

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2019

PRONOUNCED ON : 07.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.16442 of 2004

Alagammal

... Petitioner

Vs.

- 1.State of Tamil Nadu
rep. by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.
- 2.The Superintendent of Police,
Sivagangai District,
Sivagangai.
- 3.The Inspector of Police,
Ulagampatti Police Station,
Thirupattur Taluk,
Sivagangai District.

4.Balasubramaniam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents to pay compensation of Rs.5 lakhs for the assault, torture and human rights violations caused against the petitioner.

For Petitioner :Mr.J.Saravanel

For Respondent :Mrs.Narmadha Sampath, AAG
Nos.1 to 3 Assisted by Mr.G.B.Rajesh, GA

O R D E R

Heard Mr.J.Saravanel, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Additional Advocate General appearing on behalf of the respondents 1 to 3.

2. The petitioner, who was aged about 25 years in the year 2002, was employed as a Noon Meal Worker at Kurumbalur and belongs to Scheduled Caste Community. The present Writ Petition has been filed seeking for a direction to the respondents to pay compensation of Rs.5 lakhs, predominantly on the ground that she was subjected to assault, torture and other acts of human rights violation by the fourth respondent and some other policemen and also on the ground that she was taken to police custody in violation of the procedure contemplated for arrest.

3. Certain facts as alleged by the petitioner, leading to the incident are that, there was an estranged relationship between the petitioner and her husband, owing to which a panchayat was held by the local villagers wherein, the petitioner was directed to pay a penalty of Rs.51,000/-. In the meanwhile, when the petitioner had filed divorce proceedings before the Sub-Ordinate Court, Sivagangai, the villagers had excommunicated her from the village, for approaching the Court of law instead of approaching the customary village panchayat. Subsequently, when she had tried to plough her land, it was objected by way of a complaint before the panchromatic, wherein she was directed to prostrate before the panchayat, stating that for every prostrate, a sum of Rs.1000/- shall be deducted from the total fine of the panchayat. After she had prostrated 47 times, she could not continue further and thereby, the fine amount came to be reduced to Rs.4000/-. When the petitioner refused to pay the sum of Rs.4000/-, she was badly scolded and abused in the name of her community, owing to which, she had given a complaint before the Superintendent of Police, Sivagangai District, which was registered in Cr.No.24 of 2000. The complaint, later came to be closed as a mistake of fact. Thereafter, since the atrocities continued against the petitioner from certain named persons, she had given a complaint to the All India Democratic Women Association and inspite of the same, the abusement and atrocities continued.

4. The aforesaid facts are disputed by the third respondent herein in his counter affidavit filed in the month of August 2017 stating that the fourth respondent, against whom the atrocities are alleged, had died in the year 2002. During the enquiry, in connection with the petitioner's issue, the third respondent was made aware that the petitioner and her husband got legally separated on 11.07.1996 through a decree of divorce owing to certain disputes between them. On 28.08.1999, when the petitioner had tried to plough the agricultural lands belonging to one Palanichamy, a dispute erupted between them and the same was referred to the village head man namely one Karruppaiah Ambalam and the petitioner had agreed to pay Rs.4000/- as compensation for the damage caused to the agricultural lands.

Thereafter, the petitioner had preferred a complaint before the fourth respondent alleging that the said Palanichamy and others insulted her by calling her caste name and compelled her to prostrate before the village panchayat. Her case was registered in Cr.No.24 of 2000 and later closed as a mistake of fact.

5. Though the facts referred above seem to carry contradictory versions, they do not have much of relevance to the lis which is sought to be adjudicated in the present Writ Petition.

6. The cause of action for the present Writ Petition arose subsequently on 07.07.2002, when it is alleged by the petitioner that six policemen including the fourth respondent herein, had come to her house at 5.00 a.m. and assaulted her with a log on the head, shoulder, back and hands. Again at 6.40 a.m., they had come to the petitioner's house and assaulted her and took her into custody, in a van. During the entire course, she was scolded in filthy language and manhandled, without informing about the reason for such ill treatment. Later, she was produced before the Revenue Divisional Officer, Devakottai, who had informed the petitioner to come for the next hearing date on 15.02.2002. The petitioner was then dropped at Devakottai Bus stand and on the same day, at about 11.40 p.m., she got herself admitted in the Annal Gandhi Memorial Government Hospital, Tiruchirapalli. The aforesaid facts have not been disputed in the counter affidavits filed by the third respondent, as well as the first respondent.

7. The learned Additional Advocate General strenuously attempted to substantiate that the police had no role to play in the alleged incident and submitted that the incident had occurred on 07.07.2002 and in view of the efflux of time, original records were not available in the Government. It is also her submission that the petitioner herein had concocted the entire facts of the case and that the real issue commenced from a matrimonial dispute between the petitioner and her husband and subsequently, when a dispute arose between one Palanichamy and the petitioner in connection with ploughing of a land with a help of a tractor. It is stated that the dispute between the Palanichamy and the petitioner was heard by the village head man namely, Karrupaiah Ambalam and during the course of such a panchayat held, the petitioner had agreed to pay a sum of Rs.4000/-. Both the parties belong to different castes and since it was apprehended that there could be disturbance to the Law and Order, a case came to be registered in Cr.No.21 of 2001 under Section 107 of the Criminal Procedure Code, which was duly enquired by the Revenue Divisional Officer. It is also her submission that the case was initially enquired into by the fourth respondent and since the fourth respondent had committed

suicide in the year 2002, the third respondent had taken charge of the investigation. It is further stated by the learned Additional Advocate General that on 07.07.2002, the petitioner was produced before the Revenue Divisional Officer, Devakottai and after an enquiry, she was released and the matter was adjourned to 15.07.2002. In connection with the incident that occurred on 07.07.2002, the All India Democratic Women Association had staged a protest demanding action against the fourth respondent and other police. In view of such a complaint against the fourth respondent, the Inspector General of Police, South Zone, Madurai, had transferred the fourth respondent from Ulagampatti Police Station to Thoothukudi on administrative grounds. The complaint of the petitioner is only against the deceased fourth respondent and even assuming that there was any excess of powers displayed by the fourth respondent, these respondents cannot be made liable for the consequences and as such, the question of payment of compensation will not arise.

8. The learned counsel for the petitioner, on the other hand would rely upon the wound certificate, as well as the letter of the Joint Secretary to the Government, Home Department, Chennai, dated 30.09.2002 and submitted that there was an incident of assault and abuse of the procedure of arrest and since the petitioner had suffered injuries for which she was treated as an inpatient for more than a week, the Government is vicariously liable to pay the compensation to the petitioner.

9. I have given careful consideration to the submissions made by the respective counsels.

10. In the report furnished by the Deputy Inspector General of Police, Trichy and Ramnad, the Joint Secretary to Government, Home Department, Chennai in his letter dated 30.09.2002, informed the petitioner that the fourth respondent has been transferred to Thoothukudi District. It was further stated in the letter that since the petitioner was assaulted and arrested in her night dress and for the failure of not recording the statements of the witnesses during such arrest, the fourth respondent was also suspended from his services. The report dated 30.09.2002 referred to by the first respondent, has also been relied upon by the petitioner and a copy of the same has been produced by him, before this Court.

11. The incident that occurred on 07.07.2002 is not disputed by the respondents herein. However, it is submitted that the fourth respondent was transferred only on administrative grounds. During the course of oral submission, the learned Additional Advocate General submitted that the service records of the fourth respondent does not reveal that he was suspended from his services.

12. In view of the contrary statement across the bar, the Deputy Secretary to Government, Home Department, Chennai was called upon to file an affidavit clarifying the contradictory statements and accordingly, an affidavit dated 05.04.2019 came to be filed, admitting that the Government letter dated 30.09.2002 was not manipulated or forged. The affidavit further stated that the original records were not available with them. Thus, the fact remains that the incident, which had occurred on 07.07.2002, is reflected in the letter dated 30.09.2002 issued by the Joint Secretary, Home Department, Chennai stating that the fourth respondent herein had assaulted the petitioner, arrested her in her night dress and failed to record the statement of the witnesses at the scene of occurrence, for which act, he was transferred to Thoothukudi District and subsequently, suspended from his services.

13. The learned counsel for the petitioner had produced a copy of the Wound Certificate dated 24.09.2002 issued by the Annal Gandhi Memorial Government Hospital, Tiruchirapalli which evidences that the petitioner was admitted on 07.07.2002 as an in-patient and discharged at 15.07.2002, after about 8 days. The nature of injuries recorded in the wound certificate are 1) a punctured wound just above the left knee, 2) abrasion on the left thigh just above the knee and 3) swelling on the head. The reasons recorded in the wound certificate, which is based on the statement of the petitioner is that, she claims to have been assaulted by the six known police persons at Padaminghi Village, Sivagangai at her residence on 07.07.2002 at about 6.30 a.m. The wounds are also stated to be simple in nature.

14. While the petitioner had produced the letter of the Joint Secretary to the Government, Home Department, Chennai dated 30.09.2002 evidencing the assault and violation of the procedure adopted for arrest is produced before this Court along with the wound certificate dated 24.09.2002 evidencing the injuries, no records have been produced by the respondents, to the contra. While that being so, this Court is constrained to take a decision on the basis of the letter of the Joint Secretary to Government, Home Department, Chennai dated 30.09.2002, which letter has been ratified to be genuine by the Deputy Secretary to Government, Home Department, Chennai, through his affidavit dated 05.04.2019. This Court is therefore of the view that there was an incident on 07.07.2002, in which the petitioner herein was assaulted and arrested in her night dress by the fourth respondent and other policemen.

15. The manner in which the assault on the petitioner had taken place and the mode of custody adopted by the fourth respondent and the other policemen, are not only against the

statutory provisions, but are also in breach of petitioner's fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India. The Hon'ble Supreme Court in the case of D.K. Basu V. State of West Bengal reported in 1997 (1) SCC 416 had stipulated certain parameters to be adopted in cases of arrest or detention, which has been clearly violated in the instant case. In the words of the Hon'ble Supreme Court in D.K.Basu's case (supra), such requirements flow from Article 21 and 22 of the Constitution of India, which needs to be strictly followed. Following the guidelines laid down in D.K.Basu's case (supra), the Hon'ble Supreme Court in a decision reported in 2016 (11) SCC 703 [Rini Johar and another V. State of Madhya Pradesh and others] had also held thus:-

"15. Keeping the aforesaid facts in view, we may refer to the decisions in the field and the submissions canvassed by Mr. Fernandes, learned Amicus Curiae.

16. In Joginder Kumar v. State of U.P. 2 while considering the misuse of police power of arrest, it has been opined:-

(1994) 4 SCC 260 "No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. ... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

17. In the said case, the Court also voiced its concern regarding complaints of human rights pre and after arrests and in that context observed:-

"8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violations of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction. The law of arrest is one

of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider”

After so stating, certain procedural requirements were set down.

18. In D.K. Basu v. State of W.B., after referring to the authorities in Joginder Kumar (supra), Nilabati Behera v. State of Orissa and State of M.P. v. Shyamsunder Trivedi the Court laid down certain guidelines to be followed in cases of arrest and detention till legal provisions are made in that behalf as preventive measures. The said guidelines read as follows:-

“(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or

other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director,

Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

19. Mr. Fernandes, learned Amicus Curiae, in a tabular chart has pointed that none of the requirements had been complied with. Various reasons have been ascribed for the same. On a scrutiny of enquiry report and the factual assertions made, it is limpid that some of the guidelines have been violated. It is strenuously urged by Mr. Fernandes that Section 66-A(b) of the Information Technology Act, 2000 provides maximum sentence of three years and Section 420 CrPC stipulates sentence of seven years and, therefore, it was absolutely imperative on the part of the arresting authority to comply with the procedure postulated in Section 41-A of the Code of Criminal Procedure. The Court in *Arnesh Kumar v. State of Bihar and another*, while dwelling upon the concept of arrest, was compelled to observe thus:-

"Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has

not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

20. Thereafter, the Court in Arnesh Kumar case referred to Section 41 CrPC and analyzing the said provision, opined that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence. It has been further held that

"7.1. ... A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts."

Eventually, the Court was compelled to state:-

"7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

21. In the said authority, Section 41-A CrPC, which has been inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) was introduced and in that context, it has been held that Section 41-A CrPC makes it clear that

"9. ... where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

22. We have referred to the enquiry report and the legal position prevalent in the field. On a studied scrutiny of the report, it is quite vivid that the arrest of the petitioners was not made by following the procedure of arrest. Section 41-A CrPC as has been interpreted by this Court has not been followed. The report clearly shows there have been number of violations in the arrest, and

seizure. Circumstances in no case justify the manner in which the petitioners were treated.

23. In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practicing Advocate has been seriously jeopardized. Dignity, as has been held in *Charu Khurana v. Union of India*, is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualize that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus - eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli:

"I repeat ... that all power is a trust - that we are accountable for its exercise - that, from the people and for the people, all springs and all must exist."

24. We are compelled to say so as liberty which is basically the splendor of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy.

25. Having held thus, we shall proceed to the facet of grant of compensation. The officers of the State had played with the liberty of the petitioners and, in a way, experimented with it. Law does not countenance such kind of experiments as that causes trauma and pain. In *Mehmood Nayyar Azam v. State of Chhattisgarh*, while dealing with the harassment in custody, deliberating on the concept of harassment, the Court stated thus:-

"22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term "harassment". In P. Ramanatha Aiyar's Law Lexicon, 2nd Edn., the term "harass" has been defined thus:

"Harass.-'Injure' and 'injury' are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word 'harass', excluding the latter from being comprehended within the word 'injure' or 'injury'. The synonyms of 'harass' are: to weary, tire, perplex, distress, tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit." The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment."

26. In the said case, emphasizing on dignity, it has been observed:-

(2012) 8 SCC 1 "...The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history". The Constitution as the organic law of the

land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector...."

27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in the case of D.K. Basu (supra), there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A of CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in Nilawati Behra (supra), Sube Singh v. State of Haryana, Hardeep Singh v. State of M.P., comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs.5,00,000/- (Rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised."

16. It is also been held in D.K.Basu's case (supra) that though certain punitive provisions have been provided in the Indian Penal Code, which seek to punish violation of right to life. Such statutory provisions are however, inadequate to repair a wrong done to the citizen. It was held therein that though prosecution of the offender is an obligation to a State in case of every crime, the victim of the crime needs to be compensated monetarily also. The context in which such observations were made reads as follows:-

"40. UBI JUS IBI REMEDIUM - There is no wrong without a remedy. The law will that in

every case where man is wronged and undamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

41. Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Section 330 and 331 provide for punishment of those who inflict injury of grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustration (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These Statutory provisions are, However, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, nor by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience."

17. In view of the undisputable facts establishing that the petitioner in the instant case was subjected to illegal arrest and torture and by applying the ratio laid down in D.K.Basu's case (supra), this Court is of the view that the petitioner requires to be monetarily compensated. It is needless to point

out that since the fourth respondent had already expired, the question of any punitive action against him would not arise.

18. As per the law laid down in D.K.Basu's case and Rini Johar's case (supra), this Court is unable to accept the submissions of the learned Additional Advocate General that the State cannot be held liable for compensating the victim. On the other hand, in view of the categorical pronouncements referred above, this Court is of the view that there is a duty cast on the State to compensate the victim, who has been subjected to illegal custody and torture.

19. On the quantum of compensation, though the petitioner had sought for a sum of Rs.5 lakhs, this Court has taken into consideration that the nature of injuries seem to be simple and that the amount of Rs.5 lakhs, claim could be regarded as disproportionate. Though it is a misfortune that such an incident had occurred, the petitioner cannot be permitted to make a fortune out of such a misfortune. The Hon'ble Supreme Court in D.K.Basu's case (supra), had also held that the quantum of compensation to be awarded to the victim would depend on the peculiar facts of each case. The relevant portion of the order reads as:

"54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must revive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do, That award of compensation in the public law jurisdiction is

also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, in addition to the traditional remedies and not the derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

Thus, this Court is of the view that a sum of Rs.2 lakhs to the petitioner could be a just and reasonable compensation and the liability to pay such a compensation would be on the first respondent herein.

20. For all the foregoing reasons, the first respondent herein is directed to pay a sum of Rs.2 lakhs (Rupees Two Lakhs Only) to the petitioner towards compensation, within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition thus stands allowed. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

DP

To

- 1.The Secretary,
State of Tamil Nadu
Home Department,
Fort St. George,
Chennai-600 009.
- 2.The Superintendent of Police,
Sivagangai District,
Sivagangai.

3.The Inspector of Police,
Ulagampatti Police Station,
Thirupattur Taluk,
Sivagangai District.

+1cc to the Government Pleader, S.R.No.68121
+1cc to Mr.J.Saravana Vel, Advocate, SR.No.74888
(dt:29/08.2019)

W.P.No.16442 of 2004

RP(CO)
RRS(28/08/2019)