



WEB COPY

W.P.(MD).No.23921 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on: 14.09.2023

Order Delivered on: 13 .10.2023

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P.(MD).No.23921 of 2018
and W.M.P.(MD).No.21635 of 2018

S.Santhi

...Petitioner

Vs

- 1.State of Tamil Nadu,
represented by its Secretary,
Public Department,
St.George Fort,
Chennai.
- 2.The Director General of Police,
Tamil Nadu Police Head Quarters,
Mylapore,
Chennai.
- 3.The District Collector,
Sivagangai District,
Sivagangai.
- 4.The Superintendent of Police,
Sivangangai District,
Sivagangai.
- 5.The Inspector of Police,
District Crime Branch,
Sivagangai,
Sivagangai District.
- 6.The Inspector,
South Police Station,
Karaikudi,
Sivagangai District.



7. Inspector of Police,
Kundrakkudi Police Station,
Sivagangai District.

8. Raveendran,
Inspector of Police,
Kundrakkudi Police Station,
Sivagangai District.
Now working at Pallathur Police Station,
Sivagangai District.

9. State of Tamil Nadu
represented by The Home Secretary,
Home Department,
St. George Fort,
Chennai-600 009.

...Respondents

(R9 is impleaded vide Court order dated 30.08.2023 in WMP.(MD).No.16771 of 2023 in W.P.(MD).No.23921 of 2018)

PRAYER: Writ Petition has been filed under article 226 Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 3 to pay the compensation of Rs.25 lakhs to the petitioner.

For Petitioner : M/S.P.Aju Tagore
For R1 to R7 & R9 : Mr.Anbunithi
Additional Public Prosecutor
For R8 : M/s.AL.Ganthimathi
Senior counsel for
Mr.C.Mahadevan

ORDER

This Writ Petition has been filed by the petitioner to issue a Writ of Mandamus directing the respondents 1 and 3 to pay the compensation of Rs.25 lakhs to the petitioner.



2. According to the petitioner, the husband of the petitioner namely Subramanian was working as goldsmith and he had been running workshop in his house. On 11.04.2017 at about 00.30 hours, the 8th respondent along with 5 other known police personnels' brought the petitioner's husband in a police vehicle to her home with multiple injuries all over his body. When she enquired about the same, the 8th respondent replied that he involved in murder of one Vallikannu dated 31.01.2017 and the 8th respondent looted their jewels which was kept in her home. Thereafter, her husband was also taken to his jewelry work shop, from where also the 8th respondent looted the jewels, which actually belong to the customers. Thereafter, the husband of the petitioner along with her son were taken by the 8th respondent and the same was questioned by the petitioner, for which, the 8th respondent threatened her with dire consequences.

(ii) On 11.04.2017 at about 8.00 clock the petitioner's son contacted over phone and told that her husband died and his body was kept at Karaikudi Government Hospital. Thereafter, she rushed to Karaikudi Government Hospital and asked her son, about the death of her husband and he replied that during the police custody, her husband died due to the physical torture made by the police personnel. Thereafter, the petitioner approached the Deputy Superintendent of Police, Karaikudi for lodging a complaint against the 8th respondent and other police personnels, for which, the FIR in Crime No.95/2017 has been registered for the offence under section 174 Cr.P.C.



(iii)After the death of the above said Subramanian, an enquiry was conducted by the learned Principal District Munsiff cum Judicial Magistrate, Karaikudi. At that time, the petitioner produced her husband's torn dresses and also narrated about the custody torture made by the police. In the mean time, the 8th respondent and others, in order to escape from the custodial death of her husband, they falsely implicated the deceased, in Crime No.15 of 2017 on the file of the 7th respondent. There was no action as against the police officials who were responsible for the death of her husband. Hence, the petitioner on 10.08.2017, sent a representation to the respondents 1 to 4 to take action against the police officials and for compensation. But no action was taken on the representation of the petitioner.

(iv) The 5th respondent summoned the petitioner and her son. In the name of enquiry, they forced the petitioner to withdraw the complaint against the 8th respondent and other police personnels. In the mean time, the State Human Rights Commission, summoned the petitioner and her son and she also appeared, and gave statement with regard to the death of her husband. The husband of the petitioner died due to the custodial torture and she along with her children depending upon her husband who was only bread-winner of her family. Therefore, the respondents are jointly and severally liable to pay compensation to the petitioner for the custodial death of her husband.



3. The 8th respondent filed counter stating that on 31.01.2017, a lady by name Valli kannu aged about 74 years was murdered in Athangudi Village and the said crime was being investigated by the 8th respondent and they were in search of the accused. While so, on 11.04.2017, at about 3.00 am., on the basis of some secret information, they were inspecting the vehicles in Soorakudi Junction, Trichy Highway, along with Head Constable 742, 1524, Grade I Police Constable 1180, PC 1195 and a two wheeler splendour plus red colour bearing registration No.TN 63 AY 5308 was passing on the way and when they enquired him, he stated that his name is Subramanian and he belongs to Athangudi and he was found with torn clothes.

(ii)On suspicion, when he was enquired further, it was found that he had done chain snatching on 09.04.2017, and he was beaten by the public and he was coming after escaping from the public and was found with torned clothes. The said incident was also registered in Crime No.216/2017, under sections 394, 511 of IPC before the Devakottai Town Police Station. In view of the suspicion, they took him to Kundrakudi Police Station and also took the two persons as witnesses. The accused Subramanian was enquired before the para police constable 1680 and he stated that on 09.04.2017, he snatched a chain from a lady before the Devakottai Alagapuri Murugan Koil and when she started shouting, the public had rushed and he was beaten up with stones and he got injured and escaped by taking his bike.



(iii) Further on enquiry, he accepted that he murdered the lady by name Vallikannu in Athangudi. Further in the year 2004, he had beaten an old lady and took up the jewels from her in Keelaseeval Patti. In March 2017, he had stolen the chain from a girl, who was was living near Devakottai and after acceptance of all his crimes in the enquiry and explaining all the incidents, he said, he will produce the cell phone and jewels, which he had taken away from the lady at Athangudi.

(iv) Insofar as murder at Athangudi is concerned already FIR in Crime No.15 of 2017, has been registered under sections 449, 302 & 380 of IPC and the same is also under investigation. Pursuant to his confession, the said Submanian was taken by the 8th respondent along with the witnesses to Athangudi and he stated that he had given the keys of his shop to one Shanmugam Asari. When they went to Devakottai, the Shanmugam Asari said that the keys had been handed over in the house of Subramanian.

(v) Thereafter at about 4.30 a.m., they went to the house of Subramanian in Athangudi, the said Subramanian had changed his torned clothes and also had taken his keys and his son Rathnavel was also taken along them and they went to the Pattarai. In the said pattarai, he took a gold chain from small plastic box which has been stolen from the lady at Athangudi. Thereafter, he was taken to Trichy along with his son Rathnavel and Shanmugam; while on the way to Trichy at about 5.30 a.m., the said Subramanian complained of chest pain and



immediately, they turned the vehicle to Karaikudi and brought an ambulance near NGO Colony Housing Board, his position has become critical, they called upon by the doctors and requested to take him to General Hospital, Karaikudi. Immediately, by 6.20 a.m., he was taken to General Hospital, Karaikudi and the duty doctor said Subramani had died.

(vi) After the death of Subramanian, FIR in Crime No.95 of 2017 was registered. The above said entire incident had happened in the presence of the son of the petitioner namely Rathnavel and the deceased not died due to the harassment made by the police officials. It is reported that he has consumed cyanide and due to heart attack, he died. Therefore, the respondents is no way responsible for the death caused to the deceased Subramanian. Hence, the petition is liable to be dismissed.

4. The 9th respondent also filed the status report stating that the investigation was transferred to CBCID and the same is under investigation and the National Human Rights Commission has issued show cause notice to the Government of Tamilnadu to sanction a compensation of Rs.3.00 lakhs vide show cause notice No.1034/22/0/2017/PCD/M-5 dated 14.06.2021. Accordingly, the Government has sanctioned an amount of Rs.3.00 lakhs as compensation and the same was reported to the Commission vide Government letter dated 24.12.2021. Further as per G.O.(Ms).No.359, Public (Law and



Order-A) Department, dated 06.04.2015, one shall be eligible for an amount of Rs.5.00 lakhs as compensation if the death of the victim is due to police torture.

The petitioner's case shall be examined and action will be pursued, subject to the final investigation report to be received from the CBCID in the said case.

5. Learned counsel appearing for the petitioner would contend that the respondent police had taken the husband of the petitioner, harassed him, assaulted him and put up murder case in Crime No.15 of 2017. The police have taken the petitioner's husband to the house of the petitioner with torn clothes and thereafter, they taken the jewels from the house and work place of her husband. Thereafter, again the police came to the house of the petitioner and taken her husband along her son. On 11.04.2017, the petitioner's son made phone call to the petitioner and stated that her husband died, during the custody of the police. In fact, the 8th respondent along with other police personnel heavily attacked the deceased in a black and blue manner and tortured him to admit the offence of murder in Crime No.15 of 2017. Therefore, the respondents are liable to pay the compensation to the petitioner.

6. The learned counsel for the petitioner to support his contention has relied the following judgments:-

(i) Peoples' Union for Democratic Rights through its Secretary and another Vs.



Police Commissioner, Delhi Police Headquarters and another reported in (1989) 4 SCC 730.

(ii) D.K.Basu vs.State of West Bengal and Ashok K.Johri Vs.State of Uttar Pradesh reported in (1997) 1 SCC 416.

(iii)Suresh and another Vs.State of Haryana reported in (2015) SCC 227.

On careful reading of the above said judgements, it is clear that in the custodial death cases this Court can award compensation under Article 226 of Constitution of India.

7. Learned counsel appearing for the respondents would contend that the deceased was involved in so many crimes and he also involved the murder case on Vallikannu, the FIR has been registered in Crime No.15 of 2017. When they were engaged in vehicle check up, at that time, the deceased came in a two wheeler. At the time of enquiry, he admitted that he involved in so many crimes and thereby, he was taken to the places of occurrence. While so, they were proceeding to Trichy along his son Rathnavel and one Shanmugam, the deceased complained of chest pain, and immediately they turned the vehicle to Karaikudi Government Hospital and he died in the hospital. Therefore, the respondents is no way responsible for the death of the deceased. Further the deceased consumed cyanide, due to heart attack, he died. Therefore, the petitioner is not entitled for the compensation and the petition is liable to the



dismissed.

W.P.(MD).No.23921 of 2



8. This Court heard both sides and perused the materials available on record.

9. On perusal of records, the admitted fact is that the deceased died during the custody of the police. According to the petitioner, the police made harassment and beaten the deceased and thereby, he sustained injuries and died while he was in police custody. The respondents also admitted that the deceased was taken for enquiry and he was under the custody of the 8th respondent police, taken to Trichy. While on the way to Trichy, the deceased stated that he got chest pain. While admitting in the Karaikudi Hospital, he was reported dead. From the counter affidavit filed by the 8th respondent, they admitted that the deceased died during the custody of the police. However, the respondent stated the deceased died due to consumption of cyanide and due to heart attack.

10. According to the counter filed by the 8th respondent, the deceased was under the custody from 11.04.2017 at about 3.00 a.m.,. Thereafter, he was enquired by the police personnel and on enquiry, they came to know that he was involved in so many crimes. Thereafter, he was taken to his home and then taken to the Police Station. Thereafter, he was taken to the house of one Shanmugam Asari and then, he was taken to Trichy. While on the way to Trichy,



he complained of chest pain. Therefore, from the above said admissions made by the 8th respondent, it is clear that the deceased was under the custody from 11.04.2017 at about 3.00 a.m., onwards and he was subjected for enquiry. While so, it is for the 8th respondent to explain as to how the cyanide came to the hands of the deceased. When they were arrested the accused at about 3.00 a.m., and he was under the custody all along with them, how he consumed cyanide has to be explained. While in the custody of the police, the deceased died and thereby, the respondents only responsible for the death of the deceased. Further the respondents put up a story that on 09.04.2017, the deceased involved in chain snatching and he was beaten up by the public and he was coming after escaping from the public and was found with torned clothes. But the vehicle check up was made on 11.04.2017, at about 3.00 a.m., if so, how it is possible to wear the same clothes for more than two days. Further even if it is assuming that the deceased was attacked by the public, then why the respondent police have not admitted the deceased in the Hospital immediately after knowing about the condition of the deceased with injuries. Therefore, the theory set up by the police is unbelievable and without any records, this Court cannot form any opinion with regard to the story put up by the respondent police. However, the deceased died during the police custody and thereby, the respondent police are liable to pay the compensation to the petitioners.



11. Coming to the quantum of compensation, according to the petitioner, her husband was working as gold smith and no document was filed to prove the income of the deceased. However, for deciding the quantum, there is no formula for custodial death. Therefore, this Court safely follows the method adopted in MCOP cases. In this context the learned counsel appearing for the petitioner also relied the judgement in Sanjay Gupta and others .vs. State of Uttar Pradesh reported in (2022) 7 SCC 203, wherein the Hon'ble Supreme Court has held that violation of life and personal liberty, compensation to the victims to be computed in accordance with principles of just compensation as in the case of accident under the Motor Vehicles Act by the Motor Accident Claims Tribunal. It is admitted by both the parties that the son of the petitioner was aged about 51 years at the time of occurrence.

12. According to the petitioner, the deceased was aged about 51 years and no specific earnings was mentioned by the petitioner. However, this Court can take Rs.15,000/~ as monthly income of the deceased. According to the case of Sarala Verma Vs. Delhi Transport Corporation, the multiplier for the age group of 51 years is -13-. In the case of National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017(2) TN MAC 609 (SC), it is held that future prospects for the deceased can be fixed at 10%.



Therefore, the income of the deceased can be calculated as follows:

Monthly income of the deceased would come as Rs.16,500/~

(Rs.15,000/~ + Rs.1,500/~ = Rs.16,500).

Annual income of the deceased would
come to Rs.1,98,000/~(Rs.16,500/~ x 12= Rs.1,98,000/~).

Considering the dependency of the deceased, 1/3 rd of the income of the deceased has to be deducted towards his personal expenses and thereby, the annual income of the deceased would come Rs.1,32,000/~ (Rs.1,98,000/~ ~ Rs.66,000/~ = Rs.1,32,000/~)

By applying the multiplier 13 for the age group of 51 years, the amount would come as Rs.17,16,000/~ (Rs.1,32,000/~ *13 = Rs.17,16,000/~).

13.Further, a sum of Rs.18,000/~ is awarded for the loss of estate, towards funeral expenses a sum of Rs.18,000/~ is awarded and a sum of Rs. 48,000/- is awarded towards consortium and thus a total sum of Rs.18,00,000/~ is hereby awarded as compensation.

14. The respondents 1 to 4 are directed to pay a sum of Rs.18,00,000/~ (Rupees Eighteen Lakhs only) to the deceased family members, i.e., wife and son of the deceased, after proper identification, within a period of two months from the date of receipt of a copy of this order. Out of the compensation



W.P.(MD).No.23921 of 2

amount, wife and son of the deceased are entitled to get equal share towards compensation. They are also entitled to get interest at the rate of 6% per annum from the date of death of the deceased till the realization of the amount. The compensation amount if any already paid to the wife of the deceased by the Government shall be adjusted in the payment of compensation amount by the respondent-authorities. If any difficulties, the official respondents can take assistance of the District Legal Services Authority, Sivangangai District.

15. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

13.10.2023

mpa

Index : Yes/No

Speaking order/non-speaking order



To

- 1.The Secretary,
Public Department,
St.George Fort,
Chennai.
- 2.The Director General of Police,
Tamil Nadu Police Head Quarters,
Mylapore,
Chennai.
- 3.The District Collector,
Sivagangai District,
Sivagangai.
- 4.The Superintendent of Police,
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Now working at Pallathur Police Station,
Sivagangai District.
- 9.The Home Secretary,
Home Department,
St.George Fort,
Chennai-600 009.



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W.P.(MD).No.23921 of 2

P.DHANABAL, J.,

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Pre-Delivery order in
W.P.(MD).No.23921 of 2018
and W.M.P.(MD).No.21635 of 2018

13.10.2023