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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT **Reserved on : 24.01.2022**

Delivered on : 01.02.2022

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

W.P.(MD)No.2227 of 2012

Nallakaman (Deceased),

Sundarapandian, S/o. Late.Nallakaman ... Petitioner
[Petitioner substituted vide Court, dated 19.11.2021,
in W.M.P.(MD)No.10136 of 2021]

Vs.

1.The Government of Tamil Nadu,
Rep. by the Home Secretary,
Fort St. George,
Chennai - 9.

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

3.The Inspector of Police,
Vadipatti Police Station,
Usilampatti Post,
Madurai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to provide a compensation to the petitioner a sum of Rs.20 Lakhs for the torture committed by the Sub-Inspector.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

Mr.Nallakaman, an Ex-serviceman, was about 78 years old when he filed the Writ Petition in the year 2012. During pendency of the Writ Petition, he died and his son Sundarapandian has got himself impleaded to pursue the Writ Petition to its logical end. It has taken a decade for this Court to look at his grievance which will shock any reasonable man though by now 40 years have passed.

2.The case of Nallakaman is that he and his wife Seeniyammal entered into an agreement with one Bairav Singh working as Assistant Sub-Inspector of Police, Armed Reserve, in respect of the house by

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way of Othi tenancy for a sum of Rs.5,000/- and residing there since 1976 along with his wife. They have spent about Rs.4,000/- to maintain and improve the amenities in the said house. While so, during the month of December, 1981, Nallakaman and his wife were taken to the Police Station on the instruction of the then Sub-Inspector of Police Premkumar. At the instance of Bairav Singh, he was threatened to vacate the house. Nallakaman informed Premkumar that if Bairav Singh returned back the Othi money, he will hand over the vacant possession. Accordingly, a letter from Nallakaman was obtained giving an undertaking that he will vacate the house during the month of January, 1982. Since Bairav Singh belongs to the Police Department, the then Sub-Inspector of Police Premkumar took undue interest in the civil dispute and took Nallakaman to Vadipatti Police Station on 01.02.1982 in the early morning and threatened him to vacate the house or he will arrest him. Since Nallakaman apprehending arrest has already obtained anticipatory bail, Premkumar got infuriated. He through the Constable brought his wife Seeniyammal, a Teacher to the Police Station, removed the dress of Nallakaman and made him stand with his undergarments. He misbehaved with Seeniyammal and removed her Saree and made her to sit in the lockup room. Nallakaman was tortured and his hands were cuffed with leading chain, he was brutally attacked by Premkumar and others in the Station and was taken to Vadipatti bus stand. This was witnessed by the Villagers. The public got shocked over the violence unleashed on Nallakamanan and went on agitation. There was a protest in the Vadipatti Village, against the atrocity of Police and thereafter, the District Collector ordered for an enquiry by the Revenue Divisional Officer, Usilampatti, regarding the Police excess.

3.Mr.Malick Feroz Khan, Revenue Divisional Officer, Usilampatti, conducted enquiry, examined 212 witnesses and recorded their statements, submitted his report to the District Collector on 18.04.1982, concluding that there was violence of physical torture by Premkumar, Sub-Inspector of Police, Chelliah, Head Constable and Ramakrishnan and Subramanian, Police Constables attached to Vadipatti Police Station. A criminal case was registered against the Police Officials based on the Revenue Divisional Officer's report. The said case was committed to the Sessions Court in S.C.No.169 of 1983 and tried by the learned Additional District Judge cum Fast Track Court, Madurai, for the offences under Sections 307, 320, 323, 325, 355, 367 and 392 of I.P.C. The learned Additional Sessions Judge cum Fast Track Court No.I, Madurai, on completion of trial, found Premkumar, Sub-Inspector of Police and three others guilty of the offence under Section 332 of I.P.C., however, released the accused under Section 4 of the Probation of Offenders Act.

4.In the private complaint [S.C.No.21 of 1984] filed against the violence committed by the Police Officials, the learned Additional Sessions Judge-cum-Fast Track Court No.I, Madurai, found

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the Police Officials guilty under Sections 323 and 355 of I.P.C. A counter case was registered by the Police against Nallakaman and others alleging that they assaulted Premkumar in the Police Station during the course of interrogation and damaged the property in the Police Station. In the said case, the learned Additional Sessions Judge-cum-Fast Track Court No.I, Madurai, who took cognizance in S.C.No.126 of 1983, found Nallakaman and others guilty and released them under Section 3 of the Probation of Offenders Act.

5.Aggrieved over the order of acquittal and for enhancement of punishment, in S.C.No.169 of 1983, dated 11.07.2003, Nallakaman filed Crl.R.C.Nos.1245 and 1288 of 2003 before this Court. Premkumar and others preferred appeals in Crl.A.Nos.81 and 82 of 2007 before this Court against the order of conviction passed by the trial Court in S.C.Nos.169 of 1983 and 21 of 1984. Nallakaman also preferred Crl.R.C.No.1888 of 2013 against the order of acquittal in S.C.No.21 of 1984, dated 11.07.2003.

6.The appeals and the revisions were taken up together for consideration by this Court and a common judgment was passed on 03.04.2007, wherein Crl.R.C.No.1245 of 2003 was allowed and the finding of the trial Court releasing the accused under Section 3 of the Probation of Offenders Act, was set aside and the accused were sentenced to undergo one month simple imprisonment under Sections 323 (2 counts) and 355 of I.P.C. The period of sentence ordered to run concurrently.

7.Aggrieved by the said conviction, Premkumar had preferred Crl.A.No.692 of 2007 before the Hon'ble Supreme Court and the said Criminal Appeal was allowed and the Hon'ble Supreme Court quashed the criminal proceeding arising from F.I.R. in Crime No.53 of 1982 and P.R.C.Nos.1 of 1982 and 1 of 1983. The said order came to be passed on 03.08.2010.

8.Thereafter, Nallakaman has filed this Writ Petition on 19.01.2012 seeking compensation of Rs.20 lakhs for the torture committed by Premkumar, Sub-Inspector of Police. By the time the present Writ Petition filed, the said Premkumar retired from service and also died thereafter. Hence, the Writ Petition filed only against the State alleging that they are vicariously liable for the misdeed committed by the then Sub-Inspector of Police – Premkumar.

9.The third respondent has filed a detailed counter affidavit, factually admitting the averments made in the affidavit relying upon the order of the Hon'ble Supreme Court in Crl.A.No.692 of 2007, dated 03.08.2010, which has ultimately quashed the criminal complaint of the petitioner – Nallakaman and would submit that there is no ground to compensate the petitioner herein, particularly, when Premkumar against whom custodial violence has been alleged died on 16.11.2010, much prior to the filing of this Writ Petition.

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10.The learned counsel for the petitioner would submit that while the Revenue Divisional Officer's enquiry report clearly proves the custodial violence and violation of human rights by the Sub-Inspector of Police and the Police Constables, the State is vicariously liable to pay the compensation. Neither the order of the Hon'ble Supreme Court, dated 03.08.2010, which quashed the complaint against the Police Personnel by extending the benefit of doubt nor the delay could be the reason to deprive the petitioner to receive compensation.

11.This Court after considering the rival submissions and on perusing the records, finds that the Revenue Divisional Officer, Usilampatti, has conducted enquiry about the custodial violence and after recording the statements of nearly 212 witnesses, had marshalled the conclusion as below:-

> *''From the meticulous study of the deposition of witnesses, I come to organize the following pattern of sequence of incidents on 01.02.1982.*
>
> *On 01.02.1982 Bairavsingh, A.S.I. Reserve Police met the S.I. Premkumar to remind him of the house matter at about 7.00 a.m. in the morning. The Sub-Inspector was wearing only a mufti shirt (blue in colour) and Khaki pant. This has been conclusively proved by the deposition of the victims witnesses who have seen the Sub-Inspector torturing Nallakaman and Mathivanan and ill-treating Seeniammal and those who have seen the Sub-Inspector taking Nallakaman in leading chain and beating him the bazaar road between 09.00 a.m. and 10.00 a.m. The Sub-Inspector immediately sent word to bring Nallakaman to the Station. After some time, when Nallakaman arrived in the Station, he sent the three women Police Constables to summon Seeniammal also to the Station. Seeniammal by this time had gone to the School. It was around 08.40 a.m. Then the Women Police Constables went to the Vadipatti Panchayat Union School and took Seeniammal teacher outside the premises of the Station. This has been amply illustrated by the teacher witnesses of the School. As soon as Seeniammal reached the Station some verbal arguments should have taken place. As Seeniammal had tried to walk out, the Sub-Inspector would have pull her Saree covering trying to take liberties with her honour and provoking her. This would have definitely infuriated Nallakaman who prevented the Sub-Inspector from causing any immodest scene with his wife. He would have even clashed with the Sub-Inspector in the act of saving the honour of his wife. It could have been a scuffle between the Sub-Inspector and*

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Nallakaman in the process and the other Police Constables on duty should have separated the two. Ramakrishnan could have sustained the minor bruises then. Enraged and proved to the maximum, the Sub-Inspector immediately would have ordered the Police Constable Chelliah and Ramakrishnan and Mani to chain Nallakaman who had been already divested of his clothes except the underwear and banian. Seeniammal by this time, was ordered by Sub-Inspector to be put under restraint by the Women Police Constables lest she should try to walk away. Then Nallakaman was tied with chain, laid down and his legs were also roped. As discussed in the paragraph previously dealing with the torture of Nallakaman inside the torture of Nallakaman inside the station acts of beating had taken place. Mathivanan rushed upto the Sub-Inspector praying leniency and mercy at this juncture. He was also beaten as discussed in the previous pages. After putting Mathivanan and Seeniammal in the lock up Nallakaman was taken out for parading and public torture. Before this, message of this occurrence had been given to Deputy Superintendent of Police, Nilakottai and Sholavandan Police for additional reinforcements. As soon as the parading reached Aiyer hotel, the Sholavandan Police party arrived at the spot and collaborated with the local Police in beating Nallakaman. After parading, Nallakaman was taken back to the Station. The Deputy Superintendent of Police of Sholavandan also reached the Station shortly. Medical memos were prepared for the Sub-Inspector, Ramakrishnan, Nallakaman and Mathivanan and they were sent to the Sholavandan hospital around 12'O clock.

The torture of Nallakaman and Mathivanan is a clear case. Especially, in the instance of Nallakaman it is strong, stark, sound, sufficient and irrefutable because of the open parading and torture in the wide public gaze. There is a prima facie case of torture against the Sub-Inspector Premkumar, Head Constable Chelliah, Police Cosntables Ramarkrishnan and Subramanian. The evidence is too overwhelming consistent, forceful and pressing to be ignored. Even if Nallakaman had attempted on the life of Sub-Inspector Premkumar as alleged by the Police witness in the Station, then what he could have done is to restart him and put him in the lock up and eventually, the inexorable law should have taken its course. Of course, the Police have done their best to suppress the parading torture in their deposition

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and indicated the approach. I have suggested and specified above in protecting their interest. But the otherwise of the public witnesses is so cogent, clear and concurrent like the daily accurate voyage of the sun from east to west.

By way of conclusion and wistful reappraisal of the entire issue, I have my own misgivings as to how a private individual could dare to attack and police official inside the station when there were there police official inside the station when there were three Police Constables, three women Police Constables, the Officer himself and arms and ammunitions. If Nallakaman had attacked or prevented the Sub-Inspector it would have been only to protect the innate honour and modesty of his wife, an Indian woman, when the Sub-Inspector had gone to the extent of tugging out her saree. For the act of trying to shield the honour of the womanhood of his wife that the Sub-Inspector and the Police Constables have done is cruel, barbaric and inhuman.''

12.At this juncture, this Court feels it is appropriate to mention below the injuries caused to Nallakaman by the Police at Vadipatti Police Station on 01.02.1982.

''1. A lacerated wound over the head 4cm x ½ cm x 1 cm.

2. A lacerated wound over the nose 1 cm x ½ cm x ½ cm.

3. A lacerated wound over the back of left forearm 2 cm x 1 cm x ½ cm.

4. A contusion over the dorsum of left hand below the left thumb and left index finger 3 cm x 3 cm.

5. A contusion over the dorsum of right hand below right finger and right ring finger 3 x 3 cms.

6. An abrasion over the abdomen 6 cm above the umbilicus ½ x ½ cm.

7. Abrasion over the abdomen 2 cm above the sixth wound.

8. A liner contusion over the lower part of the left side of the chest 4 cm x ½ cm.

9. A liner contusion over the lower part of the left side of chest 2 cm above the eighth wound.

10. A liner abrasion over the back of right upper arm 1 cm below 4 cm x ½ cm.

11. A liner abrasion over the back of right upper arm 1 cm below tenth injury.

12. A liner abrasion over middle of back of right arm 3 cm x ½ cm.

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13. A liner abrasion over the right U/Arm 4 cm below twelfth (12th) injury 4 cm x ½ cm.

14. Two contusion over the back of right shoulder 7 cm x 1 cm.

15. A contusion over the back over left the scapula 10 cm x 5 cm.

16. A lacerated wound over the middle of right leg 2 cm x 1 cm x 1 cm.

17. A lacerated wound over the medial side of lower 1/3 of right leg 3 cm x 1 cm x 1 cm.''

13.The trial Court, which has taken up the final report filed by the Inspector of Police, Cholavandan, Vadipatti Police Station, in Crime No.52 of 1982 as well as the appellate Court namely, this Court, which has considered the criminal revisions and the criminal appeals arising out of the order passed by the learned Additional Sessions Judge-cum-Fast Track Court No.I, Madurai, passed in S.C.No.169 of 1983 and 21 of 1984, had concurrently held that Premkumar and other Police Officials had caused injuries to Nallakaman and he was paraded with leading chain from Vadipatti Police Station to Vadipatti bus stand with the full view of the public. While entertaining the appeal filed by the Premkumar, the Hon'ble Supreme Court had not dealt with the facts of the case, but had quashed the F.I.R. passing the following order:-

''The facts in detail have been stated in the impugned judgment and hence we are not repeating the same here.

Having regard to the facts and circumstances of the case, particularly in view of the fact that there are contradictory judgments of the trial Court, we give the benefit of doubt to all the accused persons.

Accordingly, the impugned judgment of the High Court as well as of the trial Court are set aside. Consequently, the criminal proceedings arising from F.I.R. (Cr.No.53/82), P.R.C.No.1/1983 and P.R.C.No.1/82 against all the accused persons shall stand quashed.''

14.The concurrent finding of fact by the trial Court and the first appellate Court has not been discussed by the Hon'ble Supreme Court while quashing the complaint and the proceedings followed thereafter. Therefore, the contentions of the State that the Hon'ble Supreme Court, by order dated 03.08.2010, had exonerated Premkumar from his guilt of using excessive force and violation of human rights of Nallakaman is an absurd argument. The extension of benefit of doubt to Premkumar without assigning any reason by the Hon'ble Supreme Court, in the considered view of this Court, cannot stand in the way of granting relief in the Writ Petition filed by Nallakaman seeking compensation from the State, even though the perpetrator of the crime died before filing of the Writ Petition and

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the Writ Petition filed after 30 years of the incident. This Court consciously makes the above observation.

15.Premkumar, perpetrator of the crime, was acquitted by extending benefit of doubt, however, the misdeed committed by Premkumar is on record by way of Revenue Divisional Officer's enquiry report, dated 18.04.1982. *De hors* the result of the criminal prosecution, the violence leashed out against Nallakaman by the Police in the Police Station and outside the Police Station in front of his wife and general public cannot be simply erased merely on the ground of delay. The State, which has encouraged the people like Premkumar to abuse their power on innocent person should be informed that personal life and liberty of a person cannot be deprived on any account. When deprivation of human rights is patently proved by record and through evidence, the State ought to have taken action on their own, instead of allowing the perpetrator of the crime to continue in service and say that the victim is not entitled for compensation in view of laches.

16.The Hon'ble Supreme Court in catena of decisions have time and again deprecating the custodial violence by the Police and abuse of power by the Police foisting false case. In spite of reprimanding some Men in Khaki have seldom realised their responsibility in protecting human rights.

17.In **D.K.Basu Vs. State of West Bengal** reported in **1997 SCC (Cri) 92**, the Hon'ble Supreme Court has observed as under:-

> *''11. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as "torture" — all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast.*
>
> *12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.''*

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18.In **S.Nambi Narayanan Vs. Siby Mathews and others** reported in **2018 (10) SCC 804,** the Hon'ble Supreme Court deprecated the high-handedness of Men in Khaki and Police by falsely fixing reputed Scientists in the case of espionage and directed the State to pay compensation and also to constitute a Committee to take action against the erred officials.

19.Relying upon its judgment in **Sube Singh Vs. State of Haryana** reported in **2006 (2) SCC (Cri) 54,** the Hon'ble Supreme Court in **S.Nambi Narayanan's case [cited supra]** observed that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21 of the Constitution by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a Civil Court, in the enforcement of private law remedy in tort, nor come in the way of the Criminal Court ordering compensation under Section 357 of the Code of Criminal Procedure.

20.Since Nallakaman, the aggrieved person, who faced ignominy at the hands of the Police is no more, this Court is of the view that as a token of redressal to his grievance, the State is directed to pay compensation of Rs.2,00,000/- [Rupees Two Lakhs only] to the family members of Nallakaman, within a period of two months from the date of receipt of a copy of this order.

21.With the above observations, this Writ Petition is disposed of.

Sd/-

Assistant Registrar (CRL)

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Sub Assistant Registrar(CS)

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To

1.The Home Secretary to the Government of Tamil Nadu,
Fort St. George,
Chennai - 9.

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

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3.The Inspector of Police,
Vadipatti Police Station,
Usilampatti Post,
Madurai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5.The District Collector, Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate(SR-3548[F] dated 02/02/2022)

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MGJ(10.02.2022) 10P 7C

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