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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:09.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Criminal Revision Case (MD) Nos.83 of 2014
and
462 and 463 of 2013
and
M.P.(MD).No.2 of 2014
in
Crl.R.C.(MD).No.83 of 2014
and
M.P.(MD).Nos.1 & 1 of 2013
in
Crl.R.C(MD).Nos.462 and 463 of 2013

Criminal Revision Case (MD) No.83 of 2014:

Sathya

..Petitioner

Vs

1.Murugan,
Sub- Inspector of Police,
Dindigul Town West Police Station,
Dindigul District.

2.The State through the
Inspector of Police,
Dindigul Town West Police Station,
Dindigul District.

3.Madhavan,
Inspector of Police,
Dindigul Town West Police Station,
Dindigul District.

..Respondents/Respondents

This petition is preferred under Section 397 r/w 401 Cr.P.C to call for the records connected with the order in Cr.M.P.No.254 of 2012 in S.C.No.70 of 2006 on the file of the Hon'ble Additional Assistant Sessions Judge, Dindigul, dated 30.04.2013 and set aside the same so far as to approach the civil court for compensation, consequently to direct the respondents to pay compensation to the petitioners.

For Petitioner
For Respondents

: Mr.R.Alagumani
:Mr.K.Chellapandian for R-2
Additional Advocate General
assisted by
Mr.P.Kannithevan
Government Advocate (Crl.Side)
Mr.Gangai Amaran for
Mr.Veera Kathiravan R-3
Mr.M.Ajmal Khan, Senior Counsel for R-1
for M/s.Ajmal Associates

Criminal Revision Case (MD) No.462 of 2013:

Murugan

.. Petitioner



The Inspector of Police,
Dindigul Town West Police Station,
Dindigul District.
Cr.No.28 of 2001.

.. 1st Respondent/Complainant

Sathya

..2nd Respondent/Accused

This petition is preferred under Section 397 r/w 401 Cr.P.C to call for the records relating to the order dated 30.04.2013 passed in Cr.M.P.No.254 of 2012 in S.C.No.70 of 2006 on the file of Additional Assistant Sessions Judge, Dindigul and set aside the same as illegal.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates
For 1st Respondent:Mr.K.Chellapandian
Additional Advocate General
assisted by
Mr.P.Kannithevan
Government Advocate (Crl.Side)

Criminal Revision Case (MD) No.463 of 2013:

R.M.Madhavan

.. Petitioner

Vs

1.R.Sathya
2.Mr.Murugan,
The Sub-Inspector of Police,
Dindigul Town West Police Station,
Dindigul.
3.The State rep. By its
Inspector of Police,
Dindigul Town West Police Station,
Dindigul.

... Respondents/Respondents

This petition is preferred under Section 397 r/w 401 Cr.P.C to call for the proceedings pertaining to Crl.M.P.No.254 of 2012 in S.C.No.70 of 2006, on the file of the Additional Assistant Sessions Judge, Dindigul, dated 30.04.2013 and set aside the same.

For Petitioner : Mr.Gangai Amaran for
Mr.Veera Kathiravan
For Respondents : Mr.Ajmal Khan for R-2
Senior Counsel for
M/s.Ajmal Associates
Mr.R.Alagumani for R-1
Mr.K.Chellapandian for R-3
Additional Advocate General
assisted by
Mr.P.Kannithevan
Government Advocate (Crl.Side)

COMMON ORDER

<https://hcservices.ecourts.gov.in/hcservices/>

Mr.R.Sathya, son of Rasu is the petitioner in Crl.R.C[MD].No.83 of 2014. He is a native of Cumbam in Uthamapalayam Taluk, Theni District.



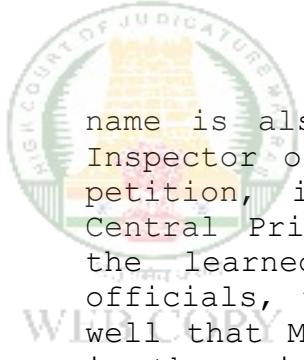
The petitioner in Crl.R.C.No.462 of 2013 was the then Sub-Inspector of Police, attached to Dindigul Town West Police Station. The petitioner in Crl.R.C.No.463 of 2013 was the then Inspector of Police, attached to Dindigul Town West Police Station.

2. The Inspector of Police, Dindigul Town West Police Station, registered a case in Crime No.28 of 2001 against four accused alleging that they had committed offences punishable under Sections 419, 420, 224, 506(ii) of the Indian Penal Code, Section 65 of the Madras City Police Act, Section 25 (1) (b) and (a) of Arms Act and Section 3(1) of Tamil Nadu Public Property (Damages and Loss) Act, r/w Section 34 of the Indian Penal Code.

3. On completing the investigation, one Mr.Thangavelu, the then Inspector of Police, Dindigul Town West Police Station filed final report on 07.08.2003. According to the final report, on 24.01.2001, all the four accused were found in two separate rooms, in Gomath Lodge at Dindigul. At about 11.30 P.M, when the Sub-Inspector of Police and the Inspector of Police had gone to the said lodge for a routine raid, all the four accused were found committing the crime. However, on seeing the Police, the accused escaped from the scene of occurrence. The incriminating weapons and the other materials left behind by them were all seized by the Police.

4. As per the final report, one Mr.A.Deivendran alias Mandavetti @ Murugan S/o.Ammavasai Thevar, Keezhkoodalur village in Theni District is the first accused, the second accused is one Mr.C.Chandran S/o.Chinnasamy of the same village, the third accused is one Mr.V.Eswaran s/o.Virumandi of the same village and the fourth accused is one K.Murugan s/o.Karuppiiah Thevar of Melakoodalur village of Theni District. The fourth accused - Mr.Murugan S/o.Karuppiiah Thevar could not be apprehended. In the final report, he was shown as an absconding accused. On the said final report, the learned Judicial Magistrate No.1, Dindigul, took cognizance of the offences. The accused 1 to 3 either appeared or produced before the learned Judicial Magistrate almost regularly. But, the fourth accused did not appear even voluntarily. The learned Magistrate had issued a non-bailable warrant to secure the fourth accused - Mr.K.Murugan, S/o.Karuppiiah Thevar.

5. The petitioner in Crl.RC[MD].No.83 of 2014, Mr.R.Sathya S/o.Rasu, was convicted in a different case and he was imprisoned in the Central Prison, Madurai vide S.C.No.478 of 2001, on the file of the District and Sessions Judge cum Fast Track Court No.4, Periyakulam. As of now, it is the admitted case that Mr.R.Sathya, S/o.Rasu has got nothing to do with the instant case, in which the fourth accused was one Mr.K.Murugan s/o.Karuppiiah Thevar. Curiously, on 19.10.2005, the Sub-Inspector of Police, Mr.T.Murugan preferred an exotic petition/memo, supported by an affidavit before the learned Judicial Magistrate seeking issuance of "Prisoner Transit Warrant" to produce Mr.R.Sathya, S/o.Rasu, before the said Court. In the said request, shockingly, but wantonly, a misleading statement was made that Mr.R.Sathya, s/o.Rasu, is the fourth accused in the above case. Since the fourth accused, in the above case, is one Mr.K.Murugan, S/o.Karuppiiah Thevar, in the petition as well as in the affidavit, the name of the accused was deliberately mentioned as Murugan @ Sathya S/o.Karuppiiah Thevar @ Raju. It was asserted and represented to the Court that Mr.R.Sathya is the fourth accused, whose



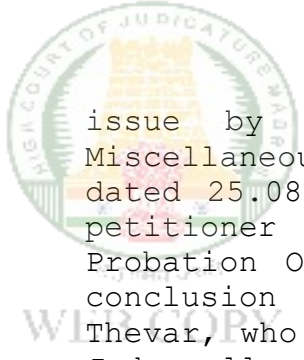
name is also Murugan. Believing the said statement made by the Sub-Inspector of Police, the then Judicial Magistrate, acting upon the said petition, issued a "Prisoner Transit Warrant" to the Superintendent, Central Prison, Madurai, to cause the production of Mr.R.Sathya before the learned Judicial Magistrate. It is alleged that the police officials, who were responsible for the false representation, knew very well that Mr.R.Sathya is not Mr.K.Murugan so as to face the prosecution in the said case and the above representation was obviously made only with a view to get out of the official pressure to secure the real accused.

6. Accordingly, in pursuance of the said warrant, Mr.R.Sathya, S/o.Rasu (the petitioner in CrI.R.C.(MD).No.83/2014) was produced before the learned Judicial Magistrate on 11.11.2005. It is further stated that while Mr.R.Sathya was in prison, some police officials brought pressure upon him to tell the Court that he was also known as "K.Murugan S/o.Karuppaiya Thevar". However, when he was produced before the Court, according to Mr.R.Sathya, he protested and submitted to the Court that he had nothing to do with the case and he was not the fourth accused in the said case. Further, on the pretext that he was the fourth accused in the said case, the learned Judicial Magistrate remanded him to the judicial custody. This initial remand in this case of Mr.Sathya was made on 11.11.2005.

7. Subsequently, on the production of Mr.R.Sathya periodically before the said Judicial Magistrate, he was remanded. In the meanwhile, he claimed that he sent petitions through the Jail Superintendent to the Court as well as to the other authorities informing that he was not the fourth accused in the case. But, no effort was taken by any authority including the Court to ascertain the fact. Thus, almost it became a routine affair to remand him to the judicial custody on regular intervals.

8. Thereafter, the case was committed to the Court of Sessions and on taking cognizance, the learned Sessions Judge commenced trial (Vide Sessions Case No.70 of 2006, on the file of the learned Additional Assistant Sessions Judge, Dindigul). Before the trial Court also, Mr.R.Sathya claimed that he raised protests and submitted to the Court that he was not the fourth accused in the said case. However, charges were framed as against accused Nos.1 to 3 as well as Mr.R.Sathya as though Mr.R.Sathya is Mr.Murugan, S/o.Karuppaiya Thevar and then, commenced the trial. The police officials, who were examined as prosecution witnesses, also identified Mr.R.Sathya as though he were the fourth accused. It is brought to my notice that as many as 13 witnesses were examined before the trial Court and the accused were about to be questioned under Section 313 of the Code of Criminal Procedure.

9. At that juncture, the petitioner Mr.R.Sathya again protested. As a matter of fact, he submitted a representation to the Legal Services Authority seeking legal aid. But, no legal aid was afforded to him in the trial court, though it is mandatory on the part of the Court to afford legal aid. At this stage, fortunately, the learned Additional Assistant Sessions Judge took up the issue of identity of the petitioner to verify whether he is Mr.Murugan, who is the fourth accused or not. The learned Additional Assistant Sessions Judge, Dindigul (Mr.K.Venkidasamy, who deserves appreciation of this Court) took up the



issue by entertaining the petition filed by him as a Criminal Miscellaneous Petition in CrI.M.P.No.254 of 2012. Finally, by order dated 25.08.2012, the learned Sessions Judge, after having examined the petitioner - Mr.R.Sathya and three other witnesses including the Probation Officer and relying on as many as 25 documents, came to the conclusion that Mr.R.Sathya, S/o.Rasu is not Mr.K.Murugan S/o.Karuppiiah Thevar, who is the fourth accused in the said case. The learned Sessions Judge allowed the said petition and ordered the petitioner Mr.R.Sathya to be set free. Accordingly, he was released on 25.08.2012 from the continued illegal incarceration for 6 years 9 months and 14 days.

10. In the said order, while ordering Mr.R.Sathya to be let off from the incarceration, the learned Assistant Sessions Judge took up the issue of compensation to be paid to Mr.R.Sathya. The learned Assistant Sessions Judge directed payment of Rs.3,00,000/- (Rupees three lakhs only) as compensation to be paid by the State with liberty to recover the same from two police officials, viz., Mr.T.Murugan (the petitioner in CrI.RC[MD].No.462 of 2013), and Mr.R.M.Madhavan (the petitioner in CrI.RC[MD].No.463 of 2013). As against the said order of the learned Sessions Judge, the State did not come up with any revision. Mr.T.Murugan, the then Sub-Inspector of Police, filed a revision in CrI.RC[MD].No.425 of 2012 before this Court.

11. It was contended in that revision case that Mr.T.Murugan, the petitioner in CrI.RC[MD].No.463 of 2013, was not afforded sufficient opportunity by the trial Court before deciding to direct payment of compensation and to recover the same from him. In essence, the crux of the argument before this Court was that such part of the order of the learned Additional Assistant Sessions Judge directing the payment of compensation was passed, without following the principles of natural justice. Accepting the said submissions, this Court, by order dated 12.10.2012, allowed the revision, set aside the order of the learned Additional Assistant Sessions Judge and remitted the matter to the same Court with a direction to implead all the police officials, who are responsible for issuing PT warrant against Mr.R.Sathya, to hold a full-fledged enquiry and then to pass suitable orders on merits within a period of one month from the date of receipt of a copy of the said order, which was not challenged by anybody and the same became final.

12. In pursuance of the said direction of this Court, the learned Additional Assistant Sessions Judge, Dindigul, heard the matter again, impleaded Mr.T.Murugan, the then Sub-Inspector of Police, Mr.R.M.Madhavan, the then Inspector of Police as parties to the said petition, afforded opportunity and finally, by order dated 30.04.2013, held that Mr.R.Sathya, S/o.Rasu, is not Mr.K.Murugan, S/o.Karuppiiah Thevar and thus, he is not the fourth accused in S.C.No.70 of 2006. So far as the claim for compensation is concerned, the learned Additional Assistant Sessions Judge held that the remedy for Mr.R.Sathya is to work out before the Civil Court and the Additional Assistant Sessions Judge could not award any amount as compensation, as there were disputed questions of fact. The learned Additional Assistant Sessions Judge proceeded further to issue a direction to the Superintendent of Police, Dindigul, to prosecute Mr.T.Murugan, the then Sub-Inspector of Police and Mr.R.M.Madhavan, the then Inspector of Police, for the offences punishable under Sections 193, 195 and 211 of the Indian Penal Code.



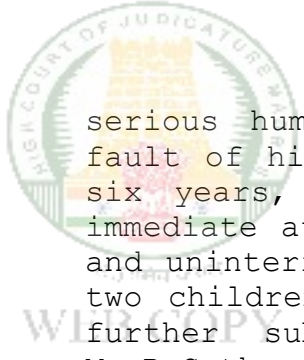
13. Aggrieved over the denial of compensation, Mr.R.Sathya has come up with CrI.RC[MD].No.83 of 2014. As against the direction for prosecution, Mr.T.Murugan, the then Sub-Inspector of Police and Mr.R.M.Madhavan, the then Inspector of Police, have come up with CrI.RC [MD].Nos.462 and 463 of 2013 respectively. That is how, these Criminal Revision Cases are now before this Court for disposal.

14. When these three revisions came up for hearing before this Court, on 23.03.2015, Hon'ble Mr.Justice M.SATHYANARAYANAN, after having gone through the entire records, has passed a detailed interim order, issuing a direction to the State to pay interim compensation of Rs.1,50,000/- to Mr.R.Sathya, within a period of four weeks from the date of receipt of a copy of the order. In the said order, this Court expressed its surprise and anguish as to how the officers, who were responsible for the entire episode, were either given promotion or allowed to retire from service. The Hon'ble Judge, in Paragraph No.11 of the order, observed that the interim order for compensation was passed by taking into account the illness of Mr.R.Sathya, who is in serious condition, requiring immediate and urgent medical attention.

15. Despite the said order, dated 23.03.2015 and despite the fact that it was served on the Director General of Police and Home Secretary, the anxiety expressed by the Court and the concern of the Court for the health of Mr.R.Sathya were not considered by them. When these revisions came up for hearing before me on 08.06.2015, the learned Additional Advocate General requested for two weeks time to report the response regarding the interim direction for compensation. This Court expressed its unhappiness over the said statement and wanted the learned Additional Advocate General to ascertain from the Government as to whether the Home Secretary would release the amount immediately at least within a period of one week from 08.06.2015 so that the life of Mr.R.Sathya could be saved, as his condition is serious. After getting instructions from the Secretary, Home Department, Government of Tamil Nadu, the learned Additional Advocate General represented to this Court that the said amount of Rs.1,50,000/- shall be paid by the Government within a period of one week from 08.06.2015 and the matter, thereafter, was adjourned to 10.06.2015. This Court had also issued a direction to the Superintendent of Police, Dindigul, to be present before this Court along with all the records and to submit his response.

16. Today, when these Criminal Revision Cases were taken up, Mr.Saravanan, the Superintendent of Police, Dindigul, made appearance, assisted by a number of other police officials. The learned Additional Advocate General appeared for him. I have heard him. I have heard Mr.R.Alagumani, the learned counsel appearing for Mr.R.Sathya, the petitioner in CrI.RC[MD].No.83 of 2014, Mr.M.Ajmal Khan, the learned Senior Counsel appearing for Mr.T.Murugan, the petitioner in CrI.RC[MD]. No.462 of 2013 and Mr.Veera.Kathiravan, the learned counsel appearing for Mr.R.M.Madhavan, the petitioner in CrI.RC[MD].No.463 of 2013. I have also got the benefit of going through the entire records of the Lower Court.

17. Mr.R.Alagumani, the learned counsel, would submit that the Lower Court was not right in declining to order for payment of compensation for the loss incurred by the petitioner on account of this



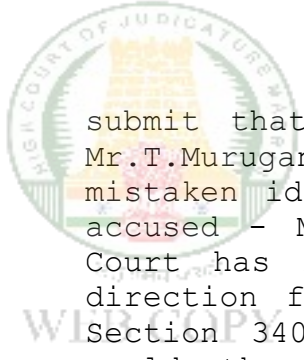
serious human rights violations. He would further submit that for no fault of him and no crime committed by him, he was in incarceration for six years, nine months and fourteen days. He is a patient requiring immediate attention, as his health has deteriorated, because of his long and uninterrupted incarceration. He would further submit that he has got two children, a wife, mother and brother to be taken care of. He would further submit that there is no controversy at least now that Mr.R.Sathya, S/o.Rasu, is not Mr.K.Murugan, who is the fourth accused in the said case. When the facts are not controverted, this Court, being the constitutional Court, according to the learned counsel, can order for compensation. He would further submit that going by the gravity of the serious human rights violations committed, there may be a direction to the Government to pay at least a sum of Rs.25 lakhs as compensation.

18. The learned Additional Advocate General, in his usual fairness, would submit that Mr.R.Sathya S/o.Rasu, who is the petitioner in CrI.R.C(MD).No.83 of 2014 is not Mr.K.Murugan, S/o.Karuppiyah Thevar, who is the accused No.4 in S.C.No.70 of 2006. He would further submit that now a person has been identified in Koodalur by the police and interrogation is going on, on the suspicion that he is Mr.K.Murugan, S/o.Karuppiyah Thevar. He would submit that if identity is established, he would be arrested and produced before the Court to make him to face the trial in S.C.No.70 of 2006. He would further submit that so far as the first accused, in this case, is concerned, since he is no more, charges have abated as against him. So far as the accused Nos.2 and 3 are concerned, they were on bail and they were appearing before the Court regularly. But, from the year 2012 onwards, they have been absconding and non-bailable warrants have been pending against them.

19. The Superintendent of Police, Dindigul, who was present before this Court, submitted that efforts are taken relentlessly to locate the accused Nos.2 and 3, to secure them, to arrest them and produce them before the court. The said statement is also recorded.

20. The learned Additional Advocate General submitted that though it is true that Mr.R.Sathya has suffered loss on account of incarceration, for this, he can work out his remedy under the private law in tort. It is not only for this case that he was in jail, but in connection with the conviction in S.C.No.478 of 2001 also. Thus, according to him, even otherwise, his detention in prison would have continued, as his sentence in the said case would have expired only in the year 2014. He would further submit that already this Court has passed an interim order, directing the Government to pay interim compensation of Rs.1,50,000/-, which may be considered to be sufficient leaving it open for the petitioner to work out his remedy in the manner known to law. He would further submit that the claim for compensation made by Mr.R.Sathya for over and above of Rs.1,50,000/- may be rejected.

21. Mr.M.Ajmal Khan, the learned Senior Counsel and Mr.Veera. Kathiravan, the learned counsel appearing for the Police Officials would submit that they are aggrieved by the direction issued by the learned Sessions Judge in ordering prosecution of these two Police Officials. According to them, without fixing the individual liability, issuing a direction to register a case is not legal. The learned counsel would



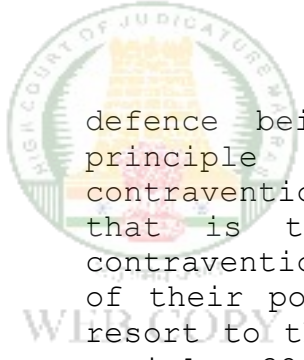
submit that there are conflicting stands taken by Mr.R.M.Madhavan and Mr.T.Murugan, where each of them disown his responsibility for the mistaken identity of the petitioner Mr.R.Sathya, S/o.Rasu as the fourth accused - Mr.K.Murugan, S/o.Karuppiyah Thevar. At any rate, the trial Court has no power under the Code of Criminal Procedure to issue a direction for registration of the case, as the power is restricted to Section 340 of the Code of Criminal Procedure. The learned counsel would, therefore, submit that the direction issued by the lower Court for prosecution of the Police Officials may be set aside.

22. In respect of these two Criminal Revision Cases, Mr.R.Alagumani, the learned counsel appearing for Mr.R.Sathya would submit that the act of the police officials in falsely identifying Mr.R.Sathya as Murugan, in this case, is a very serious offence, falling under a number of penal provisions and thus, the Lower Court was right in issuing the said direction.

23. The learned Additional Advocate General, on instructions, would submit that the Director General of Police is prepared to appoint an Enquiry Officer to hold a thorough enquiry into the whole episode to find out as to who are all responsible for the mistaken identity of Mr.R.Sathya and then to proceed further.

24. I have considered the above submissions. For the sake of convenience, let me take up the issue regarding the compensation at the first instance.

25. It is true that the power this Court to order for compensation under Article 226 of the Constitution of India and the power of the Honourable Supreme Court under Article 32 of the Constitution of India were in debate, during the normative period of the constitution. The debate was as to whether the higher judiciary could order for grant of compensation, when the remedy is available under the private law in action based on tort. For the purpose of this case, I do not wish to trace the entire history and the development of law on this subject. It is suffice for me to straight away refer to the well-celebrated judgment of the Honourable Supreme Court in Nilabati Behera Vs. State of Orissa and others, reported in 1993 (2) SCC 746, wherein, the Hon'ble Supreme Court held that enforcement of the constitutional right and grant of redress embraces award of compensation as part of the consequences of its contravention. Award of compensation in a proceeding under Article 32 by the Supreme Court or by the High Court under Article 226 is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. 'A claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a

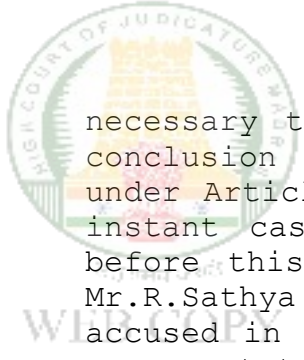


defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its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

26. But, to the contrary, the learned Additional Advocate General would submit that in the instant case, for the tortuous liability of the police officials, who acted in their individual capacity, the State cannot be held liable to pay compensation. In a way, the argument of the learned Additional Advocate General appears as though the State is pleading sovereign immunity. In my considered opinion, as per the law declared by the Hon'ble Supreme Court in *Nilabati Behera's* case, in the instant case, since Mr.R.Sathya was mis-identified as Mr.K.Murugan, S/o.Karupppiah Thevar, wantonly by the police officials, who are the Government Servants, there is no scope for the Government to take a plea of sovereign immunity. Since the compensation, in this case, claimed by the petitioner, is a public law remedy on the ground of violation of human rights, which have been guaranteed as fundamental rights under Article 21 of the Constitution of India. It is needless to point out that Article 21 of the Constitution of India, which is considered to be the soul of the Constitution, guarantees dignified life and personal liberty. If there is any violation of the said well-cherished and precious rights, then, it is for the Courts of law to step in and try to remedy the loss caused to the individual, who has suffered at the hands of the officials of the Government. Therefore, in this case, the Government is vicariously liable to pay compensation to Mr.R.Sathya.

27. In this regard, I would like to refer to yet another Judgment of the Hon'ble Supreme Court in *Sube Singh Vs. State of Haryana and others*, reported in AIR 2006 SCC 1117, wherein the Hon'ble Supreme Court, after reference to the Judgment in *Nilabati Behera's* case, has held that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21 of the Constitution of India by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation by way of public law remedy will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor, come in the way of the Criminal Court ordering compensation under Section 357 of the Code of Civil Procedure.

28. Regarding the above legal position, I do not want to catalogue all the other subsequent Judgments, as the same would only add to the length of this order. As of now, there is no controversy that Mr.R.Sathya is not the fourth accused in the said case. By way of public law remedy, this Court has got not only power, but also the constitutional obligation to issue a direction to the State to pay compensation, whenever it is brought to the notice of the Court that there is infringement of right to life under Article 21 of the Constitution of India. But, it is absolutely



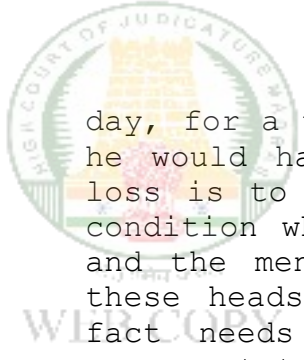
necessary to have uncontraverted facts before the Court leading to the conclusion that there has occurred serious violation of right to life under Article 21 of the Constitution of India, resulting in loss. In the instant case, as I have already pointed out, there is no controversy before this Court either by the State or by the police officials that Mr.R.Sathya was not Mr.Murugan, S/o.Karupppiah Thevar, who is the fourth accused in S.C.No.70 of 2006. It is also not in controversy that on the representation made by the police officials, more particularly, on the affidavit filed by the police officials, Mr.R.Sathya was incarcerated, continuously for six years, nine months and fourteen days. It is very unfortunate that though Mr.R.Sathya was making repeated representations to the Judicial Magistrates as well as to the learned Additional Assistant Sessions Judge, the Jail Authorities and the Legal Services Authorities, all fell in the deaf ears of these authorities.

29. It pains me to say that these authorities had failed to discharge their constitutional obligations in the manner in which they are expected to act. Fortunately, at the end of six years, nine months and fourteen days, a Judicial Officer in the rank of Assistant Sessions Judge, took up the issue, held a detailed enquiry and finally came to the conclusion that Mr.R.Sathya is not Mr.K.Murugan, S/o.Karupppiah Thevar, who is the fourth accused in S.C.No.70 of 2006. Accordingly, he ordered to let him off. Had this action taken by Mr.K.Venkidasamy, the then Additional Assistant Sessions Judge, been taken, as and when there were representations made by Mr.R.Sathya, this long period of incarceration and the serious violations of human rights would have been at least minimized if not avoided. I am only hopeful that in future, the Judicial Officers in the State would be very vigilant in discharging their judicial functions in the manner in which they are expected to do, as and when there arises any dispute regarding the identity of the accused in the Court. Since from the uncontraverted facts, it has been established that Mr.R.Sathya has suffered serious human right violations, all because of the action of the police officials, who are the Government Servants, the Government is liable to pay the compensation.

30. With this conclusion, let me now move on to the question of quantum. Admittedly, while in prison, Mr.R.Sathya has been found to be suffering from serious Killer disease. He is present before this Court today. When this Court enquired him, he is not able to walk steadily, stand even for a few minutes and to speak in clear terms. It is apparent that his health condition does not permit him to know as to what is happening in the Court. This I am recording only to show the physical and mental condition of Mr.R.Sathya, who is the victim of serious human rights violations. During enquiry, he stated that he has got two children, wife, mother as well as brother to be taken care of.

31. Mr.R.Alagumani, the learned counsel would submit that the life span of Mr.R.Sathya is doubtful and unless immediate medical attention is given, anything may happen to his life at any time. He would further submit that he is doing some small business.

32. Keeping the gravity of the human rights violations committed and keeping in mind the various other circumstances, I have to quantify the amount of compensation. For a man of his stature, assuming that he would have been in a position to earn the barest minimum of Rs.100/- per



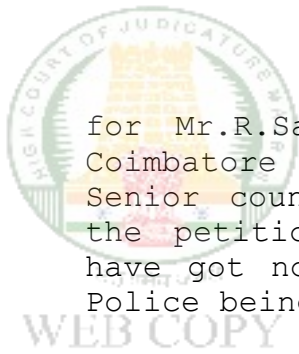
day, for a total number of seven years, during which he was incarcerated, he would have earned, at least, a sum of Rs.2,50,000/-. This monetary loss is to be necessarily compensated. Apart from the above, his health condition which has deteriorated due to the inadequate medical attention and the mental agony suffered by him also cannot be brushed aside. On these heads, I order for compensation of Rs.2,50,000/-. Above all, one fact needs to be mentioned. Though Mr.R.Sathya had made repeated representations, at no point of time, the higher ranking police officials, thought it necessary to order for enquiry to find out the truth as to whether he is Mr.K.Murugan S/o.Karuppiyah or he has been falsely implicated in this case. But, no such effort was taken. Till a detailed enquiry was conducted by Mr.K.Venkidasamy, the learned Additional Assistant Sessions Judge, they were going on maintaining that Mr.R.Sathya, S/o.Rasu, is none else than Mr.Murugan, S/o.Karuppiyah Thevar. This attitude cannot be appreciated. Had they taken some efforts at the earliest point of time to hold enquiry, at least, this episode would have been averted to some extent. Taking into account all these facts, I am of the view that directing the Government to pay a sum of Rs.6,00,000/- as compensation would meet the ends of justice. In other words, apart from a sum of Rs.1,50,000/-, which has already been ordered to be paid as an interim compensation, the Government shall pay a sum of Rs.4,50,000/-. As assured to this Court on 08.06.2015, the interim compensation of Rs.1,50,000/- shall be paid within a period of one week from 08.06.2015 and the balance sum of Rs.4,50,000/- shall be paid within a period of two months from the date of receipt of a copy of this order.

33. Now, turning to the other two revisions filed by Mr.T.Murugan, the then Sub-Inspector of Police, Mr.R.M.Madhavan, the then Inspector of Police, a perusal of the order of the Lower Court would go to show that the Lower Court has not fixed the exact liability on the police officer, who is responsible for the whole episode. Mr.T.Murugan, made a statement before this Court that he was directed by his superiors to file petition for PT warrant. He further submitted that when he refused to do so, since Mr.R.Sathya was not the fourth accused, his superiors pressurised him to sign the papers and to file the same before the Court. Thus, he pleaded innocence. From the materials available on record, it is not difficult for this Court to fix the liability and then to direct action against him. That apart, regarding the contention of the counsel that the trial Court has no jurisdiction to issue direction to launch prosecution against these two police officers under Sections 193, 195 and 211 of the Indian Penal Code, I do not want to go into the said question. These questions are left open.

34. In my considered opinion and as rightly pointed out by the learned counsel on either side and as conceded by the learned Additional Advocate General, the whole episode requires a detailed enquiry by a higher ranking police official and based on the outcome of the enquiry, it shall be appropriate for the Police Department to take action against the erring officers. For this, the learned Additional Advocate General suggested the names of the following officials:-

- i) Mr.Mahesh, Superintendent of Police, Theni
- ii) Mr.Maheswaran, Superintendent of Police, Virudhunagar
- iii) Mr.Vijayendra Singh Pidari, Superintendent of Police, Madurai.

He would submit that out of the above three officials, one may be entrusted with the task. Mr.R.Alagumani, the learned counsel appearing



for Mr.R.Sathya suggested that Mr.Sudhakar, Superintendent of Police, Coimbatore may be entrusted with the task. Mr.M.Ajmal Khan, the learned Senior counsel and Mr.Veera. Kathiravan, learned counsel appearing for the petitioners in Crl.R.C.(MD).Nos.462 and 463 of 2013 respectively, have got no objection for any officer of the rank of Superintendent of Police being entrusted with the job to hold enquiry.

35. In view of all the above, the order of the learned Sessions Judge, insofar as it relates to issuing a direction to the Superintendent of Police, Dindigul to prosecute Mr.R.M.Madhavan and Mr.T.Murugan alone is liable to be set aside and the Director General of Police, Government of Tamil Nadu, is directed to nominate Mr.Mahesh, presently working as the Superintendent of Police, Theni, to hold an enquiry into the whole episode to find out as to who is responsible for mistaken identity of Mr.R.Sathya @ Murugan S/o.Karuppiyah Thevar and based on the report to be submitted by him, there shall be necessary legal action against the Police Officers who are found responsible.

36. In the result, Crl.RC.(MD)No.83 of 2014 is allowed and the Secretary, Department of Home, Government of Tamil Nadu is directed to pay a sum of Rs.4,50,000/- (Rupees four lakhs and fifty thousand only) as compensation, in addition to a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) already ordered to be paid as interim compensation to the petitioner Mr.R.Sathya.

(i) The interim compensation of Rs.1,50,000/- shall be paid to the petitioner in Crl.R.C.(MD)No.83 of 2014 namely Mr.R.Sathya, S/o.Rasu, within a period of one week from 08.06.2015 and the balance amount of Rs.4,50,000/- shall be paid within a period of two months from the date of receipt of a copy of this order.

(ii) It is made clear that the petitioner is at liberty to approach the Civil Court, if so advised, for additional compensation, if any.

(iii) Crl.R.C(MD).Nos.462 and 463 of 2013 are allowed. The order of the Lower Court in directing the Superintendent of Police, Dindigul to prosecute the petitioners in Crl.R.C(MD).Nos.462 and 463 of 2013 is set aside and instead, Mr.Mahesh, the Superintendent of Police, Theni, is directed to hold a thorough enquiry, as stated above. The Trial Court shall permit the enquiry officer to inspect the original case records and if he so requires, to furnish photostated copies of the same to him for the purpose of enquiry. It is directed that he shall be given full co-operation by all concerned to complete the enquiry.

(iv) The Registry is directed to list Crl.RC.[MD].No.83 of 2014 again on 16.06.2015. On that day, Mr.R.Sathya, the revision petitioner in Crl.RC.[MD].No.83 of 2014 is directed to be present before this Court and the Superintendent of Police, Dindigul, shall hand over Demand Draft/Cheque for a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) to him in the Open Court. The Registry shall, thereafter, list Crl.RC.[MD].No.83 of 2014, on 12.08.2015 and on that day, Mr.R.Sathya is directed to be present and the Superintendent of Police, Dindigul, shall hand over Demand Draft/Cheque for a sum of Rs.4,50,000/- (Rupees four lakh and fifth thousand only) in the open Court to Mr.R.Sathya.



Before parting with the case, I would like to record that let this be the last case to this Court to deal with such kind of gross human rights violation spreading for number of years and henceforth, let all the Public Servants show their concern for the human rights of the citizens and non-citizens and without fail, enforce the same so as to reassure the fundamental rights guaranteed under Part III of Chapter I of the Constitution of India.

Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. THE ADDITIONAL ASSISTANT SESSIONS JUDGE, DINDIGUL.
2. THE DIRECTOR GENERAL OF POLICE, GOVT., OF TAMILNADU, CHENNAI.
3. THE SUPERINTENDENT OF POLICE, DINDIGUL DISTRICT, DINDIGUL.
4. MR.MAHESH, THE SUPERINTENDENT OF POLICE, THENI.
5. THE SECRETARY, HOME DEPARTMENT SECRETARIAT, CHENNAI.
6. THE INSPECTOR OF POLICE, DINDIGUL TOWN WEST POLICE STATION, DINDIGUL DISTRICT.
7. MR.MURUGAN,
THE SUB-INSPECTOR OF POLICE, DINDIGUL TOWN WEST POLICE STATION,
DINDIGUL DISTRICT.
8. THE ADDL.PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
9. THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
10. R.SATHIA, S/O.RASU,
IYYANNAR THIRUVALLUVAN COLONY,
RANGER OFFICE ROAD, CUMBUM POST,
UTHAMAPALAYM TALUK, THENI DISTRICT.

+1cc to M/s.Ajmal Associates, in SR.29414

+1cc to Mr.R.Alagumani, Advocate in SR.29699

+1cc to Mr.Veerakathiravan, advocate in SR.29154

COMMON ORDER MADE IN

Cr1.R.C.(MD).Nos.462 and 463 of 2013 and 83 of 2014

09.06.2015

vs/nb

pbk/amf 11/06/2015 13p-14C:(IT)