

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No. 32518 of 2010

ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader appearing for the respondents 1 to 5.

2. The prayer sought in the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue a writ, order or direction more particularly in the nature of writ of mandamus declaring the action of the respondents 4 and 5 in not giving compensation to 1st petitioner and her children as 1st respondent authorities failed to protect her husband's life alleged in committing suicide in the 1st respondent prison, as illegal arbitrary violation of the article 21 of the Constitution of India and consequently direct the 5th respondent to pay compensation of Rs.10,00,000/ (Rupees Ten Lakhs only) with interest at 18% per annum from the date of filing of this Writ Petition to the 1st petitioner and her children and to grant such other relief or reliefs as this Honble Court deems fit and proper in the circumstances of the case.”

3. The facts of the case are that the husband of the first petitioner was arrested in Crime No.217 of 2005 for the offence under Section 392 IPC. After filing of the charge sheet, the said crime was numbered as C.C.No.630 of 2009 on the file of the II Additional Chief Metropolitan Magistrate, Visakhapatnam. After trial, the husband of the first petitioner was convicted on 24.07.2009 and sentenced to undergo rigorous imprisonment for a period of two years for the offence under Section 392 IPC and 411 IPC. In jail, he was allotted prisoner No.8489. When the husband of the first petitioner was in prison, she visited prison twice to look-after the welfare of her husband. However, the authorities of the first respondent came to her house and stated that her husband was admitted in K.G. Hospital, Visakhapatnam. The first petitioner

immediately rushed to the Hospital where she saw her husband fighting for life. On the next day of joining in the hospital, he died. However, she was not informed as to how her husband died in the prison. On 08.09.2009 in the mid-night her deceased husband consumed poison. The Duty Medical Officer who attended the deceased gave first aid and shifted to K.G. Hospital at 4 A.M. for further treatment. However, while taking medical treatment he died on 10.09.2009 at 11.50 A.M. In the post mortem report, the doctors opined that the deceased died of respiratory and circulatory failure due to Benzene Hexa chloride an insecticide poison. Since the cause of death shown is not believable, and since there is negligence on the part of the jail authorities, the present writ petition is filed seeking compensation of Rs.10 lakhs with interest at 18% per annum from the date of filing of the writ petition to the petitioners.

4. The first respondent filed a counter counter-affidavit stating that the husband of the first petitioner was working in Prison garden where insecticides are used for cultivation of vegetables. The deceased stealthily picked up the insecticide (ant killer) from the vegetable garden inside the premises of Central Prison, Visakhapatnam and consumed the same on the intervening night of 8/9-09-2009. On information given by co-inmates, the night duty Medical Officer after giving first aid, shifted the deceased to the K.G. Hospital immediately. The deceased died on the next day of admitting him in the hospital i.e. on 10.09.2009. The cause of death was shown as respiratory and circulatory failure due to benzene

hexachloride an insecticide. The first respondent also stated in the additional counter that the Assistant Registrar (Law), National Human Rights Commission, New Delhi in Case No. 416/1/21/09-10-JCD dated 02.05.2011 stated that the Commission received an intimation from the Superintendent, Central Prison, Visakhapatnam about the custodial death of prisoner while in custody. The Enquiry Officer concluded that the deceased died due to respiratory and circulatory failure due to consuming Benzene Hexa chloride, an insecticide poison.

5. Since the death of the deceased was reported to the District Collector, Visakhapatnam, the District Revenue Officer & Additional District Magistrate, Visakhapatnam was appointed to conduct magisterial enquiry under Section 176 Cr.P.C. to elicit the cause of death and report the same. The District Revenue Officer during the course of the enquiry on 15.12.2009 and 19.01.2010 examined different witnesses and recorded their statements. After conclusion, in the report he opined that the cause of death appears to be consuming poisonous material due to despair and frustration. The wife of the deceased deposed that her husband might have committed suicide due to the harassment of Central jail staff. Except her, nobody has expressed any opinion that the staff of the central jail have harassed the deceased. He also stated in his report that he personally inspected the scene of offence in Godavari Block of Central Prison, Visakhapatnam on 23.03.2010 and enquired some of the prisoners of the same block and recorded their statements regarding the death of the deceased. Some of the

prisoners have expressed their opinion that the deceased committed suicide due to non-attending of his wife and other family members to meet him in Central Prison. They have also expressed that there is no harassment of jail staff against the deceased prisoner. In fact, the Central Jail staff also immediately attended on the deceased and rendered necessary medical aid and shifted him to K.G. Hospital, Visakhapatnam for treatment. This apart, the matter was referred to National Human Rights Commission, at New Delhi. On the material placed before the Commission, the matter was closed on the ground that as per the magisterial enquiry report, the deceased consumed pesticide/insecticide to commit suicide as he was under depression. He was taken to the prison hospital and then admitted in KG Hospital, Visakhapatnam for treatment where he expired during medical treatment on 10.09.2009. The Enquiry Officer concluded that the deceased died due to respiratory and circulatory failure due to consuming Benzene Hexa chloride, an insecticide and there was no foul-play in the death of the deceased prisoner.

6. Having heard both the learned counsel and from the perusal of the material on record, the admitted facts are that suspecting foul-play in the death of the husband of the first petitioner while he was in custody, the present writ petition is filed seeking compensation of Rs.10 lakhs. Learned counsel appearing for the petitioners in support of his contentions relied on two judgments reported in *MUSTKAMALA BEGUM v. STATE OF ASSAM*¹ and

¹ 2003 LawSuit(Gau) 413

PARVATHAMMA v. CHIEF SECRETARY². From the perusal of the facts in the above said judgments, they are not applicable to the facts of the present case. The District Revenue Officer who conducted magisterial enquiry recorded the statements of the inmates of the very same block where the deceased was put up, and opined that the deceased was depressed as his wife and other family members were not visiting him when he was in the prison. It is relevant that some of the inmates also gave statements stating that there was no harassment by the jail authorities. The Human Rights Commission at New Delhi also opined that there was no foul-play in the death of the deceased prisoner. When both the authorities have concluded that there is no negligence or otherwise on the part of the jail authorities, this Court while exercising jurisdiction under Article 226 of the Constitution of India cannot go into the disputed questions of fact as raised in the writ petition that due to negligence of the jail authorities, the husband of the first petitioner died. Therefore, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO, J

Date: 08.11.2018
ccm

² 1995 LawSuit(Kar) 255

HONOURABLE SRI JUSTICE P. KESHA VA RAO



WRIT PETITION No. 32518 of 2010

Date:08.11.2018

ccm