

DATED: 15.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.21312 of 2004
and
W.M.P.Nos.25734 of 2004 and 18555 of 2006

1. The Government of Tamilnadu,
rep. by its Secretary,
Home Department,
Fort. St. George, Chennai-600 009.
2. Director General of Police,
Chennai.
3. Superintendent of Police,
Madurai.
4. Inspector General of Police,
NIB,
Chennai-2

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to pay a sum of Rs.19,00,000/- (Rupees nineteen lakhs only) as compensation excluding Rs.1,00,000/- (Rupees one lakh only) already sanctioned as per the order passed in earlier W.P.No.7925 of 1995.

For Petitioner : Mr.V.P.Raja
For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to pay a sum of Rs.19,00,000/- (Rupees nineteen lakhs only) as compensation excluding Rs.1,00,000/- (Rupees one lakh only) already sanctioned as per the order passed in earlier W.P.No.7925 of 1995.

<https://hcservices.ecourts.gov.in/Hcservices/> 2. It is the case of the petitioner that she is the widow

of late Pandian who died in Police custody. There are three daughters and one son for them, as informed by the learned counsel for the petitioner. The said Pandian was detained by the Police on 05.04.1995. It is averred by the petitioner that her husband has not committed any offence, much less the one alleged against him and as the death had occurred in the custody, the petitioner would be entitled to compensation of Rs.20 lakhs. By the earlier order passed by this Court on 14.08.1996 in W.P.No.7925 of 1995, a sum of Rs.1 lakh was directed by this Court to be paid by the respondents as interim compensation, which was paid and the said amount of Rs.1 lakh was directed by this Court to be adjusted when regular compensation is claimed. This Court, in the said Writ Petition, further directed that out of the said sum of Rs.1,00,000/-, a sum of Rs.25,000/- was directed to be paid immediately within four weeks from the date of receipt of a copy of the said order and the balance sum of Rs.75,000/- was directed to be invested in a Nationalised Bank in Gudalur, permitting the petitioner to draw the monthly interest directly from the Bank and the said deposit of Rs.75,000/- was directed to be made within eight weeks from the date of receipt of the said order.

3. According to the learned Government Advocate appearing for the respondents, the said Pandian is a hard-core criminal and that the allegation that there was custodial death is denied. The pleading of the petitioner that there was custodial death, is without any iota of evidence. Though the deceased Pandian was arrested on 05.04.1995, as he died in Police custody, the Sub-Collector, Periakulam submitted a report with recommendation to the Collector, Madurai, stating that it is a case of custodial death and that the Inspector of Police Mr.Pandia Raja and Sub-Inspector of Police Mr.J.Rajendran were responsible for causing the death of the deceased Pandian while in Police custody. The Collector, Madurai, recommended for criminal action to be initiated against the erred Police personnel and the Sub-Collector, Periakulam filed the charge sheet against the said Police personnel and the learned Government Advocate submitted that the Additional Sessions Court-cum-Fast Track Court, Periakulam tried the matter in S.C.No.478 of 1999, which ended in conviction on 16.06.2003, in which, the said J.Rajendran was convicted for the offences under Sections 330 and 302 IPC and respectively sentenced to undergo three years rigorous imprisonment and life imprisonment with fine of Rs.10,000/-, in default, to undergo further three years rigorous imprisonment and the sentences imposed on his were ordered to run concurrently. Pending trial in the said S.C.No.478 of 1999, the said Pandia Raja died. It is further stated that the said Rajendran was dismissed from service. On appeal to this Court (Madurai Bench) in Criminal Appeal in CrI.A.No.946 of 2003, by judgment dated 16.02.2008, the said Rajendran was

acquitted of the charges and the said Criminal Appeal was allowed setting aside the conviction and sentence imposed by the trial Court.

4. It is further contended by the learned Government Advocate appearing for the respondents that this Court in the said Writ Petition in W.P.No.7925 of 1995, by order dated 14.08.1996, directed the respondents to pay the compensation of Rs.1 lakh to the petitioner, as discussed supra and out of which Rs.25,000/- was directed to be paid within four weeks from the date of receipt of a copy of the said order passed in the said Writ Petition and the remaining amount of Rs.75,000/- was directed to be invested in a Nationalised Bank in Gudalur, permitting the petitioner to draw monthly interest directly from the Bank and the said deposit was directed to be made within eight weeks from the date of receipt of the said order passed in W.P.No.7925 of 1995. It is further stated by the learned Government Advocate that the outcome of Crl.A.No.946 of 2003 would alone substantiate the allegations of the petitioner to decide the culpabilities of the Police officials, as the Madurai Bench of this Court has allowed the said Criminal Appeal filed by the said Police personnel, namely J.Rajendran. He further stated that the deceased Pandian was arrested in connection with a case registered by the Narcotic Intelligence Bureau Crime Investigation Department and that the petitioner is not entitled to any relief, much less the compensation prayed for by her.

5. Heard both sides and perused the materials available on record.

6. It is seen that the trial Court (Sessions Court) has rendered detailed findings as to how the incident had taken place in the Police custody and the accused J.Rajendran was held guilty. The Madurai Bench of this Court in the Criminal Appeal, has interfered with the judgment of the trial Court and the reasonings given by the Madurai Bench of this Court are extracted below:

"11. From the very reading of the report of P.W.10, the Sub-Collector, it would be quite clear that the finding was recorded to the effect that Pandiaraja, the Inspector of Police, who lead the team and in-charge of the investigation, was directly responsible for the death of Pandiyan. The Sub-collector has further added that insofar as the other officials and constables from NIB, Madras, are concerned, might or might not be involved, since there was no evidence at all. Even then, he has added that action should be taken against the Assistant Sub-Inspector of Police, the appellant also for the simple reason that he was also

along with Pandiaraja, the Inspector of Police. It is pertinent to point out that in a case like this, when there are number of assailants and there is no direct evidence to fix a particular individual, it is needless to say that the prosecution cannot point to the guilt or complicity of a particular person that he was the person who attacked or he was the culprit and therefore action must be proceeded with against him. As rightly pointed out by the learned counsel for the appellant, even at the earliest statements recorded by P.W.10, the Sub-Collector, none of the witnesses have pointed out that the appellant/accused No.2 was present or he made any attack over the deceased. In the instant case, in the opinion of the Court, once the presence of the appellant was not made known and proved by evidence and even assuming that he was present, no evidence is available as to the complicity of the appellant herein. In the absence of any evidence, it would be highly difficult to accept the case of the prosecution.

12. Further, in the instant case, if the report of the Sub-Collector was to be acted upon, all the officials comprised in the team should have been shown as accused, but not done so. The finding of the Sub-Collector was that Pandiarajan, the Inspector of Police, who lead the team, was directly responsible for the death of Pandiyan and he has also recorded that in so far as the other officials and constables from NIB, Madras, they might or might not have involved in the death, since there was no concrete evidence, which is also equally applicable to the appellant/2nd accused. In such circumstances, the Court is of the opinion that the prosecution has not brought-forth any evidence indicating the nexus of the appellant/accused No.2 to the crime.

13. Added further, in the instant case, the Court is able to see legal lacuna, which would go to the root of the case. It is a complaint placed by the Revenue Divisional Officer, Periyakulam, before the Judicial Magistrate under Section 200 Cr.P.C. It was a private complaint on the death of a person in police custody. In such circumstances, it is needless to say that a duty is cast upon the Magistrate Concerned under proviso to sub-Section (2) to Section 202 Cr.P.C. that when it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he should call upon the complainant to produce all his witnesses and examine them on oath before committing the case for trial to the Court of Sessions. In the instant case, a perusal of the committal order of

the Magistrate, would indicate that without following the mandatory procedure contained in proviso to Section 202(2) Cr.P.C. This contention of the learned counsel attacking the order of committal is fortified by the judgment of this Court rendered by Ratnavel Pandian, J (His Lordship as he then was). In paragraphs 31 and 32, it has been held as under:

"31. From the above decisions, it can be seen that except Paul, J., in Crl.M.P.890/1978 following the judgment of a single Judge of the Andhra Pradesh High Court in M.N.Reddy's case (1977 Crl.L.J.1473) which ruling has been impliedly overruled by a Division Bench of the Andhra Pradesh High Court in Ramachander Rao's case (1980 Crl.L.J.593), most of the Judges of this Court and the various other High Courts have taken the view, with which I am in respectful agreement, that when once the Magistrate resorts to an inquiry under S.202 in cases triable exclusively by a Court of Session, by application of the proviso to S.202(2), it is imperative on the part of the Magistrate taking cognizance of the offence to call upon the complainant to produce all his witnesses and examine them on oath before arriving at a conclusion whether he should proceed either under S.203 or under S.204 of the Code. The failure on the part of the Magistrate to comply with this statutory direction given under the proviso to S.202(2) would vitiate the further proceedings taken by the Magistrate.

32. Coming to the reference on hand, it is seen from the list of witnesses appended to the complaint that the complainant has cited nine witnesses of whom he has examined only three witnesses listed as Nos.6,8, and 9, besides examining himself, and the other six witnesses cited as Nos.1, 5 (sic) and 7 have not been examined. The learned Magistrate who has committed the case has stated that he thought it fit to make an inquiry in this case by resorting to S.202 (2). Under these circumstances, therefore, I am of the view that the learned Magistrate ought to have called upon the complainant to produce all his witnesses

and examined them on oath and he is not justified in saying that from the examination of the complainant and the three witnesses produced before him, he came to the conclusion that a prima facie case had been made out against the accused and hence he ordered the issue of process and passed the committal order without examining the other witnesses cited."

The decision cited above has got full application to the facts of the present case.

14. Under such circumstances, the Court is of the considered view that the judgment of the trial Court has got to be necessarily undone by upsetting the same and the appellant is entitled for an order of acquittal.

15. Accordingly, the appeal is allowed and the conviction and sentences imposed on the appellant by the trial court in its judgment dated 16.06.2003 are set aside and he is acquitted of the charges levelled against him. The fine amount, if any, paid by him is ordered to be refunded. It is reported that the appellant is on bail. The bail bonds executed by him shall stand terminated."

7. Admittedly, the relief of acquittal from the charges had been granted to the accused, namely Police personnel Rajendran, by the Division Bench of this Court, only based on the benefit of doubt and not on merits. That apart, while deciding the Writ Petition, the said acquittal is not a bar for the Court to arrive at a conclusion that it is a case of custodial death or not, based on the documents available on record.

8. Learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2013 (14) SCC 290 (Rohtash Kumar Vs. State of Haryana), in which, the Apex Court has granted compensation to a victim who died in Police encounter. In the said decision, the Supreme Court has further held that the Police have a right to retaliate in case of murderous attack, which might result in the death of a criminal. But the endeavour of the Police is to arrest the accused and not to kill. The Supreme Court, in the said decision, has followed the earlier decision of the Apex Court reported in 1993 (2) SCC 746 = 1993 SCC (Cri) 527 (Nilabhati Behera Vs. State of Orissa), in which case, the appellant's son therein had died while in the custody of the Police and while noting that the custodial death is a clear violation of the prisoner's rights under Article 21 of the Constitution of

compensation to the appellant therein.

9. In the case on hand, the accused was arrested in connection with Narcotic Investigation Bureau Central Investigation Department. The Sessions Court has rendered detailed findings on facts and as to how the death has occurred. In criminal jurisprudence, acquittal by a Court is based on the prosecution not proving the guilt of an accused beyond reasonable doubt, but in the civil jurisprudence, the compensation has got to be awarded based on the preponderance of probabilities. Though in the said Criminal Appeal, the Madurai Bench of this Court has interfered with the judgment of the Sessions Court and the accused was acquitted of the charges by this Court, the reasons given by the trial Court would establish that there was actually the custodial death.

10. As discussed supra, the Division Bench of this Court, in the said Criminal Appeal, has acquitted the accused (Rajendran) giving the benefit of doubt, as the complainant has not been examined and the documents have not been produced and scrutinised by the learned Magistrate before committing the case to the Sessions Court based on the private complaint. The Division Bench of this Court further held that a perusal of the committal order of the Magistrate would indicate that the mandatory procedures as enunciated under Section 202(2) Cr.P.C. have not been followed while dealing with the complaint filed by the Revenue Divisional officer, Periakulam under Section 200 Cr.P.C. Moreover, the decision rendered by the Division Bench of this Court in the said Criminal Appeal giving the benefit of doubt in favour of the accused while acquitting him, will not stand in the way of this Court awarding compensation.

11. Even assuming for the sake of argument that the acquittal of the said Police personnel is on the merits of the case, there are categorical findings based on the evidence that had been discussed indicating that the said Pandiaraj, Inspector of Police, who led the team, was directly responsible for the death of Pandian, i.e. the petitioner's late husband. Since the said Pandiaraj is no more and that he died pending trial, taking note of the findings rendered by the Division Bench of this Court in the said Criminal Appeal and also based on the report of the Sub-Collector, Periakulam, the petitioner is entitled to get compensation. The contention that since in the criminal appeal, the judgment is rendered acquitting the said Police personnel, the petitioner herein would not be entitled to get compensation, cannot be countenanced, and hence, this Court finds that there is custodial death and the petitioner being the wife of the victim, is entitled to compensation.

of compensation in cases of these type of cases. The enactments like the Motor Vehicles Act, the Workmen's Compensation Act and the Fatal Accidents Act, may be applied for arriving at a just compensation.

13. Accordingly, while applying the decisions of the Supreme Court pertaining to motor accident cases in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009 (6) SCC 121), Reshma Kumari Vs. Madan Mohan (2013 (9) SCC 65), Santosh Devi Vs. National Insurance Co. Ltd. (2012 (6) SCC 421), Rajesh Vs. Rajbir Singh & others (2013 (9) SCC 54) and Syed Sadiq and others v. Divisional Manager, United India Insurance Company Ltd., (2014 (2) SCC 735), this Court applies the same yardstick to this case of custodial death also and the principles laid down in the motor accident cases, had also been applied by this Court in respect of the claim of compensation due to electrocution in W.P.Nos.6270 of 2015, dated 02.08.2017 and 1845 of 2010, dated 31.07.2017.

14. Even though it has been contended by the learned counsel for the petitioner that the petitioner was an agriculturist, there is no proof or evidence produced in support of the same or to show that he is owning agricultural land. Hence, this Court takes into account the principles of motor accident victim compensation cases pertaining to the vegetable vendor in the case of Syed Sadiq and others v. Divisional Manager, United India Insurance Company Ltd., (2014 (2) SCC 735) to arrive at the compensation. However, the accident in the said decision of Syed Sadiq, happened in the year 2008. In the present Writ Petition, the death of the petitioner's husband was of the year 1995. The Courts have arrived at a compensation in cases of accidents prior to 2008, taking into account the monthly income at Rs.3,000/-. However, in the absence of details furnished by the petitioner with regard to the avocation of the petitioner's husband and taking into consideration the avocation of the husband of the petitioner as Vegetable Vendor and following the said decision of the Supreme Court in the case of Syed Sadiq, and, while applying the principles laid down in all the above decisions of the Supreme Court, the following compensation is arrived at:

Head under which compensation is awarded	Amount in Rs.
Loss of earning capacity (Rs.3,000 + future prospects of Rs.1,500/- less 1/3 for personal expenses) (3,000 x 12 x 15)	5,40,000
Pain and sufferings	50,000

Head under which compensation is awarded	Amount in Rs.
Loss of love and affection to children (3 daughters and one son) (Rs.50,000/- each)	2,00,000
Mental agony to wife	50,000
Medical expenses	50,000
Loss of consortium to the wife	1,00,000
Transportation to Hospital	20,000
Attendant Charges	20,000
Funeral expenses	20,000
Total compensation	10,50,000

15. The respondents are directed to pay the compensation of Rs.10,50,000/- (Rupees ten lakhs and fifty thousand), less, the compensation already granted i.e. Rs.1,00,000/- (Rs.25,000/- cash and Rs.75,000/- in bank deposit)) i.e. vide order passed in W.P.No.7925 of 1995, dated 14.08.1996) with interest at 9% per annum from the date of custodial death i.e. from 05.04.1995 till the date of payment, within 45 days from the date of receipt of a copy of this order, failing which the amount of Rs.9,50,000/- will fetch interest @ 12% per annum from the date of filing of this writ petition till the date of payment. The amount of Rs.75,000/- lying in deposit in the Bank pursuant to the interim compensation as ordered in W.P.No.7925 of 1995, dated 14.08.1996 is also to be paid with accrued interest as on date lying in Bank deposit, within 45 days from the date of receipt of a copy of this order. Out of the above said compensation of Rs.9,50,000/-, the petitioner-wife of the victim is entitled to get Rs.4,50,000/- (Rupees four lakhs and fifty thousand only) and the son, being the only male legal heir in the family to take care of the family consisting of four female members including his mother, he is entitled to get Rs.2,00,000/- (Rupees two lakhs only) and each of the three daughters are entitled to get Rs.1,00,000/- (Rupees one lakh only). If the said amount of Rs.9,50,000/- is not paid within the time stipulated above, the interest portion at 12% per annum from the date of filing of this Writ Petition till the date of payment, shall be recovered from the personal accounts of the official(s) concerned who are responsible for the implementation of the order of this Court. The respondents shall issue separate cheques/DD in favour of the petitioner and her above said four children.

16. The Writ Petition is disposed of with the above observations and direction. No costs. W.P.M.Ps. are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary,
Home Department,
Fort. St. George, Chennai-600 009.
2. The Director General of Police,
Chennai.
3. The Superintendent of Police,
Madurai.
4. The Inspector General of Police,
NIB,
Chennai-2.

+1cc to Government Pleader sr.67781

+1cc to Mr.V.P.Raja, Advocate sr.67340

सत्यमेव जयते

W.P.No.21312 of 2004

rsI(co)
ss(3/10/2017)

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