

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.22634 of 2010

1. V. Angappan @ Rajendran

2. A. Senthamarai

3. A. Vasudevan

4. A. Kavitha ... Petitioner

Vs.

1. The Union of India,
rep. by the Secretary to Government,
Government of Union Territory of Puducherry,
Jail Department,
Puducherry.

2. The Inspector General of Prisons,
Puducherry.

3. The Superintendent,
Central Prison,
Puducherry.

4. The Inspector of Police,
Grand Bazaar Police Station,
Puducherry.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pay a compensation of Rs.15,00,000/- to the petitioners towards the death of A. Asai Jagan @ Jagannathan.

For Petitioner : Mr. S.P.Vijayaraghavan

For Respondents : Mr. V. Balamurugan,
Gov. Pleader (Pondy)

O R D E R

This writ petition has been filed seeking a direction to the respondents to pay compensation of Rs.15 lakhs to the petitioners for the death of one Asai Jagan @ Jagannathan in the Central Prison, Puducherry.

2. According to the petitioner, the deceased Aasai Jagan @ Jagannathan was an auto driver, he was arrested in a criminal case and remanded to judicial custody in the month of January 2005, he was confined in Central Prison, Pondicherry, as an under-trial prisoner. On 03.05.2005, at about 12.00 p.m., the petitioners were informed that the said Aasai Jagan @ Jagannathan died in the prison by consuming cyanide poison mixed with alcohol. Thereafter, a case was registered by the fourth respondent in Crime No.127 of 2005 under Section 176 of the Criminal Procedure Code, and an enquiry commission was also constituted with a retired member judiciary, and a report was also submitted. That apart, the District Magistrate also conducted an inquest and submitted a detailed report. Thereafter, no further action has been taken, the petitioners made several complaints to the authorities concerned and also before the Chairperson, National Human Rights Commission. The National Human Rights Commission ordered a sum of Rs.1,00,000/- to the petitioners in the year 2008. Since the deceased died in the judicial custody due to consumption of cyanide poison and it is an unnatural death, the petitioners are entitled for compensation. Even though, the petitioners made several representations to the authorities, the same were not considered so far. Hence, the present writ petition has been filed.

3. The respondents filed a counter affidavit stating that the criminal case has been registered against the deceased Jegannathan for robbery and he was arrested by the CBCID Police on 19.11.2003 and the deceased was also involved in many criminal cases and he is a history sheeted rowdy. It is also stated that the poisonous liquor bottle was thrown inside the jail campus, and the deceased Jegannathan has consumed that liquor on his own, and he was taken to the hospital, where he was declared dead. On the same day, two other persons, who have also consumed the same liquor, also died. Thereafter, One Man Commission was appointed under the head of a Retired Judge and the report filed by the One Man Commission clearly reveals that the petitioner, on his own, consumed poisonous liquor mixing cyanide and died and he has not died due to custodial torture. In the above circumstances, the respondents are not liable to pay any compensation. It is further stated that already a sum

of Rs.1,00,000/- has been paid by the Government of Pondicherry to the petitioners, which itself is a compensation and no further compensation is liable to be paid to the petitioners.

4. I have heard the submissions made on either side and perused the materials available on records carefully.

5. A perusal of the records, it could be seen that the deceased died by consuming poisonous liquor inside the jail, the post-mortem Report also confirmed the same. The death is due to consuming the Sodium Cyanide or Potassium Cyanide and there is no injury found on the body of the deceased. From the report of the Enquiry Commission and the Postmortem autopsy report, it is clear that the deceased did not die due to custodial torture, however, it is an unnatural death inside the prison, during the judicial custody. Now, it is settled law that even for un-natural death of any under trial prisoner during the custody, the legal heirs are entitled for compensation.

6. In Re - Inhuman conditions in 1382 prisons, (2017 (10) SCC 658, the Hon'ble Supreme Court has held that even for the unnatural death of a person in custody, the kith and kin of the deceased are entitled for compensation and directed the State authorities to compensate the next of kin for an unnatural custodial death. Paragraphs 54 & 55 of the judgement, cited supra, 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."

7. In the instant case, as already discussed above, the death was unnatural and the death was only due to the negligence of the jail authorities. Hence, the petitioners are entitled for compensation as per the law laid down by the Hon'ble Supreme Court in the judgement cited supra. So far as the quantum of compensation is concerned, the deceased is aged 22 years, and an unmarried persons, the petitioners are parents, brothers and sister of the deceased and the deceased had considerable income at the time of death. Considering the above circumstances, I am of the considered view that awarding a sum of Rs.3 lakhs is just and fair compensation payable to the petitioners. Now it is stated that already the respondent/Government has paid a sum of Rs.1 lakh to the petitioners pursuant to the order passed by the National Human Rights Commission. Therefore, the first respondent is directed to pay the remaining sum of Rs.2 lakhs to the petitioners within a period of eight(8) weeks from the date of receipt of a copy of this order.

8. With the above directions, this writ petition is disposed of. No costs. सत्यमेव जयते

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Secretary to Government,
The Union of India,
Government of Union Territory of Puducherry,
Jail Department,
Puducherry.
2. The Inspector General of Prisons,
Puducherry.
3. The Superintendent,
Central Prison,
Puducherry.
4. The Inspector of Police,
Grand Bazaar Police Station,
Puducherry.

+1cc to Mr.S.P.Vijayaraghavan, Advocate Sr.88124
+1cc to the Government Pleader Sr.88497

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srg 03/02/2020

सत्यमेव जयते

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