

**S. Chandrasekaran Vs The Secretary to Govt., Public (Law and Order) E.
Dept., The Director General of Police and The Joint Commissioner of
Police, South Zone, Chennai City Police**

Court: Madras High Court

Date of Decision: Nov. 5, 2009

Acts Referred: Constitution of India, 1950 " Article 226

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Muthappan, for the Appellant; R. Neelakantan, G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

Heard both sides.

2.The petitioner is an Inspector of Police attached to the Central Crime Branch, Chennai, Egmore. He filed the present writ petition seeking to

challenge the orders dated 11.07.2006, 19.07.2006 and 07.01.2009 issued by the respondents.

2. By the order dated 11.07.2006, the State Government directed the second respondent - Director General of Police to indicate the gravity of

involvement of five policemen including the petitioner and the proportionate amount to be recovered from each of them towards the total amount of

Rs. 3,80,000/- paid to one Tmt.Meena. Subsequently, a letter dated 19.07.2006 was sent by the second respondent DGP to the Additional

Commissioner of Police, Chennai to indicate the proportionate amount to be recovered from each of the policemen, who were responsible for the

death of one Wilson at E-2 Royapettah Police Station on 22.06.1993.

3. The third respondent Joint Commissioner of Police upon receipt of this communication ordered recovery of amounts from the petitioner as well

as other policemen. The petitioner's liability was fixed at Rs. 76,000/-. A further direction was given to recover the amount in 38 instalments @

2000/- per month and the recovery was to start from February 2009. Challenging the same, the petitioner has filed the present writ petition.

4. This Court after notice to the learned Government Advocate granted an interim stay till 16.07.2009. Subsequently, the stay was not extended.

When the matter came up today before this Court, the learned Counsel for the petitioner submitted that the petitioner was not given any notice

before the recovery and the impugned order is opposed to the principles of natural justice. The second contention raised by the learned Counsel

for the petitioner was that after an enquiry under Police Standing Order 145, a charge memo was issued to the petitioner and a criminal case was

also registered. In the criminal case, the petitioner was acquitted in S.C. No. 122 of 1998 on 05.08.1998. In so far as the disciplinary proceedings

are concerned, it had ended in awarding a punishment of reduction in pay by two stages for a period of two years with cumulative effect.

However, the petitioner had challenged it before the Tribunal in O.A. No. 3649 of 1999. The Tribunal by an order dated 04.10.2001 had set

aside the punishment and remanded the matter for fresh disposal. Thereafter, the petitioner filed a Review Application before the Tribunal. The

Tribunal by an order dated 22.01.2002 allowed the Review Application and had set aside the proceedings by cancelling the remit order.

5. In view of the fact that the petitioner had escaped from the criminal case as well as from the departmental proceedings, there was no further

liability on the petitioner in sharing the burden along with other policemen. This Court is unable to agree with the submission made by the petitioner.

6. It is seen from the records that on account of the death of her husband Wilson in the police custody, one S.Meena had filed a writ petition

before this Court being W.P. No. 14879 of 1994. In the said writ petition, she had claimed a compensation of Rs. 3,00,000/- towards custodial

assault, torture and murder of her husband and also for a direction to the respondents 1 to 5 for initiating disciplinary action against respondents 7

to 11 and for further reliefs.

7. K.P. Sivasubramaniam, J. who heard the matter in his final order in paragraph 71 gave his findings which is as follows:-

71. As a result of the above analysis, I have no hesitation in accepting the reasonings and the findings rendered by the P.A. to the Collector. He

has rightly dealt with the evidence in a judicious manner. After eschewing the evidence of victim's mother and uncle as interested witnesses, he has

characterised the evidence of Maragatham and Nalini as independent and reliable witnesses. The evidence of the Doctor who conducted post-

mortem also confirms that the death was ultimately due to the injuries. I have also independently considered the evidence and I find no reasons to

differ from the findings of the enquiry under Clause 145 of the P.S.O. As stated earlier in the case of custodial death, the Supreme Court had held

in 1995 (4) SCC 262, that the police officials alone can explain the circumstances in which a person in their custody had died.

8. In the said writ petition, the petitioner was arrayed as respondent No. 7 and he was represented by a Counsel before this Court. Even in that

proceedings, the petitioner had contended about the subsequent acquittal made by the criminal court. A further contention was raised regarding the

payment of compensation. Rejecting the said submission, this Court came to the conclusion that the petitioner entitled to get the compensation of a

sum of Rs. 4,15,000/- by further adding a sum of Rs. 15,000 towards funeral and other incidental expenses. The total compensation was fixed at

Rs. 4,30,000/-. Deducting a sum of Rs. 50,000/- which was already paid, the respondents were finally directed to pay a total sum of Rs.

3,80,000/- to the petitioner. It is at that stage the learned Government Pleader who appeared for the State sought for a direction to enable the

Government to recover the amounts from the party respondents, namely, respondents 7 to 11. This Court held that while the responsibility of the

state was to initially pay the amount, but it is also open to them to recover the same from the party respondents, which obviously included the

petitioner herein. The learned Counsel appearing for the petitioner fairly stated that no appeal was filed by his client against the said order and that

order has become final.

9. When the petitioner was heard before this Court in a public tort liability towards the death of a person in the lock up and ultimately this Court

had granted compensation, there is no question of any further hearing to be extended to the petitioner. This Court had specifically held that it was

open to the State to recover the amounts from the salary of the petitioner and other policemen. Therefore, the contention that they should have

been heard before passing any recovery order does not arise. The other contention that the departmental proceedings were quashed by the

Tribunal and he was acquitted in criminal Court need not be a factor, which will enable the petitioner to resist the claim for payment of

compensation. The payment of compensation arose out of a tort liability of the State in which the petitioner also had a joint responsibility in

compensating for such tortious acts. As they were heard before this Court already, it is not open to them to urge before this Court that the

impugned order was made without jurisdiction.

10. This Court in the case filed by S.Meena had already dealt with the scope of power under Article 226 of the Constitution of India in granting

compensation in cases of custodial torture and death at the hands of the authorities. In fact this Court had specifically referred to the judgment of

the Supreme Court in D.K. Basu Vs. State of West Bengal, . In that case, the Supreme Court had categorically held that in case of any violation of

the guidelines laid down therein, which included a civilised treatment in police lockups, compensation can be ordered and amounts can be

recovered from the concerned Government Servants. The Court has also further directed that even contempt proceedings can be initiated against

such police personnel who are responsible for committing such custodial tortures.

11. Therefore, there is no case made out by the petitioner. Hence, the writ petition will stand dismissed. No costs. Consequently, connected

miscellaneous petitions are closed.