

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29-11-2005

Coram:

The Honourable Mr. A.P. SHAH, The Chief Justice
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.A. No.1167 of 1998

C. Thekkamalai
(Cause Title amended as per order
of Court dated 17.8.98 in
CMP.No.11156/98) ... Appellant

:versus:

- 1.State of Tamil Nadu
rep. by the Secretary to Government
Home Department
Fort St. George
Chennai 600 009
- 2.The Assistant Collector cum
Executive Magistrate
Karur
Trichy District
- 3.The Superintendent of Police ... Respondents
Trichy

Appeal under Cl.15 of the Letters Patent against the order dated
27-3-1998 in W.P. No.4966 of 1995.

For Appellant :: Mr. P. Rathinam
For Respondents :: Mr. V. Raghupathi
Government Pleader

JUDGMENT

(Delivered by the Honourable The Chief Justice)

The appellant, Thekkamalai, who is a cobbler, and his wife Lakshmi, an agricultural worker, are the residents of Gandhi Nagar in Vaiyampatty in Manapparai Taluk in Trichy District and they belong to Scheduled Caste. In July, 1989, Thekkamalai was taken to the police station for an enquiry in connection with some missing amount from an accident place. His wife Lakshmi was also brought to the police station to see her husband in the lock-up. It is alleged that in the police station she was threatened by the police personnel to reveal the theft of money and she pleaded innocence. It is further alleged that she was taken to a certain place by the Sub Inspector of Police, who, after removing her gold and brass ornaments, forcibly raped her. As the matter was taken up to the Deputy Superintendent of Police, Manapparai, an F.I.R. came to be registered in Cr.No.153 of 1989 for the offence under Secs.376 and 379 of I.P.C. and a criminal case in S.C. No.90 of 1992 against the said Sub Inspector of Police before the I Assistant Sessions Court, Trichy.

2. Invoking Art.226 of the Constitution, a writ petition was filed on behalf of Thekkamalai and his wife Lakshmi to direct the first respondent to pay a fair and reasonable amount as compensation to Lakshmi and Thekkamalai, to provide adequate and suitable rehabilitative measures to them, to appoint a Special Public Prosecutor with the consent of the Chairman of the Tamil Nadu Legal Aid Board for conducting the trial in S.C. No.90 of 1992 on the file of the I Assistant Sessions Judge, Trichy and to provide adequate personal protection to Thekkamalai and Lakshmi and their close relatives.

3. Learned single Judge, on materials produced before him, held that there is a prima facie case of the victim Lakshmi having been criminally assaulted at the police station and was a victim of rape committed by the Police Sub Inspector. The learned single Judge, therefore, allowed the writ petition and directed the first respondent to pay interim compensation Rs.75,000/- to Thekkamalai and his wife Lakshmi, subject to the right of the State to realise the said amount from the delinquent police personnel concerned, who abused their position as the servants of the State Government, and irrespective of the

result of their prosecution before the criminal court. Learned single Judge further directed the first respondent to take all necessary steps to provide the victims adequate and suitable rehabilitative measures. Certain further directions were issued, but those are not material for the purpose of this appeal.

4. Thekkamalai has filed the present appeal Sfor the enhancement of the compensation on the ground that he and his wife Lakshmi are entitled to just and reasonable compensation and the amount awarded by the learned single Judge by way of interim compensation is meagre and inadequate.

5. Learned counsel, Mr. Rathinam, appearing for the appellant urged that the approach adopted by the learned single Judge was unwarranted since this is a clear case of vicarious liability of the State for the criminal/tortuous acts of illegal arrest, unlawful detention and rape committed by the Sub Inspector of Police on the basis of a false F.I.R. According to Mr. Rathinam the learned single Judge has failed to fix the just and reasonable compensation since the nature of sufferings the victims had undergone were many and distinct. Learned counsel urged that with regard to the rehabilitative measures to be adopted by the first respondent, the learned single Judge ought to have issued specific directions such as providing employment to the victims on the lines indicated in the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

6. Learned counsel invited our attention to an unreported decision of this Court, dated 21-6-2002, delivered by M. Karpagavinayagam, J., in Criminal Appeal Nos.764 and 765 of 1993 (Govindan @ Govindarajan and another v. State). That was also a case where the victim woman was taken inside the store-room of the police station, beaten by the police personnel with sticks inflicting injuries all over the body and then raped by the police personnel one after another. In that case, the learned Judge awarded the compensation of Rs.5,00,000/- to the victim.

7. Mr. Rathinam also brought to our notice the decision rendered by the Apex Court in CHAIRMAN, RAILWAY BOARD AND OTHERS v. MRS. CHANDRIMA DAS AND OTHERS (AIR 2000 SC 988). Justice Saghir Ahmad, speaking for the Bench, observed as follows:

"In cases relating to custodial deaths and those relating to medical negligence, this Court awarded compensation under Public Law domain in Nilabati Behera v. State of Orissa : AIR 1993 SC 1960, State of M.P. v. Shyam Sunder Trivedi : 1995 AIR SCW 2793, People's Union for Civil Liberties v. Union of India : AIR 1997 SC 1203 and Kaushalya v. State of Punjab (1996) 7 SCALE (SP) 13, Supreme Court Legal Aid Committee v. State of Bihar (1991) 3 SCC 482, Dr. Jacob George v. State of Kerala (1994) 3 SCC 430, Paschim Banga Khet Mazdoor Samity v. State of West Bengal : AIR 1996 SC 2426 and Mrs. Manju Bhatia v. N.D.M.C. : AIR 1998 SC 223.

Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the civil court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law.

In the instant case, it is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which is involved. Smt. Hanuffa Khatoon was a victim of rape. This Court in Bodhisattwa v. Ms. Bhubra Chakraborty : AIR 1996 SC 922 has held 'rape' as an offence which is violative of the Fundamental Right of a person guaranteed under Article 21 of the Constitution. The Court observed as under (Para 10 of AIR):

"Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21."

8. We find considerable substance in the submissions of learned counsel for the appellant. Where a heinous crime of rape committed by the police personnel, who are public functionaries, the matter clearly relates to the violation of basic human rights as well as Fundamental Right guaranteed under Article 21 of the Constitution and the victim would be entitled to a fair and reasonable compensation. It is reported that the concerned Sub Inspector was convicted by the trial court in S.C. No.90 of 1992 under Sections 366, 376(2)(a)(1), 384 and 342 of I.P.C. and sentenced to suffer rigorous imprisonment for ten years and to pay fine amount. The trial court also directed the accused to pay Rs.2,00,000/- and Rs.50,000/- as compensation to Lakshmi and Thekkamalai respectively. In the appeal filed by the Sub Inspector of Police, the conviction under Sections 366 and 376(2)(a)(i) of I.P.C. as well as the payment of Rs.2,00,000/- as compensation to the victim Lakshmi was confirmed by this Court. It appears that the amount of compensation has not been paid by the accused, who is presently behind the bars.

9. In our opinion, the ends of justice would be served if the amount of compensation is enhanced from Rs.75,000/- to Rs.5,00,000/-. It is brought to our notice that pursuant to the order passed by the learned single Judge a sum of Rs.85,000/- (Rs.75,000/- towards interim compensation and Rs.10,000/- towards rehabilitative measures) has already been paid to the victims Lakshmi and her husband Thekkamalai. We, therefore, direct the State Government to pay the balance amount of Rs.4,15,000/- (Rupees Four Lakhs Fifteen Thousand only), with simple interest at the rate of six (6) per cent per annum from the date of the order of the learned single Judge till date of payment, within a period of eight weeks from today. Out of the total amount (i.e.) Rs.4,15,000/- plus interest accrued on the said amount, a sum of Rs.5,00,000/- (Rupees Five lakhs only) shall be invested in the name of Lakshmi in a fixed deposit, initially for a period of three years, with Tamil Nadu Power Finance Corporation and she would be entitled to receive the interest accrues on such deposit once in three months. The remaining amount shall be released to the appellant and his wife Lakshmi jointly. State is at liberty to take steps to recover the amount of compensation so paid to the victims from the concerned delinquent police personnel by taking appropriate steps in accordance with law.

10. We further direct the State Government to consider the application of Lakshmi for allotment of agricultural land under THADCO land purchase scheme and if she identifies the land, the same shall be allotted to her at concessional rate in accordance with the scheme.

11. With the above directions, the writ appeal is disposed of.

Jai

29-11-2005

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1.The Secretary to Government
State of Tamil Nadu
Home Department
Fort St. George
Chennai 600 009
- 2.The Assistant Collector cum
Executive Magistrate
Karur
Trichy District
- 3.The Superintendent of Police
Trichy

1 cc to Mr.P.Rathinam, Advocate, SR.47052
1 cc to Government Pleader, SR.46876

ra (co)

dv/12.12.05

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