

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.251 OF 2007

Shivabai W/o Ram Mugave,
Age 30 years, Occu: Household,
R/o Chincholi Kajale, Tq. Ausa,
District. Latur.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Superintendent of Police,
Latur.
3. The District Magistrate and
Collector, Latur.
4. The Sub-Divisional Magistrate,
and Inquiry Officer, Nilanga,
District Latur.
5. Deputy Superintendent of Police
Crime Branch, Latur.
6. Vijay S/o Nivrutti Jondhale,
Age 43 years, Occu: Police Sub-
Inspector, Bhada Police Station,
Tq. Ausa, District Latur.
7. Govind S/o Baliram Gurav,
Age 52 years, Occu : A.S.I.
Bhada Police Station, Tq. Ausa,
District Latur.
8. Ashok S/o Tukaram Chougule,
Age 33 years, Occu : Police Constable,
Bhada Police Station, Tq. Ausa,
District Latur.

9. Kisan S/o Gema Chavan,
Age 42 years, Occu : Police Constable,
R/o Bhada Police Station, Tq. Ausa,
District Latur. ... **Respondents**

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Advocate Sonia S. Chillarge holding for Mr. S.V.Chillarge, Advocate
for Petitioner
Mr. P.G.Borade, AGP for State/Respondent Nos.1 to 5
Mr. S.G.Magre, Advocate for Respondent Nos.6 to 9
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**CORAM : T.V.NALAWADE AND
SUNIL K. KOTWAL, JJ.**

RESERVED ON : 21st July, 2017

PRONOUNCED ON : 31st July, 2017

JUDGMENT : (Per Sunil K. Kotwal, J.) :-

1. This Writ Petition is filed by the wife of deceased Ram Kerappa Mugave, resident of Chincholi Kajale, Taluka Ausa for compensation of Rs.25,00,000/- from the Respondent No.1, for the reason of causing custodial death of her husband Ram Kerappa Mugave (deceased) by Respondent Nos.6 to 9, who were the then police officers working at Bhada Police Station, Taluka Ausa. Respondent Nos.2 to 5 are the authorities for inquiring into the custodial death of husband of the petitioner and who launched criminal prosecution against Respondent Nos.6 to 9 for the offences

punishable under Sections 306, 218 read with 34 of Indian Penal Code (hereinafter referred as 'IPC').

2. Contention of the petitioner, in brief is that deceased was 32 years old person and he cohabited with the petitioner, having two children and old mother. He was the only bread earning member of the family and his approximate monthly income was Rs.20,000/- (Rupees Twenty Thousand Only) per month out of agriculture and dairy business. On 19.12.2005, at about 9.00 a.m. police officers from Bhada Police Station forcibly took deceased from the village of petitioner and detained him in custody at Police Station Bhada, without any reasonable cause. In police lock-up, Respondent Nos.6 to 9 subjected the deceased to third degree treatment and thereby tortured him. On 20.12.2005, early in the morning in between 3.00 to 4.00 a.m. police personnel from Bhada Police Station came to the residence of petitioner and took her and her mother-in-law to Bhada Police Station. Only dead body of deceased Ram Kerappa Mugave was shown to the petitioner. Contention of the petitioner is that custodial death of her husband was caused as a result of torture and third degree treatment given to him by Respondent Nos.6 to 9. She has placed reliance on Post Mortem Examination Report of the deceased. On 20.12.2005, villagers from Village Chincholi Kajale also submitted

representation to Deputy Superintendent of Police, AUSA regarding illegal arrest of the deceased and regarding the custodial death of deceased Ram Kerappa Mugave due to the violence and tortious act of the Respondent Nos.6 to 9. Even magisterial inquiry was held by Sub-Divisional Magistrate, Nilanga. After full fledged inquiry, Deputy Superintendent of Police, Crime Branch, Latur lodged FIR against the Respondent Nos.6 to 9 for commission of the offences punishable under Sections 306, 218 read with 34 of IPC and they are prosecuted before the competent Court. Accordingly, Respondent No.1 is liable to pay compensation to the petitioner under public law for custodial death of the husband of the petitioner. Accordingly, petitioner claimed compensation of Rs.25,00,000/- (Rupees Twenty Five Lac only) from Respondent No.1.

3. On behalf of Respondent Nos.1 and 2, Mr. S.S.Doke, API, Bhada Police Station filed reply-affidavit and denied all the allegations levelled against the police officials. According to respondents, the husband of petitioner was suspect in Crime No.101 of 2005, registered at Bhada Police Station, under Section 379 of IPC and as per order of Police Inspector Shri. Jondhale on 19.12.2005, at about 2.30 p.m., the husband of petitioner was brought to Police Station Bhada for inquiry by Head Constable Sopan Bhande,

Respondent No.8, Dilip Narwade and Respondent No.7. Mukram Kadri was the complainant in Crime No.101/2005, who alleged that, deceased Ram Kerappa Mugave had committed theft of electric motor of complainant Mukram. It was also informed that for settlement, amount of Rs.5,000/- was demanded. On that day, at about 7.00 p.m. there was black out due to load shedding and when the electric supply was restored at about 7.05 p.m., it was found that husband of the petitioner had committed suicide in the toilet room of Police Station by hanging. In fact he was not arrested by police and he was never subjected to violence by any police officer. Respondents have denied the monthly income of the deceased and contended that, claim of the petitioner is illegal. However, respondents have admitted that, magisterial inquiry regarding custodial death of deceased Ram Mugave was held and on investigation by S.D.P.O., CID, Crime, Latur, prosecution was filed against Respondent Nos.6 to 9 vide Crime No.16 of 2006, under Section 306, 218 read with 34 of IPC. According to respondents, deceased committed suicide only due to apprehension of ill-treatment and harassment at the hands of police personnel.

4. Heard learned Advocate for petitioner and Advocates for the respondents. Learned Advocate for petitioner has drawn our

attention towards Post Mortem Notes, which shows ligature mark around the neck abrasion on back left scapular region of the deceased. However, Medical Officer reserved the final opinion regarding cause of death. In brief, contention of learned Advocate for petitioner is that no stolen property was recovered from the possession of deceased Ram Kerappa Mugave and he was illegally detained by Respondent Nos.6 to 9 at Police Station Bhada and tortured, which resulted into his custodial death. Learned counsel for the petitioner has drawn my attention towards magisterial inquiry report and copy of the charge-sheet filed against Respondent Nos.6 to 9.

5. On behalf of respondents, learned APP for the State submitted that at the time of occurrence there was black out due to load shedding and taking this advantage of that situation the husband of the petitioner committed suicide by hanging himself with the help of his own scarf.

6. In the case at hand, in fact detention of the husband of the petitioner at Police Station since 19.12.2005, till his death is an admitted fact. Even it is undisputed fact that no stolen articles or any incriminating article was seized from the possession of deceased Ram. The respondents have admitted that without making arrest, the

deceased was detained in Police Station. There is no record to show that the deceased was called to the Police Station and circumstances show that Respondent Nos.6 to 9 detained the deceased Ram Kerappa Mugave without following procedure like preparation of arrest panchnama, and so he was illegally detained by police. This act of the respondents / police is definitely illegal and violated the personal liberty of the husband of the petitioner. Injuries found on body of deceased also indicate violence.

7. In fact, after going through the magisterial inquiry report conducted by Sub-Divisional Magistrate, Nilanga it emerges that, during that inquiry also Respondent Nos.6, 7, 8, P.C. N.G.Chavan and H.C. S.P.Bhande were held responsible for the custodial death of the husband of the petitioner.

8. The learned Sub-Divisional Magistrate, Nilanga observed that proper precautions were not taken by the respondents to avoid commission of suicide by any person detained at Police Station. He has also observed that Section 41 of the Criminal Procedure Code was not complied by the Respondent – Police Officers. Thus, obviously the detention of husband of the petitioner by Respondent Nos.6 to 9 at Police Station Bhada was illegal and the custodial death of deceased

Ram Kerappa Mugave resulted only due to high handedness and dereliction of duty by police. If the police personnel from Police Station Bhada had taken precautions like removal of ligature article such as scarf from the possession of deceased before allowing him to go to the toilet, such mishap could have been avoided. Explanation given by Respondent Nos.1 and 2 is not acceptable that within 5 minutes of black out deceased committed suicide. Thus, obviously Respondent / State is responsible to pay compensation to the petitioner for illegal detention of her husband and for causing his custodial death.

9. From the Post Mortem notes of the dead body of Ram Kerappa Mugave it emerges that, at the time of his death he was around 33 years old young averagely built and nourished person. The deceased Ram Kerappa Mugave was only bread earning family member of the family of petitioner, consists of two children, old mother of the deceased and the petitioner. The deceased was young agricultural labour, who could have worked for the next 30 years. Thus, the family of the petitioner sustained heavy financial loss due to the death of their bread earning family member. In addition to this, petitioner sustained loss of consortium and her children as well as mother-in-law sustained the loss of love and affection of their father

and son respectively. No doubt such a loss cannot be compensated in terms of money. However, considering the present sky touching prices of essential commodities, the total family members in the family of petitioner and above discussed circumstances of the case, we hold that award of compensation of at least Rs.5,00,000/- (Rupees Five Lac only) payable to the petitioner is necessary to meet the ends of justice. Respondent / State is liable to pay this compensation to the petitioner at the earliest. Liberty will be there to the Respondent No.1 to recover this compensation amount from defaulting police personnel, found responsible for the custodial death of deceased Ram Kerappa Mugave. It follows that this petition deserves to be allowed. Accordingly, we proceed to pass following order.

ORDER

- (1) Petition is allowed.
- (2) Respondent No.1 – State of Maharashtra is directed to pay compensation of Rs.5,00,000/- (Rupees Five Lac only) to the petitioner within period of two months from the date of passing of this order. In case of default in payment of compensation amount to the petitioner within prescribed time limit, the petitioner is entitled to recover interest @ 9% per annum on the compensation

amount, from the date of default till payment of the amount.

- (3) Respondent No.1 is at liberty to recover the said compensation amount from defaulting staff members from the Police Station Bhada, after necessary inquiry.
- (4) Rule is made absolute.

(SUNIL K. KOTWAL, J.)

(T.V.NALAWADE, J.)

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