

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.08.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.11553 of 2013

Goharyasmin

... Petitioner

Vs

1. The State of Tamilnadu
rep. by Secretary to Government,
Home Department, Fort St. George,
Chennai-9.
2. The Collector,
Collectorate, Chennai.
3. The Director General of Police,
Office of Director General of Police,
Mylapore, Madras-600 004.
4. The Superintendent of Police,
Office of Superintendent of Police,
Mylapore, Madras-600 004.
5. Inspector of Police,
Kanathur Police Station,
Kanathur, Chennai.
6. Raja,
Sub-Inspector of Police,
Kanathur Police Station,
Kanathur, Chennai.
7. Lakshmanan, Head Constable,
Kanathur Police Station,
Kanathur, Chennai.
8. The Dean,
Government Kilpauk Medical College Hospital,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing to award compensation amount of Rs.10,00,000/- (Rupees Ten lakhs only) to the petitioner after considering the gravity of the offence committed by the fifth, sixth and seventh respondents apart from two lakhs paid from Chief Minister's Relief Fund.

For Petitioners :Ms.P.Uma

For Respondents :Mr.V.Shanmuga Sundar,
Special Government Pleader for RR 1-5

Mr.S.Jyakumar for R6

Mr.S.Parthasarathy for R7

Mr.Akhil Akbar Ali,
Government Advocate for R8

O R D E R

This writ petition is heard through Videoconferencing, on account of the COVID-19 pandemic situation.

2. The petitioner is the wife of one Humayun and she sought for the relief of compensation amount of Rs.10,00,000/- (Rupees Ten Lakhs only) for the unnatural death of her husband alleged to have been caused by respondents 5 to 7.

3. The husband of the petitioner was a Daily Wager. On 08.07.2012, he had gone along with one Shoukath Ali to the residence of one Geetha residing at Kanathur for the purpose of fixing mosquito net on the windows. Later, Geetha had given a complaint for the loss of her gold ear rings, based on which, the sixth respondent had arrested the petitioner's husband and Shoukath Ali. On the same day, around 9.00 p.m. Shoukath Ali was released by the police and the husband of the petitioner was retained in the police station.

4. The petitioner claimed that she learnt from the First Information Report (in short, "FIR") registered by the police that two policemen, i.e, sixth and seventh respondents were guarding her husband and around midnight, the sixth respondent went out for vehicle checking on the other side of the road and he called the seventh respondent to bring the Vehicle entry diary that he had left in the station. When the seventh respondent went out of the station leaving the deceased to be alone in the station, the petitioner's husband took a Can of

Kerosene kept there, poured on himself and immolated himself. On seeing this, the sixth and seventh respondents had immediately put off the fire and took him for treatment to Chettinad Hospital, where, he was given first aid and later, he was shifted to Kilpauk Medical College Hospital (in short, "KMC").

5. The petitioner also claimed that only on 09.07.2012 at about 7.00 a.m., the police came to her residence and informed about the incident and then, she rushed to the hospital along with her children, where, the Doctor informed her that there was only 1% of chance for the petitioner's husband to live. As she went near the bed, she was informed that her husband was no more. According to her, there were marks of injuries on his body to show that he had suffered torture in the hands of the police. Therefore, she gave several representations to the authorities, which yielded no response. Her attempts to get the vital documents, namely, FIR for theft case and second FIR for death of her husband, Post-Mortem Report, Doctor's prescription, etc., do not yield any result and they were not given to the petitioner till the date of filing. The petitioner, therefore, has alleged that her husband was brutally tortured in custody, which had resulted in his death and only to cover up the same, the respondents had twisted the death as that of a suicide by self-immolation.

6. The petitioner having lost the sole bread-winner of the family of herself and her three children, had come to this Court seeking the compensation of Rs.10,00,000/- on the ground that there was violation of human rights resulting in the death of her husband.

7. The above said writ petition was resisted by the fifth respondent, who is the Inspector of Police in-charge of the police station at the time of the incident, by filing a counter-affidavit. He had stated that based on the complaint given by one Geetha that her gold ear rings were missing, while the petitioner's husband and Shoukath Ali were doing mosquito net work, the accused were called for oral enquiry on 08.07.2012. Since the another suspect Shoukath Ali was involved in outdoor work, he was enquired and advised to appear for further enquiry, when called for by the police and as the petitioner's husband Humayun was working inside the house, where the article was missing, he was retained for further enquiry and was waiting in the police station. While so, there was a dispute in Nainar Kuppam Fishermen tenement and hence, he had to rush to the spot, after entrusting the suspect Humayun to other officials, who were present. At 1.00 a.m. in the night, he received a call from Raja, Special Sub-Inspector-the sixth respondent herein stating that the suspect had set himself ablaze outside the

police station on the East Coast Road using the kerosene, which was seized and kept inside the Police Station and that the police officials present had rescued the accused with the help of the public and admitted him at the Chettinad Hospital, Kelambakkam for treatment and after giving first aid, he was referred to the KMC for further treatment. Since the treatment failed, the petitioner's husband died on 09.07.2012 at 7.15 a.m. The fifth respondent had further stated that in the post-mortem report, it has been opined that death was caused due to shock and burns. The enquiry was conducted by the Judicial Magistrate under Section 177 of the Code of Criminal Procedure (Cr.P.C.), wherein, it is stated that the petitioner's husband set fire on his body by himself. It has also been stated that the petitioner's husband has been uttering that he had done a mistake and the Almighty Allah will not spare him. The report of the Judicial Magistrate also stated that the death was only due to self-immolation by the deceased and no other person was involved in the same. It is further stated that sufficient opportunity was given to the petitioner to approach the authorities by providing the documents sought for by her to get the aid of Chief Minister's Relief Fund (in short, "CMRF") to the tune of Rs.2,00,000/- and that she had also received the said amount, but now filed this petition only for unlawful gain. The fifth respondent has specifically stated that there was no ill-treatment or misbehaviour by the policemen in the station and the petitioner's husband had committed suicide due to his guilty consciousness in front of the police station. The payment of Rs.2,00,000/- from the CMRF itself was made to the petitioner only after thorough enquiry by the DRO and after completion of all the formalities. Therefore, it was prayed that the petition has to be dismissed for want of merits.

8. The sixth and seventh respondents also filed separate counter-affidavits re-iterating the same facts, as that of the fifth respondent.

9. The sixth respondent filed the typed-set of copies of the FIRs dated 08.07.2012 in Crime No.2243 of 2012 and Crime No.2270 of 2012 dated 09.07.2012 are filed before this Court and also the report of the Judicial Magistrate dated 28.03.2013.

10. The learned counsel for the petitioner contended that the death of the petitioner's husband was due to the custodial torture, inter alia, on the following grounds :

- (i) The petitioner's husband died due to the custodial torture committed by respondents 5 to 7 ;
- (ii) The arrest of her husband for the alleged offence of theft was not informed to the family members on 08.07.2012 ;
- (iii) There is no reason why Shoukath Ali was released and the petitioner's husband was retained by the police on

08.07.2012 ;

(iv) The petitioner's husband, who was a Daily Wager, was a healthy person and there is no reason for him to become mentally disturbed to go to the extent of committing suicide.

(v) There were multiple injuries seen on the body ;

(vi) The copies of the FIRs were not furnished to the petitioner immediately. There was a failure to follow the procedure as per the directions of the Hon'ble Supreme Court, while taking the petitioner's husband to custody ; and

(vii) Neither the hospital nor the police gave her the copy of the Post Mortem Report or even the treatment records. For all the above said reasons, it is submitted that it is the categorical case of the petitioner that her husband was tortured by the respondents 5 to 7 by beating him up severally to death and covered up the same as the case of suicide.

11. Heard the learned Special Government Pleader and the learned Government Advocate appearing on behalf of the official respondents, learned counsels for the respondents 6 and 7 respectively and perused the materials placed before this Court.

12. The question that arises for consideration is whether the petitioner is entitled for the award of compensation of Rs.10,00,000/- as claimed by her, for the death of her husband on the ground of custodial torture at the hands of the respondents 5 to 7 ?

13. A perusal of the report of the Judicial Magistrate dated 28.03.2013 would go to show that the statement of the fifth respondent has been recorded by the Judicial Magistrate, wherein, he had stated that when he was away in Nainar Kuppam regarding a dispute, the deceased had dozed himself of the kerosene and set fire on himself and he was given first aid and taken to KMCH. One Balamurali Krishnan, who was returning from Puducherry to Chennai around 12.15 a.m. On 09.07.2012, was also enquired and his statement was also recorded, wherein, he had stated that he witnessed a person in fumes and took him to the hospital and also about the words uttered by the victim. The Magistrate also examined some more witnesses, including the Doctors, who had given first aid and treatment at KMCH. Ultimately, the Magistrate reported that it would have been a suicide by self-immolation.

14. Though the learned counsel for the petitioner pointed out that there were so many lapses and procedural irregularities in conducting the post-mortem and the submission of the report by the Judicial Magistrate, the same cannot be gone into by this Court in this petition filed under Article 226 of the Constitution.

15. Be that as it may, based on the complaint given by the sixth respondent - Sub Inspector of Police on 09.07.2012, an FIR No.2270 of 2012 was registered with regard to the incident. Subsequently, the investigation was transferred to the CBCID by the Government in G.O.(Ms)No.256, Public (Law and Order) Department, dated 27.03.2017 and it was taken on file in Crime No.3 of 2017 on 16.06.2017. After enquiry, the further action was dropped in the said case. Curiously, the petitioner has not challenged the said action.

16. Further, the CBCID also filed a report dated 28.03.2019 stating that departmental proceedings were initiated against respondents 5 to 7 for their negligence in duty and also recommended against one Sub Inspector Kanagamani, who arrested the husband of the petitioner and left him at the police station without taking further action. This Court is not a trial Court to venture upon the factual disputes. In such scenario, the cause of death of the petitioner's husband as to whether it was a homicide or suicide cannot be decided by this Court, while exercising the power under Article 226 of the Constitution.

17. The learned Special Government Pleader also submitted that the complaint given to the State Human Rights Commission (SHRC) was not proceeded with and it was closed on 09.02.2016 in SHRC Case Nos.5783 and 5633 of 2012. He had also produced the said order copy.

18. Though the learned counsel for the petitioner would refer various citations wherein compensation is paid for custodial death, whether they are applicable to the present case has to be seen. The victim had attempted to commit suicide and succumbed to the burn injuries when he was in the police custody. If the deceased had survived, he would have been arrested for the punishable offence under Section 309 IPC. The police had taken the victim for enquiry which is a process of investigation for the alleged theft. The victim had committed suicide by self-immolation when he was in the police custody.

19. Nevertheless, it is to be stated that a human life is lost and on account of the same, a family of four, the petitioner and her three children are put to untold hardship and irreparable loss. Even assuming without admitting that it was a suicide, the State has to pay compensation for the unnatural death in custody.

20. At this juncture, it is apt to refer to the judgment of the Hon'ble Apex Court in Inhuman conditions in 1382 prisons - In Re, 2017 (10) SCC 658, wherein, 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 in the following manner :

"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."

21. Undisputably, the petitioner's husband is the victim of an unnatural death, which even according to the CBCID and the Judicial Magistrate, was on account of negligence of the police authorities. Hence, the petitioner and her children are entitled to get some more compensation, besides the sum of Rs.2,00,000/- given under the CMRF to the petitioner.

22. Considering the family circumstances narrated above, this Court is of the view that granting another sum of Rs.2,00,000/- (Rupees two lakhs only) would be just and fair compensation. The first respondent is directed to pay the said sum to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

23. It is made clear that the additional compensation is awarded to the petitioner solely on sympathetic consideration and no aspersions could be attached on account of the same on the official respondents. It is open to the petitioner to take appropriate steps before the criminal court, if she is so advised, to redress her other grievances.

24. In the upshot, this writ petition is disposed of with the above directions. There will be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Home Department, Government of Tamilnadu,
Fort St. George, Chennai-9.
2. The Collector,
Collectorate, Chennai.
3. The Director General of Police,
Office of Director General of Police,
Mylapore, Madras-600 004.
4. The Superintendent of Police,
Mylapore, Madras-600 004.
5. Inspector of Police,
Kanathur Police Station,
Kanathur, Chennai.
6. The Dean,
Government Kilpauk Medical College Hospital,
Chennai.

+1cc To Mr.S.Parthasarathy, sr no.27141

W.P.No.11553 of 2013

VS (CO)
RMP (31/08/2020)