

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24..10..2019

Orders Pronounced on : 07..11..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.18315 of 2010
and
M.P.Nos.1 and 2 of 2010

1.Mrs.Azhagammal
2.Ezhumalai
3.Arumugam
4.Ms.Pachaiammal
5.Ms.Lakshmi
6.Pazhanivel

... Petitioners

-Versus-

1.The Secretary,
Public Department,
Representing Sate of Tamil Nadu,
Fort St. George,
Chennai 600 009.

2.The Director General of Police,
Villupuram District,
Villupuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pay a sum of Rs.25,00,000/- to the petitioners as compensation together for the death of the son of the 1st petitioner by name Balu @ Balamurugan together with interest @ 18% p.a. from the date of death i.e., 05.08.2006 till date of payment and to prosecute the delinquent policemen for various offences committed by them by entrusting the investigation to an independent investigating agency for the wrongful confinement, illegal detention, torture, ill-treatment and murder of the 1st petitioner's son.

For Petitioner : Mrs.Y.Kavitha

For Respondent(s) : Mrs.Narmadha Sampath, Addl.
Advocate General
Assisted by Mr.R.Govindasamy,
Spl. Govt.Pleader for RR1 to 3

ORDER

This Writ Petition has been filed by the mother and brothers as and sisters of the deceased Balu @ Balamurugan seeking compensation of Rs.25,00,000/- from the respondents for the custodial death of the deceased together with interest and also for a direction to the respondent to prosecute the delinquent policemen by entrusting the investigation to an independent investigating agency for the wrongful confinement, illegal detention, torture, ill-treatment and murder of the deceased.

2. According to the petitioners, the 1st petitioner is the mother and the other petitioners are the brothers and sisters of the deceased Balu @ Balamurugan. The deceased and his brothers were jointly engaged in the business of construction of houses. While so, on 05.08.2006, at about 07.30 a.m. one Shri.Senthil Kumar, the then Sub Inspector of Police and one Palanisamy and Yesu, the then Head Constables, Arakkandanallur Police Station, Villupuram District took the deceased to the police station under the guise of enquiry in connection with a case of sale of illicit liquor. The deceased was actually doing construction work and near by the construction site, a lady was found selling liquor and on seeing the police party, she fled away from the scene of occurrence. But, the police, have arrested the deceased and took him to the police station.

3. After hearing the news, the 1st petitioner rushed to the police station at about 11.55 a.m. where she found the deceased was brutally attacked and detained in the lock up room. Thereafter, he was taken to Thirukovilur Government Hospital for treatment. The 1st petitioner was however waiting at the police station. After some time, she was informed that her son Balu @ Balamurugan died and his body was kept in the Government Hospital. Soon after the news spread over, the general public and the political parties had conducted an agitation against police. An inquiry on the custodial death was ordered. The Revenue Divisional Officer, who conducted inquiry had stated

that the deceased had committed suicide by hanging himself at the bath room situated within the police station. The Revenue Divisional Officer had also stated in his report that only due to the negligence of the police at Arakkandanallur Police Station, the deceased had committed suicide. Thereafter, the petitioner made a complaint to the Government and the other higher officials against the erring police officers. But, no action has been taken against them. According to the petitioners, the deceased died due to custodial violence and he had not committed suicide as alleged by the police. Hence, this writ petition for compensation from the respondents.

4. The 1st respondent Government filed counter affidavit inter alia contending that on 05.08.2006, Mr.Senthil Kumar, the then Sub Inspector of Police along with two Police Constables of Arakkandanallur Police Station had conducted a prohibition raid at Veerapandi village. At that time, near Veerapandi Higher Secondary School Compound, the deceased Balu @ Balamurugan was caught red handed while selling poisonous liquor and the entire contraband was seized. Thereafter, a case was registered against the deceased in Cr.No.200 of 2006 on the file of Arakkandanallur Police Station for offence under Section 4(1) of The Tamil Nadu Prohibition Act and he was kept in the lock up at the police station. While he was in the police custody, he had committed suicide at toilet by hanging himself with the use of his lunghi. When he was taken to the Government Hospital, the Doctor declared him as brought dead.

5. Thereafter, based on the complaint given by Mr.Yesu, the then Head Constable of Arakkandanallur Police Station, a case was registered in Crime No.201/2006 under Section 176(3) of Cr.P.C. on 05.08.2006 at 02.00 p.m. Then, an enquiry was ordered under Clause 151 of PSO. The Revenue Divisional Officer who conducted inquiry submitted his report dated 15.11.2006 fixing negligence against Mr.Senthil Kumar, the then Sub Inspector of Police, Mr.Yesu and Mr.Palanisamy, the then Head Constables and recommending for departmental action. Based on such report, those three police personnel were placed under Suspension. A criminal proceeding was also initiated against them and the same was taken cognizance in C.C.No.3 of 2007 on the file of the learned Chief Judicial Magistrate at Villupuram against Senthil Kumar, Yesu and Palanisamy.

6. The 1st respondent specifically denied that the deceased died due to custodial violence at the police station. According to him, the enquiry conducted by the Executive Magistrate would clearly show that the deceased had committed suicide due to the negligent act of the police personnel. For the act of the

negligence on the part of the erring police personnel, appropriate action have been taken against the erring police personnel. It is also stated that based on the enquiry report of the Executive Magistrate as per G.O.Ms.153, Public (Law and Order-B) Department, dated 31.01.1998, the Government had already sanctioned a sum of Rs.1,00,000/- to the next kin of the deceased and disbursed the same to the 1st petitioner on 03.03.2011. Therefore, the petitioners are not entitled for another compensation.

7. The learned counsel for the petitioner would contend that the death had occurred inside the police station when the deceased was in custody of the police. The inquiry conducted by the Revenue Divisional Officer would indicate that there are sufficient materials available to show that the deceased was subjected to the custodial violence soon before his death and only due to which, he had committed suicide. Even the report of the Revenue Divisional Officer would reveal that the police personnel were alone responsible for the death of the deceased. Since it is a custodial death, the respondents are liable to pay compensation to the kin of the victim of the custodial death.

8. Per contra, the learned Additional Advocate General would contend that the deceased was arrested in connection with a prohibition case and he was detained in lock up. While he was in lock up, he had committed suicide. Immediately, an inquiry was ordered into the death of the deceased. The Revenue Divisional Officer who conducted the inquiry had submitted a report stating that the deceased had committed suicide. Even though the report indicate the negligence on the part of the erring police personnel, there is absolutely no materials on record to show that the deceased was subjected to custodial torture. According to the learned Additional Advocate General, accepting the report of the Revenue Divisional Officer, departmental action had already been initiated against the erring police personnel. Apart from this, a criminal prosecution has also been initiated against the erring police personnel. Though the case was taken cognizance by the learned Chief Judicial Magistrate concerned, on a petition filed by the accused, the criminal proceedings have been quashed by this court by order dated 26.02.2014 in CrI.O.P.No.9491 of 2013. However, since the deceased had died in the lock up, the Government had already granted a sum of Rs.1,00,000/- as compensation to the 1st petitioner. As there is no evidence to show that the deceased was subjected to any custodial torture as projected in the writ petition, the petitioners are not entitled for compensation as prayed for and the writ petition is liable only to be dismissed.

9. It is the admitted case that the deceased Balu @ Balamurugan died in the lock up when he was in the custody of the police at Arakkandanallur Police Station in Villupuram District in connection with a prohibition case. It is also the admitted case that the death was unnatural. According to the respondents, the deceased had committed suicide at the toilet when he was under the custody of the police in connection with a prohibition case. The petitioners allege that deceased did not have any connection with the prohibition case. The deceased had been falsely implicated in the case by the police and while in custody, he was subjected to custodial violence which resulted in his death at the police lock up. In this back drop, the following questions crop up for consideration

(i) Whether the deceased was subjected to custodial torture?

(ii) Whether the deceased died due to the custodial violence?

(iii) If so, whether the petitioners are entitled for further compensation? and

(iv) What is the quantum of compensation?

10. I have considered the rival submissions carefully.

Point Nos.1 and 2:

11. Since the death was unnatural while the deceased was in the custody of the police, an inquiry into the death was ordered. During inquiry, the Revenue Divisional Officer had examined as many as 45 persons. Based on enquiry, the Revenue Divisional Officer had come to a conclusion that the deceased had committed suicide by hanging himself at the toilet in the police station and he was not subjected to any custodial violence. The learned Revenue Divisional Officer however had come to a conclusion that only due to the negligence of the police personnel (1) Mr.Senthil Kumar, the then Sub Inspector of Police, (2) Mr.Yesu and (3) Mr.Palanisamy, the then Head Constables of Arakkandanallur Police Station as they have not followed the procedure while detaining a person at the lock up in the police station and had also recommended for suitable action against the erring police personnel.

12. Based on the report of the Revenue Divisional Officer, a criminal case was also registered against the erring police personnel. However, on a challenge by Mr.N.Senthil Kumar, the then Sub Inspector of Police, Arakkandanallur Police Station, this court, by order dated 26.02.2014 in CrI.O.P.No.9491 of 2013

quashed the entire criminal proceedings in C.C.No.3 of 2007 on the file of the Chief Judicial Magistrate, Villupuram.

13. Even though the petitioners contended that the deceased died due to custodial torture, absolutely, there is no material available on record to substantiate his contention. The only material that was produced before this court is the report of the Revenue Divisional Officer which would only show that it is a case of suicidal death and the deceased was not subjected to any custodial torture. In the above circumstances, in the absence of any other materials to substantiate the contention of the petitioners that the deceased died due to custodial torture, this court is not in a position to come to a conclusion that the deceased died due to custodial violence at the police station.

14. It is the admitted case that the deceased died unnaturally by hanging himself inside the police station. 15. While a person is detained in the police custody, it is the incumbent duty and responsibility of the police officials to ensure the life and safety of the detainee and the detainee is entitled for protection of his life and safety. In the instant case, it could be seen that the death was due to the negligence of the police personnel at Arakkandanallur Police Station in not giving adequate protection to the deceased while the detainee was in the police custody. The death of the deceased had taken place in the police station when the deceased was detained at lock up and it resulted in deprivation of his life contrary to the right guaranteed under Article 21 of the Constitution of India. For the failure of the authorities to protect the life of the deceased, now, the petitioners are entitled to be compensated.

15. In *Kewal Pati v. State of UP*, (1995) 3 SC 600, the Hon'ble Supreme Court has held as follows:-

"2. ... Even though Ramjit Upadhayaya was a convict and was serving his sentence yet the authorities were not absolved of their responsibility to ensure his life and safety in the jail. A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law (See *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* [(1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746] and *A.K. Roy v. Union of India* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152 : AIR 1982 SC 710]). Therefore, he was entitled to protection. Since the killing took place when he

was in jail, it resulted in deprivation of his life contrary to law. He is survived by his wife and three children. His untimely death has deprived the petitioner and her children of his company and affection. Since it has taken place while he was serving his sentence due to failure of the authorities to protect him, we are of opinion that they are entitled to be compensated."

16. Award of compensation in a proceedings under Section 226 of The Constitution of India is a remedy available in Public Law based on strict liability for violation of fundamental rights and there is no necessary to direct the kin of the victim of custodial death to resort to ordinary civil remedy for damages. In Nilabati Behera v. State of Orissa, (1993) 2 SCC 746 , the Hon'ble Supreme Court has held as follows:-

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental

rights of the citizen."

17. In the recent past, in *Re-Inhuman Conditions in 1382 Prisons*, (2017) 10 SCC 658, after surveying almost all the judgments on the subject, the Hon'ble Supreme Court has held that even for the unnatural death in the police or judicial custody, the kin of the victim of unnatural death are entitled for compensation. The relevant portion of the judgement read as follows:-

"54. The case law indicates that over the last several decades this Court and almost every High Court has relied on Article 21 of the Constitution and thought it appropriate to compensate the next of kin for an unnatural custodial death. The constitutional courts can go on delivering judgment after judgment on this issue and award compensation, but unless the State realises that custodial death is itself a crime and monetary compensation is not necessarily the only appropriate relief that can be granted to the next of kin of the deceased, such unnatural deaths will continue unabated. Therefore, what is needed is a review of all prisons with a humanitarian nuance. 55. Over the last several years, there have been discussions on the rights of victims and one of the rights of a victim of crime is to obtain compensation. Schemes for victim compensation have been framed by almost every State and that is a wholesome development. But it is important for the Central Government and the State Governments to realise that persons who suffer an unnatural death in a prison are also victims—sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal. Human rights are not dependent on the status of a person but are universal in nature. Once the issue is looked at from this perspective, it will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence, the need to compensate the next of kin."

18. In the light of the above legal position, this court is of the considered view that since the deceased died while he was in the custody of the police in connection with a criminal case and the death was unnatural, the petitioners are entitled for compensation. Though the death was not due to any custodial violence, for the failure of the police authorities to protect the life of the detainee while he was in the police custody, the petitioners are to be compensated by the respondents. Point Nos.1 and 2 are answered accordingly.

Point Nos.3 and 4:

19. Coming to the quantum of compensation, even though there is no codified law for fixation of compensation for the unnatural death of a person while in police / judicial custody, the Hon'ble Supreme Court in *Murti Devi v. State of Delhi*, (1998) 9 SCC has granted a sum of Rs.2,50,000/- to the mother of the deceased. The relevant portion of the judgement reads as follows:-

"1. As it was the bounden duty of the jail authorities to protect the life of an under trial prisoner lodged in the jail and as in the instant case such authorities had failed to ensure safety and security to the said unfortunate under-trial accused, we direct the respondent to pay a sum of Rs.2,50,000/- to the petitioner Murti Devi within a period of six weeks from today."

20. In the instant case the occurrence was in the year 2006. The writ petition was filed in the year 2010 and almost 14 years have elapsed since the occurrence. The deceased in this case was an unmarried man. He was 26 years old at the time of death. Even though it was stated that he was earning a sum of Rs.8000/- per month, there is no material available not even to infer that he was engaged in the construction business besides agricultural operations along with his family member. However, considering the age of the deceased and the other facts and circumstances of the case, this court is of the considered view that awarding a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the petitioners would be fair and just compensation for the unnatural death of the deceased Balu @ Balamurugan while in the custody of the police.

21. At this juncture, it is relevant to state that the 1st petitioner had already been granted a sum of Rs.1,00,000/- by the State for the death of her son - Balu @ Balamurugan and

therefore, this amount has to be necessarily deducted from the total compensation now awarded to the petitioners. Point Nos.3 and 4 are answered accordingly.

22. In view of the foregoing discussions, the writ petition succeeds and the petitioners are entitled for compensation of Rs.3,00,000/- less a sum of Rs.1,00,000/- already paid to the 1st petitioner together with interest.

In the result, this Writ Petition is allowed. The respondents are directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs) as compensation besides the amount already paid within a period of eight weeks from the date of receipt of a copy of this order. In default, the respondents shall pay the compensation amount as directed above together with simple interest @ 9% p.a. from the date of writ petition till date of payment in full. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Secretary, Public Department, Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

2.The Director General of Police, Villupuram District,
Villupuram.

+1cc to M/s.Giridhar & Sai, Advocate sr.93222

Writ Petition No.18315 of 2010

ad(co)
nr 12/12/2019