A STATE OF ANDHRA PRADESH

v.

CHALLA RAMKRISHNA REDDY AND ORS.

APRIL 26, 2000

B [S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Limitation Act, 1963 : Articles 72 and 113—Death of a prisoner caused in jail by some outsiders—Police officials involved in the conspiracy—Suit for compensation filed by family of the deceased against the State on account of
C *negligence resulting in death of the deceased—Suit dismissed being barred by limitation—Article 72 of the Act prescribing one year limitation period held applicable—High Court decreed the suit—On appeal, Held : Article 72 is applicable only if the act or omission of a public officer pursuant to a statute is bonafide and itself is a tort causing injury to the person claiming*
D *compensation—If act or omission is malafide then Article 72 is not applicable—Article 113, prescribing three years limitation period will apply.*

Constitution of India : Articles 21 and 300—Right to life under Article 21 is guaranteed to every person—Even a prisoner lodged in jail continues to enjoy right to life—State cannot violate it even under the garb of immunity in
E *respect of sovereign acts as provided in Article 300.*

Respondent No. 1 and his father, involved in a criminal case, were remanded to judicial custody and were lodged in Jail. Respondent No. 1 and his father informed the Inspector of Police that a conspiracy to kill
F **them was going on and their lives were in danger. A representation regarding the same was also sent by them to the Collector and the Home Minister. The Circle Inspector did not treat the matter seriously and inspite of the representations made by them neither adequate protection was provided to them; nor extra guards were put on duty. On the night of occurrence, between 5th and 6th of May 1977, a bomb was hurled at them and as a**
G **result of the bomb explosion father of Respondent No. 1 died. In his dying declaration, the deceased stated that he had information that a conspiracy to kill them in jail was hatched and Sub-Inspector of Police (DW-1) was a party to that conspiracy. Respondent No. 1, however, escaped with some injuries. He alongwith his mother and four brothers filed a suit against the**
H **State for a sum of Rs. 10 Lakhs as damages on account of the negligence**

which resulted in the death of the deceased. The appellant State contested the suit on the ground of limitation and also on the ground of immunity from legal action in respect of its sovereign acts. Accepting the contentions, the trial court dismissed the suit. On appeal, High Court decreed the suit for a sum of Rs. 1,44,000 along with interest. Hence, the present appeal.

The appellant State contended that the suit was barred by time as the time limit provided by Article 72 of the Limitation Act, 1963 was one year only whereas the suit was filed after three years. The appellant also contended that maintenance of jails being a part of sovereign function of the State the suit for compensation was not maintainable. The respondents contended that the period of limitation would be governed by Article 113 of the Act as the nature of the suit was not covered by any other Article of the Act and that the said Article prescribed a period of three years from the date on which the right to sue accrued.

Dismissing the appeal, this Court

HELD : 1.1. Articles 72 and 113 of the Limitation Act, 1963 are applicable to different situations. In order to attract Article 72, it is necessary that the suit must be for compensation for doing or for omitting to do an act in pursuance of any enactment in force at the relevant time. If the act or omission complained of is not alleged to be in pursuance of the statutory authority, this Article would not apply. This Article would be attracted to meet the situation where the public officer or public authority or, for that matter, a private person does an act under power conferred or deemed to be conferred by an Act of the Legislature by which injury is caused to another person who invokes the jurisdiction of the court to claim compensation for that act. Thus, where a public officer acting *bonafide* under or in pursuance of the Act of Legislature commits a "tort", the action complained of would be governed by this Article which, however, would not protect a public officer acting *malafide* under colour of his office. The Article, as worded, does not speak of "*bonafide*" or "*malafide*" but it is obvious that the shorter period of limitation, provided by this Article, cannot be claimed in respect of an act which was malicious in nature and which the public officer or authority could not have committed in the belief that the act was justifiable under any enactment. [650-F-H; 651-A-C]

State of Punjab v. *M/s. Modern Cultivators,* AIR (1965) SC 17, relied

A on.

Mohammad Sadat Ali Khan v. *Administrator, Corporation City of Lahore,* **AIR (1945) Lahore 324;** *Secretary of State* v. *Lodna Colliery Co. Ltd.,* **AIR (1936) Patna 513 and** *Punjab Cotton Press Co. Ltd.* v. *Secretary of State,* **AIR (1927) PC 72, referred to.**

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Jailal v. *The Punjab State & Anr.,* **AIR (1967) Delhi 118;** *Jacques & Ors.* v. *Narendra Lal Das,* **AIR (1936) Calcutta 653;** *The State of Punjab & Ors.* v. *Lalchand Sabharwal,* **AIR (1975) Punjab 294 and** *Pt. Shiam Lal* v. *Abdul Raof,* **AIR (1935) Allahabad 538, affirmed.**

C **1.2. Respondent No. 1 and his father (the deceased) who apprehended danger to their lives complained to the police and requested for adequate police guards being deployed at the jail, but their requests were not heeded to and true to their apprehension, a bomb was thrown at them which caused the death of deceased and injuries to Respondent 1. In this** D **process, one of the three persons, who was sleeping near the jail, was also killed. The Police Sub-Inspector was also in conspiracy and it was for this reason that inspite of their requests, adequate security guards were not provided. Even the normal strength of the guards who should be on duty at night was not provided and only two constables, instead of nine, were put on duty. Since the Sub-Inspector of Police himself was in con-** E **spiracy, the act in providing adequate security at the jail cannot be treated to be an act or omission in pursuance of a statutory duty, namely, Rule 48 of the Madras Prison Rules, referred to by the High Court. Moreover, the action was wholly *malafide* and, therefore, there was no question of the provisions of Article 72 being invoked to defeat the claim of the respond-** F **ents as the protection of shorter period of limitation, contemplated by that Article, is available only in respect of *bonafide* acts. The High Court in the circumstances of this case was justified in not applying the provisions of Article 72 and invoking the provisions of Article 113 to hold that the suit was within limitation. [654-E-H; 655-A-B]**

G **2.1. The Crown in England does not now enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants. The Maxim that king can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to** H **run the Government, which has to act in accordance with the provisions of**

the Constitution and would be answerable to the people for any violation thereof. [655-D-E] A

Ratan Lal's, Law of Torts (23rd Edition), referred to.

2.2. Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be he a convict or an undertrial or a *detenue*, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights including the Right to Life guaranteed under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights. The Fundamental Rights, which also include basic human rights, continue to be available to a prisoner and those rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which has been rejected several times by this Court. [656-E-G; 659-B] B C D

N. Nagendra Rao & Co. v. *State of A.P.*, AIR (1994) SC 2663; *Common Cause, A Regd. Society* v. *Union of India & Ors.*, AIR (1999) SC 2979; *Nilabati Behera* v. *State of Orissa*, AIR (1993) SC 1960; *In Re : Death of Sawinder Singh Grower*, [1995] Supp. 4 SCC 450 and *D.K. Basu* v. *State of West Bengal*, AIR (1997) SC 610, relied on. E

Kasturi Lal Ralia Ram Jain v. *State of U.P.*, AIR (1965) SC 1039, distinguished.

2.3. None of the three categories of prisoners as defined under the Prisoners Act, 1894 lose their Fundamental Rights on being placed inside a prison. The restriction placed on their right to movement is the result of their conviction or involvement in crime. Thus, a person (prisoner) is deprived of his personal liberty in accordance with the procedure established by law which must be reasonable, fair and just. [657-C-D] F G

Maneka Gandhi v. *Union of India*, AIR (1978) SC 597; *State of Maharashtra* v. *Prabhakar Pandurang Sanzgiri*, AIR (1966) SC 424; *D. Bhuvan Mohan Patnaik* v. *State of Andhra Pradesh*, AIR (1974) SC 2092; *Charles Shobhraj* v. *Superintendent, Central Jail, Tihar*, AIR (1978) SC 1514; *Francis Corallie Mullin* v. *The Administrator, Union Territory of Delhi*, H

AIR (1981) SC 746; *Sunil Batra (I)* v. *Delhi Administration*, AIR (1978) SC 1675 and *Sunil Batra (II)* v. *Delhi Administration*, AIR (1980) SC 1679, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3969 of 1989.

From the Judgment and Order dated 17.2.89 of the Andhra Pradesh High Court in A. No. 2162 of 1986.

Ms. K. Amareshwari, B. Sridhar, Y. Subba Rao and K. Ram Kumar for the Appellant.

A.T.M. Sampath and V. Balaji for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Challa Chinnappa Reddy and his son Challa Ramkrishna Reddy were involved in Criminal Case No.18/1997 of Owk Police Station in Baganapalle Taluk of Kurnool District. They were arrested on 25th of April, 1977 and on being remanded to judicial custody on 26th of April, 1977, they were lodged in Cell No.7 of Sub-jail, Koilkuntla. In the night between 5th and 6th of May, 1977, at about 3.30 A.M., some persons entered the premises of Sub-jail and hurled bombs into Cell No.7 as a result of which Challa Chinnappa Reddy sustained grievous injuries and died subsequently in Government hospital, Kurnool. His son Challa Ramakrishna Reddy who was also lodged in Cell No.7, however, escaped with some injuries.

Challa Ramakrishna Reddy and his four other brothers as also his mother filed a suit against the State of Andhra Pradesh claiming a sum of Rs.10 lacs as damages on account of the negligence of the defendant which had resulted in the death of Challa Chinnappa Reddy.

The suit was contested by the State of Andhra Pradesh on two principal grounds, namely, that the suit was barred by limitation and that no damages could be awarded in respect of sovereign functions as the establishment and maintenance of jail was part of the sovereign functions of the State and, therefore, even if there was any negligence on the part of the Officers of the State, the State would not be liable in damages as it was immune from any legal action in respect of its sovereign acts. Both the contentions were accepted by the trial court and the suit was dismissed. On appeal, the suit was decreed by the High Court for a sum of Rs.1,44,000 with interest at the

rate of 6 per cent per annum from the date of the suit till realisation. It is this judgment which is challenged in this appeal.

Ms. K.Amreshwari, learned Senior Counsel appearing on behalf of the State of Andhra Pradesh has contended that the suit was barred by time as the period of limitation, as provided by Article 72 of the Limitation Act, 1963, was only one year and since the act complained of took place in the night intervening 5th and 6th of May, 1977, the suit which was instituted on 9th of June, 1980, was barred by time. Learned counsel appearing on behalf of the respondents has, on the other hand, contended that the period of limitation would be governed by Article 113 of the Limitation Act, 1963 which prescribed a period of three years from the date on which the right to sue accrued. It is contended that Article 113 was the residuary Article and since the nature of the present suit was not covered by any other Article of the Limitation Act, it would be governed by the residuary Article, namely, Article 113 and, therefore, the suit, as held by the High Court, was within limitation.

The other question which was argued by the learned counsel for the parties with all the vehemence at their command was the question relating to the immunity of the State from legal action in respect of their sovereign acts. It was contended by the learned counsel for the appellant that the prisons all over the country are established and maintained either by the Central Government or by the State Government as part of their sovereign functions in maintaining law and order in the country and, therefore, the suit for compensation was not maintainable. Learned counsel for the respondents, on the contrary, has contended that the theory of immunity, professed by the appellant in respect of sovereign acts, has since been exploded by several decisions of this Court and damages have been awarded against the State even in respect of custodial deaths.

We will first take up the question of limitation. Article 72 of the Limitation Act, 1963 is quoted below:-

"Description of suit	Period of limitation	Time from which period begins to run
For compensation for doing or for omitting to do an act alleged	One year	When the act or omission takes place.

to be in pursuance of any enactment in force for the time being in the territories to which this Act extends.		

"

The above Article corresponds to Article 2 of the Limitation Act, 1908 which is quoted below:-

"For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in India."	Ninety days	When the act or omission takes place.

Article 113 of the Limitation Act, 1963, upon which reliance has been placed by the respondents, is quoted below:-

"Description of suit	Period of limitation	Time from which period begins to run
Any suit for which no period of limitation is provided elsewhere in this Schedule."	Three years.	When the right to sue accrues.

These Articles, namely, Articles 72 and 113 are applicable to different situations. In order to attract Article 72, it is necessary that the suit must be for compensation for doing or for omitting to do an act in pursuance of any enactment in force at the relevant time. That is to say, the doing of an act or omission to do an act for which compensation is claimed must be the act or omission which is required by the statute to be done. If the act or omission complained of is not alleged to be in pursuance of the statutory authority, this Article would not apply. This Article would be attracted to meet the situation where the public officer or public authority or, for that matter, a private person

does an act under power conferred or deemed to be conferred by an Act of the Legislature by which injury is caused to another person who invokes the jurisdiction of the court to claim compensation for that act. Thus, where a public officer acting bona fide under or in pursuance of an Act of the Legislature commits a "tort", the action complained of would be governed by this Article which, however, would not protect a public officer acting mala fide under colour of his office. The Article, as worded, does not speak of "*bona fide*" or "*mala fide*" but it is obvious that the shorter peiod of limitation, provided by this Article, cannot be claimed in respect of an act which was malicious in nature and which the public officer or authority could not have committed in the belief that the act was justifiable under any enactment.

In *State of Punjab* v. *M/s Modern Cultivators*, [1964] 8 SCR 273 = AIR (1965) SC 17, Hidayatullah, J. (as he then was) while approving the earlier decisions in *Mohammad Sadat Ali Khan* v. *Administrator, Corporation of City of Lahore*, ILR (1945) Lahore 523 (FB) = AIR 1945 Lahore 324 and *Secretary of State* v. *Lodna Colliery Co. Ltd.*, ILR 15 Patna 510 = AIR (1936) Patna 513, observed as under:-

> "(25) This subject was elaborately discussed in ILR (1945) Lah 523: AIR (1945) Lah 324 (FB) where all ruling on the subject were noticed. Mahajan, J. (as he then was) pointed out that "the act or omission must be those which are honestly believed to be justified by a statute." The same opinion was expressed by Courtney Terrell C.J. in *Secretary of State* v. *Lodna Colliery Co. Ltd.*, ILR 15 Pat 510: AIR (1936) Pat 513 in these words:-
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> > "The object of the article is the protection of public officials, who, while *bona fide* purporting to act in the exercise of a staturory power, have exceeded that power and have committed a tortious act; it resembles in this respect the English Public Authorities Protection Act. If the act compalined of is within the terms of the statute, no protection is needed, for the plaintiff has suffered no legal wrong. The protection is needed when an actionable wrong has been committed and to secure the protection there must be in the first place a *bona fide* belief by the official that the act complained of was justified by the statute, secondly the act must have been performed under colour of a statutory

A duty, and thirdly, the act must be in itself a tort in order to give rise to the cause of action. It is against such actions for tort that the statute gives protection."

(26) These cases have rightly decided that Art.2 cannot apply to cases where the act or omission complained of is not alleged to be in
B pursuance of statutory authority."

In Jailal v. *The Punjab State & Anr.*, AIR (1967) Delhi 118, it was held by the Delhi High Court that protection under Article 72 could be claimed only when the act was done under the colour of statutory duty but if the person acted with the full knowledge that it was not done under the authority
C of law, he could not claim the benefit of the shorter period of limitation prescribed under this Article.

In *Jaques & Ors.* v. *Narendra Lal Das*, AIR (1936) Calcutta 653, it was held that this Article would not protect the public officer acting *mala*
D *fide* under the colour of his office. To the same effect is the decision of the Punjab High Court in *The State of Punjab & Ors.* v. *Lalchand Sabharwal*, AIR (1975) Punjab 294 = 77 Punjab LR 396. In *Punjab Cotton Press Co. Ltd.* v. *Secretary of State*, AIR (1927) PC 72, where the canal authorities cut the bank of a canal to avoid accident to the adjoining railway track and not to the canal and plaintiff's adjacent mills were damaged, it was held that
E Article 2 was not applicable as the act alleged was not done in pursuance of any enactment. A Full Bench of the Allahabad High Court in *Pt. Shiam Lal* v. *Abdul Raof*, AIR (1935) Allahabad 538 held that if a police officer concocts and reports a false story, he is not protected by Article 2 of the Limitation Act, which would apply only where a person honestly believing
F that he is acting under some enactment does an act in respect of which compensation is claimed. But where the officer pretends that he is so acting and knows that he should not act, Article 2 would not apply.

Keeping these principles in view, let us examine the facts of this case. On being lodged in jail, the deceased Challa Chinnappa Reddy and Challa
G Ramkrishna Reddy (P.W.1) both informed the Inspector of Police that there was a conspiracy to kill them and their lives were in danger. They sent a representation to that effect to the Collector and the Home Minister. On 5th of May, 1977 they told the Circle Inspector that they had positive information that an attack on their lives would be made on that very night. But the Circle
H Inspector did not treat the matter seriously and said that no incident would

happen inside the jail and that they need not worry. In spite of the representation made by the deceased and Challa Ramkrishna Reddy, adequate protection was not provided to them and extra guards were not put on duty. The deceased, therefore, asked his followers to sleep that night near the jail itself. As pointed out earlier, that night, which incidentally was the night between 5th and 6th of May, 1977, a bomb was hurled in Cell No.7 where the deceased and Challa Ramkrishna Reddy (P.W.1) were lodged and as a result of the bomb explosion, Challa Chinnappa Reddy died but before his death, his dying declaration was recorded by the Judicial Magistrate in which it was stated by the deceased that they had received information that a conspiracy was hatched to kill them in the jail itself and that the Sub-Inspector of Police (who was examined as D.W.1 in the trial court) was a party to that conspiracy. The Magistrate also recorded the statement of Challa Ramkrishna Reddy who stated that though the deceased and he himself had requested the police to provide protection to them as their lives were in danger, their requests were not heeded to.

The High Court while examining the evidence on record came to the following conclusion:-

> "It is thus clear that though 9 members of the police party must stay in the sub-jail premises during the night, only two were there on that night. The witness did not produce his General Diary maintained in the Police Station to establish that 9 members of the guardian party were staying in the Sub-jail on that night. The learned Magistrate who visited the jail immediately after receiving the information and on learning of the incident, stated in his report, Ex.A-9, submitted to the Addl. District & Sessions Judge, Kurnool, that only two Constables were guarding the jail that night. He opined
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> > "I am inclined to think that the alleged explosion in Cell No.7 is on the first-floor, and that the culprits put up a ladder, tied with a rope to the wooden parapet, went up to the first-floor and threw the bomb into Cell No.7. He also reported that while going away, when they were challenged by three persons sleeping outside the jail (kept there by the deceased and P.W.1 as an additional precaution) they threw bombs at them, killing one of them and injuring the other two. It is also evident from Ex.A-14 that both the said Constables were suspended on 23.5.1977. The report of the learned Magistrate and his notes inspection (Ex.A-9)

clearly show that the Police Constables guarding the jail were not vigilant, and the P.C.483, whose duty it was to guard the cell, was probably sleeping at that time. The learned Magistrate has observed in his report "if P.C. 483 was more vigilant, perhaps the untoward incident would not have occurred..."

The very manner in which the culprits gained entry into the jail shows that it could not have happened but for the negligence on the part of the police to guard the jail property and to ensure the safety of prisoners, as required by Rule 48 of the Madras Rules aforesaid. It may be noted that Kurnool District is one of the districts in Rayalaseema area of the State, notorious for factions and blood-feuds. Use of bombs is not a rare occurrence in that area. In such a situation, and more so when a specific request was made for additional precautions, the failure not only to provide additional precautions, but the failure to provide even the normal guard duty cannot but be termed as gross negligence. It is an omission to perform the statutory responsibility placed upon them by Rule 48 of the Madras Prisons Rules. It is a failure to take reasonable care. On the issue too we disagree with the learned trial Judge."

It would thus be seen from the above that the deceased as also Challa Ramkrishna Reddy who apprehended danger to their lives, complained to the police and requested for adequate police guards being deployed at the jail, but their requests were not heeded to and true to their apprehension, a bomb was thrown at them which caused the death of Challa Chinnappa Reddy and injuries to Challa Ramkrishna Reddy (P.W.1). In this process, one of the three persons, who was sleeping near the jail, was also killed. The Police Sub-Inspector was also in conspiracy and it was for this reason that in spite of their requests, adequate security guards were not provided. Even the normal strength of the guards who should be on duty at night was not provided and only two Constables, instead of nine, were put on duty. Since the Sub-Inspector of Police himself was in conspiracy, the act in not providing adequate security at the jail cannot be treated to be an act or omission in pursuance of a statutory duty, namely, Rule 48 of the Madras Prison Rules, referred to by the High Court. Moreover, the action was wholly *mala fide* and, therefore, there was no question of the provisions of Article 72 being invoked to defeat the claim of the respondents as the protection of shorter period of limitation, contemplated by that Article, is available only in respect

of *bona fide* acts. A

In our opinion, the High Court in the circumstances of this case, was justified in not applying the provisions of Article 72 and invoking the provisions of Article 113 (the residuary Article) to hold that the suit was within limitation. B

We may now consider the next question relating to the immunity of the State Government in respect of its sovereign acts.

The trial court relying upon the decision of this Court in *Kasturi Lal Ralia Ram Jain* v. *State of U.P.*, AIR (1965) SC 1039 = [1965] 1 SCR 375, C dismissed the suit on the ground that establishment and maintenance of jail being a part of the sovereign activity of the Government, a suit for damages would not lie as the State was immune from being proceeded against in a court of law on that account. The High Court also relied upon the decision in *Kasturi Lal's* case (supra) but it did not dismiss the appeal on that ground. It went a step further and considered the provisions contained in Article 21 D of the Constitution and came to the conclusion that since the Right to Life was part of the Fundamental Rights of a person and that person cannot be deprived of his life and liberty except in accordance with the procedure established by law, the suit was liable to be decreed as the officers of the State in not providing adequate security to the deceased, who was lodged with E his son in the jail, had acted negligently.

Immunity of State for its sovereign acts is claimed on the basis of the old English Maxim that the King can do no wrong. But even in England, the law relating to immunity has undergone a change with the enactment of Crown Proceedings Act, 1947. Considering the effect of this Act, it is stated F in Rattan Lal's "Law of Torts" (23rd Edition) as under:-

> "The Act provides that the Crown shall be subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject (1) in respect of torts committed by its servants G or agents, provided that the act or omission of the servant or agent would, apart from the Act, have given rise to a cause of action in tort against that servant or agent or against his estate; (2) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; (3) in respect of any breach of the duties attaching at common law to the ownership, H

A occupation, possession or control of property. Liability in tort also extends to breach by the Crown of a statutory duty. It is also no defence for the Crown that the tort was committed by its servants in the course of performing or purporting to perform functions entrusted to them by any rule of the common law or by statute. The law as to indemnity and contribution as between joint tort-feasors shall be B enforceable by or against the Crown and the Law Reform (Contributory Negligence) Act, 1945 binds the Crown. Although the Crown Proceedings Act preserves the immunity of the Sovereign in person and contains savings in respect of the Crown's prerogative and statutory powers, the effect of the Act in other respects, speaking C generally, is to abolish the immunity of the Crown in tort and to equate the Crown with a private citizen in matters of tortious liability."

Thus, the Crown in England does not now enjoy absolute immunity and may be held vicariously liable for the tortious acts of its officers and servants. D

The Maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to run the Government, which has to act in accordance with the provisions of the E Constitution and would be answerable to the people for any violation thereof.

Right to Life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that Right. A prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being. Even when lodged in the jail, F he continues to enjoy all his Fundamental Rights including the Right to Life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.

"Prison" has been defined in Section 3(1) of the Prisons Act, 1894 as G any jail or place used permanently or temporarily under the general or special orders of State Government for the detention of prisoners. Section 3 contemplates three kinds of prisoners. Sub- clause (2) of Section 3 defines "criminal prisoner" as a prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order H of a court martial. "Convicted criminal prisoner" has been defined in Section

3(3) as a prisoner under sentence of a court or court martial and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882 or under the Prisoners Act, 1871. The corresponding provision in the new Code of Criminal Procedure is not being indicated as it is not necessary for pruposes of this case. "Civil prisoner" has been defined in Section 3(4) as a prisoner who is not a "criminal prisoner". A B

Thus, according to the definition under the Prisoners Act, there is a convict, there is an under- trial and there is a civil prisoner who may be a detenu under preventive detention law. None of the three categories of prisoners lose their Fundamental Rights on being placed inside a prison. The restriction placed on their right to movement is the result of their conviction or involvement in crime. Thus, a person (prisoner) is deprived of his personal liberty in accordance with the procedure established by law which, as pointed out in *Maneka Gandhi* v. *Union of India*, [1978] 1 SCC 248 = [1978] 2 SCR 621 = AIR (1978) SC 597, must be reasonable, fair and just. C

The rights of prisoners, including their Fundamental Rights have been culled out by this Court in a large number of decisions, all of which may not be referred to here. In *State of Maharashtra* v. *Prabhakar Pandurang Sanzgiri*, AIR (1966) SC 424 = [1966] 1 SCR 702, it was held that conditions of detention cannot be extended to deprivation of other Fundamental Rights and the detenu, who had written a book in 'Marathi', could not be prohibited from sending the book outside the jail for its publication. In *D. Bhuvan Mohan Patnaik* v. *State of Andhra Pradesh*, AIR (1974) SC 2092 = [1975] 3 SCC 185 = [1975] 2 SCR 24, it was laid down that convicts are not denuded of all the Fundamental Rights they possess. Chandrachud, J. (as he then was) held : D E F

> "The security of one's person against an arbitrary encroachment by the police is basic to a free society and prisoners cannot be thrown at the mercy of policemen as if it were a part of an unwritten law of crimes. Such intrusions are against the very essence of a scheme of ordered liberty." [See: [1975] 3 SCC Page 188 Para 9] G

In *Charles Shobraj* v. *Superintendent, Central Jail, Tihar*, AIR (1978) SC 1514, Krishna Iyer, J. observed as under :

> "True, confronted with cruel conditions of confinement, the court has an expanded role. True, the right to life is more than mere animal H

existence; or vegetable subsistence. True, the worth of the human person and dignity and divinity of every individual inform Articles 19 and 21 even in a prison setting. True constitutional provisions and municipal laws must be interpreted in the light of the normative laws of nations, wherever possible and a prisoner does not forfeit his part III rights." (See: AIR 1978 Page 1517 Para 14)

In *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi*, [1981] 1 SCC 608 = AIR (1981) SC 746 = [1981] 2 SCR 516, the Court held that Right to Life means the right to live with basic human dignity. In this case, the petitioner, who was a British national and was detained in the Central Jail, Tihar, had approached this Court through a petition of habeas corpus in which it was stated that she experienced considerable difficulty in having interview with her lawyer and the members of her family. She stated that her daughter, who was 5 years of age, and her sister who was looking after the daughter, were permitted to have interview with her only once in a month. Considering the petition, Bhagwati, J. (as he then was) observed at Page 753 in Para 8 as under :

"The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression 'personal liberty' occurring in Article 21 has been given a broad and liberal interpretation in *Maneka Gandhi's* case (AIR 1978 SC 597) (supra) and it has been held in that case that the expression 'personal liberty' used in that Article is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19". There can therefore be no doubt that 'personal liberty' would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Arts. 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21."

(See also : *Sunil Batra (I)* v. *Delhi Administration*, AIR (1978) SC 1675 = (1978) 4 SCC 494 = 1979 (1) SCR 392 ; *Sunil Batra (II)* v. *Delhi Administration*, AIR (1980) SC 1579 = [1980] 3 SCC 488 = [1980] 2 SCR 557)

Thus, the Fundamental Rights, which also include basic human rights, continue to be available to a prisoner and those rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which has been rejected several times by this Court.

In *N. Nagendra Rao & Co.* v. *State of A.P.*, AIR (1994) SC 2663 = (1994) 6 SCC 205, it was observed:-

> "But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is soverign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in Nineteenth Century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government at par with any other juristic legal entity. Any watertight compartmentalisation of the functions of the State as "soverign and non-sovereign" or "governmental or non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligently. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a welfare State is not shaken. Even in America where this doctrine of soverignty found it place either because of the 'financial instability of the infant American States rather than to the stability of the doctrine theoretical foundation', or

A because of 'logical and practical ground', or that 'there could be no legal right' as against the State which made the law gradually gave way to the movement from, 'State irresponsibility to State responsibility.' In welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulaing and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between soverign and non-soverign powers for which no rational basis survives, has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity."

The whole question was again examined by this Court in Common Cause, *A Registered Society* v. *Union of India & Ors.*, [1999] 6 SCC 667 = AIR (1999) SC 2979, in which the entire history relating to the institution of suits by or against the State or, to be precise, against Government of India, beginning from the time of East India Company right up to the stage of Constitution, was considered and the theory of immunity was rejected. In this process of judicial advancement, *Kasturi Lal's* case (supra) has paled into insignificance and is no longer of any binding value.

This Court, through a stream of cases, has already awarded compensation to the persons who suffered personal injuries at the hands of the officers of the Government including Police Officers & personnel for their tortious act. Though most of these cases were decided under Public law domain, it would not make any difference as in the instant case, two vital factors, namely, police negligence as also the Sub-Inspector being in conspiracy are established as a fact.

Moreover, these decisions, as for example, *Nilabti Behera* v. *State of Orissa*, [1993] 2 SCC 746 = 1993 (2) SCR 581 = AIR 1993 SC 1960; In *Re: Death of Sawinder Singh Grower*, [1995] Supp. 4 SCC 450 = JT (1992) 6 SC 271 = 1992 (3) Scale 34; and *D:K. Basu* v. *State of West Bengal*, [1997] 1 SCC 416 = AIR (1997) SC 610, would indicate that so far as Fundamental Rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the Government attitude continues to be

conservative and it tries to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign acts or acts of State, which must fail.

For the reasons stated above, we do not find any merit in this appeal which is dismissed.

R.C.K. Appeal dismissed.