

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2015

DATED : 3.03.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.No.4082 of 2010

P.Pugalenthii,
Director,
Prisoners Rights Forum,
No.5, 4th Floor, Sunkurama Street,
Chennai-600 001.

..... Petitioner

Vs.

1.State of Tamil Nadu,
represented by the Secretary
to Government, Home Department,
Secretariat, Chennai-600 009.

2.The Director General of Police,
Chennai-4.

3.The Commissioner of Police,
Egmore, Chennai-8.

4.Thiru B.Nandakumar
Inspector of Police,
Central Crime Branch,
Chennai-8.

5.Thiru R.Mahendran
Inspector of Police(Crime),
MGR Nagar Police Station,
Chennai.

WEB COPY

6.S.Jayasree

W/o late Sankaran Diwakaran,
"Alandhanam" Lakkidi Post,
Ottapalam, Palghat District,
Kerala State.

(R6 impleaded as per order dt.23.04.2010 by
EDRJ&KKSJ in M.P.No.1/2010 in
Writ Petition.No.4082/2010)

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of Writ of Mandamus directing the respondent-State of Tamil Nadu to register a case against respondents 4 and 5 other police personnel involved in the killing of Pandi @ Dindigul Pandi and Velu @ Guduvancherry Velu in an encounter occurred on 08.02.2010 at Neelankarai near Chennai.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.S.T.S.Moorthy,
Government Pleader for R1 to R3

ORDER

M.M.SUNDRESH, J.

This pro bono publico is instituted at the instance of the petitioner seeking a direction to the first respondent to register the case for the alleged offence under Section 300 of Indian Penal Code (hereinafter referred to as "IPC") punishable under Section 302 IPC against respondents 4 and 5, being the police personnel involved in the killing of one Pandi @ Dindigul Pandi and Velu @ Guduvancherry Velu on 08.02.2010.

2. The deceased Pandi @ Dindigul Pandi was a person with criminal record. Following are the details of the cases in which he was said to be involved.

Sl.No.	Police Station	Crime Number and Section
01	V5 Thirumangalam P.S.	Cr.No.1433/1995 u/s 302 IPC
02	Dindugal Town North P.S.	Cr.No.595/1995 u/s 307 IPC
03	Dindugal Town North P.S.	Cr.No.322/1998 u/s 147, 148, 341 and 302 IPC
04	Dindugal Town North P.S.	Cr.No.523/1999 u/s 302 IPC
05	Gujiliamparai P.S.	Cr.No.215/1999 u/s 303 IPC

Sl.No.	Police Station	Crime Number and Section
06	Dindugal Town South P.S.	Cr.No.563/2000 u/s 307 IPC
07	J4 Kotturpuram P.S.	Cr.No.1024/2004 u/s 341, 387, 506(ii) and 25(i) (A) Indian Arms Act
08	J4 Kotturpuram P.S.	Cr.No.1125/2004 u/s 392, 398, 332 and 506(ii) IPC, 25(i) (A) Indian Arms Act and 5 of Explosive Substances Act
09	J1 Saidapet P.S.	Cr.No.1159/2004 u/s 341, 385, 506(ii) IPC
10	Thiruverkadu P.S.	Cr.No.500/2004 u/s 286 IPC r/w 4 and 5 of Explosive Substances Act
11	E5 Pattinabakkam P.S.	Cr.No.422/2007 u/s 399 IPC
12	R7 K.K. Nagar P.S.	Cr.No.301/2009 u/s 147, 148, 341 and 302 IPC

3. Apart from that, he was also detained under the The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982, in the years 2000 and 2005 respectively. The other deceased person Velu @ Guduvancherry Velu was said to be the henchman of Pandi @ Dindigul Pandi.

4. The police party lead by respondents 4 and 5, based upon a specific and reliable information, intercepted the vehicle carrying the deceased for the purpose of interrogating them, who were allegedly involved in a case of murder pending investigation on the file of R7 K.K.Nagar Police Station in Crime No.301/2009 under Sections 147, 148, 341 and 302 IPC. It is the further case of the respondents that the police party was attacked by the deceased persons without stopping the vehicle by using sickle, gun and country bomb. It was reported that some of the police officers were also injured. By way of a self defence, the police retaliated by opening fire, which caused death of the deceased.

5. One of the police personnel of the Special Team, who sustained injuries, has filed a complaint and a case was registered by J-8 Neelankarai Police Station in Crime No.81/2010 under Sections 332, 307, 324 and 506(ii) IPC, 25(i)(A) and 27 of the Arms Act, 1955 and Section 3 of Explosive Substances Act, 1908 read with 174 Cr.P.C. @ 176 Cr.P.C.

6. The Assistant Commissioner of Police, Thuraipakkam Range,

sent a report to the Revenue Divisional Officer, Chengalpet, for conducting necessary enquiry under Police Standing Order 151. Reports were also submitted to National Human Rights Commission (NHRC) and State Human Rights Commission (SHRC) qua the incident occurred. At that stage, the petitioner has filed this writ petition seeking the abovesaid relief.

7. We have heard Mr.M.Radhakrishnan, learned counsel appearing for the petitioner and Mr.S.T.S.Moorthy, Government Pleader appearing for the respondents 1 to 3, perused the records inclusive of the report of the Revenue Divisional Officer.

8. The learned counsel appearing for the petitioner submitted that there is no dispute that the death occasioned at the hands of respondents 4 and 5. Therefore, the jurisdictional police ought to have registered a case for the offence of murder punishable under Section 302 IPC and after doing so, the Station Officer ought to have proceeded to investigate. The death having occurred at the instance of the police personnel, an independent enquiry ought to have been initiated. The guidelines laid down by the Supreme Court ought to have been followed. A plea of self defence is available to the accused persons only at the time of trial. The petitioner has got the locus standi to file this writ petition. For his submissions, the learned counsel sought support from the following decisions.

- (i) ONKARNATH SINGH AND OTHERS V. THE STATE OF UTTER PRADESH (AIR 1974 Supreme Court 1550)
- (ii) RUBABBUDDIN SHEIKH V. STATE OF GUJARAT AND OTHERS ((2010) 2 Supreme Court Cases 200)
- (iii) SATYAVIR SINGH RATHI, ASSISTANT COMMISSIONER OF POLICE AND OTHERS V. STATE THROUGH CENTRAL BUREAU OF INVESTIGATION ((2011) 6 Supreme Court Cases 1)
- (iv) PEOPLE'S UNION FOR CIVIL LIBERTIES AND ANOTHER V. STATE OF MAHARASHTRA AND OTHERS ((2014) 10 Supreme Court Cases 635).

9. The learned Government Pleader, based upon the counter affidavit filed and the records produced, submitted that the procedure contemplated under law has been duly complied with. The petitioner has rushed to this Court without awaiting the result of the report. The report as submitted by the Revenue Divisional Officer was accepted by the Government, which has become final. In the absence of any materials, the petitioner cannot seek a direction to register a case under Section 302 IPC.

10. A perusal of the Report submitted by the Revenue Divisional Officer would show that an exhaustive enquiry was conducted and statements from different persons including the family members of the deceased have been obtained. Publications calling for statements were made in the dailies having wide circulation. The Report submitted by the Revenue Divisional Officer was also accepted by the Government. The petitioner has also not assailed the Report of the Revenue Divisional Officer, which has taken note of the statements given by various persons and the order passed by the Government. Thus, we do not have any factual premise leading to a conclusion of an offence having been committed.

11. An action done in the exercise of the right of private defence cannot be termed as an offence under Section 96 of IPC. Under Section 97 IPC, every person has a right to defend his own body, and the body of any other person, against any offence affecting the human body. In the case on hand, the petitioner is not in possession of the requisite facts. The complaint has been given only by the injured police personnel and based upon the same, the case was registered. There was no complaint to the contra implicating respondents 4 and 5. The materials available on record lend credence to the case of the private respondents. Every death cannot be presumed to be a culpable homicide. The petitioner has approached this Court without any inculpatory material against respondents 4 and 5.

12. The learned counsel appearing for the petitioner has made reliance upon the judgments referred to supra. There is no difficulty in appreciating the locus of the petitioner in filing the writ petition. However, we do not agree with the submission made that notwithstanding any material, whenever a death is caused by anyone, it should invariably be construed as an offence punishable under Section 302 IPC. In *ONKARNATH SINGH AND OTHERS V. THE STATE OF UTTAR PRADESH* (AIR 1974 Supreme Court 1550), a case has been registered for the offence under Section 302 IPC, in which a private defence was taken. Similar is the case in *SATYAVIR SINGH RATHI, ASSISTANT COMMISSIONER OF POLICE AND OTHERS V. STATE THROUGH CENTRAL BUREAU OF INVESTIGATION* ((2011) 6 Supreme Court Cases 1). The facts involved in *RUBABBUDDIN SHEIKH V. STATE OF GUJARAT AND OTHERS* ((2010) 2 Supreme Court Cases 200) are also different and hence not applicable to the present case.

13. The guidelines laid down by the Supreme Court in *PEOPLE'S UNION FOR CIVIL LIBERTIES AND ANOTHER V. STATE OF MAHARASHTRA AND OTHERS* ((2014) 10 Supreme Court Cases 635) would bind the respondents, being a law declared under Article 141 of the Constitution of India. However, they do not have any retrospective effect, that too, for an occurrence, which happened five years ago. There is a procedural compliance in seeking a Report from the Revenue

Divisional Officer apart from National Human Rights Commission and State Human Rights Commission. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

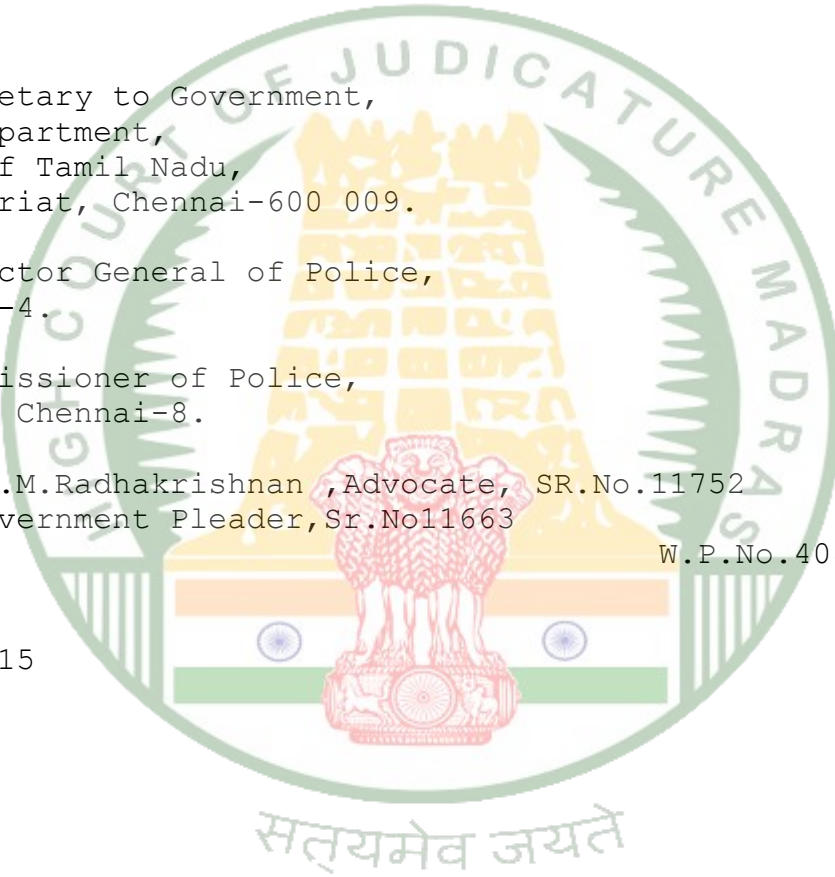
raa
To

- 1.The Secretary to Government,
Home Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.
- 2.The Director General of Police,
Chennai-4.
- 3.The Commissioner of Police,
Egmore, Chennai-8.

1 cc to Mr.M.Radhakrishnan ,Advocate, SR.No.11752
1 cc to Government Pleader, Sr.No11663

W.P.No.4082 of 2010

nm(co)
pmk.9.3.2015



WEB COPY