.2002:

(i) On 02.12.2002, the Inspector informed him that he was to be taken to Kumaran Specialty hospital, a private hospital (in short 'private hospital') for treatment.

(ii) According to the petitioner, R2 had conceded to him that the enquiry had not been conducted in a proper manner and that the entire medical expenses in relation to his treatment would be met by the police department. He also threatened the petitioner to remain silent in regard to his detention and torture.

(iii) At 9.00 a.m., two policemen from the Station took him to the KK Nagar Government Hospital, one in civilian attire and the other accompanying the Sub-Inspector, in uniform. He was asked to repeat the story about how he had sustained injuries.

(iv) The drive from the Station to the KK Nagar Government Hospital in the back seat of an Ambassador Car left him in unbearable pain. He was examined in the hospital and an x-ray was taken. He was then taken back to the Station.



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(v) At around 4.00 p.m., the petitioner was taken by an auto to the private hospital at 46, First Avenue, Ashok Nagar, Chennai – 600 083, where he was admitted. He was administered an injection and given oral medication. Venkatesan accompanied him on this visit.

e) 03.12.2002:

He was again examined by the doctors.

f) 04.12.2002:

(i) The petitioner was taken in a stretcher to Sarath Diagnostic Centre, proximate to the private hospital, accompanied by Venkatesan. An x-ray of his left leg and right shoulder were taken.

(ii) The petitioner had been visited in the hospital by reporters from some publications and states that he had, despite the threats from the policemen, told them the entire truth about the illegal detention and torture in the Station. This came to be published by various journals in January, 2003.

g) 05.12.2002:

On 05.12.2002 ECG was also taken.

h) 06.12.2002:

(i) On 06.12.2002 surgery had been performed in the private hospital and he had been told by Venkatesan, post surgery, that a steel plate had been



inserted in his thigh. He was asked to lie completely immobile for three weeks till the stitches were removed. No treatment was given for the arms.

(ii) After the stitches were removed from the leg, the mobile x-ray unit from Sarath Diagnostic Centre was brought to the private hospital to take x-rays of his legs, right shoulder, chest and spine. He was told that there was a crack in the right shoulder and he should remain immobile for it to heal. A cast was put from the fingers to the wrist of the left hand, since the joints had been broken, and in an attempt to straighten them. The petitioner was told that the cast would remain for three months.

(iii) He says that an electric shock was administered to his left hand. Physiotherapy was given to the right hand after three months. According to the petitioner, the doctors had told him that the nerves of his left palm and fingers had been badly affected and that it would take weeks for the hand movements to revert to normalcy, if at all.

(iv) He received several visits from the press and human rights organisations on account of which there was mounting pressure on the hospital authorities to discharge him. On 06.12.2002 at 10.30 p.m., he was discharged and taken home in a private ambulance by Venkatesan. The expenditure towards the ambulance was met by the police.



4. The entirety of this sordid saga had taken place between mid night of 29.11.2002 and 10.30 p.m. on 06.12.2002, when he arrived at his home and was carried to a cot. He was on total bed rest for three months.

5. The petitioner had been admitted in the hospital from 02.12.2002 to 06.12.2002. During that period, there had been several press reports in regard to the police assault and the consequent medical treatment. The petitioner was once again asked to sign a statement similar to what had been taken from him on 01.12.2002. The petitioner claims to hail from a respectable family. He claims to be civic minded having started an Exnora organisation in his locality. By virtue of this episode in his life, not just him, but his entire family has been suffering social ostracization.

6. This apart, the torture inflicted on him has left him completely unsuitable for any sort of labour. At the time of his discharge on 06.12.2002, he had been asked to go back for a review in February. On 14.02.2023, an x-ray had been taken in Vijaya Nursing Home and the amount for the test had been given by the police, since they had instructed the petitioner that they would pay for any medical tests that were done.

7. His physical and mental condition post the aforesaid events are stated to be highly debilitated. He continues to suffer from body pain, depression and



mental agony. His limbs were beaten so badly that he is unable to stretch his legs. All the fingers on his left hand had been paralysed and he continues to have sporadic pain in the shoulders. His posture is hunched and he is unable to carry out even normal bodily functions or ablutions in a proper manner.

8. The petitioner states that all means of earning a livelihood have come to a dead end. He says poignantly '*I mention with great sorrow that I am presently a living corpse in this society*'.

9. With the help of non-governmental organisation, representations had been sent on 09.01.2004 to the National and State Human Rights Commissions and on 15.05.2004 to the Home Secretary of the State, Director General of Police, Commissioner of Police and Additional Director General of Police (Social Justice and Human Rights) Crime Investigation Department.

10. Though normally very little evidence would be available to substantiate allegations in matters like the present, the petitioner has had the benefit of telegrams that have been sent to Chief Justice, Chief Minister, Governor and Commissioner of Police, Chennai on 29.11.2002.

11. Those telegrams have been sent by one, V.Kuppusamy on 29.11.2002 in regard to the detention of the petitioner, Natarajan, Ragupathy and Kalandurai. The telegram alleged arrest on 29.11.2002 at 2.00 a.m. by the



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Inspector of Police, R7 KK Nagar Police Station, Chennai, without any complaint having been filed against the aforesaid persons. Said Kuppusamy urges the addressees to intervene in the matter and release the persons held illegally.

12. The petitioner has also placed on record (i) copies of the several medical reports issued by the private hospital as well as Sarath Diagnostic Centre, (ii) copies of articles published contemporaneous with the incident and (iii) the complaints sent to the National and State Human Rights Commission and various other authorities seeking redressal.

13. In addition, affidavits have been filed by P.T.Shanmuga Sundaram, the then Secretary of the CPI(ML) Red Flag Organisation, Chennai and V.Natarajan, who was brought to the police station when the petitioner was there. The affidavit of Natarajan attests to the detention of the petitioner in the Station from 30.11.2002 till his release on 02.12.2002 at 4.00 p.m. The affidavit of P.T.Shanmuga Sundaram, likewise attests to his personal knowledge relating to the illegal detention of the petitioner from 30.11.2002 to 02.12.2002.

14. Two counters have been filed, one by N.Sivakumar, Inspector of Police at the Station in 2020. The affidavit is dated 25.09.2020 and commences by stating that the then Inspector in charge of the Station had been transferred



from the post in 2003 itself. The subsequent paragraphs merely decry all averments in the writ affidavit. This deponent simply relies on the declaration of the petitioner that he had been chased by the police officials near 15th Avenue, Jafferkhanpet and had sustained injuries during that chase.

15. He urges that the Writ Petition be dismissed denying custodial torture or illegal detention, pointing out that the Writ Petition has been filed three years after the alleged incident. He however accedes to the medical treatment having been sponsored by the police department though he is unable to justify the necessity for the police to feel obliged in that regard.

16. The affidavit of S.Balamurali is dated 21.12.2018 and is also based only on secondary knowledge only. He too merely repeats the entirety of the averments in the counter filed by Sivakumar. Both counters allege that the petitioner is only trying to unjustly enrich himself at the expense of the police and such an attempt should not be encouraged.

17. In my view, both counters are of no use whatsoever and have been drafted mechanically without any application of mind. Moreover, I have no doubt that they attest to averments that are false to the knowledge of the deponents.



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18. After several hearings, when the matter had come up in 2022, the Court was informed that the State was revisiting the quantum of consideration to be paid in matters of illegal detention and custodial torture based on the orders of National and State Human Rights Commissions.

19. My attention has been drawn to G.O.Ms.No.1055 dated 30.11.2013 under which a Victim Compensation Scheme has been formulated under Section 357-A of Code of Criminal Procedure (in short 'Cr.P.C.'). My attention is specifically drawn to Clause 10 of that Scheme which states that no claim made by a victim or his dependents under Section 357-A(4) of the Cr.P.C. shall be entertained after a period of six months from date of the commission of the crime. The proviso thereto states that the State or the District Legal Services Authority may condone the delay in filing the claim, if they are satisfied, for the reasons to be recorded in writing, for the reasons causing such delay.

20. In G.O.Ms.No.116 dated 14.02.2023, which holds the field now, the State, while continuing the time limit set out in G.O.No.1055 dated 30.11.2013, enhances the compensation to be paid to victims of custodial death/torture/rape caused by police/prison officials and police firing as below.

S.No	Description		Financial Relief
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			Payable
1	(i) Death due to police torture	:	Rs.7.50 lakhs
	(ii) Death due to police firing	:	Rs.7.50 lakhs
	(iii) Rape by police	:	Rs.7.50 lakhs
2	Permanent incapacitation	:	Rs.7.50 lakhs
3	Death in police custody where direct torture could not be established (like negligence in giving treatment etc.,)	:	Rs.3.00 lakhs
4	(i) Victim commits suicides due to instigation / ill treatment by police	:	Rs.3.00 lakhs
	(ii) Where there is partial incapacitations such as loss of eye / hand/limb	:	Rs.3.00 lakhs
	(iii) Case of torture which is provided by JM/RDO inquiry	:	Rs.3.00 lakhs
	(i.e., custodial violence not resulting in death/ permanent / partial incapacitation)		

21. In an affidavit dated 20.02.2023 filed by the Secretary, Home Department/R1 (in short 'R1'), he states that final enquiry in regard to



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custodial torture has not been concluded in the matter and thus payment of interim compensation was not possible at this stage, i.e., in February 2023.

22. The petitioner was 38 years old in 2005. He is 56 years old today when the Writ Petition is being disposed. Counters have been filed only in 2018 and 2020, 13 years and 15 years after the institution of the Writ Petition. The stand of R1 that the enquiry is yet on-going and that the payment of interim compensation was not possible after 18 years and in the aforesaid circumstances, is absurd and would be laughable had it not been so pathetic.

23. The case diary from R2 Police Station reads as follows:

ஆணை எண் 554

வழக்கு நாட்குறிப்பு

அசோக்நகர்
மாவட்டம்

2002ம் ஆண்டில் முதல் தகவல் ஏடு எண் 255/02

காவல் நிலையம் R7 K.K. நகர்

சம்பவம் நடந்த தேதியும் இடமும் 3.12.02 at 09.30 hrs 15வது அவன்யு

குற்றம்	41 cl (II) Crpc காசி தியேட்டர் அருகில்
நடவடிக்கை எடுத்த தேதியும் மணியும்	முதல் விசாரணைப் பதிவு
3.12.02 10.00 hrs. S/O No கல்யாணகுமார் S1/R7 சுப்பிரமணியன் (37) S/o அப்பாதுரை No 8/10, 3வது தெரு Dr.சுப்புராயன் நகர் கோடம்பாக்கம் சென்னை-24. IV இல்லை V	சமர்ப்பிக்கப்படுகிறது இன்று 3.12.02ம் தேதி R7 கே கே நகர் காவல் நிலைய உதவி ஆய்வாளர் ஆகிய நான் தர்மபுரியில் ஏற்பட்ட அசம்பாவிதம் காரணமாக சென்னையில் எந்தவிதமான தீவிரவாத அசம்பாவிதம் நடக்காமல் இருக்க முன் எச்சரிக்கை நடவடிக்கையாக காவல்துறை உயர் அதிகாரிகளின் உத்தரவுப்படி ஆர்-7 கே.கே.நகர் காவல் நிலைய சரகத்தில் தலைமை காவலர்கள் 8747, 9006, 8696 சகிதம் பெட்ரோல் செய்துகொண்டு அந்நிய நபர்கள் மற்றும் சந்தேக நபர்களை கண்காணித்து கொண்டு 15வது அவன்யுவில் காசி தியேட்டர் அருகில் வரும்போது சந்தேகத்திற்கிடமான முறையில் எங்களை பார்த்ததும் ஓடிய நபரை நான் பார்ட்டி சகிதம் விரட்டி போகும் போது அங்குள்ள பின்னையார் கோவில் அருகில் அவர் கால் இடறி விழுந்தார் அவரை தூக்கி விசாரணை செய்யும் போது அவர் பெயர் விலாசங்களை மாறி மாறி கூறி இறுதியாக மார்ஜினில் கண்ட பெயர் விலாசத்தை கூறினார். உடனே அவரை சந்தேகத்தின்



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VI முதல் தகவல் அறிக்கை	பேரில் கைது செய்வதற்கான காரணங்களை விளக்கி கூறி அதே இடத்தில் காலை 9.50 மணிக்கு கைது செய்து 10.00 மணிக்கு நிலையம் கொண்டு வந்து R.7. Cr.No.2555/2002 U/s 41 cl(II) Crpc யில் வழக்கு பதிவு செய்து எதிரிக்கு தன்னிச்சையாக ஏற்பட்ட காயத்திற்கு மருத்துவமனைக்கு நமூனா மூலம் K.K நகர் அரசு புறநகர் மருத்துவமனைக்கு சிகிச்சைக்காக அனுப்பி வைத்து வழக்கை மேல் நடவடிக்கைக்கு எடுத்து கொண்டேன்.
VII புலன் விசாரணை முடிவு	இவ்வழக்கில் எதிரி மீது மேற்கொண்ட புலன் விசாரணையிலும் என்னுடைய ரகசிய விசாரணையில் இருந்தும் இவர் எக்ஸ்னோரா (exnora) அமைப்பில் தான் வேலை செய்கிறார் என்றும் எந்தவித தீவிரவாத அமைப்பிலும் இவர் இல்லை எனவும் தெரிய வருகிறது. எனவும் மேற்படி சுப்பிரமணி என்பவரை அவரது தம்பி வெங்கடேசன் என்பவரை வரவழைத்து அவருடன் அனுப்பி வைக்கப்பட்டது. இவ்வழக்கில் எதிரிமீதான விசாரணை முடிந்தும் இவ்வழக்கின் புலன் விசாரணை இத்துடன் முடிக்கப்பட்டது வழக்கு விசாரணை முடிவுற்றது

ஊதவி ஆய்வாளர் (ச.ஒ)
R7. K.K நகர் கா. நி
சென்னை-78.
03.12.02

24. According to the version of the respondents, the entirety of the events relating to the petitioner transpired on a single day, i.e., 03.12.2002 and they disavow all claims relating to the period 29.11.2002 till 02.12.2002 relating to illegal detention.

25. According to the respondents, wholly supported by the statement of the petitioner that he was brought to the Station on the morning of 03.12.2002, he had sustained injuries in a chase, had thereafter fallen from a moving van and was released on the same day. Crime No.2555 of 2002 booking him under Section 41 of the Cr.P.C. had also been closed on the same day.



26. Yet another event that transpired pending Writ Petition was that on 12.04.2006, the State Human Rights Commission closed the complaint filed by Peoples Watch, a Non-Governmental Organization based in Tamil Nadu on the ground that the complaint was barred by time under Section 36(2) of the Protection of Human Rights Act, 1993. The Commission also notes the pendency of this Writ Petition before this Court.

27. As far as National Human Rights Commission is concerned, there is a communication dated 10.05.2008 indicating closure of the matter. In that communication addressed to Henri Tiphagne, who had filed a complaint on behalf of the petitioner, they refer to their proceedings dated 08.10.2007 directing the Director General of Police, Tamil Nadu to cause an independent enquiry in the matter by a senior police official and submit a report to them.

28. The report dated 26.02.2008 reiterates the stand of the respondents that the arrest and release of the petitioner was on 03.12.2002 and refers to certain witnesses having been produced before the State Human Rights Commission on 12.11.2004. It also states that though efforts were made to secure the presence of the petitioner, they could not ascertain his whereabouts. Thus, there has been no effective redressal obtained by the petitioner before either of the Human Rights Commissions.



29. Detailed submissions of the petitioner and the respondents were heard relating to the maintainability of this Writ Petition. The prayer of the petitioner is two- fold. On the one hand, the petitioner seeks a direction to R1 to initiate both criminal and departmental proceedings against the then officials of the Station, and the second limb of the prayer relates to compensation.

30. While a direction to investigate can well be given based on the prima facie satisfaction of the Court in such matters, whether it would be appropriate for a Writ Court to award compensation which requires examination of evidence, was also addressed. Several cases have been cited at the Bar and I now refer to the same in disposing the objection.

31. In *State of Uttar Pradesh v. Ram Sagar Yadav and others*¹, three Judges of the Hon'ble Supreme Court considered an appeal by the State of Uttar Pradesh against the judgment of a single Judge setting aside the order of conviction and sentence passed by the Sessions Court. The respondents had been convicted for keeping a person in confinement corruptively and had been sentenced accordingly. The respondents, the Station House Office of the Hussainganj Police Station and three constables attached to that police station, had arrested one Brijlal and brought into the police station one morning. He

¹ [(1985) 1 SCC 552]



had been tortured through the day and had died that evening due to the injuries caused to him.

32. The prosecution stated that the purpose of torture was for extorting illegal gratification from Brijlal in connection with a complaint that had been filed by another individual for cattle trespass. The entire basis of the torture was to teach Brijlal a lesson.

33. Upon a consideration of the entirety of the evidence, the then Chief Justice Hon'ble Y.V.Chandrachud concluded that the evidence made it clear that the respondents inflicted injuries upon Brijlal while he was in their custody causing his death. There had been a statement recorded from Brijlal justifying to the serious repeated injuries inflicted on him by the respondents.

34. The Court notes simply that when Brijlal was brought to the police station at 10.00 a.m., he was completely uninjured and when he was sent for remand that evening, he had a large number of injuries which had induced a state of shock. This chain of facts led to the only reasonable conclusion that the injuries were caused by the policemen attached to the police station.

35. The Court stressed on the necessity for sifting through the data available, careful not to miss the wood for the trees, as, almost always, one is confronted with a jumbled-up mass of relevant and irrelevant data. The appeal



of the State of Uttar Pradesh was allowed and at paragraph 20, the Court has this to say:

20. Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that, in the instant case, a person who complained against a policeman for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer. The vigilant Magistrate, Shri R.C. Nigam, deserves a word of praise for dutifully recording the dying declaration of the victim, which has come to constitute the sheet anchor of the case of the prosecution.

36. In *Rudul Sah v. State of Bihar and another*¹, three Judges of the Hon'ble Supreme Court considered the case of the petitioner who, though

¹ [(1983) 4 SCC 141]



acquitted by the Sessions Court on 03.06.1968, was released from jail only on 16.10.1982, 14 years after acquittal.

37. The matter was decided on a Habeas Corpus Petition along with a plea for compensation. The Court considered whether Article 22 was effective as a means of rights and obligations which are normally more efficacious through the processes of civil and criminal Courts.

38. At paragraphs 9 to 12, they considered the question that was foremost in my mind, as to whether, in the exercise of writ jurisdiction, an order may be passed for payment of money by way of compensation. Their answer was in the affirmative, to state that such compensation may be granted if the petitioner is able to establish deprivation of a fundamental right.

39. In that case, the violation was that of illegal detention after having been acquitted in a full-dressed trial. Rejecting the 'stale and sterile objection' of the State of Bihar that the petitioner was to be relegated to the Civil Court, the Bench noted that such relegation would arise in circumstances involving factual controversies.

40. In a case where factual matrix was disputed and where it was for a Civil Court to have considered such factual disputes in order to either reject or uphold the claim, the appropriate remedy may be such relegation. However, in



the absence of such a factual dispute, it is left open, if the High Court in exercise of writ jurisdiction is convinced of the violation of fundamental right.

41. In such circumstances, the difficulty would arise in predicating, in the absence of clinching evidence, the precise amount to be granted as compensation, which the Civil Court would have been more appropriately placed to do. However, this would not stand in the way of the Writ Court passing an order of compensation and it is in this context that the petitioner has also made out the well received distinction between punitive damages and palliative damages.

42. Compensation, in such circumstances, would be to alleviate the petitioner from the difficulties foisted upon him by the violation of fundamental right. Such grant of compensation would not stand in the way of the petitioner approaching other fora including the Civil Courts, for a more precise determination of compensation based on an adjudicatory process including assimilation and weighing of evidence.

43. The Hon'ble Supreme Court states in that case that the right to compensation is sometimes palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present in their protection the powers of the State as a shield. If civilization is not to perish in this country



as it has perished in some others too well-known to suffer mention, they state, 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 petitioner's rights.

44. The above findings and observations may well have been made in the facts and circumstances of the present case as they apply on all fours to this matter. Reserving the right of that petitioner from bringing a Suit to recover damages from the State and the erring officials, the Court ordered an interim compensation, a sum of Rs.30,000/- in addition to an amount of Rs.5,000/- already paid by it. This was in 1983.

45. In *Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal and Committee) v. State of Orissa and others*¹, locus classicus on this issue, this question again cropped up for decision by three Judges of the Hon'ble Supreme Court.

46. Suman Behera, who was 22 years was taken into police custody on the 1st of December, 1987 in connection with the investigation of a theft and was found dead on the 2nd of December 1987. When being released from custody, multiple injuries were seen on his person. Referring to the details of the post mortem report and recording the extensive injuries, the Court first

¹ [(1993) 2 SCC 746]



answered the question as to whether the death of Suman Behera was a case of custodial death.

47. The Bench found in the affirmative. They then went on to the question of the claim for compensation and held that such claim can be entertained as, 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, and an acknowledged remedy for enforcement and protection of such rights.

48. They reiterate the view taken earlier by the Court that such a constitutional remedy is distinct from and in addition to the remedy available in private law for the tort resulting from the contravention of the fundamental right. At paragraph 35, they state as follows:

35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and



take such action as may be available to it against the wrongdoer in accordance with law -through appropriate proceeding. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar and Anr., [1983] 3 SCR 508 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles 'apply and the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some



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of those situations have been identified by this Court in the cases referred to by Brother Verma, J.

49. Thus the proper sequence of events to be adopted by the Writ Court in deciding the question of whether a plea for compensation can be maintained before it is to first assimilate the evidence as best as possible in the context of deciding whether a fundamental right had been violated or not.

50. In the present case, the violations alleged are illegal detention and custodial torture. If established, they would amount to a constitutional tort. The next event in order of sequence would be then to decide on the appropriate quantum of compensation to be paid.

51. Reserving the right of the petitioner to other avenues of remedy as well, in *Nilabati Behera* (supra), the Bench agreed that the State of Orissa pay a compensation of Rs.1.50 lakhs to the petitioner and a sum of Rs.10,000 by way of costs to the Supreme Court Legal Aid Committee. This was in 1993.

52. The case of *M.S.Grewal and another v. Deep Chand Sood and Others*¹ followed the same pattern as in the earlier cases discussed. That case concerned the drowning of a group of students who had gone for a picnic with the teachers. The teachers had been found guilty of utter negligence and convicted under the relevant provisions of the Indian Penal Code.

¹ [(2001) 8 SCC 151]



53. A Writ Petition was filed for compensation that had been ordered by the High Court directing compensation of Rs.5.00 lakhs in regard to each of the children who had drowned and a sum of Rs.30,000/- in regard to the parents of the students who had also drowned.

54. The appeal was on the quantum of compensation awarded. In that context, the Court held that the quantum of compensation would be dependent on the factual situation involved in the matter before the Court and in determining the same, the measure of damage would have to be proportionate to the loss suffered by the victim.

55. In fine, though inclined to enhance the award, they desisted, stating that judicial propriety deterred them from doing so as in the normal course of events an appellate forum ought not to interfere with an award of compensation. Interest was granted from date of judgment of the High Court till payment of the amount that remained due.

56. In *Sube Singh v. State of Haryana and others*¹, while following the ratio of the earlier decisions discussed above, the Court concluded that there was no clear or incontrovertible evidence in regard to the allegation of custodial torture. No medical report of any injury or disability was produced.

¹ [(2006) 3 SCC 178]



The grievance of the petitioner and his relatives were targeted towards different officers in different Stations at different points in time and importantly were found to be exaggerated and false. For those reasons, the claim for compensation was rejected.

57. In *Mehmood Nayyar Azam v. State of Chhattisgarh and others*¹, the Court made the important distinction between mental and psychological torture on the one hand and physical torture on the other noting that the former, intended to create fear to submit to police demands, was as heinous as physical torture was, if not more. The petitioner there, a doctor, falsely implicated in several criminal cases for helping the weaker sections of society against the local mafia, was taken into custody. He was photographed holding a placard wherein a self-humiliating words were written. These photographs were placed in public domain.

58. The Government had denied compensation on the ground that his case was one of defamation which could only be determined by a competent Court. The incident had taken place in the year 1992 and was finally heard by the Hon'ble Supreme Court in 2012 and thus the Court notes that the petitioner had been denied compensation for 19 years. That was not a case of illegal detention or custodial torture, but one of custodial humiliation and on those

¹ [(2012) 8 SCC 1]



facts with which the Court concurred, the State was directed to pay a sum of Rs.5.00 lakhs as compensation for custodial humiliation.

59. In *K.Kabali @ Kabalesswaran v. State of Tamil Nadu, rep. by its Secretary to Government, Home Department, Fort St. George, Chennai 600 009 and others*¹, a Division Bench of this Court, after assimilating the facts, held that though the death of the victim in that case was not due to police torture, it was on account of the negligence of police personnel.

60. At paragraph 14, they reiterated the settled position that in cases where custodial death, medical negligence or negligence on the part of police and public servants was evident, a writ Court can well award appropriate compensation, making reference to the decisions in. *Thekkamalai vs. State of Tamil Nadu*², *D.Ranganayagi vs. Station of Tamil Nadu etc., and another*³, *Ruth Mary & another vs. The Commissioner Corporation of Chennai and another*⁴, *R. Dhanalakshmi vs. Govt., of Tamil Nadu*⁵, *Malkiat Singh vs. State of U.P.*⁶ and *Ajab Singh vs. State of U.P.*⁷.

61. At paragraph 20, they state as follows:

1 [2006-3-L.W.81]

2 (2006) 91 MLJ 108

3 (2000 (1) LW (Cri.) 96)

4 (2004 WLR 176)

5 (2004 WLR 346)

6 (1998 (9) S.C.C. 351

7 (2000 (3) S.C.C. 521)



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20. *The above decisions make it clear that where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the aggrieved person can very well approach this Court for necessary relief, including compensation under Article 226 of the Constitution of India. In the affidavit, the petitioner has specifically stated that he had one son (K. Ramesh, since deceased) besides three daughters (according to the learned counsel, in para 2 of the affidavit it is wrongly mentioned as 2 daughters). During the course of arguments, it is brought to our notice that all the three daughters are yet to be married and according to the petitioner for want of financial assistance he is not in a position to perform the marriage of his daughters. It is also stated that the petitioner since retired is not an earning member and he does not own any property. It is useful to mention that even the Commission of Enquiry has observed that the entire family was depending on the deceased and he was the only breadwinner. It is not disputed that altogether the petitioner, father of the deceased was paid Rs.1 lakh i.e., Rs.50,000/- at the first instance by the Government and another sum of Rs.50,000/- on the recommendation of the Commission of Enquiry.*

62. In conclusion, the State Government was directed to pay a further amount of Rs.3.00 lakhs in addition to the amount of Rs.50,000/- already paid. That order was passed in 2006.

63. More recently, in *V.Kumaravel v. The Director General of Police, Government of Tamil Nadu, Chennai*¹, a Division Bench of this Court

¹ [WA(MD)No.1544 of 2018 dated 13.06.2019]



considered an appeal filed by the victim for mandamus directing the respondents to pay compensation of a sum of Rs.1.00 crore for his illegal detention.

64. The appellant was himself a Sub-Inspector of Police. Various allegations were made in regard to the complaint of illegal detention which was established by the appellant. The detention was on the basis of a criminal case that had been falsely foisted as against the appellant and the appellant had established that the entire proceedings against him was motivated. He had been arrested in uniform.

65. Accepting the case of the appellant, this Court awarded a compensation of Rs.5.00 lakhs and also directed the State to take action against the 4th respondent the Deputy Superintendent of Police, who was stated to have been the mastermind behind the false case. This is in 2018.

66. In *Kavalappara Kottarathil Kochunni @ Moopil Nayar and others v. State of Madras and others*¹, a Constitutional Bench of the Hon'ble Supreme Court considered the very defence that has been taken by the respondents before me, albeit in a lukewarm manner, as regards the non-maintainability of these Writ Petitions as the matters involve adjudication of disputed questions of fact.

¹ [1959 Supp (2) SCR 316]



67. In that context, the Hon'ble Supreme Court ruled that the facts as contained in the affidavits would suffice to establish the sequence of events put forth by the parties. This is what the Bench states:

12.....As we have already said, it is possible very often to decide questions of fact on affidavits. If the petition and the affidavits in support thereof are not convincing and the court is not satisfied that the petitioner has established his fundamental right or any breach thereof, the Court may dismiss the petition on the ground that the petitioner has not discharged the onus that lay on him. The court may, in some appropriate cases, be inclined to give an opportunity to the parties to establish their respective cases by filing further affidavits or by issuing a commission or even by setting the application down for trial on evidence, as has often been done on the original sides of the High Courts of Bombay and Calcutta, or by adopting some other appropriate procedure. Such occasions will be rare indeed and such rare cases should not, in our opinion, be regarded as a cogent reason for refusing to entertain the petition under Art. 32 on the ground that it involves disputed questions of fact.

68. This question again arose in *Smt.Gunwant Kaur and others v. Municipal Committee, Bhatinda and others*¹ and at paragraph 14, the issue has been resolved in the following manner:

14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its

¹ [1969 (3) SCC 769]



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jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made, dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

69. In *Real Estate Agencies v. State of Goa and others*¹, the Hon'ble Supreme Court notices the wide power that is available to a Writ Court to entertain adjudication, even though it involved disputed questions of fact. They go so far as to say that, in the realm of legal theory, no question or issue could be said to be beyond the adjudicatory jurisdiction of Article 226 even including matters where oral evidence was to be taken. Thus, it is a self-imposed restriction and not a universal or cardinal principle of law that a Writ

¹ [(2012) 12 SCC 170]



Court does not entertain disputes which require adjudication of contested questions.

70. They referred to the judgment in *ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and others*¹ and extracted paragraphs 16, 17 and 19 which I too extract below in the interests of clarity.

Paragraph 18 which contains the extract of 16, 17 and 19 reads as follows:

18. The aforesaid paragraphs of the judgment in ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. may, therefore, be usefully extracted below:

16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in the case of Gunwant Kaur v. Municipal Committee, Bhatinda - MANU/SC/0397/1969 : 1969 (3) SCC 769 where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)

14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court,

¹ [(2004) 3 SCC 553]



however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the Petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the Appellants it is clear that in proof of a large number of allegations the Appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.



16. *In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the Respondents, and should have proceeded to try the petition instead of relegating the Appellants to a separate suit.*

17. *The above judgment of Gunwant Kaur (supra) finds support from another judgment of this Court in the case of Century Spg. and Mfg. Company Ltd. v. Ulhasnagar Municipal Council MANU/SC/0397/1970 : 1970 (1) SCC 582 wherein this Court held: (SCC p. 587, para 13)*

'13.....Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.

xxx xxx xxx

19. *Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur (supra) this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This*



clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

71. In *D.K.Basu v. State of W.B.*¹, a series of guidelines were set out to deal with the scourge of illegal arrest or detention. In that case, the question of compensation has been cited to be ‘an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants’, the State being vicariously liable for the illegal acts.

72. Application dated July 2020, has been filed by the Amicus Curiae in the matter of *Dilip K. Basu V. State of West Bengal and others* (W.P.(Crl.) No.539 of 1986) before the Hon’ble Supreme Court seeking several measures to be put in place to develop the custody jurisprudence, on account of unaddressed issues of custodial violence and torture. A copy thereof has been circulated by learned counsel for the petitioner. As revealed therein, the number of cases of custodial violence, torture and illegal detention is on the rise as seen from the data collected by the National Crime Record Bureau.

73. A chart placed at page 13 indicates the following numbers:

¹ [(1997) 1 SCC 416]



S.No.	Year	Custodial Deaths	Cases Registered in such deaths	Charge Sheet filed	Convictions
1	2015	97	33	28	0
2	2016	92	25	24	0
3	2017	100	62	27	0
4	2018	70	44	13	0
	Total	359	164	92	0

74. The prayer in the application is for a restoration of W.P.(crl.) No.539 of 1986 and intervention by the Court in such matters. The petitioner has also filed a compilation of several High Courts decisions applying the ratio of the above judgments of the Apex Court. In *Dino DG Dympep and Anr. v. State of Meghalaya and Ors.*¹, the Court has elaborated upon the nature of proceedings under Article 226 of the Constitution of India and paragraph 10 reads as follows:

10. It must be remembered that a proceeding under Article 226 of the Constitution of India concerning violation of fundamental rights, more particularly, the fundamental right under Article 21 of the Constitution, is not a criminal proceeding and in a proceeding of this nature, proof beyond reasonable doubt cannot be insisted upon. Once the petitioners have made out a prima facie case of custodial violence which resulted in the death of the deceased, the provision of Section 106 of the Indian Evidence Act can be readily invoked. Under Section 106 of the Evidence Act, it is provided that when any fact especially within the knowledge of any person, the burden of proving that fact is

¹ [(2007) 4 Gauhati Law Reports 105]



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upon him. This section like the preceding one is an exception to the general rule laid down in Section 101, which says that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue. However, I must hasten to say that Section 106 is not intended to relieve any person of that duty or burden, and says that when a fact to be proved (whether affirmative or negative) is peculiarly within the knowledge of a party, it is for him to prove it. For instance, when the incident of murder had taken place inside the house of the accused at the time when the accused person alone were present, they only knew what exactly had happened. It is true that Section 106 cannot be used to shift the onus of proving the evidence from the prosecution to the accused, but when there is satisfactory evidence which fastens or conclusively fixes the liability for the death of the inmates of the house present at the relevant time, in the absence of any other explanation, the only possible inference which can be drawn by this Court will be that all the accused inmates participated in the crime. If any one of them claims to the contrary then under Section 106, the burden of proving that fact would be upon him since that is within his special knowledge. This was the principle laid down by the Apex Court in Shambhu Nath v. State of Ajmer. If this is the principle held applicable even in a criminal proceeding requiring proof beyond reasonable doubt, with due respect, there is no difficulty in holding that when there is prima facie evidence to show that the deceased was subjected to physical torture by the police personnel after he was apprehended or taken into custody, it is incumbent upon the respondents to prove that the Mairang Police Station, which took him to custody or the Jail authority which subsequently took him to custody have no hand in the death of the deceased.

75. In light of the extensive precedents available, this Court entertains no doubt on the proposition that Mandamus will lie for the grant of compensation



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if a violation of a fundamental right is established. This then, is the basic premise: the undisputed nature of violation to be made out by the petitioner. Though normally it is difficult, if not impossible, for there to be clinching evidence of illegal detention or custodial torture, that there are certain admitted factual events in the present case, which assist the Court in arriving at such a conclusion.

76. The telegrams sent by Mr.V.Kuppusamy to the Chief Justice, the Chief Minister, the Governor and the Commissioner of Police, Chennai contain acknowledgments of issue by the postal authorities. There has been nothing said in denial of these telegrams. All the telegrams are identical in content and one such is extracted below:

13:57 M 179 CHENNAI 2:12:02 81/73

NAME CHIEF JUSTICE

ADDRESS HIGH COURT, CHENNAI

PIN 600 104

1. Natarajan S/o Velayudham aged about 30 years

2 A.G.Subramanian S/o P.K.Appadurai 37 years

3.Ragupathy S/o Bhoopalan 24 years

4.Kalandurai age 42 years were arrested on 29.11.2002 at 2.00 AM by Inspector of Police R-7 Police Station K.K. Nagar Chennai without any complaint. Kindly interfere in this wanton and willful arrest of the police and let them on release.



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*SENDER'S NAME TO BE TELEGRAPHED V.Kuppuswamy. 1, 83rd street,
Ashok Nagar, CH – 83.*

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77. It is impossible that Mr.V.Kuppusamy could have anticipated the filing of a complaint on 03.12.2002 or any of the events thereafter in order to send the telegrams on 29.11.2022. Thus, his telegrams are authenticated and have, indeed, been issued on 29.11.2022. There is no doubt on this Court and the learned Additional Advocate General appearing for the State does not even attempt, rightly, to dislodge this fact.

78. The telegrams, dated 29.11.2002 are thus contemporaneous with, and lend full credence to the petitioner's version of events. The petitioner is specifically named as being in the premises of the police station on those dates. The counters filed thus, clearly, contain false averments, to the knowledge of the deponents. The Court deprecates this act on the part of the police department.

79. The entire episode relating to the chase of the petitioner in Jaffarkhanpet, his fall from the moving van and the so-called declaration/statement obtained from the petitioner confirming this story is clearly concocted. The petitioner has been prevailed upon to tender such a statement under threat of further assault and violence. The case diary attesting



to the events on 03.12.2002 are thus established to be false in entirety and is not worth the paper on which it is written.

80. It is beyond unfortunate that the keepers of public safety, law and order, whose records are expected to be sacrosanct, have concocted a false story fully supported by false records to cover up unsavoury events.

81. As far as the Human Rights Commissions are concerned, there has been no effective redressal that the petitioner has obtained from either the State or the Central Human Rights Commissions. The State Human Rights Commission had originally closed the complaint. However, at the behest of the National Human Rights Commission it had re-opened the matter issuing notices to various persons to cause enquiry. The report filed before the National Human Rights Commission reveals that the petitioner had not responded to the notice and the complaint had been closed for that reason. Thus, these avenues have proved futile to the petitioner.

82. Yet another important factor that weighs with the Court is that the police authorities have paid for the medical treatment of the petitioner. There has been no denial of this aspect by the police. There is certainly no necessity for the police to have borne the cost for the petitioner's treatment except if



there were compelling reasons, in this case, that the injuries had been inflicted on him by the policemen.

83. It was the police who had taken the petitioner accompanied by the petitioner's brother, to the private hospital as well as the diagnostic centre for investigation and tests, and paid for the treatment. Such instances were both prior to and after 03.12.2002 and fortify the petitioner's version of events, that he was in custody of the police even prior to 03.12.2002. This exposes yet again, the shamelessly false contents of the police records and counters.

84. In fine, this Court finds this writ petition not just maintainable, but liable to be allowed, with the following directions:

- i. The petitioner is entitled to a sum of Rs.20,00,000/- for his illegal detention and arrest between the period 29.11.2002 to 03.12.2002. The amount shall be paid by way of bank transfer to his bank account bearing Account No.500802010012804, Account Holder Name: A G Subramaniam, IFSC Code: UBIN0540927, Bank Name: Union Bank of India, Ashok Nagar Branch, within 4 weeks from date of receipt of a copy of this order. Any delay beyond the period as stipulated aforesaid, will entail the petitioner to interest



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at the rate of 8% from the last day of the four week period till the date of payment.

- ii. Disciplinary proceedings will be initiated as against (i) Second Respondent, Mr.Srinivasan, then Inspector of Police (ii) Kalyankumar, then Sub Inspector (L&O) (iii) Velayudham, then Head Constable, all attached at the relevant point in time to the R7 K.K.Nagar Police Station. Enquiry shall be concluded, in accordance with law, within 12 weeks from date of receipt of this order.

85. This writ petition is allowed in terms of the above order.

Miscellaneous petition is closed. There will be no order as to costs.

14.06.2023

Index : Yes / No

Speaking Order/Non-speaking order

Neutral citation:Yes/No

Sl/sm



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WEB COPY

To

State of Tamilnadu
Represented by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.



WEB COPY



W.P.No.13488 of 2005

DR.ANITA SUMANTH, J.

Sl/sm

WP.No.13488 of 2005 and
WMP.Nos.14788 & 14789 of 2005

14.06.2023