



W.P.(MD)No.15974 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.09.2023

Pronounced on: 29.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.15974 of 2021

and

WMP(MD) Nos.112898 of 2021, 16952,16953 of 2023

M.Gayathri

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by the Secretary to Government
Home, Prohibition and Excise Department
Fort St.George,
Chennai – 600 009.
2. The Director General of Police
Director General of Police Office
Beach Road,
Chennai – 600 004.
3. The Inspector General of Police
Office of the Inspector General of Police
South Zone, Madurai District
4. The District Collector
Office of the District Collector
Ramanathapuram,Ramanathapuram District
5. The Superintendent of Police
Office of the Superintendent of Police
Ramanathapuram, Ramanathapuram District



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6. The Assistant Commissioner of Police
Officer of the Assistant Commissioner of Police(L&O)
Muthukulathoor
Ramanathapuram District

7. The Inspector of Police
(In charge Kadaladi Police Station)
Ilanchembur Police Station
Ramanathapuram District

8. Janeyrani
The Inspector of Police
Kadaladi Police Station
Ramanathapuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 and 2 to pay fair and reasonable amount of compensation to the petitioner's husband for the custodial torture and broken leg of the petitioner's husband and consequently direct the respondents 1 and 2 to take appropriate action on the eighth respondent by considering in accordance with law.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This writ petition has been filed to direct the respondents 1 and 2 to pay fair and reasonable amount of compensation to the petitioner's husband for the custodial torture and broken leg of the petitioner's husband and consequently direct the respondents 1 and 2 to take



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appropriate action on the eighth respondent by considering in accordance with law.

2. The contention of the petitioner is that she got married to Muthuramalingam and she got two children. Her husband was running grocery shop near Mudukulathur bus stand for the past 18 years. The Inanchembur, Kadalai and Mudukulathur the police officials foisted false criminal cases against her husband and he was enlarged on bail in the said cases and he has been regularly appearing before the trial Court. The above said police officials repeatedly harassed her husband in the name of enquiry at working place and her house, thereby the husband of the petitioner sent a representation to the Principal Secretary, Home Department , the Director General of Police, the District Collector, Ramanathapuram and other higher officials to protect him from repeated harassment.

2.1.While So on 22.08.2021 at about 11.00 pm., the seventh and eighth respondent came to her house along with driver and three other police officials took her husband into custody and a false case in Crime No.125 of 2021 was registered by the seventh respondent and they threatened her husband. On 23.08.2021 the relative of the petitioner went to Government Hospital, Ramanathapuram there her relative saw



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her husband with broken leg. He was admitted by seventh and eighth respondent for treatment for broken legs and her husband told her relative that the seven and eighth respondent beaten her husband with iron rods and they broke his legs and also registered a false case against him and remanded to judicial custody, Further her husband told them to inform the same to her and thereafter only she came to know about the said incident through her relative and thereafter her husband was remanded to Madurai Central Prison and later took treatment in Ward No.213 at Government Rajaji Hospital as inpatient, Madurai. When her husband was arrested by police he was fine and legs were also fine but after when he went to custody of the seventh and eighth respondent her husband's leg was broken.

2.2. Therefore the seventh and eighth respondent are responsible. for the fracture sustained by her husband. When her husband was taking treatment in Government Hospital, Ramanathapuram the learned Magistrate came to hospital for remand at that time her husband has given oral complaint before the learned Magistrate about the harassment, torture and breaking of legs. The learned Magistrate recorded the said complaint and thereafter her husband was transferred to Madurai Government Rajaji Hospital. After enquiry the Madurai Central Prison officials admitted him to Madurai Rajaji Hospital and then



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he is undergoing treatment for fracture and grievous injuries sustained by him. On 23.08.2021 the petitioner has sent representation to the respondent and conduct enquiry to take appropriate action against the seventh and eighth respondents and to pay adequate compensation to the husband for the illegal torture but no action has been taken, hence she has filed the present writ petition for compensation for taking action against the eighth respondent.

3. The seventh respondent filed counter stating that the husband of the petitioner involved in various criminal cases and on 22.08.2021 the seventh respondent got intimation from the Government Hospital, Muthukulathoor and on the basis of the intimation the respondent police visited the hospital and obtained statement from the injured Balamurugan., S/o.Thiruvudaiyar and he stated that there was enmity one Muthuramanlingan S/o.Muthumani and Thirumurugan(who is the cousin brother of the injured) regarding milching of cows. Further he stated that on 22.08.2021 at about 20.30 hrs while he , his wife Kaliyammal and the said Thirumurugan and his sister's husnand Sappani were standing infront of the house at that time the accused Muthuramalingam came to the place and quarrelled with Thirumurugan and the same was questioned by the injured, immediately the said Muthuramalingam took sword and attacked the injured with an intention



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to murder him and caused injuries and also threatened the general public who tried to rescue the injured.

3.1.Based on that compliant a case was registered in crime No.123 of 2021 for the offences under Sections 293(b),323, 324,506(ii), 307 of IPC, Section 4 of TNPHW Act r/w. 25(1)(A) of Arms Act. During the course of investigation on 23.08.2021 at 12.00 hrs the respondent police arrested the accused and remanded to judicial custody. During police custody the accused fell down in the rest room in the police station and caused injuries on his leg. The averments stated by the petitioner regarding place of arrest and intimation are not correct but the respondent police never visited the residence of the petitioner and the respondent police intimated about the arrest of the accused to his wife through SMS on her mobile number. The petitioner gave representation dated 23.08.2021 and the same was forwarded to the Deputy Superintendent of Police for enquiry and the same was enquired. Further the husband of the petitioner involved in eight previous cases in various police stations and only inorder to escape from the clutches of law the petitioner herein has filed this present writ petition with false allegations.



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4. The learned counsel appearing for the petitioner would contend that the seventh and eighth respondent have taken the husband of the petitioner in the name of enquiry and thereafter assaulted him in a black and blue manner and broken his leg and also filed a false case against him. During custody due to harassment and torture and due to the assault made by the police officials his leg was broken and thereby the petitioner has sent representation dated 23.08.2021 and the same was not considered, hence she filed the present petition for compensation for custodial torture of the seventh and eighth respondent. Further departmental action to be taken as against the erring officials, therefore the writ petition may be allowed in favour of the petitioner.

5. The learned Additional Public Prosecutor appearing for the respondents would contend that the husband of the petitioner involved in so many previous cases and he is a habitual offender. On the date of arrest one Balamurugan has given complaint before the seventh respondent alleging that the husband of the petitioner namely Muthuramalingam attacked with sword and caused grievous injuries and also attempted to commit murder, thereby the respondent police arrested the husband of the petitioner and when he was in custody in the police he fell down in bathroom and thereby he got fracture in leg and therefore the respondent is not responsible for the fracture



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sustained by the husband of the petitioner. Already the petitioner has given representation dated 23.08.2021 and the same was enquired by the Deputy Superintendent of Police(Madurai) and the same was closed and in order to escape from the clutches of law this case has been registered as against the petitioner on the instigation of the accused, hence this writ petition has no merits and it is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. The contention of the petitioner is that the police foisted false case against the husband of the petitioner and he was illegally arrested and during custody her husband was brutally attacked by the seventh and eighth respondent thereby he sustained injuries on his legs. Therefore she sent representation dated 23.08.2021 and the same was not considered. The contention of the respondent police is that the husband of the petitioner is having so many previous cases and on the date of arrest i.e.,22.08.2021 the husband of the petitioner was arrested in a related case in Crime No. 123 of 2021 for the offences under Sections under Sections 294(b),323,324,506(ii),307 of IPC and section 4 of TNPHW Act r/w.25(1) of Arms Act and when he was in police custody he fell down in bathroom, thereby he got fracture in the legs. In this case it is admitted by the respondents that the husband of the petitioner was



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arrested by the seventh and eighth respondent and the counter filed by the respondent also would show that the petitioner sustained injuries during custody and the only contention of the seventh respondent is that he fell down in the bathroom and his leg was broken. This Court has gone through all the records from the Central Prison, Madurai and it is seen that the petitioner sustained injuries on his right leg and he has taken treatment from 07.09.2021 to 21.10.2021. Further the medical records shows that the husband of the petitioner got fracture on his right leg. Further the petitioner has produced the remand report of the husband of the petitioner and in the remand report the learned Magistrate has recorded the statement of the accused and at the time of remand he categorically stated that about the torture made by the police. More over the police also admitted that the husband of the petitioner got injuries during custody. The police have denied the torture made by them. Since the respondents themselves admitted that the injuries sustained during the course of custody the police only will be responsible for the injuries sustained by them. Based on the statement recorded by the learned Magistrate and the medical records, it is clear that the husband of the petitioner was sustained injuries on his legs.

8. In this context the learned counsel appearing for the petitioner relied on the judgment of the Hon'ble Apex Court in the case of **Rudul**



Sah .vs. State of Bihar and another reported in **(1983) 4 SCC 141,**

wherein it is held as follows:

“We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's Counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the petitioner a further sum of Rs. 30,000 (Rupees thirty- thousand) in addition to the sum of Rs. 5,000 (Rupees five thousand) already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent”

ii) Nilabati Behera .vs. State of Orissa reported in (1993)2 SCC 746,

wherein it is held as follows:



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"This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar and Anr., [1983] 3 SCR 508 granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have molded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply And the courts have to act firmly but with certain amount of circumspection and self restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J"

iii) S.NambiNarayanan.Vs. Siby Mathews reported in (2018) 10 SCC

804, wherein it is held as follows:

If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked



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when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant “

9. On careful reading of the above said judgments it is clear that filing of civil suit for granting compensation will not bear the constitutional Court to grant compensation taking recourse of public law and the Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under [Article 21](#) of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings



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10. In the case on hand also on perusal of records it is seen that the husband of the petitioner sustained injuries while he was in custody and thereby the State has to pay compensation to him. Therefore as discussed supra this Court is of the opinion that the husband of the petitioner is entitled for a sum of Rs.5,00,000/-(Rupees Five Lakhs only) towards compensation for the injuries sustained by him during police custody. The first and second respondents are directed to pay a sum of Rs.5,00,000/-(Rupees Five Lakhs) to the husband of the petitioner for the injuries sustained by him within a period of two months from the date of receipt of a copy of this order. As far as departmental action is concerned it is for the second respondent and other competent authorities to decide the matter and this Court cannot issue direction under Article 226 of the Constitution of India and the petitioner cannot seek remedy under Article 226 of the Constitution of India to take departmental action as against the seventh and eighth respondents as per the judgment of this Court in the case of ***Sudalaikanu .vs. The Principal Secretary to Government and others.***



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11. With the above direction this Writ Petition is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

29 .09.2023

Index :yes/No

Internet:yes/No

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To

1. The Secretary to Government
The State of Tamil Nadu
Home, Prohibition and Excise Department
Fort St.George,
Chennai – 600 009.
2. The Director General of Police
Director General of Police Office
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(In charge Kadaladi Police Station)
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8. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



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P.DHANABAL, J

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