

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24..09..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

WRIT PETITION NO.6105 OF 2010

S.Aryamala

... Petitioner

-Versus-

1. Government of Pondicherry,
Rep. by its Secretary,
Public Department,
Pondicherry.
2. The District Collector,
Pondicherry.
3. Inspector General of Police / Prison,
Police Head Quarters, Pondicherry.
4. Station House Officer,
Oodayyan Salai Police Station,
Pondicherry.
5. Jain Superintendent,
Kalapet Central Jail,
Pondicherry.

... 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 compensation of Rs.20,00,000/- to the petitioner towards the custodial death of her husband - Saravanan.

For Petitioner : Mr.S.Parthasarathy

For Respondent(s) : Mr.D.Bharatha Chakravarthy,
Public Prosecutor [Puducherry]

ORDER

The petitioner is the wife of the deceased one Saravanan. She has come up with this writ petition seeking compensation of Rs.20,00,000/- for the custodial death of her husband.

2. According to the petitioner, her husband was a masonry coolie by profession and was residing with his family at Tindivanam. On 15.06.2009, he went to Puducherry for coolie work. Thereafter, he did not return home. While so, on 25.06.2009, a police constable attached to Kalapet Police Station informed her that her husband was arrested by the police and was remanded to judicial custody for offence under Section 34-A (iii) of the Puducherry Police Amendment Act. Further, according to the petitioner, the police informed her that her husband was admitted in the hospital due to ill health. When she rushed to the hospital, she found her husband dead and the body was kept in the mortuary. She found injuries all over the body and bleeding from the nose and mouth. Thereafter, she immediately complained it to the 2nd respondent on 27.06.2009. Pursuant to her complaint, inquest was conducted. After the inquest, the body was handed over to her. According to the petitioner, her husband was in good health condition. He died of injuries sustained only due to the custodial violence by the respondents 3 and 4. She therefore made a representation to the authorities concerned seeking compensation. The grievance of the petitioner is that her request for compensation has not been considered so far. Hence, this writ petition seeking compensation from the respondents.

3. The respondents filed counter affidavit inter alia contending that the deceased had sustained head injuries by himself when he attempted to climb up the wall in the bathroom situated inside the cell. The deceased, from time when he entered into the prison, behaved abnormally and was also suffering from fits. The statements of the inmates of the jail revealed that the deceased had already cuts and burn injuries in his legs and hands. The deceased was a drunkard which was admitted by the father in law of the deceased himself.

4. It is further contended by the respondents that the deceased was not ill treated by inmates or by the jail authorities. The deceased was admitted for treatment for fits by jail authorities and from the statement of a doctor from the Government General Hospital, it could be seen that the death was due to cardiac arrest. The respondents are no way responsible for the death of the husband of the petitioner. The inquest report would also suggest no foul play. A comprehensive report has also been sent by the District Magistrate to the National Human Rights Commission, New Delhi in regard to the death of the husband of the petitioner. Therefore, the petitioner is not entitled for compensation. The writ petition is liable to be dismissed on account of devoid of merits.

5. I have heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents and

also perused the records carefully.

6. The learned counsel for the petitioner submitted that the husband of the petitioner was admittedly arrested and remanded to judicial custody and he died inside the prison. The post-mortem certificate would also suggest the presence of the ante-mortem injuries and the death was due to head injury. There is no proper explanation offered by the respondents for the injuries on the body of the deceased. The available records would clearly show that the husband of the petitioner was subjected to custodial torture by the police and prison authorities and he died of injuries sustained due to the custodial violence at the hands of the respondents 3 and 4.

7. Per contra, the learned Public Prosecutor contended that the petitioner's husband was arrested for a minor offence under Section 34-A (iii) of The Puducherry Police Amendment Act at the midnight of 24.06.2009 and was remanded to judicial custody at the early morning on the next day. The inquest conducted by the District Magistrate and the statements recorded from the other inmates warders of the jail would go to show that the petitioner behaved abnormally inside the cell and he attempted to climb up the bathroom wall and suffered head injuries. He was immediately taken to the hospital for treatment where he died due to head injuries. There is not even a single piece of evidence to show that the petitioner's husband was subjected to custodial torture.

8. The learned Public Prosecutor, however, while concluding his argument in all fairness submitted that the death of the husband of the petitioner had occurred inside the prison and in an identical situation the Hon'ble Supreme Court in W.P.(Civil) No.406 of 2013 has held that compensation could be granted on the ground of strict liability.

9. From a careful perusal of the records, it could be seen that the husband of the petitioner was arrested on 24.06.2009 and was remanded to judicial custody on 25.06.2009 at 08.00 a.m. and was confined in Central Jail, Puducherry. Admittedly, the deceased died on 26.06.2009 at about 11.05 p.m. From the inquiry report, it could be seen that the co-prisoners have categorically stated that the petitioner had behaved in abnormal manner inside the prison and therefore he was given adequate treatment by the prison doctors. The statement of the other inmates during inquiry was to the effect that on the night of the 25.06.2009 at about 08.00 p.m. when the deceased attempted to climb up the bathroom wall, he fell down and suffered head injuries. It is the further statement that the deceased was immediately taken to the Government General Hospital at Puducherry where he died at about 11.05 p.m. on the same day. A

perusal of the post-mortem certificate would also go to show that there were minor abrasions on the right elbow, left elbow and on left thigh and a severe head injury. According to the post-mortem report, the death was due to "sub dural haemorrhage". Besides the above, there was no significant mark found on the body of the deceased to show that he was subjected to custodial violence soon before the death. In the absence of any other material to show that the husband of the petitioner was subjected to custodial torture by the respondents 3 and 3 and he died due to the injuries suffered on account of custodial torture, it cannot be said that he was subjected to custodial torture by the respondents 3 and 4. However, on coming to know that the deceased was behaving abnormally, had the prison authorities immediately taken care of the deceased and given appropriate treatment, the death of the deceased would have been avoided.

10. As fairly submitted by the learned Public Prosecutor, the issue of compensation for unnatural death in custody is no longer res integra. 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."

11. 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 petitioner is entitled for compensation as per the law laid down by the Hon'ble Supreme Court in the judgement cited supra. The petitioner was 26 years old at the time of death of her husband and the deceased was hardly 37 years old at the time of death. The deceased is survived by the petitioner (wife), three children and his parents. Considering the above facts and circumstances and in the light of the judgement of the Hon'ble Supreme Court, cited above, this court is of the view that the petitioner, who is the wife of the deceased and the other dependents of the deceased are entitled for compensation from the State.

12. Coming to the quantum of compensation, the this court is of the considered view that granting a sum of Rs.3,00,000/- would be a just and fair compensation.

In the result, this Writ Petition is allowed and the 1st respondent is directed to pay a sum of Rs.3,00,000/- to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmk

To

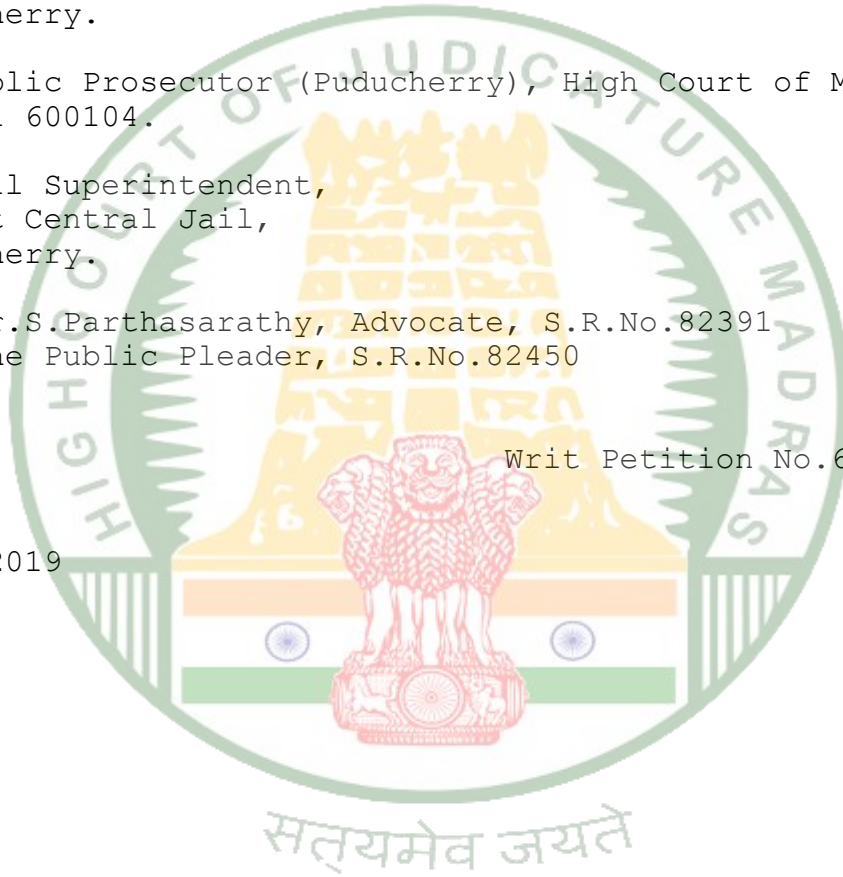
1. The Secretary, Government of Pondicherry,
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4. The Station House Officer, Oodayyan Salai Police Station,
Pondicherry.
5. The Public Prosecutor (Puducherry), High Court of Madras,
Chennai 600104.
6. The Jail Superintendent,
Kalapet Central Jail,
Pondicherry.

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.82391

+1cc to the Public Pleader, S.R.No.82450

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RSI (CO)
CS/18/12/2019



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