

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

AS.No. 73 of 1998 (C)

AGAINST THE JUDGMENT IN OS 330/1994 of ADDL.SUB COURT,
ALAPPUZHA, DATED 30-11-1996

APPELLANTS/PLAINTIFFS:-

1. SAUDAMINI, ZACHARIA PARAMBIL,
KAITHAVANA MURI, PAZHAVEEDU VILLAGE,
ALAPPUZHA.
2. INDIRA OF DO. DO.
(DIED)

(IT IS REPORTED THAT THE SECOND APPELLANT DIED AND THE FIRST
APPELLANT IS ONE OF THE LEGAL REPRESENTATIVES OF DECEASED
SECOND APPELLANT AS PER ORDER DATED 27.8.2009 (VIDE MEMO
DATED 4.10.2002).

BY ADVS.SMT.C.G.BINDU
SRI.B.S.SWATHY KUMAR
SMT.D.SARITHA
SMT.M.K.RAJITHA

RESPONDENTS/DEFENDANTS:-

- (*) 1. C.V.SALI, S.I. OF POLICE,
ALAPPUZHA SOUTH POLICE STATION FROM
VALUPARAMBIL VEETIL,
PUTHUKKANDAM MURI, KARTHIKAPPALLY. (DIED)
- (**) 2. KHURESHI, S.I. OF POLICE,
ALAPPUZHA SOUTH POLICE STATION FROM
PUTHENVALAPPIL, PARAVOOR VILLAGE,
PUNNAPRA P.O. (DIED)
3. SUDHEENDRAN, JEEP DRIVER,
D.Y.S.P. OFFICE, (VIGILANCE),
ALAPPUZHA FROM RANTUTHENGIL,
THIRUVAMPADI MURI, PAZHAVEEDU VILLAGE.
- ADDL.4. GHEETHA, W/O.SALI (LATE),
PUTHUKKANDAM VALUPARAMBIL,
MAHADEVIKAD, KARTHIKAPPALLY.
- ADDL.5. DEVAN, S/O.GHEETHA (MINOR)
OF DO. DO.

(Contd.....)

-: 2 :-

ADDL.6. KANNAN, S/O.GHEETHA (MINOR)
OF DO. DO.

(ADDL.R5 AND R6 REPRESENTED BY THEIR MOTHER AND
LEGAL GUARDIAN R4 GHEETHA.)

ADDL.7. SHAHIDA .A.S, D/O.KHURESHI,
CIVIL POLICE OFFICER, VANITHA CELL,
ALAPPUZHA.

ADDL.8. SHAJITHA A.S., D/O.KHURESHI,
SHA MANZIL, PAZHAVEDU,
ALAPPUZHA.

(*) (ADDITIONAL R4 TO R6 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF DECEASED FIRST RESPONDENT
AS PER ORDER IN I.A.NO.3112 OF 2005 DATED
25.8.2011)

(**) (ADDITIONAL R7 TO R8 ARE IMPEADED AS THE LEGAL
REPRESENTATIVES OF DECEASED SECOND RESPONDENT
AS PER ORDER IN I.A.NO.2012 OF 2004 DATED
10.11.2014)

BY ADV. SRI.R.HARIKRISHNAN
BY ADV. SRI.C.A.RAJEEV

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KVS/-

P.B.SURESH KUMAR, J.

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A.S.No.73 of 1998.
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Dated this the 5th day of March, 2015.

J U D G M E N T

The plaintiffs in O.S.No.330 of 1994 on the file of the Additional Subordinate Judge's Court, Alappuzha are the appellants in this appeal.

2. O.S.No.330 of 1994 is a suit for damages. The plaintiffs were sisters. The third defendant was a Jeep driver attached to the office of the Deputy Superintendent of Police, Vigilance, Alappuzha. According to the plaintiffs, there were disputes between the plaintiffs and the sister of the third defendant concerning the boundary of a property and the third defendant was maintaining strained relationship with the plaintiffs on account of the same. It was also their case that at the instance of the third defendant, on 11.2.1994, at about 11 am., the second defendant and two women police constables came to the house of the plaintiffs, forcefully took them to the police

station and detained them in the police station. It was also their case that they were abused by defendants 1 and 2 using filthy language at the police station. According to them, by about 3 p.m. their brother came to the police station with an Advocate and they were released from the police station by 4 p.m. It was pleaded that on account of the wrongful arrest and detention in the police station, the second plaintiff developed a psychic disorder and she has been undergoing treatment for the same under a Psychiatrist thereafter. According to the plaintiffs, they hail from a respectable family and were leading a dignified life and as a result of the aforesaid acts, their reputation in the society has been lowered. A sum of Rs.50,000/- was claimed in the suit by way of damages.

3. Defendants 1 and 2 contested the suit contending that the police received a mass petition raising serious allegations against the plaintiffs and the second defendant had gone to the house of the plaintiffs only for the

purpose of conducting an enquiry concerning the allegations in the mass petition. According to them, the plaintiffs were neither arrested nor were they brought to the police station as alleged in the plaint.

4. In support of the case, the first plaintiff gave evidence as PW1. She deposed that on 11.2.1994, at about 11 am., the second defendant came to her house along with two women police constables and took plaintiffs 1 and 2 to the police station and detained them there till 4 pm. The witnesses examined on the side of the plaintiffs namely, PW3 and PW4, have also deposed that the plaintiffs were arrested by the second defendant on the relevant day and they were taken to the police station. PW5 is the brother of the plaintiffs. PW5 has deposed that on that day by about 4 pm., he went to the police station and released his sisters with the help of a lawyer.

5. On the basis of the oral evidence tendered by the plaintiffs and on perusing the materials on record, the

trial court came to the conclusion that the plaintiffs were wrongfully taken into the custody by the second defendant on 11.2.1994 and they were detained in the police station till 4 pm. on that day. The case of the plaintiffs that they were abused by the police and that they were arrested at the instance of the third defendant were however not accepted by the court. On the basis of the said finding, the court below permitted the plaintiffs to realise by way of damages a sum of Rs.2,500/- each from defendants 1 and 2. The plaintiffs are aggrieved by the inadequacy of the damages granted. Hence this appeal.

6. Wrongful arrest and detention is a tort of strict liability and the plaintiffs in such cases need not prove malice or improper motive on the part of the defendants. The plaintiffs need only establish that the wrongful arrest and detention were caused by the defendants. If the defendants cannot establish that the arrest and detention were lawful, they are liable to compensate the plaintiffs.

The period of detention is immaterial. In a tort of this nature, the plaintiffs are entitled to general damages for the indignity, mental sufferings, disgrace, humiliation and also for loss of social status and reputation.

7. Defendants 1 and 2 have not challenged the impugned decision. As such, the finding of the court below that the plaintiffs were wrongfully arrested and detained in the police station by the second defendant at the instance of the first defendant has become final. The only question therefore is as to the quantum of damages to which the plaintiffs are entitled. Though a sum of Rs.50,000/- was claimed in the suit by way of damages, the plaint claim is limited in the appeal to Rs.25,000/-.

8. PW1 is the first plaintiff. She has categorically stated in her evidence that on account of the shock of the arrest, the second plaintiff developed a psychic disorder and she had undergone treatment for the same under a Psychiatrist for about an year. The said deposition

of PW1 is not seen challenged in cross examination. Instead, the questions put to her were only in relation to the treatment undergone by her. PW5, the brother of the second plaintiff also gave evidence regarding the psychiatric ailment suffered by the second plaintiff on account of the wrongful arrest and detention. PW5 also is not seen cross examined on this evidence. PW2 was a Psychiatrist attached to the District Hospital, Alappuzha. PW2 has given Ext.A8(f) certificate. Ext.A8(f) certificate indicates that the second plaintiff was under treatment for a psychiatric ailment in the District Hospital, Alappuzha from 18.5.1994 onwards. There is no evidence or material to show that the psychiatric ailment suffered by the second plaintiff was on account of any other reason. In the absence of any material, the same can only be on account of the shock of the wrongful arrest and detention. As indicated above, in a case of this nature, the plaintiffs are entitled to compensation by way of general damages for the indignity, mental sufferings, disgrace,

humiliation and loss of social status and reputation. As stated above, the claim of the plaintiffs is only Rs.25,000/-. According to me, in the light of the various heads under which the plaintiffs are entitled to compensation, the claim made by them is only reasonable and fair.

In the result, the appeal is allowed and the impugned decree is modified permitting the plaintiffs to recover from defendants 1 and 2 jointly and severally a sum of Rs.25,000/- with interest at 6% per annum from 17.8.1994 till 30.11.1996 and thereafter at 12% per annum till realisation with proportionate costs throughout.

**SD/-P.B.SURESH KUMAR,
(Judge)**

Kvs/-

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PA TO JUDGE.