



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **10.12.2018**

Delivered on : **13.06.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.A.(MD)No.1003 of 2016

Against W.P.(MD)No.12242 of 2012

D.Jayajothi

: Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Home Secretary,
Fort St. George,
Chennai.

2.The Superintendent of Police,
Thanjavur District,
Thanjavur.

3.The Inspector of Police,
Thanjavur West Police Station,
Thanjavur.

: Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent Act, praying to allow this Writ Appeal and set aside the order dated 28.01.2015 passed in W.P.(MD) No.12242 of 2012.

Prayer in WP(MD). 12242/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to pay a just and reasonable amount as compensation to the petitioner and her sister Gayathri and her father Dhanapathy for the torture and prosecuting Mrs. Chandra (died), the mother of the petitioner in a false case by the 2nd and 3rd respondents.

For Appellant : Mr.R.Venkatesan

For Respondents : Mr.R.Sethuraman,
Special Government Pleader

JUDGMENT

S.S.SUNDAR, J.

This Appeal is preferred by the petitioner in W.P.(MD)No.12242 of 2012.

<https://hcservices.ecourts.gov.in/hcservices/>

2.The appellant filed the Writ Petition in W.P.(MD) No.12242

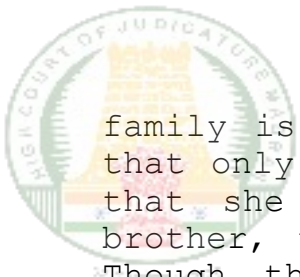


of 2012 praying for issuance of a Writ of Mandamus directing the first respondent State to pay a just and reasonable amount as compensation to the petitioner and her sister Gayathri and her father Dhanapathy for the torture and for prosecuting the petitioner's mother (one Ms.Chandra) in a false case by the second and third respondents.

3.The case of the appellant in the affidavit filed in support of the Writ Petition are as follows:

3.1.The appellant is the eldest daughter of the deceased Chandra and Dhanapathy. It is the case of the appellant that on 06.02.2008 at about 10.00 p.m., the police personnel of the second respondent entered into her house and took her parents along with them into their illegal custody. The appellant further stated that she was informed that her parents are taken in connection with the enquiry about her brother one Jeya Balaji who was a suspect in a case pending on the file of the West Police Station, Thanjavur. It is stated by the appellant that her brother left the family long back and he had no attachment with the family and they did not know his whereabouts. It is alleged that the appellant's parents were illegally detained by Thanjavur West Police Station from 06.02.2008 till the night of 08.02.2008.

3.2.It is also the case of the appellant that once again on 25.02.2008, the police personnel came to the appellant's house and took her parents and fabricated a criminal case against her mother Ms.Chandra under Section 8(C) r/w. Section 20(b)(ii)(b) of the Narcotic Drug and Psychotropic Substances Act (hereinafter referred to as "the NDPS Act") and remanded her into judicial custody. The appellant suspected that the police hatched a conspiracy along with the senior police officers to kill her brother Jaya Balaji in a fake encounter. It is in the said circumstances, it is stated by the appellant that she had given a representation to the State Human Rights Commission. It is the case of the appellant that her mother was arrested and remanded on 25.02.2008 and she got bail on 12.03.2008 and released on 18.03.2008. The appellant's mother was later acquitted in C.C.No.27 of 2008 on 19.04.2010. It is further submitted by the appellant that the illegal custody of her mother and the false case foisted against her mother were all part of a conspiracy hatched by the police to kill the appellant's brother by name Jaya Balaji in a fake encounter which resulted in the death of appellant's brother Jaya Balaji on 28.04.2008. Though the writ petition filed by the appellant in W.P.(MD)No.12242 of 2012 is not in connection with the killing of appellant's brother on 28.04.2008 in an encounter, it is stated by the appellant that the parents were harassed by the police knowing full well that they had no contact with her brother. It is stated that the criminal case registered by the police against her mother on 25.02.2008 is an uncivilised act to tarnish the image of the appellant's parents. It is stated that the appellant's father is a retired Assistant Engineer working for Tamil Nadu Electricity Board and that the



family is a respectful family with no antecedents. It is stated that only due to the suspicion, the police had against her mother that she did not cooperate with the police to trace out her brother, the false criminal case was foisted against her mother. Though the Additional Sessions Court, Thanjavur, acquitted the appellant's mother, in C.C.No.27 of 2008, it is stated by the appellant that in the criminal case, several lapses in the investigation were pointed out by the Court. It is submitted that the information leading to the arrest of the appellant's mother was not recorded by the police. Pointing out the lapses in the whole investigation process and the factual controversies, the appellant has stated in his affidavit that the appellant's mother was charge-sheeted by the police with an ulterior motive only to take vengeance for not disclosing the whereabouts of appellant's brother. Stating that the respondents 2 and 3 are directly responsible for the human rights violations and the rights guaranteed under Articles 14 and 21 of the Constitution of India, the appellant submitted that the first respondent State is bound to compensate by applying vicarious liability for the violations committed by the police personnel. It is admitted that the appellant's mother died in a motor accident on 27.09.2011 and that she never made any claim for compensation during her life time.

3.3.Sum and substance, it is pointed out that the appellant's brother by name Jaya Balaji was absconding and he was accused in three murder cases. The incident relating to the death of appellant's brother in police encounter was explained and it is stated that the said incident has nothing to do with the criminal case that was registered in Crime No.829 of 2008 in February, 2008.

3.4.The third respondent also filed independent counter denying the allegations made in the affidavit filed in support of the writ petition. It was stated that the appellant's mother was arrested on 25.02.2008 at 10.30 a.m. by the police for possession of 1150 grams of Ganja and a case was registered in Crime No.829 of 2008 under Section 8(1) r/w. Section 20(b)(ii) of NDPS Act and was produced before the Judicial Magistrate-I, Thanjavur. With regard to the allegations that the arrest of appellant's mother is part of a big conspiracy, the version of the third respondent is entirely different and it is the specific case of the third respondent that the mother of the appellant was never harassed or tortured as it was submitted by the appellant. It is further stated that the police never suspected the appellant's mother for hiding appellant's brother.

3.5.The learned Single Judge of this Court after considering the pleadings on both sides found that no false case was registered against the appellant's mother and that there was no illegal detention. Merely because the appellant's mother was acquitted from the criminal case, the learned Single Judge held that the Government cannot be directed to give compensation. The learned Single Judge also followed a judgment of this Court in

Crl.O.P.No.511 of 2000 [Dr.R.S.Sridhar vs. The State of Tamil Nadu, rep. by Secretary, Fort St. George, Chennai and another], dated 30.07.2009 wherein it is held that acquittal of accused cannot result in payment of compensation for the accused. In several cases, accused are being acquitted by the criminal Courts for various reasons and hence, the learned Single Judge held that acquitted persons cannot be allowed to get compensation from the Government in all cases. Aggrieved by the dismissal of the Writ Petition, the above appeal has been preferred by the appellant.

4.The learned Counsel for the appellant submitted that the learned Single Judge has failed to appreciate the background of the arrest and the procedural violations in the case of appellant's mother when she was charge-sheeted for the offences under the NDPS Act. The learned Counsel further tried to project the connection between the arrest of appellant's mother on 25.02.2008 and the death of her brother on 28.04.2008 in a police encounter. The learned Counsel further pointed out some of the infirmities in the statement of P.W.1 who was examined in C.C.No.27 of 2008. It is to be pointed out that in a case like this, when compensation is demanded from the Government making them vicariously liable no relief can be claimed in a Writ Petition as decision on crucial issues will be based on disputed question of fact. Secondly, the criminal case in C.C.No.27 of 2008 was dismissed by the Criminal Court only on the ground that the charges are not proved beyond reasonable doubt. In paragraph 13 of the order of Additional District Court, Thanjavur, reads as follows:

"13. இறுதியாக இவ் வழக்கின் எதிரி மீதுள்ள 1985ம் ஆண்டு போதை மருந்துகள் (ம) மயக்கப் பொருட்கள் சட்டம் பிரிவு, 8 (சி) உ/இ 20(பி)(11)(பி) படியான குற்றச் சாட்டு அரசுத் தரப் பினரால் சந்தேகமற மெய்ப்பிக்கப் படாததால், சந்தேகத்தின் பலனை எதிரிக் களித்தும் அதனடிப்படையில் எதிரியைக் குற்றவாளியில்லை எனத்தீர்மானித்து எதிரியை கு.வி.மு.ச. 248 (1)ன் கீழ் விடுதலை செய்து தீர்ப்பளிக்கிறேன்."

5.Hence, the acquittal of appellant's mother is not honorary acquittal. It is true that several lapses and procedural violations have been pointed out by the Criminal Court while acquitting the appellant's mother. However, that by itself cannot be construed to come to the conclusion that the whole criminal case against the appellant's mother was foisted and that the registration of a criminal case was part of a conspiracy. No material is produced before this Court by the appellant except the judgments in the criminal Court and the findings, apart from the evidence of P.Ws.3 and 4 in C.C.No.27 of 2008. The statement of witnesses examined in a criminal case cannot be the basis for making serious allegations which are otherwise unfounded. Though the appellant has submitted a representation to the Chairperson of State Human Rights Commission, on 07.03.2008, no acknowledgement for receipt of those representation is produced by the appellant. The appellant's mother though died in a road accident only on



27.09.2011 nearly 1½ years after the judgment in C.C.No.27 of 2008, she did not submit any representation against the police officials for falsely implicating her in a criminal case. This Writ Petition is filed three years after the death of appellant's mother claiming compensation on the ground that the State is vicariously liable for the false case foisted against her mother. The appellant has stated nothing about her status or status of other beneficiaries and the injuries suffered by them on account of the false case foisted against the appellant's mother. The appellant has come to Court claiming compensation to her and her sister and father for the torture and sufferings of the appellant's mother. Unless the appellant suffered personal injury by herself or her sister and father suffered any injury, it is inappropriate to claim compensation for the sufferings of deceased and no law justifies such a claim. The learned Counsel for the appellant relied upon a judgment of a Division Bench of this Court in the case of **Katturaja v. State** reported in **2014 (1) MWN (Cr) 570** wherein this Court expressed its dis-satisfaction about the various infirmities during investigation and further investigation of police personnel in connection with a murder case where four persons including 2 children were brutally murdered. The trial Court awarded a death sentence to accused 1 and 2 and while acquitting the accused who have charged for murdering four persons, a Division Bench of this Court found that the victims of the crime should be compensated. In paragraph 79 of the Division Bench of this Court, it has been observed as follows:

"79.As we have already pointed out, the State machinery has miserably failed to investigate the case properly and to get the real culprits of the crime convicted so that this Court could direct the convicts to pay compensation. Though we are not in a position to recommend for payment of Compensation, as provided in Section 357-A of the Code, the power of this Court under Section 482 of the Code as well as the power flowing from Article 226 of the Constitution of India could be invoked so as to direct the Government to pay adequate Compensation to the family of the victims, in this case. Having regard to the facts and circumstances of the case and the family of the victims, we deem it appropriate to issue a direction to the Government of Tamil Nadu to pay a compensation of Rs.5,00,000/- (Rupees five lakhs only) to the family of the victims."

6.The judgment relied upon by the learned Counsel appearing for the appellant has no relevance or application to the facts in the present case. The Division Bench dealt with the case and awarded compensation to the victim of a heinous crime, on account of the serious lapses and failure of the investigating agency. The appellants are not family members of the victim of crime but the daughter of an accused who was acquitted later, on the ground that the charges are not proved against her beyond doubt. The State cannot be expected to give compensation to the persons who were

earlier acquitted in a criminal case especially when the accused is acquitted for want of proof or for other reasons. The Writ Petition cannot be a proper forum to decide the case of this nature where serious disputed questions of facts are involved. Further, as pointed out earlier, the claim of the appellant to seek compensation for the injuries suffered by her mother in connection with the criminal case is not sustainable in law. Hence, we find no merit to interfere with the order of the learned Single Judge and the Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

- 1.The Secretary,
Home Department,
Fort St. George,
Chennai.
- 2.The Superintendent of Police,
Thanjavur District,
Thanjavur.
- 3.The Inspector of Police,
Thanjavur West Police Station,
Thanjavur.

+1CC TO MR.P.RATHINAM, Advocate Sr. No. 68702

JUDGMENT IN
W.A. (MD) No.1003 of 2016
13.06.2019

DB(CO)

TR (28.06.2019) 6P 5C