

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 8149 of 2001
and
Criminal Revision Case No.of 185 of 2011

V. Amsu ... Petitioner in both the cases

Versus

1. The State of Tamil Nadu
represented by its Commissioner and
Secretary to Government
Home Department
Fort St. George
Chennai - 600 009
2. The Director General of Police
Chennai - 600 004
3. Mr. P.S. Devarajan
Son of Sathiaseelan
Head Constable, Ulundurpet Police Station
(formerly Head Constable of Ulundurpettai
Police Station, Villupuram District)
residing at No.63-A, Bhavatani Amman Koil St
Viswa Nagar, Cuddalore
4. The Inspector of Police
CBCID, Villupuram ... Respondents in WP No.
8149 of 2001
1. State represented by
The Inspector of Police
CBCID, Villupuram
(Cr.No.275/99 on the file of the
Inspector of Police, Ulundurpet)
2. Mr. P.S. Devaraj
Son of Sathiaseelan
HC No. 1298, Vilvanagar ... Respondents in CrI.R.C.
Cuddalore No. 185 of 2011

Writ Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 1 to 3 to pay a sum of Rs.8,00,000/- to

the petitioner towards compensation with suitable interest for causing death of petitioner's husband.

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure against the Judgment and Order in C.C. No. 7 of 2001 dated 25.08.2005 on the file of the District Munsif cum Judicial Magistrate-1, Ulundurpet.

For Petitioner : Mr. R. Sankara Subbu
in both the cases

For respondents : Mr. V. Arul
Government Advocate (Crl.side) for R1

COMMON ORDER

As per the order of the Honourable Chief Justice, both the Criminal Revision Case and the Writ Petition are taken up together as a specially ordered case.

2.(i) The petitioner in the Criminal Revision Case and the writ petition are one and the same. According to the petitioner, she along with her husband Velu reached the Ulundurpet bus stand at about 3.00 p.m. on 31.03.1999 intending to go to a temple. At that time, petitioner's husband was allegedly dragged by some people to the Ulundurpet police station and complained that he had snatched the gold chain of a women. In this connection, the case in Crime No. 275 of 1999 was registered against her husband for the alleged offence punishable under Section 379 of IPC. In the said case, the petitioner's husband was shown as a suspected accused. After registration of the case, in the guise of enquiry on suspicion that petitioner's husband had snatched the chain from the victim, the petitioner's husband was brutally beaten by the police constable and compelled her husband to either pay the money or hand over the snatched chain. The petitioner's husband was beaten in his neck, right hand, right thigh. When the petitioner went to the rescue of her husband, she was thrown out of the police station and therefore, she proceeded to her native place to seek her relatives help.

(ii) It is alleged that at that time, the petitioner's husband was intoxicated, however, he was not referred to any Doctor to confirm that he was in an intoxicated state or his blood samples were collected. Ultimately, the petitioner's husband was sent from the police station on the same day at 6.00 p.m. and he died near near ADMK flag mast, Ulundurpet bus stand. It is claimed by the respondents that the husband of the petitioner died of asphyxia due to intoxication.

(iii) According to the petitioner, the police officials, in order to cover up their guilt, have made erroneous entry in their register as if the petitioner's husband was released from the police station at about 04.30 p.m. on 31.03.1999 in an autorickshaw. It is the claim of the petitioner that the police officials are responsible for the death of her husband as they have beaten him mercilessly which led to his death. Therefore, the petitioner sought for conducting appropriate investigation and to prosecute the police officials responsible for the death of her husband for the offences punishable under Sections 330 and 228 of IPC. On the basis of such complaint given by the petitioner, a case was registered against the police officials. However, the petitioner claimed that the investigation conducted was not in accordance with law. Hence, the petitioner filed WP No. 7383 of 1999 before this Court seeking for investigation by the Central Bureau of Investigation (CBI) and for payment of compensation of Rs.8 lakhs for the death of her husband. This Court, by order dated 21.12.1999 directed the CB-CID to investigate into the suspicious death of the petitioner's husband by deputing a competent investigation officer and such officer shall conclude the investigation within three months. As far as compensation is concerned, this Court directed that the petitioner is at liberty to seek for compensation on the basis of the outcome of the investigation.

(iv) On the basis of the direction issued by this Court, CB-CID officials have taken up the investigation. The fourth respondent herein, after completion of investigation, filed a charge sheet on 20.10.2000. According to the petitioner, the investigation disclose that her husband was severely beaten up by the third respondent and thereafter, without rendering any medical assistance, had allegedly sent her husband by an autorickshaw. It is the claim of the petitioner that her husband did not die due to intoxication or asphyxia but only on account of assault and torture meted out to him by the third respondent.

(v) The charge sheet filed on 20.10.2000 by the investigation officer attached to CB-CID was taken on filed in C.C. No. 7 of 2001. During the course of trial in the case, as many as 37 witnesses have been examined by the prosecution. The trial Court, on appreciation of the oral and documentary evidence, has acquitted the accused in the case by the judgment dated 25.08.2005. Challenging the same, the present Criminal Revision Case is filed.

(vi) The petitioner has also filed the above Writ Petition No. 8149 of 2001 praying for a Writ of Mandamus directing the respondents 1 to 3 to pay a sum of Rs.8,00,000/- to her as compensation with suitable interest for having caused the death of her husband.

3. The learned counsel appearing for the petitioner would mainly contend that the Court below erred in not giving an opportunity to examine the star witness in this case, being the petitioner. According to the counsel for the petitioner, the petitioner could not be examined before the Court below because, at the time of her examination, there was a Criminal Revision pending before this Court but that was not taken note of by the court below. The trial Court simply

relied on the evidence of witness, who connived with the police officials to safeguard the accused in this case. The learned counsel for the petitioner also brought to the notice of this Court that when a criminal case is registered against the husband of the petitioner, the police officials ought not to have let him out of the police station without producing him before the jurisdictional Magistrate. Therefore, In any event, the order of acquittal passed by the trial court, without examining the petitioner is legally not sustainable inasmuch as the petitioner is the star witness who had set the law in motion. Therefore, the learned counsel appearing for the petitioner prayed for setting aside the order of acquittal passed by the trial Court in C.C. No. 7 of 2001 and to direct the respondents 1 to 3 in the writ petition to pay a sum of Rs.8,00,000/- as compensation to the petitioner for having caused the death of her husband.

4. Per contra, the learned Government Advocate appearing for the official respondents would contend that the husband of the petitioner was caught red handed by the public when he attempted to snatch a chain of a women. The husband of the petitioner was brought to the police station after he was severely beaten by the general public. Even at the time when he was brought to the police station, he could not walk properly. The husband of the petitioner was interrogated by the police officials and as no material object could be found in his possession, he was allowed to leave the police station. In fact, the police officials have called upon an autorickshaw and also paid Rs.10/- towards the auto charge for transporting the husband of the petitioner to the bus stand. After reaching the bus stand, due to asphyxia which resulted out of intoxication, the husband of the petitioner died at the bus stand. The postmortem report indicates that the husband

of the petitioner died due to suffocation or block in the food particles and the allegation that the police officials have beaten the husband of the petitioner and it caused his death is false and incorrect. The learned Government Advocate also brought to the notice of this Court that as against the order of acquittal passed by the trial Court, the petitioner did not prefer any appeal or revision for about five years and only thereafter, the present Criminal Revision Case was filed with enormous delay. Thereafter, the petitioner has preferred the writ petition with very same allegations seeking compensation for the death of her husband. It is also stated that during the course of trial in the criminal case, the prosecution has examined several witnesses and none of the witnesses have stated anything about the brutal assault said to have been caused by the officials in the police station. As regards the investigation conducted in this case, as directed by this Court, CBCID officials have conducted an enquiry and filed the charge sheet before the trial Court. During the course of trial, the petitioner was also examined as a witness on behalf of the prosecution, however, the petitioner refused to give any evidence by stating that she is intending to prefer an appeal before this Court. At that time, there was no order passed by the trial Court against which she could prefer any appeal. The fact remains that the petitioner was given an opportunity to support the case of the prosecution, but she refused to do so. It is also stated that the petitioner has filed a petition under Section 173 (8) of Cr.P.C. seeking for a direction to conduct further investigation and it was dismissed as early as on 09.04.2001. The trial Court, on appreciation of the evidence, has concluded that the death of the husband of the petitioner has occurred due to asphyxia consequent to his intoxication. The learned Government Advocate also brought to the notice of this Court that during the pendency of the above Criminal Revision

Case and writ petition, by an order dated 23.04.2014, this Court directed the respondents to pay a sum of Rs.1,50,000/- to the petitioner towards interim compensation and it was also paid by the respondents without prejudice to their defence. In any event, the trial Court has examined the entire evidence made available and come to a conclusion that the husband of the petitioner has died only due to asphyxia, which is supported by medical evidence. In such circumstances, the learned Government Advocate prayed for dismissal of both the cases.

5. I heard the learned counsel for both sides and perused the materials placed on record. On careful perusal of the entire documentary evidence as well as the judgment passed by the trial Court, which is challenged in the Criminal Revision Case, it is clear that the deceased was beaten up by the general public alleging that he had snatched a chain of a woman and the deceased was taken to the police station only by the mob which beat him. There are evidence to suggest that at the time when the petitioner was taken to the police station, he could not walk properly. There are also evidence to suggest that the husband of the petitioner was in an intoxicated state, even though the officials in the police station did not suggest him to a medical test to prove the same. It is also clear from the evidence that the police officials have conducted an enquiry in the police station and have also registered a first information report against the deceased on suspicion. However, as no material objects could be recovered from the possession of the deceased, he was simply let off from the police station. It is also claimed that the deceased was sent by an auto rickshaw and the police officials have paid Rs.10/- towards auto fare. It is also seen from the evidence that at the time when the deceased boarded the autorickshaw, his leg was protruding outside and he was asked to keep his leg

inside the autorickshaw. First of all, the police officials ought not to have let the deceased to leave the police station when first information report is registered against him. The deceased was also not subjected to medical test when it is contended that he was in an intoxicated state. These are two flaws in the investigation conducted by the official respondents.

6. It is claimed by the petitioner that she witnessed the police officials beating her husband while waiting outside the police station but she was not allowed to remain inside the police station, It is also claimed that she proceeded to her native to seek the help of her relatives. If that be so, it is not known as to why the petitioner did not adduce evidence during the course of trial. In fact, the petitioner was examined as PW14 during trial on 23.08.2004. The petitioner refused to tender evidence by stating only this:-

"rhl;rp brd;id cah;ePjpkd;wj;jpw;F nky;KiwaPL br;aa
cs;sJhy; jw;nghJ jhd; rhl;rp brhy;y KoahJ vd;W kWf;fpwhh;/"

7. Therefore, it is evident that the petitioner was given an opportunity to depose before the trial court, but she did not utilise such opportunity. Therefore, it cannot be now contended that the petitioner is the star witness in this case and she was not permitted to be examined during the course of trial. As the petitioner refused to tender evidence, the trial court commenced the trial by recording the other witnesses on the same day.

8. It is seen from the records that the petitioner has earlier filed an application before the trial Court under Section 173 (8) of Cr.P.C. seeking for

issuing appropriate direction to conduct a fresh investigation. The petition was dismissed by the trial Court on 09.04.2001 against which the petitioner has filed Criminal Revision Petition No. 13 of 2001 before the learned Additional District and Sessions Judge cum Chief Judicial Magistrate, Villupuram, which was allowed on 20.12.2001 directing the learned Judicial Magistrate No.1, Udumalpet to decide the petition for re-investigation on merits.

9. As regards the cause of death of the husband of the petitioner, after transfer of investigation to CBCID, at the intervention of this Court, the investigation agency have sought for a second opinion from a medical expert namely Dr. Shantha Kumar regarding the cause of death of the husband of the petitioner. The said expert has also given his opinion stating that the deceased due to asphyxia due to alcoholism. It is to be stated that the Doctor who originally conducted the postmortem has also given the same reason as the cause of death of the deceased. As regards the second opinion, it is contended on behalf of the petitioner that such opinion was given only on the basis of the records produced relating to the death of the deceased and it is not reliable. Such a contention cannot be countenanced in the absence of any challenge as regards the second opinion given by the medical expert by the petitioner. Suffice it to state that at the instance of the petitioner, this Court transferred the investigation to CBCID. The investigation conducted appropriate investigation and conducted the trial in the case in which as many as 37 witnesses have been examined on behalf of the prosecution, including the petitioner. However, the petitioner refused to tender evidence without any basis by stating that she has taken steps to approach this Court for filing an appeal. The fact remains that there was no order passed by the

trial Court during the relevant point of time against which the petitioner could file an appeal or revision before this Court.

10. The learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of **Suresh and another vs. State of Haryana (2015) 2 Supreme Court Cases (Crl) 45 = (2015) 2 Supreme Court Cases 227** and **(Mohammed Haroon and others vs. Union of India and another) (2014) 5 Supreme Court Cases 252** wherein the Honourable Supreme Court has dealt with the issue relating to payment of compensation by the State to the victims of the crime.

11. It is no doubt true that the victims of crimes have to be compensated by the State. For the purpose of getting such compensation, it must be shown that a person has been victimised by the official machinery of the State. In the present case, first of all, the petitioner, even though claims to be a star witness, has refused to give evidence during the course of trial. The trial Court, on appreciation of the evidence adduced by the prosecution came to the conclusion that the death of the husband of the petitioner did not cause due to any violence or brutal assault on the part of the official respondents, but he died due to asphyxia owing to intoxication. This is also proved by medical evidence. Originally, the Doctor who performed the autopsy on the body of the husband of the petitioner concluded that he died due to asphyxia owing to intoxication and the same view was reiterated by the expert from whom second opinion was sought by the investigating agency. Thus, there is no evidence on record to conclude that the husband of the petitioner died due to any assault caused by the official respondents but due to asphyxia and consequently it

has to be held that the death of the husband of the petitioner has not occurred due to any physical assault or torture at the hands of the police officials.

12. As regards payment of compensation for the death of the husband of the petitioner, first it must be proved by evidence that the official machinery was misused and abused and which led to the death of the husband of the petitioner. In the present case, the witnesses examined during trial did not say anything about the alleged torture or inhuman treatment meted to the husband of the petitioner. On the contrary, there are evidence to suggest that the husband of the petitioner was brought to the police station after he was beaten by the public for having indulged in chain snatching. As mentioned above, there are two flaws committed by the official respondents. First, they ought to have subjected the husband of the petitioner to medical test to prove the intoxicated state and secondly he ought not to have been let off from the police station, when they have registered the first information report against him, without any police report. Having regard to the above flaws, this Court ordered for payment of interim compensation of Rs.1,50,000/- and it was also paid to the petitioner by the respondents without prejudice.

13. No doubt, in the absence of any evidence to show the alleged inhuman treatment meted out to the husband of the petitioner by the police officials/accused in the criminal case, the writ petition itself is not maintainable, however, during the pendency of this writ petition, by virtue of the interim order granted by this Court, a sum of Rs.1,50,000/- was paid by the respondents to the petitioner without prejudice to their right. Having regard to the facts and

circumstances of the case, I do not see any reason to direct the petitioner to return the amount paid to her by the respondents pursuant to the interim direction issued by this Court, even though the writ petition is not maintainable and it is liable to be dismissed. Therefore, it is hereby observed that the amount of Rs.1,50,000/- paid by the respondents to the petitioner pursuant to the interim order passed by this Court shall be treated as compensation and it need not be recovered from her. I also do not find any reason to direct the respondents to pay any further amount to the petitioner in the form of compensation.

14. It is well settled proposition of law that an order of acquittal passed by the trial Court need not be disturbed by this Court in exercise of powers conferred under Section 397 read with Section 401 of Cr.P.C. unless there are strong grounds made out to do so. The trial Court, on appreciation of the factual evidence, has arrived at a conclusion that the prosecution has not established the case against the accused beyond reasonable doubt and consequently acquitted the accused-police officials. Such an order passed by the trial Court cannot be disturbed by this Court in the absence of any strong evidence to show that the conclusion arrived at by the trial Court is palpably wrong and materially irregular. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of **Ram Swaroop and others vs. State of Rajasthan (2005) Scc (Crl) 61** wherein the Honourable Supreme Court held that the High Court need not interfere with the order of acquittal passed by the trial court merely because a contrary view can be taken. In other words, if two views are possible, the one which favours the accused has to be considered. In the present case, this Court is of the view that the conclusion arrived at by the trial Court is probable, fair

and reasonable and there is no grounds made out to disturb such findings arrived at by the trial Court.

15. In the result, the Criminal Revision Case as well as the Writ Petition are dismissed. No costs.

28.09.2015

Internet : Yes

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To

1. The State of Tamil Nadu
represented by its Commissioner and
Secretary to Government
Home Department
Fort St. George
Chennai - 600 009
2. The Director General of Police
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B. RAJENDRAN, J

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