(2018) 9 JT 97 : (2018) 11 Scale 171 : (2018) 4 KHC 598 : (2018) 4 KLJ 242 : (2018) 4 RCR(Criminal) 801 : (2018) 7 SLT 310 : AIR 2018 SC 5112 : (2018) 12 SCR 51 : (2018) 10 SCC 804

Supreme Court Of India

Case No: Civil Appeal Nos. 6637-6638 Of 2018

S. Nambi Narayanan — APPELLANT

Vs

Siby Mathews & Others Etc — RESPONDENT

Date of Decision: Sept. 14, 2018

Acts Referred:
Foreigners Act, 1946 â€" Section 14#Constitution of India 1950 â€" Article 21#Indian Official Secrets Acts, 1923 â€" Section 3, 4#Code of Criminal Procedure 1973 â€" Section 173(2), 357

Citation: (2018) 9 JT 97 : (2018) 11 Scale 171 : (2018) 4 KHC 598 : (2018) 4 KLJ 242 : (2018) 4 RCR(Criminal) 801 : (2018) 7 SLT 310 : AIR 2018 SC 5112 : (2018) 12 SCR 51 : (2018) 10 SCC 804

Hon'ble Judges: Dipak Misra, CJ; A.M. Khanwilkar, J; D Y Chandrachud, J

Bench: Full Bench

Advocate: K. B. Sounder Rajan

Final Decision: Allowed

Judgement

Dipak Misra, CJ

The appellant, a septuagenarian, a former Scientist of the Indian Space Research Organisation (ISRO), has assailed the judgment and order passed by

the Division Bench of the High Court of Kerala whereby it has overturned the decision of the learned single Judge who had lancinated the order of the

State Government declining to take appropriate action against the police officers on the grounds of delay and further remitted the matter to the

Government. To say the least, the delineation by the Division Bench is too simplistic.

2. The exposÃƒÂ© of facts very succinctly put is that on 20.01.1994, Crime No.225/94 was registered at Vanchiyoor Police Station against one Mariam

Rasheeda, a Maldivian National, under Section 14 of the Foreigners Act, 1946 and paragraph 7 of the Foreigners Order. The investigation of the case

was conducted by one S. Vijayan, the respondent no. 6 herein, who was the then Inspector, Special Branch, Thiruvananthapuram.

3. Mariam Rasheeda was arrested and sent to judicial custody on 21.10.1994. Her custody was obtained by the Police on 03.11.1994 and she was

interrogated by Kerala Police and Intelligence Bureau (IB) officials. Allegedly, during interrogation, she made certain Ã¢â‚¬Ëœconfessions Ã¢â‚¬â„¢ which led to

the registration of Crime No. 246/1994, Vanchiyoor Police Station on 13.11.1994 under Sections 3 and 4 of the Indian Official Secrets Acts, 1923,

alleging that certain official secrets and documents of Indian Space Research Organisation (ISRO) had been leaked out by scientists of ISRO.

4. Another Maldivian National Fousiya Hasan along with Mariam Rasheeda was arrested in Crime No. 246/1994. On 15.11.1994, investigation of both

the cases was taken over by the Special Investigation Team (SIT) headed by one Mr. Siby Mathews, respondent no. 1 herein, who was the then

D.I.G. Crime of Kerala Police. On 21.11.1994, Sri D. Sasikumaran, a scientist at ISRO, was arrested and on 30.11.1994, S. Nambi Narayanan, the

appellant herein, was arrested along with two other persons. Later, on 04.12.1994, consequent to the request of the Government of Kerala and the

decision of the Government of India, the investigation was transferred to the Central Bureau of Investigation (CBI), the respondent no. 4 herein.

5. After the investigation, the CBI submitted a report before the Chief Judicial Magistrate (CJM), Ernakulam, under Section 173(2) of Cr.P.C. stating

that the evidence collected indicated that the allegations of espionage against the scientists at ISRO, including the appellant herein, were not proved

and were found to be false. This report was accepted vide courtÃ¢â‚¬â„¢s order dated 02.05.1996 and all the accused were discharged.

6. That apart, in the said report, addressed to the Chief Secretary, Government of Kerala, the CBI, the respondent no. 4 herein, had categorically

mentioned:-

Ã¢â‚¬Å“Notwithstanding the denial of the accused persons of their complicity, meticulous, sustain and painstaking investigations were launched by the CBI

and every bit of information allegedly given by the accused in their earlier statement to Kerala Police/IB about the places of meetings for purposes of

espionage activities, the possibility of passing on the drawing/documents of various technologies, receipt of money as a consideration thereof etc.,

were gone into, but none of the information could be substantiated.Ã¢â‚¬â€‹

7. The CBI in its report, as regards the role of the respondent no.1 herein, went on to state:-

Ã¢â‚¬Å“I, Sh. Siby Mathew was heading the Special

Investigation Team and was, therefore, fully responsible for the conduct of investigation in the aforesaid two cases. Investigation conducted by the

CBI has revealed that he did not take adequate steps either in regard to the thorough interrogations of the accused persons by Kerala Police or the

verification of the so called disclosure made by the accused persons. In fact, he left the entire investigation to IB surrendering his duties. He ordered

indiscriminate arrest of the ISRO scientist and others without adequate evidence being on record. It stressed that neither Sh. Siby Mathew and his

team recovered any incriminating ISRO documents from the accused persons nor any monies alleged to have been paid to the accused persons by

their foreign masters. It was unprofessional on his part to have ordered indiscriminate arrest to top ISRO scientists who played a key role in

successful launching of satellite in the space and thereby caused avoidable mental and physical agony to them. It is surprising that he did not take any

steps at his own level to conduct investigation on the points suggested by him. Since Sh. Mathew was based at Trivandrum, there was no justification

for not having the searches conducted in the officialsÃ¢â‚¬â„¢ residential premises of the accused Nambi Narayanan was arrested by the Kerala Police

on 30.11.1994.

Vi. Shri Siby Mathew and his team miserably failed even in conducting verification of the records of Hotels viz., Hotel foret Manor, Hotel Pankaj,

Hotel Luciya, etc., which were located at Trivandrum to ascertain the veracity of the statement of accused personsÃ¢â‚¬Â¦.

The above facts are being brought to the notice of the competent authority for their kind consideration and for such action as deemed fit.

[Emphasis added]

8. On 27.06.1996, the State Government of Kerala, being dissatisfied with the CBI report, issued a notification withdrawing the earlier notification

issued to entrust the matter to CBI and decided to conduct re-investigation of the case by the State Police. This notification for re-investigation was

challenged by the appellant herein, before the High Court of Kerala, in O.P. No. 14248/1996-U but the notification was upheld by the High Court of

Kerala vide order dated 27.11.1996.

9. Aggrieved by the aforesaid order of the Kerala High Court, the appellant herein, moved this Court by filing a special leave petition. This Court in K.

Chandrasekhar v. State of Kerala and others (1998) 5 SCC 223 quashed the notification of the State of Kerala for re-investigation holding that the

said notification was against good governance and consequently, all accused were freed of charges. The observations of this Court read thus:-

Ã¢â‚¬Å“Even if we were to hold that State Government had the requisite power and authority to issue the impugned notification, still the same would be

liable to be quashed on the ground of malafide exercise of power. Eloquent proof thereof is furnished by the following facts and circumstances as

appearing on the recordÃ¢â‚¬Â¦.Ã¢â‚¬â€‹

[Emphasis added]

10. Even after disposal of the case by this Court, the State of Kerala did not take any action against the erring police officers. In the year 2001, the

National Human Rights Commission ordered a compensation of Rs.10,00,000/- (Rupees ten lakhs only) as interim relief to the appellant, who had

sought Rs.1,00,00,000/- (Rupees one crore only) as damages. A division bench of the Kerala High Court, vide order dated 07.09.2012, asked the

Government to pay the interim relief of Rs. 10,00,000/- (Rupees ten lakhs only) within three weeks of the said order.

11. Thereafter, one Rajasekharan Nair filed a writ petition, being W.P. (C) No. 8080 of 2010, before the Kerala High Court on the basis of the report

filed by the CBI seeking directions for the State of Kerala to pass appropriate orders and take necessary action against the erring police officers for

conducting a malicious investigation. In the meantime, the Government, by order dated 29.06.2011, decided not to take any disciplinary action against

the members of the SIT (erring police officers). The relevant portion of the order of the State of Kerala dated 29.06.2011 reads as follows:-

Ã¢â‚¬Å“5) Both the CBI and the accused-discharged persons approached the HonÃ¢â‚¬â„¢ble High Court against the action of Government of Kerala.

However, the High Court upheld the action of the Government. Against this the CBI and the accused Ã¢â‚¬" discharged persons approached the

Supreme Court through SLPs against the action of Government of Kerala.

6) In the meantime Government examined the case withreference to the views obtained form the State Police Chief on the observation of the CBI

along with the explanation of the officers concerned. After examination it was decided to await the decision of the HonÃ¢â‚¬â„¢ble Supreme Court. The

HonÃ¢â‚¬â„¢ble Supreme Court allowed the prayer of the CBI and the accused discharged persons questioning the notification issued by the Government

withdrawing the consent given to the CBI to investigate into the espionage case and also to Ã¢â‚¬Å“further investigateÃ¢â‚¬ the ISRO espionage case and

also directed to give Rs. 1 Lakh each to the accused appellants as cost.

7) Government examined the matter with reference to theentire records of the case and in proper application of mind. It has been found that neither

the HonÃ¢â‚¬â„¢ble Chief Judicial Magistrate Court who accepted the Final Report nor the HonÃ¢â‚¬â„¢ble Supreme Court had issued any direction to take

action against the investigating officers viz :- Shri S. Vijayan, the then Inspector, Special Branch, Thiruvananthapuram City, Shri K.K. Joshwa, the

then Dy. SP, CB CID, Thiruvananthapuram, Shri Siby Methews, the then DIG (Crimes) of the Special Investigation Team who investigated in to the

ISRO Espionage case.

8) In the circumstances, Government are of the view thatit is not proper or legal to take disciplinary action against the officials for the alleged lapses

pointed out in the investigation report of the CBI at this juncture, after the lapse of 15 years and therefore Government decide that no disciplinary

action need be taken against the above officials for their alleged lapses in the investigation of the ISRO Espionage case and it is ordered

accordingly.Ã¢â‚¬â€‹

12. W.P. (C) No. 8080 of 2010 was disposed of by the High Court having been rendered infructuous as the petitioner therein, Rajesekharan Nair,

wanted to reserve his right to challenge the order issued by the Government. Despite insurmountable difficulties, the indomitable spirit of the appellant

impelled him to file another writ petition, W.P. (C) No. 30918 of 2012, before the Kerala High Court. The learned Judge of the High Court of Kerala,

considering the pleadings of the parties and thereafter elaborately considering the matter, allowed the writ petition and quashed the order dated

29.06.2011 passed by the State of Kerala whereby the Kerala Government had decided not to take any disciplinary action against the members of the

SIT (erring police officers) and consequently remitted the matter to the State of Kerala, the respondent no. 2 herein, for reconsideration and passing

further orders within three months. Though the learned single Judge left it open to the State of Kerala to decide on the course of action to be taken in

the matter, yet it was categorically mentioned that the reconsideration of the matter should not just be a namesake which will make the administration

of justice a mockery.

13. Though the said decision of the learned single Judge was not challenged by the State of Kerala, yet two private persons, being the respondent nos.

1 and 5 herein, assailed the judgment before the Division Bench in WA Nos. 1863 and 1959 of 2014. The Division Bench of the High Court, vide

impugned judgment and order dated 04.03.2015, observed that the only question before the Government was whether any disciplinary action was to be

initiated against the officers who were members of the SIT which conducted investigation for some days and thereafter reported that the matter

required to be investigated by the CBI. The Division Bench opined that the factual finding or report submitted by the CBI on 03.06.1996 in the matter

could only be treated as an opinion expressed by the CBI which may be considered by the Government. Further, the Division Bench left it to the

Government to consider or not to consider the opinion expressed by the CBI in its aforesaid report for the purpose of taking disciplinary action.

14. The Division Bench also held that the Kerala GovernmentÃ¢â‚¬â„¢s decision of not taking action against the erring police officers of the SIT was

based on three specific findings, namely (i) the GovernmentÃ¢â‚¬â„¢s examination of the case with reference to the views obtained from the State Police

Chief with respect to the observations of the CBI alongwith the explanation of the erring police officers concerned, (ii) the absence of any direction by

the Chief Judicial Magistrate who had accepted the final report, and (iii) absence of any direction from the Supreme Court to take action against the

investigating officers. That apart, the Government opined that it is not proper or legal to take disciplinary action against the officers on the basis of CBI

report after a lapse of fifteen years.

15. Be it noted, the Division Bench concluded by observing thus:

Ã¢â‚¬Å“Therefore the three reasons mentioned in Ext.P2 clearly indicate that the Government has examined the relevant matters for arriving at the said

decision. When a decision has been taken not to proceed further with any disciplinary action, after considering such relevant matters, the decision

cannot be considered as unreasonable, unfair or arbitrary.Ã¢â‚¬â€‹

And again:-

Ã¢â‚¬Å“In fact, whether the accused were tortured or not is a disputed question of fact. Further no such complaint was raised by the accused. When the

fact being so and since the petitioner having already approached the National Human Rights Commission and the Civil Court, it is for the said agencies

to arrive at a proper finding regarding such disputed facts.Ã¢â‚¬â€‹

The said order is the subject matter of assail before this Court in these appeals.

16. It is urged by the appellant that the prosecution launched against him by the Kerala police was malicious on account of two reasons, the first being

that the said prosecution had a catastrophic effect on his service career as a leading and renowned scientist at ISRO thereby smothering his career,

life span, savings, honour, academic work as well as self-esteem and consequently resulting in total devastation of the peace of his entire family which

is an ineffaceable individual loss, and the second, the irreparable and irremediable loss and setback caused to the technological advancement in Space

Research in India.

17. It has also been contended that the CBI, to whom the investigation of the case against the appellant was transferred, after a thorough investigation

for about eighteen months, filed a comprehensive and exhaustive report wherein it had recommended that the case against the appellant be closed as

the allegations against the appellant are totally unsubstantiated.

18. The appellant has also drawn the attention of this Court to the fact that the CBI in the said report had also highlighted several omissions and

commissions on the part of the Kerala Police Officers while investigating the case against the appellant. That apart, the CBI, in its report submitted to

the Kerala Government, had recommended that action be taken against the erring police officers for serious lapses in the discharge of their duties.

The appellant has, in his submissions, expressed his agony over the fact that the State Government, instead of acting upon the recommendations made

by the CBI and taking appropriate action against the erring police officers, focused its entire attention on taking further action on the investigation

against the appellant and hastened to constitute a Special Investigation Team (SIT) through a notification which was challenged before the High

Court.

19. The appellant has further highlighted that this Court had earlier opined about the malicious prosecution launched against him. Reliance has been

placed on the criticism advanced by the NHRC against the State Government. Learned senior counsel has urged with anguish that the High Court has

fallen into grave error by sustaining the order of the Government and remaining oblivious to the plight of the appellant. It is his further submission that

the appellant should be granted compensation by taking recourse to the principle of constitutional tort and a committee be constituted to take

appropriate action against the officers who had played with the life and liberty of a man of great reputation.

20. Learned counsel for the respondent no. 1 has submitted that the contention of the appellant that if he had not been falsely implicated, he would

have made a huge difference in the cryogenic technology and thereby contributed immensely to the Nation is untenable as it is an admitted fact that he

had submitted his VRS on 01.11.1994 immediately after the arrest of Mariam Rasheeda, and on the very same day, his resignation was accepted by

the Superior Officer. It is pointed out that the claim of significant contribution to the Nation is being put forth by appellant only to gain the sympathy of

the Court.

21. It is further canvassed that the entire investigation of the case against the appellant was carried out under close supervision of the then Director

General of Police (Intelligence) & Director General of Police (Law and Order) and daily reports were sent to them during the course of the

investigation. It has also been highlighted that on the day of arrest of the appellant, the respondent no. 1 had submitted a report to the DGP requesting

entrusting of the matter to the CBI which is a clear indication of the fact that there was no mala fide on the part of the said respondent no. 1 and other

officials of the Kerala Police. The respondent no. 1 has contended that the entire gamut of facts reveals that he and other officials had performed

their duties with full responsibility and the evidence on record and the statements of other accused had clearly shown the involvement of the accused

persons in the activities of espionage.

22. The respondent no. 1, in order to substantiate his claim that the appellant and the other accused persons were never subjected to any torture by the

respondent no. 1 or other police officers, seeks to draw the attention of the Court to the findings of a Division Bench of the High Court which had

dealt with a writ petition filed when the investigation was pending before the CBI. It is put forth on behalf of the respondent no. 1 that he himself did

not take any steps for thorough interrogation of the accused and sent the same to the CBI and, hence, the argument that he was tortured by the State

police was far from the truth. As per the notification dated 20.01.1987 issued by the Government of India, Ministry of Home Affairs, the Central

Government conferred the powers of Superintendent of Police on officers of the rank of Assistant Director of the Intelligence Bureau and in the

instant case, the IB had come into the picture long before the constitution of a Special Investigation Team (SIT) by the State Government.

23. It is highlighted by the respondent no. 1 that there was sufficient evidence indicating the involvement of the appellant and it had also come to the

notice of the respondent no. 1 that the appellant, who had submitted his VRS, was intending to leave the country and in the light of the said facts, the

arrest of the appellant and other accused persons had become necessary. Learned counsel would contend that the stand of the CBI that no

incriminating records had been recovered is unacceptable inasmuch as the final report reveals that 235 documents were recovered from the house of

the accused persons and the reason for the same was an issue which required investigation.

24. Further, it is contended that the case had been investigated by the respondent no. 1 only for 17 days and thereafter, it was the CBI that carried out

the investigation and, hence, the responsibility to apprise the media fell on the CBI and not on the respondent no. 1. Various other aspects have been

controverted to show the non-involvement of the said respondent and the bona fide act on his part to transfer the case to the CBI. To make allegations

against the SIT after transfer of the case to the CBI is unwarranted.

25. Learned counsel for the respondent no. 1 submits that the whole thrust of the argument of the appellant that he was subjected to torture falls to the

ground as the IB officials against whom the major charges of torture had been levelled had not been made accountable for the said action and,

therefore, it would be discriminatory to hold the respondent no. 1 and other police officers of Kerala accountable for the alleged torture. That apart, it

is urged that the learned single Judge of the High Court had only remanded the matter to the State Government for fresh consideration and had not

given any finding on the allegation of torture and the respondent no. 1 had also contended that the appellant never raised any allegations of torture

before the CJM Court. Further, it is argued that the appellant was in custody of Kerala police only for 5 days, while the CBI had taken remand of the

accused on three occasions and had kept in custody for forty five days.

26. On behalf of the CBI, the fourth respondent, it is submitted that inspite of highlighting several lapses and faults on the part of the police officials

while carrying out investigation against the appellant and other accused persons, the Kerala Government has failed to take any action against the

erring officials. It has been submitted that the reasons given by the Kerala Government for not initiating any action against the erring police officers,

who had not only inflicted inhuman custodial torture to the scientists of ISRO but also arrested them while they were working on a crucial space

programme, was an unpardonable lapse. It is pointed out that if the action of the Government of Kerala is not interfered with on the ground of delay, it

would tantamount to taking advantage of oneÃ¢â‚¬â„¢s own wrong doing and further adding a premium to an unpardonable fault.

27. Learned counsel for the respondent no. 4 has submitted that the conduct of the police officials is criminal in nature as per the investigation and

report submitted by the CBI and the investigation of the CBI had clearly established that the investigation carried out by the State police was full of

lapses and also involved employment of illegal means such as criminal torture. The stand of the respondents is that the report is recommendatory but it

was incumbent upon the State of Kerala to act upon the same as that would have reflected an apposite facet of constitutional governance and respect

for individual liberty and dignity. Relying upon the judgment of this Court in Japani Sahoo v. Chandra Sekhar Mohanty(2007) 7 SCC 394 , it is

submitted that the State of Kerala could not take shelter of the doctrine of delay and laches. The erring conduct of the police officers is of criminal

nature and justice can be meted out to the appellant only by taking appropriate action against the said officers along with payment of compensation for

the humiliation and disgrace suffered by the victim.

28. It is further contended by the learned counsel for the respondent no. 4 that investigation can be initiated to instill confidence in the public mind. To

buttress his stand, the decision in Punjab and Haryana High Court Bar Association v. State of Punjab and others(1994) 1 SCC 616 has been pressed

into service.

29. First, we shall advert to the aspect of grant of compensation. From the analysis above, we are of the view that the appellant was arrested and he

has suffered custody for almost fifty days. His arrest has been seriously criticized in the closure report of the CBI. The comments contained in the

report read as follows:-

Ã¢â‚¬Å“2. Consequent upon the request of Govt. of Kerala, the investigation of Crime No 225/95 and No. 246/94 was entrusted to the .CHI for

investigation vide DP&T Notification No. 228/59/94-AVD.II (i) & (ii) dated 2/12/94. Accordingly, case RC. 10(S) 94 lis. 14 of Foreigners Act and

Para 7 of Foreigners Act, 1948 (corresponding to Crime No. 225/95) and case RC 11 (S)/94 U/s. I20-B r/w See. 3, 4 & 5 of official Secrets Act r/w

Sec. 34 IPC (corresponding to Crime No. 246/94). were registered on 3/12/94 in SIU. V Branch of CBl/SIC.II/New Delhi.

3. Immediately after the registration of the case, theinvestigation was taken upon 4/12/94 and the police case files of both the cases were taken over.

After investigation, a Chargesheet in Case Crime no. 225.94 was filed on 17/12/94 against Mariam Fasheeda. This case has ended in acquittal of

accused Mariyam Rasheeda vide Judgment dated 14.11.1995, passed by the HonÃ¢â‚¬â„¢ble Chief Judicial Magistrate, Cochin.

4. The local police during the course of investigation of case crime No. 225/94 had seized a Diary written in Dwivegi script from accused Mariyam

Rasheeda, the contents of which indicated that she was collecting informations about certain Maldivian nationals based in Bangalore who were

allegedly planning a coup against the Govt. of Maldives. It was further revealed that accused Mariyam Rasheeda along with Fauziya Hassan had

stayed in Room No. 205 of Hotel Smart, Trivandrum from 17/9/94 to 20/10/94 and during this period a number of telephone calls were found to have

been made from Room No. 205 to Tel. No. of D. Sasikumaran, a senior Scientist of Indian Space Research Organisation, Valiamala. Accused

Mariyam Rasheeda while in Kerala Police custody in this case was interrogated by Kerala Police and officials of Intelligence Bureau. Accused

Mariyam Rasheeda allegedly made a statement revealing the contacts of Fauziya Hassan and of one Zuheira, a Maldivian national settled in Colombo

with Mohiyuddin state to be Pakistani national working as Assistant Manager, Habib Bank in Male and Mazhar Khan, another Pak National. She also

allegedly disclosed that according to Fauziya Hassan, D. Sasikumaran was friend of Zuheria. Based on the disclosures allegedly made by accused

Mariyam Rasheeda coupled with the contents of her diary and the telephone contacts with D. Sasikumaran, the instant case was registered on the

suspicion that she and Fauziya Hassan along with others were taking part in activities prejudicial to the sovereignty and integrity of India.

5. The investigation of crime No. 246/94 remainedwith Special Branch only for two days and on 15.11.94, the investigation was taken over by Special

Investigation was taken over by Special Investigation Team headed by Shri Siby Mathews, DIG (Crime), Trivandrum. During the course of

investigation, the Kerala Police/Crime branch arrested 6 accused persons on the dates as shown below:-

i. Fauziya Hassan - 13.11:94 ii. Mariyam Fasheeda- 14.11.94 iii. D. Sasikumaran - 21.11.94 iv. K. Chandrasekhar - 23.11.94 v. Nambi Narayanan -

30.11.94 vi. Sudhir Kumar Sharma - 01.12.94

5. The search of the office room as well as residence of D. Sasikumaran at Space Application Centre, Ahemedabad, was conducted on 21.11.94 and

that of his office and residence at Trivandrum on 30.11.94. The search of office as well as residence of accused Chandrasekhar and S.K. Sharma,

were conducted on 21.11.94 at Bangalore. The house search of Ms Sara Palani of Bangalore where accused Fauziya Hassan was residing, was also

conducted on 21.11.94. In addition, the house seach of Shri. M.K. Govinadan Nair and Shri Mohana Prasad, both senior Scientists of LPSC

Valiamala, was also conducted but nothing incriminating was recovered. The Crime Branch also exdamined 27 witnesses but none of the witnesses

stated anything which could throw any light about the alleged espionage activities of the accused persons. The 7 witnesses of Hotel Samrat,

Tridandrum, proved the stay of accused Mariyam Rahseeda and Fauziya Hassan in Room No. 205 in Hotel Samrat from 19.9.94 to 20.10.94 and the

visit of Sasikumaran to Hotel Samarat to meet Mariyam Rasheeda. The witnesses of Hotel Geeth, Trivandrum and that of Hotel Rock Holm,

Trivandrum, proved the visit of accused Sasikumaran alongwith Mariyam Rasheeda to the said hotel on 10.10.94 and witjiMariyam Rasheeda to the

said hotel on 10.10.94 and 28.9.94, respectively.Ã¢â‚¬â€‹

And again:-

Ã¢â‚¬Å“10. Though no independent evidence has come on record during the course of local Police/Crime branch investigation about the alleged espionage

activities of the accused persons, yet based on the revelations allegedly made by the accused, the module that emerged regarding the espionage

activities was that accused Nambi Narayanan and Sasikumaran used to pass on documents drawings of ISRO relating to Viking/Vikas Engine

technology, Cryogenic Engine technology and PSLV Flight Data/Drawings and accused Chandersekhar, S.K. Sharma and Raman Srivastava, the then

IGP South Zone, Kerala passed on secrets of Aeronautical Defence Establishments, Bangalore. The documents/drawings were allegedly passed on to

Mohd. Aslam, a Pak nuclear scientist and Mohd. Pasha/ahmed Pasha for monetory considerations and that the amount running into lacs of US dollars

was received andshared by accused Sasikumaran, Chandrasekhar, Nambi Narayanan and Shri Raman Srivastava and that Mohiyuddin, Asstt.

Manager of Habib Bank, Male, was one of the persons who was financing the accused. Accused Fauziya Hassan, zuheria, a Maldivian national

settled in Colomobo, Mr. Alexi Vassive of Glovkosmos, Russia, and Shri Raman srivastava, worked as conduits. Some of the important meetings

which were held for espionage activities and in which the documents were allegedly passed on for a consideration, were held at International Hotel

Madras on 24.5.1994, m Bangalore in the mid September and on 23.9.94 at Hotel Luciya, Trivandrum, in which some of the accused as well as said

Zuheira and Shri Raman Srivastava, IGP, took part.

11. Immediately after taking over the investigation , by CBI, all the 6 accused persons are thoroughly interrogated, taking the statements purported to

have been made by the accused before the Kerala Police/IB, to be true, but all of them denied having indulged in any espionage activity. On being

confronted with the statements made by them before Kerala Police as well as IB officials, the accused took the plea that the statements were made

on the suggested lines under duress. Though there was no complaint either from ISRO or fromDE Bangalore about the loss of any documents, the

alleged revelations of the accused made before local Police/Intelligence officials were taken at their face value and focused investigation was carried

out to find out the details and purposes of various visits of accused Mariyam Rasheeda and Fauziya Hassan to India, their places of stay were verified,

the persons, including accused,, with whom they came in contact were examined and efforts are made to gather oral as well as documentary evidence

to find out whether the accused have committed any acts which were prejudicial to the sovereignty, integrity and security of the State and violative of

the Official Secrets Act, 1923

x xÃ, xÃ, x x

Ã¢â‚¬Å“Accused Nambi Narayanan jointed Thumba Equotarial Launching System on 12.9.1996 as Technical Assistant (Design) and then from time to

time he was promoted and was working as Scientist-II since January 93. In system Project, Associates Project Director GSLV and Project Director

PS-II and PS-LV and was responsible for the organization and management of launch vehicle system projects in LPSC.

xÃ, x x x x

32. During the investigation neither any evidence came on record indicating that the accused indulged in espionage activities by way of passing on of

secret documents of ISRO of any Defence establishments nor any incriminating documents could be recovered. Accused Mariyam Rasheeda has

taken the stand that she was to return to Male on 29.9.94 but could reach Trivandrum Airport as she did not get any transport on account of the

'bandh'. Subsequently, the Indian Airlines (lights were suspended on account of plague scare and thus, she could not go. Since she was going to

complete stay of 90 days on 14.10.94, and to enable her to stay beyond 90 days she required the permission of the police authorities, she alongwith

Fauziya Hassan visited office of the Commissioner of Police and contacted Inspector Vijayan. She was advised by Inspector Vijayan to first obtain a

confirmed ticket for her return and then to approach for the extension of her stay. Accordingly, she got one Indian Airlines ticket and one Air Lanka

ticket confirmed for her departure of 17.10.94 and approached Inspector Vijayan. However, Inspector vijayan took ticket as well as her Passport and

ultimately she was arrested on 20.10.94.

x x x x

38. As per the statement of accused Nambi Narayanan allegedly made before Kerala Police, a deal for sale Viking/Vikas Engine drawings was

struck with Habibullah Khan for Rs. 1.5 crores. Two installments of the drawings were given to Rauziya at Thampanoor 'Bus Stand and Luciya Hotel

and the third installment was scheduled to be given on 5,12.94. Another deal for transfer for Rocket Launch details of LPSC was finalized with

Fauziya Hassan and Ahemd Pash at hotel Fort Manor during February, 1993 for a consideration of USS 1.00 lakh and that on 11.10.94 he and

Sasikumaran took Fauziya from Hotel Samrat to a nearby dam and engaged in transfer of packets containing Cryogenic technology. The investigation

revealed:-

(xiv) Investigation has established that the accusedpersons including Rasheeda, Nambi Narayanan and Chandrasekhar were harassed and physically

abused. It is curious that while the IB had all the six accused persons in their custody, they recorded the statements of only Sasikumaran,

Chandrashekar, Fauziya and Rasheeda and not of Nambi Narayanan and S.K.. Shanna. There is reason to believe that the interrogators forced the

accused persons to make statements on suggested lines. The CBI seized the personal diary of Chandrasekhar on 9.12.94. which contained the details

of his activities almost on day to day basis. If Chandrasekhar had made truthful disclosures to the Kerala Police/IB interrogators, certainly they would

have also discovered the existence of his diary which did not support case against him. He made disclosures before the CBI regarding the existence

of his diary which on analysis corroborates his version regarding his movements ex. Bangalore.

(xv) On the request of CBI, Director, LPSC hadconstituted a Committee of experts of determine whether any documents were found to be missing.

The Committee gave a report to say that only 254 documents were found to be missing which were random in nature and did not pertain to a

particular system or sub system. The Committee also noted that Vikas Engine was released on the basis of the in-house drawings which were

prepared after modifying the SEP drawings and all the in-house drawings were available and there was likely to be no impact of some small number

of missing documents. Similarly, all the 16.800 sheets in the Fabrication Divn. where Sasikumaran was working were found to be intact. (xvi) Neither

any incriminating documents of any moneyIndian or foreign have been recovered form the accused persons during searches conducted by the Kerala

Police and later by the CBI. The scrutiny of bank accounts also do not indicate anything suspicious in this regard.

(xvii) It is reasonable to believe that if Rasheeda was involved in any espionage activity regarding ISRO, she should have made a mention thereof in

her diary which is not the case.

114. During course of investigation, certain lapses were found on the part of earlier investigations/interrogators. The report is being submitted that

Government of Kerala/Govt. of India, separately on these aspects.

115. So sum up, in view of the evidence on record, oralas well as documentary, as discussed above, the allegations of espionage are not proved and

have been found to be false. It is, therefore, prayed that the report may kindly be accepted and the accused discharged and permission be accorded to

return the seized documents to the concerned.Ã¢â‚¬â€‹

From the aforesaid report, the harassment and mental torture faced by the appellant is obvious.

30. The report submitted by the CBI has been accepted by this Court in K. Chandrasekhar (supra). Dealing with the conclusion of the report, this

Court stated:-

Ã¢â‚¬Å“(iii) Though the investigation of the case centered round espionage activities in ISRO no complaint was made by it to that effect nor did it raise

any grievance on that score. On the contrary, from the police report submitted by the CBI we find that several scientists of this organisation were

examined and from the statements made by those officers the CBI drew the following conclusion:

Ã¢â‚¬Å“The sum and substance of the aforesaid statements is that ISRO does not have a system of classifying drawings/documents. In other words, the

documents/drawings are not marked as Top Secret, Secret, Confidential or Classified etc. Further, ISRO follows an open-door policy in regard to the

issue of documents to the scientists. Since ISRO is a research-oriented organisation, any scientist wanting to study any document is free to go to the

Documentation Cell/Library and study the documents. As regards the issue of documents to various Divisions, the procedure was that only the copies

used to be issued to the various divisions on indent after duly entering the same in the Documentation Issue Registers. During investigation, it has been

revealed that various drawings running into 16,800 sheets were issued to the Fabrication Division where accused Sasi Kumaran was working, and

after his transfer to SAP, Ahmedabad on 7-11-1994, all the copies of the drawings were found to be intact. Nambi Narayanan being a senior scientist,

though had access to the drawings, but at no stage any drawings/documents were found to have been issued to him. They have also stated that it was

usual for scientists to take the documents/drawings required for any meetings/discussions to their houses for study purposes. In these circumstances,

the allegation that Nambi Narayanan and Sasi Kumaran might have passed on the documents to a third party, is found to be false.Ã¢â‚¬â€‹

It further appears that at the instance of CBI, a Committee of senior scientists was constituted to ascertain whether any classified documents of the

organisation were stolen or found missing and their report shows that there were no such missing documents. There cannot, therefore, be any scope

for further investigation in respect of purported espionage activities in that organisation in respect of which only the Kerala Police would have

jurisdiction to investigate;

31. As stated earlier, the entire prosecution initiated by the State police was malicious and it has caused tremendous harassment and immeasurable

anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State police

was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the

Central Bureau of Investigation. After comprehensive enquiry, the closure report was filed. An argument has been advanced by the learned counsel

for the State of Kerala as well as by the other respondents that the fault should be found with the CBI but not with the State police, for it had

transferred the case to the CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was

initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were

jeopardized as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation

invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a

situation, it springs to life with immediacy. It is because life commands self-respect and dignity.

32. There has been some argument that there has been no complaint with regard to custodial torture. When such an argument is advanced, the

concept of torture is viewed from a narrow perspective. What really matters is what has been stated in D.K. Basu v. State of W.B (1997) 1 SCC

416. The Court in the said case, while dealing with the aspect of torture, held:-

Ã¢â‚¬Å“10. Ã¢â‚¬ËœTortureÃ¢â‚¬â„¢ has not been defined in the Constitution or in other penal laws. Ã¢â‚¬ËœTortureÃ¢â‚¬â„¢ of a human being by another human being is

essentially an instrument to impose the will of the Ã¢â‚¬ËœstrongÃ¢â‚¬â„¢ over the Ã¢â‚¬ËœweakÃ¢â‚¬â„¢ by suffering. The word torture today has become synonymous

with the darker side of human civilisation.

Ã¢â‚¬Ëœ Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is

anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and

hate. It is a desire to kill and destroy including yourself.Ã¢â‚¬â„¢

Ã¢â‚¬" Adriana P. Bartow

11. No violation of any one of the human rights has beenthe subject of so many conventions and declarations as Ã¢â‚¬Ëœtorture Ã¢â‚¬â„¢ Ã¢â‚¬" all aiming at total

banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever

before. Ã¢â‚¬Ëœ Custodial torture Ã¢â‚¬â„¢ is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual

personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward Ã¢â‚¬" flag of

humanity must on each such occasion fly half-mast.

12. In all custodial crimes what is of real concern is notonly infliction of body pain but the mental agony which a person undergoes within the four

walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the

purview of law.Ã¢â‚¬â€¹

33. From the aforesaid, it is quite vivid that emphasis has been laid on mental agony when a person is confined within the four walls of a police station

or lock up. There may not be infliction of physical pain but definitely there is mental torment. In Joginder Kumar v. State of U.P. and others (1994) 4

SCC 260, the Court ruled:-

Ã¢â‚¬Å“8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints

about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand,

and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual

and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first

Ã¢â‚¬" the criminal or society, the law violator or the law abiderÃ¢â‚¬Â¦.Ã¢â‚¬â€‹

34. In Kiran Bedi v.Committee of Inquiry and another (1989) 1 SCC 494 , this Court reproduced an observation from the decision in D.F. Marion v.

Davis 217 Ala. 16 (Ala. 1927):

Ã¢â‚¬Å“25. Ã¢â‚¬Â¦ Ã¢â‚¬ËœThe right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human

society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty,

and property.Ã¢â‚¬â„¢Ã¢â‚¬â€‹

35. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two Judge Bench of this Court in

Vishwanath Agrawal v. Sarla Vishwanath Agrawal (2012) 7 SCC 288 has observed:-

Ã¢â‚¬Å“55. Ã¢â‚¬Â¦ reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a

cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity.Ã¢â‚¬â€‹

36. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected.

In this context, we may refer with profit how this Court had condemned the excessive use of force by the police. In Delhi Judicial Service Association

v. State of Gujarat and others (1991) 4 SCC 406 , it said:-

Ã¢â‚¬Å“39. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent

commission of crime and above all to ensure law and order to protect the citizensÃ¢â‚¬â„¢ life and property. Ã, The law enjoins the police to be

scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy

and police are complementary to each other. Ã, It is unfortunate that these objectives have remained unfulfilled even after 40 years of our

Constitution. Ã, Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments

from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without

obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police Ã¢â‚¬Â¦ [and it] must bear in mind, as held by this

Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.Ã¢â‚¬â€‹

37. 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 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. In Sube Singh v. State of Haryana and others (2006) 3

SCC 178, the three-Judge Bench, after referring to the earlier decisions, has opined:-

Ã¢â‚¬Å“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an

established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the

facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person

claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court

ordering compensation under Section 357 of the Code of Criminal Procedure.Ã¢â‚¬â€¹

38. In Hardeep Singh v. State of Madhya Pradesh(2012) 1 SCC 748 , the Court was dealing with the issue of delayed trial and the humiliation faced

by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted compensation of Rs. 70,000/-. This Court, while dealing

with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

39. In the instant case, keeping in view the report of the CBI and the judgment rendered by this Court in K. Chandrasekhar (supra), suitable

compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life

and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs. 50 lakhs

towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be paid within eight weeks by the State. We hasten to

clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any

opinion on the merits of the suit.

40. Mr. Giri, learned senior counsel for the appellant and the appellant who also appeared in person on certain occasions have submitted that the grant

of compensation is not the solution in a case of the present nature. It is urged by them that the authorities who have been responsible to cause such

kind of harrowing effect on the mind of the appellant should face the legal consequences. It is suggested that a Committee should be constituted to

take appropriate steps against the erring officials. Though the suggestion has been strenuously opposed, yet we really remain unimpressed by the said

oppugnation. We think that the obtaining factual scenario calls for constitution of a Committee to find out ways and means to take appropriate steps

against the erring officials. For the said purpose, we constitute a Committee which shall be headed by Justice D.K. Jain, a former Judge of this Court.

The Central Government and the State Government are directed to nominate one officer each so that apposite action can be taken. The Committee

shall meet at Delhi and function from Delhi. However, it has option to hold meetings at appropriate place in the State of Kerala. Justice D.K. Jain shall

be the Chairman of the Committee and the Central Government is directed to bear the costs and provide perquisites as provided to a retired Judge

when he heads a committee. The Committee shall be provided with all logistical facilities for the conduct of its business including the secretarial staff

by the Central Government.

41. Resultantly, the appeals stand allowed to the extent indicated hereinabove. There shall be no order as to costs.