



W.P(MD)No.9764 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9764 of 2015

Manikandan

... Petitioner

Vs

1.The Secretary to the Government,
Home Department, Fort St.George,
Chennai – 600 009.

2.The Director General of Police,
Kamarajar Salai, Chennai – 600 004.

3.The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

4.The District Collector,
Perambalur District,
Perambalur.

5.The Commissioner of Police,
Tiruchirappalli City,
Tiruchirappalli.

6.The Superintendent of Police,
Perambalur District, Perambalur.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to pay compensation to the petitioner towards death of the petitioner's father (late) Ramachandran on the basis of the petitioner's representation dated 09.06.2015 within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.D.Rameshkumar

For Respondents : Mr.S.Ra.Ramachandran
Additional Government Pleader
for R1, R3 and R4

Mr.A.Albert James,
Government Advocate (crl.)
for R2, R5 and R6

ORDER

The petitioner's father Ramachandran was arrested by the police personnel attached to Perambalur Police Station on 04.10.2006. He was remanded to custody. He died on 20.10.2006. The specific case of the petitioner is that his father was brutally assaulted while in custody and on account of the injuries suffered by him, the death has occurred. Complaint was lodged by the petitioner and the same was registered as Crime No.446 of 2013 on the file of KK Nagar Police Station, Thiruchirapalli. Enquiry by the Executive Magistrate was ordered. The Revenue Divisional Officer, Thiruchirappalli filed private complaint against three of the police personnel



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attached to Perambalur Police Station and the same was taken on file in P.R.C.No.4 of 2013 on the file of the learned Judicial Magistrate No-II, Thiruchirappalli. It was committed to Sessions Court and the case was tried in S.C No.96 of 2013. The learned Trial Judge convicted the accused and found them guilty of the offences under Section 304 of IPC and they were awarded 10 years rigorous imprisonment vide judgment dated 24.04.2015. The petitioner was paid compensation of Rs.1,00,000/- alone. Seeking enhancement of compensation, the petitioner has filed this writ petition.

2.The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition and also the materials enclosed in the typed set of papers. He called upon this Court to grant relief as prayed for.

3.The respondents 5 and 6 have filed individual counter affidavits and the learned Government Advocate took me through its contents. They pointed out that the judgment of conviction was reversed in CrI.A(MD)No.123 of 2015 dated 23.06.2015 and that therefore, the very foundation of the petitioner's case has been totally undermined. It is further pointed out that the petitioner is now



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a life convict. My attention was drawn to the Judgment dated 27.02.2020 in S.C.No.43 of 2010 on the file of the Mahila Court, Perambalur. The petitioner was figuring as A.7 in the murder case. He pressed for dismissal of the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. The fact that Manikandan has been convicted in a murder case and that he has been granted suspension of sentence by this Court are not relevant for the purpose of deciding this case. The only question that calls for consideration is whether the petitioner's father died due to torture in police custody. The learned counsel appearing for the petitioner placed considerable reliance on the post-mortem certificate issued by one Dr.A.Karthikeyan. In the post-mortem certificate certain wounds have been referred to and the final opinion reads as follows:

“Died of cerebral, renal, pulmonary and gastro intestinal tract pathology”

5.The Criminal Appeal filed by the convicted police personnel was allowed on 23.06.2015 in the following terms :



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“7. There is no denial of the fact that the deceased was taken into custody on 04.10.2006 and he was remanded to judicial custody on the same day. The question is whether the deceased was attacked by these accused or not, while he was in police custody. As rightly pointed out by the learned counsel for the appellants, the Sub Inspector of Police, who arrested the accused, has not been examined. There is no direct evidence to prove that these accused had attacked the deceased, while he was in custody. The prosecution relies only on the evidence of PW1. PW1 is not an eyewitness to the occurrence, but he has stated that when his father was in the Police lock up, he told him that he was attacked by the Police, but the persons, who attacked him, were not mentioned to him. PW1 has not identified these accused as the persons, who attacked the deceased. Thus, absolutely there is no evidence to show that these accused attacked the deceased.

8. The deceased, when he was produced before the Doctor on 05.10.2006, told the Doctor that he was attacked by four unknown persons and two known persons near the Police Station. This statement is a dying declaration, but, in this statement, the deceased had not implicated the accused. Who are those unknown persons and who caused the injuries are not known. The Doctor, who conducted autopsy, had found two external injuries, which are small contusions. Therefore, it could be inferred that the above said four unknown persons and two known persons would have caused those injuries on him.



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9.On 05.10.2006, when he was examined at the Government Hospital, Tiruchirapalli, he had only hypertension and diabetics. ECG taken revealed that he was alright. X-ray taken also did not reveal any abnormality. He was discharged from the hospital on 06.10.2006, since there was no abnormality in him. This shows that till 06.10.2006, there was no cause which would have resulted in death later on.

10.According to the evidence of PW4, between 06.10.2006 and 16.10.2006, the deceased did not make any complaint at all, that means he was perfectly alright. On 17.10.2006, he complained of abdominal pain and vomiting sensation. Drugs were administered for the same. After treatment, his blood pressure was also brought under control. He continued to have constipation. The abdominal pain disappeared on 18.10.2006. But, on 19.06.2006, the deceased again complained of abdominal pain, but he passed motion normally on that day. There was no other complaint. On 20.10.2006 at 7.30 p.m., he complained of chest pain. When he was rushed to the hospital, he breathed his last on the way to the hospital. It is in evidence that the Doctors, who gave treatment to the deceased, did not find that the external injuries on him.

11.Now, the cause of death is to be ascertained. PW5, Dr.A.Karthikeyan, who conducted autopsy, has opined that there were two small contusions on the body of the deceased. It is not his opinion that these two contusions have contributed for the cause of death in any manner. According to him, the internal



organs such as, peritoneum, omentum, mesentery, kidneys, heart, lung, brain and meninges were sent for Histo-pathological examination. Based on the pathological examination, he gave opinion that the deceased would appear to have died of Cerebral, Renal, Pulmonary and Gastro Intestinal Tract Pathology. Thus, even according to PW5, the death was due to disease which was noticed almost in all the internal organs. There was also pus indicating perforation. The Doctor had further found that there was adhesions of intestines which cannot be attributed to these injuries. The Doctor gave clear opinion that the death was due to the disease, based on the pathological examination. Thus, it has been established that the death was due to natural cause, that is due to disease, which has got nothing to do with the injuries found on the deceased.”

6. Merely because the accused police personnel have been acquitted by this court, the judgment of acquittal need not necessarily come in the way of granting relief. However, I cannot disregard the eventual conclusion arrived at by the learned Single Judge who allowed CrI A(MD)No.123 of 2015. It will not be open to this Court to now hold that the petitioner’s father’s death was due to the treatment meted out during police custody. It is not the case of the respondents that the petitioner was arrested in connection with Cr No.480 of 2006 at around 20.30 hours on 04.10.2006. Column Nos.9, 10 and 11 of the arrest memo read as follows:



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9	கைது செய்யப்பட்ட நபரின் உடலில் இல்லை. காணப்பட்ட பெரிய அளவிலான அல்லது சிறிய அளவிலான காயங்கள் பற்றிய விவரங்கள்	
10	கைது செய்யப்பட்ட நபர் வேறு ஏதேனும் கடுமையான நோயினால் பாதிக்கப்பட்டு இருக்கிறாரா என்பது பற்றிய விவரங்கள் (கைது செய்யப்பட்டவரிடம் கேட்டுப் பெறவேண்டும்)	வலது கால் கணுக்காலின் மேற்பகுதி விபத்தினால் பாதிக்கப்பட்டு சீரற்ற நிலையில் அமைந்துள்ளது. பழைய காய வடு காணப்படுகிறது.
11	கைது செய்யப்பட்ட நபர் மருத்துவ சிகிச்சைக்காக அனுப்பி வைக்கப்பட்டாரா, இல்லையா என்பது பற்றிய விவரங்கள் (கு.ந.ச.53 மற்றும் 54 மற்றும் காவல் நிலை ஆணை எண்.667)	மருத்துவ சிகிச்சை தேவையில்லை என்று தெரிவித்துவிட்டார்.

The arrest card prepared on 04.10.2006 also does not indicate anything unusual on the person of the petitioner's father. He was remanded at 10.00 P.M on 04.10.2006. He was produced for examination at Annal Gandhi Government Hospital, Thiruchirappalli at around 02.15 A.M. The accident register reads as follows :



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“19.In this case, the said Ramachandran has been brought to the Perambalur Police Station on 04.10.2006. PW.1 has stated that while he went to the Police Station to meet his father, he found his father tied with iron chain; he was permitted to talk to his father. At that time,, his father has told him that he was assaulted by the Inspector and Policemen who took him to the Police Station kicked him on his stomach and chest. PW.1 could note his father's stomach somewhat bulged by that time. And his father told him in the Central Prison that he was not able to eat, pass urine or motion. After the information received by the PW.1 that his father was dead, PW.1 could note a bleeding from the nose of Ramachandran. At this juncture the medical evidence is to be gone through. PW.3 is Dr.Rajendran who has permitted Ramachandran at about 2.25 A.M. On 05.10.2006, A1 and A2 have taken Ramachandran for treatment in G.H. Tiruchy. At the time of admission it is recorded in the AR copy that Ramachandran was said to be assaulted by two known persons and 4 unknown persons near Perambalur Police Station. He was treated as an inpatient upto 06.10.2006 and then discharged. So it is made clear that Ramachandran was admitted for a reported case of assault at about 2.25 am on 05.10.2006 before G.H Trichy. As far as this AR copy, Ex.P4 it is recorded so. But it is not made clear while the Ramachandran was in judicial custody after remand, how that assault was exercised upon him.

20.Coming to the evidence of PW.4 Dr.Chokkalingam, Medical Officer of Central Prison, he has deposed that



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“.....06.10.2006 அன்று மத்திய சிறைக்கு சிகிச்சை அளித்து திருப்பி அழைத்து வரப்பட்டார். மருத்துவ கல்லூரி மருத்துவமனையில் “அடித்ததற்காக” சிகிச்சை அளிக்கப்பட்டு, டிஸ்சார்ஜ் சம்மரியில் அசால்ட் என குறிப்பிடப்பட்டிருந்தது. 06.10.2006 முதல் 16.10.2006 வரை எந்தவிதமான நோய் பற்றிய கம்பெளயண்ட்டும் இல்லை. மேற்கண்ட தேதிகளில் சிறை மருத்துவமனைக்கு சிகிச்சைக்கு வரவில்லை. 17.10.2006 அன்று தனக்கு வயிற்று வலி இருப்பதாகவும் கூறி வந்தார்.... 20.10.2006 மாலை சுமார் 7.43 மணிக்கு திடீரென்று நெஞ்சு வலிப்பதாக கூறினார்.

In the cross examination he has deposed that

“06.10.2006 முதல் 16.10.2006 வரை இந்த சிறைவாசிக்கு சிறை மருத்துவமனையில் சிகிச்சை அளிக்கப்பட்டது....”. So it is contradictory to state that on 06.10.2006 to 16.10.2006 Ramachandran did not come to Jail hospital in the Chief Examination and then to state that Ramachandran was given treatment from 06.10.2006 to 16.10.2006 in the cross examination.

21.Evidence of Dr.A.Karthikeyan as PW5 plays a vital role in this case. This Doctor Karthikeyan has conducted the autopsy. He has mentioned in his post-mortem report Ex.P6 that there was a swelling on the left side fore head of Ramachandran-Bruising of the underlying scalp, Bruising of anterior abdominal wall and bruising of measentary in a patch manner. He has confirmed that these injuries would have been sustained by said Ramachandran 10 or 15 days before autopsy. His brain was found oedematic. So



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it is very clear that at the time of autopsy, there were bruises on the left forehead, abdomen, and intestine wall. Coming to his final report Ex.P8 he has very clearly given the opinion as follows :

22.The deceased would appear to have died of “Died of cerebral, Renal, Pulmonary and gastro intestinal tract pathology”. ”

8.I am more than satisfied that the petitioner’s father had suffered injuries while in custody. While the materials are insufficient to come to any conclusion that his death was due to said injuries, the State is bound to provide compensation. Of course, a sum of Rs.1,00,000/- had already been given. When the police arrest an individual, if injuries had been inflicted on him while he was in custody of the State, compensation is bound to be paid to him. I direct the first respondent to pay further compensation of Rs.1,00,000/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

9.This writ petition is allowed accordingly. No costs.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA



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To

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Home Department, Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police,
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- 6.The Superintendent of Police,
Perambalur District, Perambalur.

G.R.SWAMINATHAN, J.



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