

W.P.(MD).Nos.22169 and 22170 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	29.11.2024
Pronounced On	:	15.05.2025

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P.(MD).Nos.22169 and 22170 of 2021

Ramesh

... Petitioner

in W.P.(MD).No.22169 of 2021

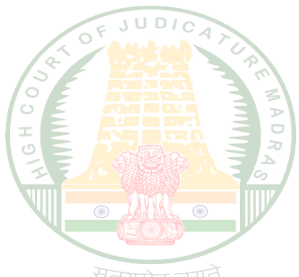
Manikandan

... Petitioner

in W.P.(MD).No.22170 of 2021

Vs.

1. The Home Secretary,
Secretary to Government,
Chennai 600 001.
2. The Director General of Police,
DGP Office, Radhakrishnan Salai,
Chennai 600 001.
3. The Superintendent of Police,
Sivagangai District
Sivagangai 630 562.
4. The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District 630 611.
5. Rajesh
6. Karunanithi



W.P.(MD).Nos.22169 and 22170 of 2021

7.Ramamoorthy

... Respondents
in both W.Ps.

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus or any other writ or order or direction of like nature directing the respondents No. 1 to 3 to pay Rs.20,00,000/- (Twenty Lakhs Rupees) as compensation for false prosecution without any scrap of evidence or documents in order to escape from the custodial torture, made by the respondents 5 and 6, of accused No.1 namely Ramesh in the fourth respondent Police Station in the acquitted case in C.C.No.240 of 2019,

For Petitioner : Mr.R.Senthil Kumar

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor
for R1 to R4 and R9

: Mr.G.Mohan Kumar for R5

: M/s.P.Jessi Jeeva Priya for R6 to R8

ORDER

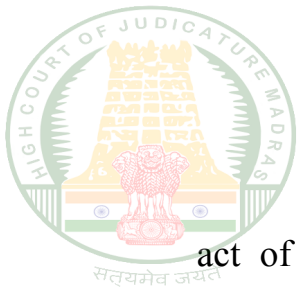
The petitioner was arrested in the midnight of 26.07.2010 (at 01.00 a.m.) by the 5th and 6th respondents. The 5th and 6th respondents brutally attacked the petitioner in the 3rd respondent's police station, caused injuries and released him from the custody in the night. On the same day, namely



W.P.(MD).Nos.22169 and 22170 of 2021

on 26.07.2010 at 10.40 p.m, the petitioner was admitted in the Government

Rajaji Hospital, Madurai for the injuries and he took treatment for two days and the doctor found some internal injury on the body of the petitioner. The 5th and 6th respondents received the complaint from the 7th respondent namely Ramamoorthy the then Assistant Engineer, Public Work Department against the petitioner and others with allegation that they criminally intimidated the said Ramamoorthy when he questioned the illegal transportation of sand, and manipulated the C.S.R.No. 607 of 2010 and registered the case against the petitioner. Therefore, he made a complaint before the 3rd respondent with allegation that the 5th and 6th respondents committed torture at the police station without any complaint and also fabricated the C.S.R.No.606 of 2010 and laid a false complaint. There was no response for the complaint and hence he filed the direction petition before this court in CrI.O.P.(MD).No.5189 of 2012 to register a case against 5th and 6th respondents on the basis of his complaint dated 29.11.2010. This court issued direction to the 3rd respondent police to conduct an enquiry and take necessary action on the basis of the Hon'ble Constitution judgment of the Supreme Court in the case of ***Lalitha Kumari Vs State of UP*** reported in ***2013 (4) Crimes 243 (SC)***. Thereafter, an enquiry was conducted by the jurisdictional DSP and he found that the



W.P.(MD).Nos.22169 and 22170 of 2021

act of the 5th and 6th respondents is high-handed and same required departmental action. Parallely the case registered against the petitioner ended in acquittal in C.C.No.240 of 2019 on the file of the District Cum Munsif, Thiruppuvonomam. In the said circumstances, the petitioner made a representation to the 1 to 3 respondents to take action and grant compensation. There was no action and hence he filed this writ petition seeking the compensation.

3.The Learned counsel for the petitioner reiterated the above pleadings and specifically submitted that custodial torture was committed by the respondents No. 5 and 6 and the same was clearly proved through the report of the jurisdictional DSP and various evidence of the police officers adduced in the course of the trial in C.C.No. 240 of 2019 on the file of the District Cum Munsif, Thiruppuvonomam. He also submitted that in the departmental proceedings, there is a finding against the 5th and 6th respondents. Therefore, there is a *prima facie* case to show that the allegation mentioned in his complaint dated 29.11.2010 is true. To prove the police torture this evidence is sufficient to take action against the said persons and grant compensation.



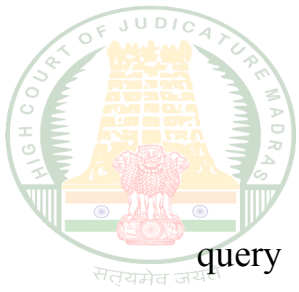
W.P.(MD).Nos.22169 and 22170 of 2021

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4. Per contra, The Learned Senior Counsel Thiru B. Saravanan, appearing for the respondent Nos.5 and 6 submitted that the allegations made by the petitioner against the 5th and 6th respondents are false. It is true that the jurisdictional DSP gave a finding against them and recommended for the departmental proceedings and in the said departmental proceedings, punishment was imposed against the 5th and 6th respondents. But, the said punishment was set aside. Therefore, the petitioner's case on the basis of the finding in the departmental proceedings has no legs to stand on.

4.1. The Learned Senior Counsel Thiru B.Saravanan further submitted that the petitioner already filed the petition under section 357 of Cr.P.C. Seeking the compensation and the same was dismissed. Therefore, this present petition seeking the same relief is not legally maintainable.

5. The Learned Additional Public Prosecutor reiterated the submission of the Learned Senior Counsel Thiru.B.Saravanan and submitted that the departmental proceedings initiated against the respondents No.5 and 6 was decided in favour of the respondent Nos.5 and 6 and he filed the counter on behalf of the 3rd respondent in respect of the



W.P.(MD).Nos.22169 and 22170 of 2021

query raised by this court about the action taken on the basis of the direction issued by this court in CrI.O.P.(MD).No.5189 of 2012, a counter was also filed on behalf of the 3rd respondent contending that the said complaint was closed and there was no report available. The Learned Additional Public Prosecutor seeks for the dismissal of the writ petition.

6. This Court considered the rival submission made by either side and perused the records and the precedent relied by them.

7. The respondents No. 5 and 6 registered the case in Crime No. 283 of 2010 under section 294 (b), 420 and 506 (ii) of I.P.C. against the petitioner and others with allegation that they illegally took sand and attempted to transport the same without permission, on the basis of the complaint made by the 7th respondent. The said case entered in an acquittal.

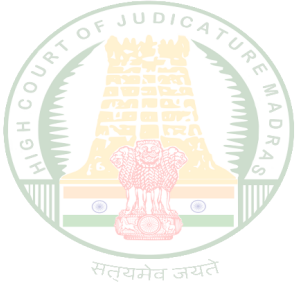
7.1. The petitioner specifically made allegation against the 5th and 6th respondents that they illegally detained him in the police station by taking him to the police station at the odd hour on 21.07.2010 (early morning 01.00 a.m.) from his house and brutally attacked him and released



him in the night hours of 21.07.2010. Immediately he got himself admitted in the Madurai Government Rajaji Hospital and took the treatment as inpatient and he made a complaint against this 5th and 6th respondents. The same was received and CSR No.607 of 2010 was given. Thereafter, subsequently the 5th and 6th respondents received the complaint from the 7th respondent and filed a false case in CSR No.607 of 2010 and registered the FIR against the petitioner. The said allegation of the ill-treatment and false case was substantiated by the judgment rendered in the criminal case and the report of the Jurisdictional DSP and the finding in the departmental proceedings. The material portion of the finding is as follows:-

“2) 26.07.10ம் தேதி 18.00 மணிக்கு பொறுப்புள்ள உதவி பொறியாளர் பொதுப்பணித்துறை மணல் திருட்டு சம்மந்தமாக புகார் கொடுத்துள்ளார் என எடுத்துக்கொண்டாலும் அது பிடிக்கக்கூடிய குற்றம் என நன்கு அறிந்திருக்கும் மனுவை பெற்ற த.கா.855 உடன் வழக்கு பதிவு செய்யவில்லை ஏன்? மேலும் 26.07.2010 மற்றும் 27.07.2010 ஆகிய தேதிகளில் சார்பு ஆய்வாளர் திரு. ராஜேஷின் பணி என்ன? 28.07.2010ம் தேதி வழக்கு பதிவு செய்ய வேண்டிய காலதாமதம் ஏன்? இவைகளை உற்று நோக்கும் போது சார்பு ஆய்வாளர் திரு.ராஜேஷ் மற்றும் த.கா.855 கருணாநிதி இருவரும் காவல்துறை பணிக்கு முரணாக செயல்பட்டது என அறிய வருகிறது.

3) 26.07.2010ம் தேதி 18.00 மணிக்கு கிழித்து



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W.P.(MD).Nos.22169 and 22170 of 2021

ஒட்டப்பட்ட மனு எண்.607/10ல் த.கா.855 திரு.கருணாநிதி கையெழுத்திற்கு கீழ் என கார்பன் வைத்து எழுதப்பட்டுள்ளது, கையெழுத்து த.கா.855 கருணாநிதியின் அசலாக உள்ளது. ஆகையால் தவறு நடந்துள்ளது தெளிவாகிறது. மேலும் திருப்புவனம் பொது நாட்குறிப்பில் மனு ரசீது எண்.607/10ல் ராமமூர்த்தி புகாரின் பேரில் கொடுக்கப்பட்டதாக பாலகுரு பெயரை சொரண்டி ராமமூர்த்தி பெயர் எழுதப்பட்டுள்ளது. மேலும் மனுப்பதிவேட்டில் மனு எண்.607/10 பதிவில் பெண் முனிகா 274 கைப்பட எழுதியுள்ளார். அதை சுரண்டி அழித்துவிட்டு அதன் மேல் over writing ஆக த.கா.855 கருணாநிதி எழுதியுள்ளார் என நம்பகரமாக அறிய வருகிறது. மொத்தத்தில் திருப்புவனம் காவல்நிலைய மனுப்பதிவேடு மனு ரசீது, பொது நாட்குறிப்பு ஆகியவைகளில் சாட்சி ரமேஷ், திருமுருகன் மற்றும் மணிகண்டன் ஆகியவர்களை பழிவாங்கும் நோக்கில் அதிகாரத்தை தவறாக பயன்படுத்தி False writing போடப்பட்டுள்ளது என புதிய சந்தேகத்திற்கு இடமின்றி தெளிவாகிறது.

எனது விசாரணையின் முடிவில் மணல் விற்பனையில் அரசு விதிக்கு முரணாக 2யூனிட் ரூ.672க்கு பதிலாக ரூ.1500 பெற்றதில் உதவி பொறியாளர் திரு.ராமமூர்த்திக்கும் மணல் அள்ளும் லாரி உரிமையாளர் காளீஸ்வரன் வகையறாவுக்கும் மனஸ்தாபம் ஏற்பட்டுள்ளது. மணல் கொள்ளையில் பங்களிப்பு பெறும் சார்பு ஆய்வாளர் திரு. ராஜேஷ் மற்றும் த.கா.855 திரு.கருணாநிதி ஆகியார்கள் மூலம் பழிவாங்க நினைத்து சாட்கி காளீஸ்வரன் லாரியை திருப்புவனம்



காவல்நிலையத்திற்கு முன் சார்பு ஆய்வாளர் திரு.ராஜேஷ், த.கா.855 கருணாநிதி ஆகியார்கள் நிறுத்தியுள்ளார்கள். இதன் விபரம் அறிந்த லாரி உரிமையாளர் தம்பி ரமேஷ் முறையாக மணல் எடுத்து செல்ல அனுமதி சீட்டு இருக்கும் போது ஏன் நிறுத்தியுள்ளீர்கள் என கேட்டுள்ளனர். நம்மிடம் கேள்வி கேட்பவன் யாருடா இவன் என்ற அதிகார துஷ்பிரயோகத்தில் ரமேஷ் என்பவரை தாக்கி காயப்படுத்தியுள்ளார்கள்? தாக்கியுடன் வழக்கு ஏதம் பதிவு செய்யாத நிலையில் ரமேஷையும் லாரியையும் விடுவித்துள்ளார்கள். விடுவிக்கப்பட்ட ரமேஷ் மதுரை இராஜாஜி அரசு மருத்துவமனையில் உள்நோயாளியாக சேர்ந்து சார்பு ஆய்வாளர் ராஜேஷ் மற்றும் த.கா.855 கருணாநிதி ஆகியவர்கள் தாக்கியதாக A.R. புதிவு செய்து திருப்புவனம் காவல்நிலையத்திற்கு தகவல் தெரிவிக்கப்பட்டுள்ளது. பேச்சுவார்த்தை மற்றும் மிரட்டலுக்கு அடிபணியாததால் உதவி பொறியாளரை அணுகி பொய் புகார் வாங்கி மனுப்பதிவேடு, மனு ரசீது, பொது நாட்குறிப்பு ஆகியவைகளை திருத்தம் செய்து பழிவாங்கும் நோக்கில் 26.07.2010ம் தேதி நடந்த சம்பவத்திற்கும் மிகவும் காலதாமதமாக 28.07.2010ல் திருப்புவனம் காவல்நிலைய குற்ற எண்.283/10 பிரிவு 294(பி), 507(1) இதச-படி தனது அதிகாரத்தை தவறாக பயன்படுத்தி வழக்குப்பதிவு செய்யப்பட்டுள்ளது என்றும், மேலும் பாதிக்கப்பட்டவர்கள் தகவல் அறியும் உரிமை சட்டத்தில் போதிய தகவல் பெற்றத்தன் காரணமாக மீண்டும் பழி வாங்கும் நோக்கத்தில் 16.09.2010ம் தேதி அதே உதவி பொறியாளர் திரு.ராம மூர்த்தியிடம் புகார் வாக்குமூலம் அடித்துக்கொடுத்து சுரேஷ்,

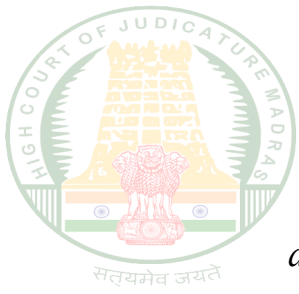


செந்தில்குமார் மற்றும் சரவணன் ஆகியோர்கள் மீது மற்றொரு வழக்கு திருப்புவனம் காவல்நிலைய குற்ற எண். 330/10 பிரிவு 294(b), 353, 506(ii) and 420 of IPC dated: 16.09.10 ன்படி வழக்கு பதிவு செய்துள்ளதாகவும் விசாரணையின் வாயிலாக அறிய வருகிறது. இச்செய்கையில் உதவிபொறியாளர் திரு.ராமமூர்த்தி, பொதுபணித்துறை நீர்வள ஆதார அமைப்பு பாசனப்பிரிவு 2 திருப்புவனம் முன்னால் சார்பு ஆய்வாளர் திரு.ராஜேஷ் மற்றும் த.கா.855 திரு.கருணாநிதி ஆகியார் கடமை, கண்ணியம் ஒழுக்கம் கட்டுப்பாட்டை மீறி பொதுமக்கள் ஊழியர் என்பதை மறந்து தவறு செய்துள்ளார்கள் என அறிய வருவதால் இவர்களுக்கு எதிராக தக்க ஒழுங்கு நடவடிக்கை எடுக்க பரிந்துரை செய்கிறேன்.”

7 (2). From the above finding and the medical record, it is clear that the 5th and 6th respondents committed the act of the police torture in the custody of the petitioner. There is total violation of the following guidelines of the Hon'ble Supreme Court issued in the case of **D.K.Basu** reported in **1997 (1) SCC 416** issued the following guidelines:

35. We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

1. ???The police personnel carrying out the arrest



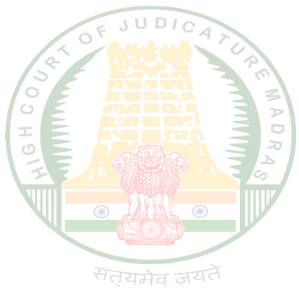
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and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. ????That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

3. ???A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. ????The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.



W.P.(MD).Nos.22169 and 22170 of 2021

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5. *????The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.*

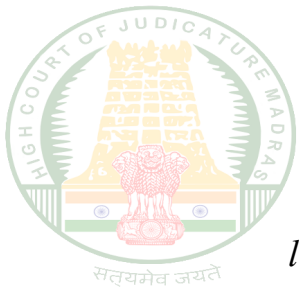
6. *????An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*

7. *????The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.*

8. *The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.*

9. *????Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.*

10. *?????The arrestee may be permitted to meet his*



W.P.(MD).Nos.22169 and 22170 of 2021

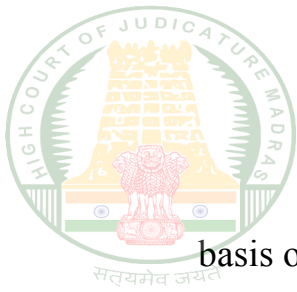
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lawyer during interrogation, though not throughout the interrogation.

11. ?????A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

7(2)(c). The established fact from the record is that the petitioner was taken in the midnight i.e., 01.00 a.m., at an unearthly hour on 26.07.2010 for the alleged offence of under section 294 (b), 420 and 506 (ii) of I.P.C. The petitioner sustained injuries in the custody of the police which has been proved through the medical evidence. The petitioner was admitted immediately after release from the police station on 26.07.2010 at 10.40 p.m. itself in the Government Hospital and the injury certificate is also marked.

7(2)(d). The petitioner also made a complaint on 29.11.2010 stating the above incident after his release from the police custody and direction was issued to conduct enquiry and register a the case. This court directed the superintendent of police to submit the report on the action taken on the



W.P.(MD).Nos.22169 and 22170 of 2021

basis of the direction of this court. He filed the following counter:-

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"4. It is further submitted that when the matter was previously called on 05.12.2023 this Hon'ble Court was pleased to order thus.....Hence, this court directs the superintendent of Police to file a report about the missing of CSR particulars.....". I humbly request the 'CSR particulars' may be read as 'Complaint particulars'. The cited complaint refers to the petitioner's complaint cited in Crl. O.P. (MD). No. 5189 of 2012. On enquiry with the 4th respondent and upon his search, it is revealed that the closure report is not available in the station Records. Further search is going on to trace any connected papers.

7(2)(e). From the same, it is clear that the superintendent of police in order to safe guard 5th and 6th respondent filed such a counter and failed to produce the report. Therefore this court can easily presume that the allegation of the police torture in the custody of the 5th and 6th respondents is substantiated by the petitioner on the basis of the enquiry of the jurisdictional DSP.

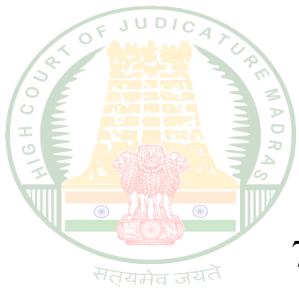
7(2)(f). This court declines to accept the argument of the 5th and 6th respondents that the finding of the departmental proceedings was set aside



W.P.(MD).Nos.22169 and 22170 of 2021

and hence the allegation of the police torture is without evidence. Before this court on the available above materials, without any contra material adduced to show the injuries was not caused during the custody of the 5th and 6th respondents, this court inclines to accept the case of the petitioner that torture was caused on the basis of the medical record and the number of the incriminating material as elicited during the course of the cross examination of the police officers in the criminal case registered against the petitioner in C.C.No.228 of 2010.

7.3. Therefore this court finds that the petitioner was subjected to police torture at the hands of the 5th and 6th respondents and the same requires suitable compensation as the said police torture amounts to violation of the fundamental rights of the petitioner and the violation of the guidelines issued in D.K.Basu case and the various human right commission directions. It is the submission of the 5th and 6th respondents that the compensation has been declined by the court in the petition filed under section 357 of Cr.P.C. and it is a bar to claim the compensation under Article 226 of the Constitution of India. Under Section 357 of Cr.P.C. relates to the statutory violation. Article 226 relates to the violation of the fundamental right of the citizens and it deserves to be rejected on the basis of the law laid down by the Hon'ble Supreme Court in the following case:

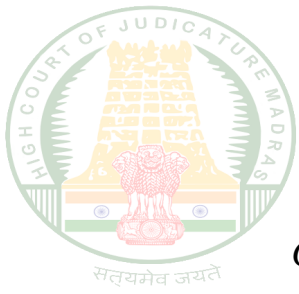


W.P.(MD).Nos.22169 and 22170 of 2021

7.3.1. A three-Judge Bench of the Hon'ble Supreme Court in the case of ***Nilabati Behera (Smt) alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. State of Orissa, (1993) 2 SCC 746***, while dealing with the custodial death of a 22 year old boy in police custody, entertaining the writ petition filed by mother claiming compensation alleging violation of Article 21 for the death of her son in police custody, held that award of compensation in proceedings under Article 226 for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and observed as follows:—

"33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much as protector and guarantor of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations.

34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the

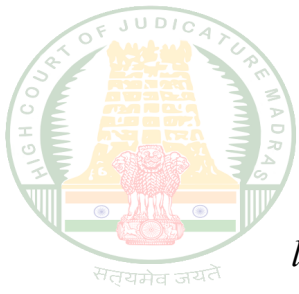


W.P.(MD).Nos.22169 and 22170 of 2021

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Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and inalienable rights of the citizen.

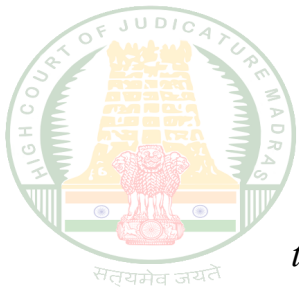
The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the Court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal



law.

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35. *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, (1983) 4 SCC 141** 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*



W.P.(MD).Nos.22169 and 22170 of 2021

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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 moulded 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."

7.3.2. Again quoting with approval the above observations, in the case of **D.K. Basu v. State of West Bengal, 1997 Cri LJ 743**, holding that any form of torture or cruel, inhuman or degrading treatment fall within inhibition of Article 21, whether it occurs during investigation,



W.P.(MD).Nos.22169 and 22170 of 2021

interrogation or otherwise, the Apex Court has observed as follows:-

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"44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages of tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies

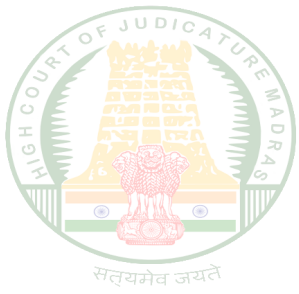


W.P.(MD).Nos.22169 and 22170 of 2021

available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Court and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damage is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family. "

7.3.3. Again in the case of **Mehmood Nayyar Azam v. State of Chhattisgarh, (2012) 8 SCC 1**, explaining when the compensation can be awarded on the complaint of custodial humiliation and mental torture meted out to the appellant at the hands of insensible police officials, the Apex Court has held as follows:—

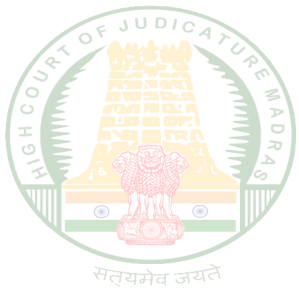
"40. As we perceive, from the admitted facts borne out on record,



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the appellant has been humiliated. Such treatment is basically inhuman and causes mental trauma. In Kaplan & Sadock's Synopsis of Psychiatry, while dealing with torture, the learned authors have stated that intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. We have referred to such aspects only to highlight that in the case at hand, the police authorities possibly have some kind of sadistic pleasure or to "please someone" meted out the appellant with this kind of treatment.

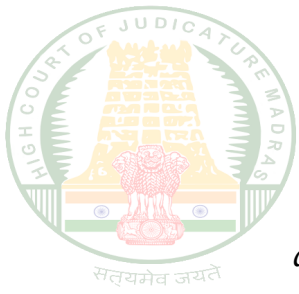
*41. It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by rule of law where humanity has to be a laser beam, as our compassionate Constitution has so emphasized, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. As Pithily stated in *Jennison v. Baker*, [1972] 2 Q.B. 52: "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."*



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42. Presently, we shall advert to the aspect of grant of compensation. The learned counsel for the State, as has been indicated earlier, has submitted with immense vehemence that the appellant should sue for defamation. Our analysis would clearly show that the appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy.

46. On a reflection of the facts of the case, it is luculent that the appellant had undergone mental torture at the hands of insensible police officials. He might have agitated to ameliorate the cause of the poor and the downtrodden, but, the social humiliation that has been meted out to him is quite capable of destroying the heart of his philosophy. It has been said that philosophy has the power to sustain a man's courage. But courage is based on self-respect and when self-respect is dented, it is difficult even for a very strong minded person to maintain that courage. The initial invincible mind paves the path of corrosion. As is perceptible, the mindset of the protectors of law appears to cause torment and insult and tyrannize the man who is helpless in custody. There can be no trace of doubt that he is bound to develop stress disorder and anxiety which destroy the brightness and strength of the will power. It has been said that anxiety and stress are slow poisons. When torment is added, it creates commotion in the mind and the slow poisons get



W.P.(MD).Nos.22169 and 22170 of 2021

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activated. The inhuman treatment can be well visualized when the appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written on it. This withers away the very essence of life as enshrined under Article 21 of the Constitution. Regard being had to the various aspects which we have analysed and taking note of the totality of facts and circumstances, we are disposed to think that a sum of Rs. 5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant and, accordingly, we so direct. The said amount shall be paid by the respondent State within a period of six weeks and be realized from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State."

7.3.4. In the light of the above dictum laid down by the Hon'ble Apex Court, in the case on hand, this court is able to appreciate the following admitted facts, as pleaded by the parties

8.This court finds from the record that the department proceedings ending in punishment was suo moto called by the Then Deputy Inspector General of Police and the same was remitted back to the disciplinary authority without any valid reason. Further there is no particulars available as to what was the final decision taken by the department against the



W.P.(MD).Nos.22169 and 22170 of 2021

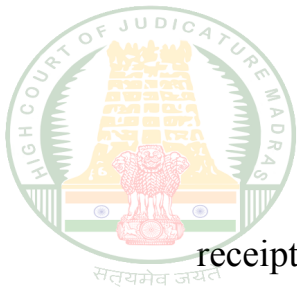
respondents No.5 and 6. In the said circumstances, allegation in the department enquiry finding still holds good. Therefore, the prayer of the writ petitioner deserves to be accepted.

9. Accordingly this court allows the writ petition in the following terms:

9.1. The petitioner is entitled to receive compensation of Rs.5 Lakhs from the 5th and 6th respondents.

9.2. The 5th and 6th respondents are hereby directed to pay the Rs. 2.5 Lakhs each to the petitioner within two weeks from the date of the receipt of the copy of this order.

9.3. The 2nd respondent is hereby directed to call for the files relating to the proceedings in C.No.B1/12167/2013-1 dated 22.01.2014 on the file of the Deputy Inspector General of Police, Madurai Range (I/C) Ramanathapuram Range and appoint a high level officer not below the rank of the Inspector General of Police to take the decision on the punishment order imposed against the 5th and 7th respondent, whether it deserves to be sustainable or not within two months from the date of the



W.P.(MD).Nos.22169 and 22170 of 2021

receipt of the copy of this order.

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9.4. The 2nd respondent is directed to call for explanation from the Superintendent of Police, Sivagangai District for filing such a counter as stated below:

"Paragraph No.4. It is further submitted that when the matter was previously called on 05.12.2023 this Court was pleased to order thus.....Hence, this court directs the superintendent of Police to file a report about the missing of CSR particulars....". I humbly request the 'CSR particulars' may be read as 'Complaint particulars'. The cited complaint refers to the petitioner's complaint cited in Crl.O.P.(MD).No. 5189 of 2012. On enquiry with the 4th respondent and upon his search, it is revealed that the closure report is not available in the station Records. Further search is going on to trace any connected papers" and conduct the enquiry relating to his conduct of filing such a report to help the 5th and 6th respondents and submit the report before this court within two months from the date of the receipt of the copy of this order.

10.List these cases on **02.12.2025**, under the caption for **reporting compliance**.

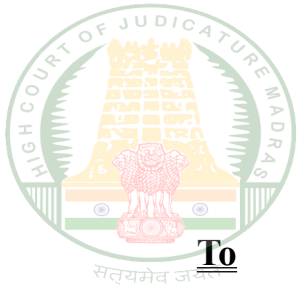


W.P.(MD).Nos.22169 and 22170 of 2021

15.05.2025

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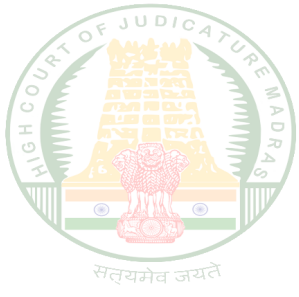


W.P.(MD).Nos.22169 and 22170 of 2021

To

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1. The Secretary to Government,
Home and Police Department,
Secretariat, St.George Fort, Chennai.
2. The Inspector General of Police,
South Zone, Madurai.
3. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
4. The Superintendent of Police,
Kanyakumari District at Nagercoil.
5. The Revenue Divisional Officer,
Nagercoil, Kanyakumari District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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W.P.(MD).Nos.22169 and 22170 of 2021

K.K. RAMAKRISHNAN. J.,

vsg/sbn

Pre-delivery order made in
W.P(MD)Nos.22169 and 22170 of 2021

Dated : 15.05.2025