

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).NO. 12927 OF 2008 (L)

PETITIONER(S):

JYOTHI SHAJI, AGED 26,
W/O.LATE SHAJI, PALAKKUNNEL HOUSE, CHALAKUZHI
PERUMTHURUTHY P.O., THIRUVALLA.

BY ADV. SRI.P.HARIDAS

RESPONDENT(S):

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY, HOME AFFAIRS, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE DISTRICT COLLECTOR,
PATHANAMTHITTA.
3. THE SUPERINTENDENT OF POLICE,
PATHANAMTHITTA.
4. THE SUPERINTENDENT OF POLICE,
CRIME BRANCH, KOTTAYAM.
5. THE REVENUE DIVISIONAL OFFICER,
ADOOR.
6. THE SUB INSPECTOR OF POLICE,
PATHANAMTHITTA.
7. THE SUPERINTENDENT OF POLICE,
SU-JAIL, PATHANAMTHITTA.

R3 BY GOVERNMENT PLEADER SRI. E.M.ABDUL KHADIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K. SURENDRA MOHAN, J

W.P.(C) No.12927 of 2008

Dated this the 1st day of April 2015

J U D G M E N T

The petitioner, wife of late Shaji has filed this Writ Petition seeking compensation for the death of her husband while he was in judicial custody. According to the petitioner, late Shaji was a fish vendor. He was arrested on 29.07.2007, alleging that he was found in possession of illicit arrack. He was produced before the Magistrate Court, Thiruvalla and was remanded. On 29.08.2007, he complained of chest pain and was taken initially to the General Hospital and thereafter to the Muthoot hospital. He died on 30.08.2007.

2. According to the petitioner, the death of Shaji was caused due to mental and physical torture and the delay in providing timely medical care. He had been arrested and taken into custody by the excise officials on 29.07.2007. According to the person who was taken into custody along with late Shaji, he was brutally manhandled by the Excise authorities at the time of his arrest. It is submitted that the other person who was

arrested along with late Shaji was also physically tortured. However, he was let off on his complaining of chest pain shortly thereafter. Late Shaji was, however, taken away by the Excise officials. Later on, he was produced before the Magistrate and was remanded to judicial custody. The allegation of the petitioner is that, late Shaji had succumbed to injuries sustained by him due to the physical torture inflicted by the authorities. Therefore, it is contended that the State is liable to compensate her for the loss of her husband.

3. According to Adv. Sikky Ravisankar who appears for the petitioner, the postmortem certificate, Ext.P1 refers to antemortem injuries. There was an injury on the right hand of the deceased. There was another injury which was a linear abrasion 3 cms in length oblique across the front of chest 13 cms below the sternal notch. According to the learned counsel, the injuries clearly establish the physical torture inflicted on the deceased. According to the learned counsel for the petitioner, the death of late Shaji was a direct

consequence of the injuries so inflicted. It is contended that the fellow detainee of the deceased has spoken to physical torture inflicted on both of them, at the time of their detention, in Ext.P5 statement. In view of the above, it is contended that this is a fit case in which award of compensation is justified. Decisions of the Honourable Supreme Court are also relied upon to support the contentions that this Court has ample powers to grant compensation for such misdeeds of the subordinates of the 1st respondent.

4. The contentions of the learned counsel for the petitioner are disputed by the learned Government Pleader who appears for the respondents. A statement has been filed by the 3rd respondent pointing out that, late Shaji had died of a cardiac disease in the early hours 30.08.2007. He had been initially taken to the General hospital, Pathanamthitta following chest pain. Later on, he was referred to the Muthoot hospital and was admitted in the ICU, where he breathed his last. He was given proper medical care and attention. A crime, Crime

No.662 of 2007 of Pathanamthitta Police station had been registered. During the course of investigation of the said crime, under Sec.174 Cr.P.C. it was found that, late Shaji had died due to Coronary Artery Disease and the death was due to natural causes. Therefore, final report was submitted to the Court on 29.12.2007 and the case was closed with respect to the injuries found on the body of the deceased. The learned Government Pleader points out that the injuries were not of serious in nature and the death could have been caused by the natural means also.

5. Heard. The question to be decided in this case is whether late Shaji had died due to injuries inflicted on him by torture at the hands of the Police/Excise officials during his detention. According to the petitioner, the detainee had been physically tortured at the time he was taken into custody. Ext.P5 is relied upon contending that his fellow detainee has spoken to such torture. However, a perusal of Ext.P5 does not show any authentication thereof by any authority. It is not clear when, where and by whom such a statement was

recorded. The same does not contain any signature or authentication by any person. Therefore, no reliance could be placed on Ext.P5.

6. Ext.P1, Postmortem Certificate refers to antemortem injuries. One is on the right hand close to the wrist of the deceased. According to the statement of the Assistant Professor who has conducted the postmortem, the injury could have been the result of administering an injection. With respect to the second injury, which is only an abrasion on the chest, what is stated is that, it could have been caused by natural means also. At any rate, the injuries noted cannot be treated as serious in nature and are not capable of causing death of a person. Had the deceased being tortured or subjected to manhandling, as contended by the counsel for the petitioner, there would have been marks of such injuries on the person of the deceased, either in the form of contusions or internal injuries. The postmortem report does not reveal any such injuries. On the contrary, according to the Assistant Professor who had conducted

the postmortem, a copy of whose statement has been handed over to me by the learned Government Pleader along with the Case Diary, the arteries of the deceased showed thickening and narrowing to the extent of 90% justifying the conclusion that he was suffering from Coronary Artery Disease. On the basis of the observations made at the time of conducting the postmortem, the Assistant Professor has given the opinion that the cause of death of the deceased was natural. It is further worth noticing that, the deceased had been taken into custody on 29.07.2007. He was in custody for a period of more than one month. He had been produced before the Magistrate on more than two occasions. He had never made any complaint of any torture inflicted on him while he was in judicial custody, at any time. The records reveal that, he had been taken to hospital and provided with medical care on complaining of chest pain. There is nothing on record to indicate that any torture had been inflicted on the deceased as alleged. No circumstance also exists justifying the probability of any torture, as

alleged.

I notice that pursuant to a telephonic message given from this Court, the District Judge, Pathanamthitta has placed on record a copy of the report submitted by the Judicial First Class Magistrate, Thiruvalla regarding the custodial death of Sri. Shaji dated 06.12.2007. The report forms part of the records of this case. According to the Magistrate also, the death of the deceased was due to natural causes. The above being the position, there are no grounds to grant any of the reliefs sought for by the petitioner. The writ petition is therefore dismissed.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

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/ True Copy /
P.A. To Judge

WP(C) .NO. 12927 OF 2008 (L)

APPENDIX

PETITIONER(S) EXHIBITS :

EXT.P1 : COPY OF THE POSTMORTEM CERTIFICATE DATED 30.08.2007.

EXT.P2 : COPY OF THE NEWS ITEM APPEARED IN MANORAMA DAILY ON 31ST
AUGUST 2004.

EXT.P3 : COPY OF THE REPRESENTATION DATED 14.10.2007 SUBMITTED BY THE
PETITIONER TO THE HOME MINISTER.

EXT.P4 : COPY OF THE COMMUNICATION NO.P1-9036/08 ISSUED BY THE 2ND
RESPONDENT.

EXT.P5 : COPY OF THE STATEMENT GIVEN BY SHRI. SATHYAKUMAR M.P.

RESPONDENT(S) EXHIBITS : NIL

/ TRUE COPY /

[Signature]

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P.A. TO JUDGE