

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.10.2015
DATED : 04.11.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Writ Petition No.23963 of 2015

S.Vivek

... Petitioner

Vs.

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, St.Fort George,
Chennai - 600 009,
2. The Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat, St.Fort George,
Chennai - 600 009,
3. The Director General of Police,
Mylapore, Chennai - 600 004.
4. Vaiko,
General Secretary, Marumalarchi,
Dravida Munnetra Kalagam (MDMK),
No.12, Rukmani Lakshmipathi Salai,
Egmore, Chennai - 600 008.

5. Y.Arul Doss

... Respondents

Respondents No.4 and 5 are impleaded as parties
as per order dated 4.11.2015 made in M.P.Nos.
1 and 2 of 2015.

Prayer: Writ Petition is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus to direct the 1st and 2nd respondents to appoint Judicial Enquiry Committee under the supervision of Hon'ble Sitting High Court Judge or Hon'ble Retired High Court Judge, to enquire into the death of Sri Sasiperumal, son of Kandasamy who died on 31.07.2015.

For Petitioner : Mr.T.Sivagnanasambandam

For Respondents : Mr.A.L.Somayaji, Advocate General
assisted by Mr.S.T.S.Moorthy,
Govt.Pleader for RR.1 to 3

Mr.Vaiko - impleaded respondent
- R.4 - party in person

Mr.N.Sivakumar for impleaded
respondent - R.5

ORDER

This case is a fall out of an unfortunate death happened while in pursuit of a cause, though not strictly legal but moral. Before proceeding with the submissions made by the party in person and the learned counsel appearing for the parties, a fruitful recapitulation of the factual matrix governing the case is required.

Facts:-

2. A protest was raised for the functioning of a liquor shop at Unnamala Kadai Junction, Vilavancode Taluk, Kanyakumari District bearing Shop No.4839. As it fell into deaf ears, the door of the Court was knocked by filing a writ petition in W.P(MD) No.4343 of 2013. On hearing the parties, the Division Bench of the Madurai Bench of this Court was pleased to pass the following order on 20.2.2014:

"5. In such view of the matter, the authority concerned is directed to consider the said representation of the petitioner with all seriousness that is required, in the light of the above said Field Plan. If prima facie materials are shown and the objections raised by the petitioner are in accordance with the relevant Rules, the authority concerned may consider the shifting of TASMAR shop No.4839 situated at Unnamalai Kadai Junction, Vilavancode Taluk, Kanyakumari District, to any other place which does not cause any inconvenience to the general public, educational institutions, places of worship or other areas that may be specified under the relevant Rules.

6. Accordingly, the writ petition is disposed of as above. No costs."

3. According to the officials of the TASMACH, suitable alternative place could not be found. As there was considerable delay, agitation was organised on 30.6.2015. On assurance it was given up. But having found no fruitful action forthcoming, another agitation was proposed on 31.7.2015 in front of the said TASMACH shop. Sri Sasiperumal was invited and he came to attend the said protest. Apparently, there was a change of plan and thus Sri Sasiperumal and others allegedly along with a coir rope, kerosene, gingelly oil and waste cloth went to a nearby Reliance Cellphone Tower at about 8.15 a.m and started climbing. The indulgence of the said act was by Sri Sasiperumal and Sri Jeyaseelan. While Sri Jeyaseelan stopped midway, Sri Sasiperumal proceeded with by reaching the top of the 130 feet tower driven by his cause, though his age would not have permitted it otherwise.

4. The police officials, who gathered at the TASMACH shop anticipating the protest before it, on coming to know of the above, rushed to the Cellphone tower spot. According to the version of the respondents, the officials were threatened with self immolation from taking any steps to bring the protesters back, by using the materials they took along with them. The police party was said to be accompanied by the officials of Fire and rescue service Department and revenue Department. The protesters on Cellphone tower refused to get down unless the demand was met. It was also the case of the police that they were also prevented by others with the very same threat of self-immolation if the protesters were to be brought down by force. An announcement was made through loud speaker at 1.00 p.m conveying the assurance of the District Manager, TASMACH. It is also the case of the respondents that Sri Sasiperumal had ligatured his neck with the coir rope with the other end tied to the tower rod. He fell down from the tower and died. The officials then moved in and took the body. It is apposite to re-produce the following opinion of the surgeons who conducted postmortem:

'The postmortem findings are consistent with that of death due to hanging. Examination of viscera have not detected Ethyl alcohol or other poisons.

Histopathological Examination of lung shows pulmonary edema and congestion.'.

It is not in doubt that from the morning of the date of occurrence upto the postmortem of the deceased Sri Sasiperumal, the entire happening has been videographed.

5. Thereafter, a case has been registered under Section 174 of Cr.,P.C.and the investigation is pending. The petitioner, who is the son of the deceased,has come forward to file this writ petition seeking a judicial enquiry on the death.Impleading applications have been filed supporting the case of the petitioner,though raising more grounds. This Court allowed the impleading petitioners to make their submissions and considering the issues involved the applications filed in M.P.Nos.1 and 2 of 2015 are accordingly allowed.

Submissions of the petitioners:-

6. Though the writ petition was filed by the son of the deceased, the learned counsel for the petitioner has shown grace in allowing the implead petitioner/ 4th respondent in M.P.No.1 of 2015 to lead the case. The 4th respondent (since impleaded) apart from being a leading political personality of stature, is also incidentally stated to be a close friend of the deceased. Similarly, the petitioner in M.P.No.2 of 2015 is stated to be a person associated with the deceased in its cause on behalf of the public. For the sake of brevity, the submissions made by all of them are recorded together.

7. It is submitted that the entire incident would not have happened, had the officials concerned taken appropriate steps at the earliest. Despite the order passed by this Court and assurance given earlier for shifting the liquor shop, there was a deliberate inaction on their part leading to the unfortunate incident. No attempt has been made to safeguard the life of the deceased. Had a decision been taken immediately after the deceased climbed the tower, he would have been saved. Though he has climbed on his own the death was due to the negligence on the part of the officials. He must have died on the attempt made by the officials to bring him back to the ground. A nylon rope has been used, which must have been responsible for the death.

8. While there is no difficulty on the cause of death, the question is qua the circumstances leading to it. The petitioner was informed belatedly. There was an attempt to do postmortem hurriedly. As the issue involved is serious, a thorough enquiry is required from an independent body. To buttress their submissions, reliance has been placed on the following decisions:

- ''(1) Janamohan Das and others Vs. State of Orissa and others, (AIR 1993 ORISSA 157); and
(2) C.Padmavathi Vs. The Commissioner of Police, Egmore, Madras-8 and another, (1991 Writ Law Reporter 189).''

Submissions of the Respondents:-

9. Learned Advocate General appearing for the respondents 1 to 3 submitted that the protest and climbing the tower were acts done voluntarily. A threat was made by the deceased to commit self immolation. This can be seen from the materials recovered, such as coir rope, kerosene, gingelly oil and waste cloth. The action could not be taken earlier by the TASMAC officials as there was no sufficient alternative place, which can be seen from the documents filed on behalf of the petitioner. The entire occurrence has been videographed. Therefore, there is no necessity to hide the truth. The officials were prevented from performing their duties. There was a change in the venue at the instance of the deceased and other protesters. Neither the petitioner nor the impleaded respondents were eye witnesses to the occurrence. There is no other complaint from any other eye witnesses. Even the postmortem has been videographed. The deceased climbed a narrow passage and reached the top of the cellphone tower. He was old and exposed to sun for a long time. He was carrying a rope placing on his head, as seen from the photographs produced before this Court. There is no nylon rope involved and it is not the case of any eye witness also. There is no material to substantiate the allegations made. What is relevant is the cause of the death and not the reason for the protest and then climbing the cell phone tower. The existence of the rope is not disputed. There is no necessity for considering the prayer as everything had happened in the public gaze. The investigation is still pending. The deceased was seen at the top of the tower in full public view. The occurrence was also before the public. Thus, considering the above, no interference is required.

Discussion:-

10. In this writ petition, we are not concerned with the reason for agitation, rather the possible cause of the death. An agitation did happen on 31.7.2015. The deceased voluntarily climbed the cell tower. Everything had happened before the public eye and duly recorded through videograph. The deceased reached the top of the tower as against Sri Jeyaseelan, who stopped midway. The photograph also shows that the deceased was carrying a rope and trying to place it over his head. Whether it is meant for his protection or otherwise is a matter for investigation. There is no material to come to the conclusion that there will be any real likelihood of bias or reasonable apprehension of it. Admittedly, neither the petitioner nor the impugned respondents were eye witnesses. Thus, their statements before this Court could at best be on

hear say. Though the ultimate object of the deceased may have been laudable, the question for appointing an enquiry does not arise on the facts of the case, especially, when it is the deceased, who chose the mode of protest. Prima facie, it appears that there is no material to substantiate the allegations made. Further, it is well open to the petitioner as well as the impleaded respondents to produce the material if any before the Investigation Officer. As the entire incident occurred in the broad day light in the presence of the mass gathering of the people, there are no compelling circumstances warranting such an enquiry.

11. Coming to the decisions relied upon by the learned counsels, this Court is afraid that they did not have any bearing on the facts of the case. We are neither dealing with the Commission of Enquiry Act nor the general allegations made against the authorities for acting contrary to law. There is no material to hold that truth will not come out after investigation.

12. Therefore, for the foregoing reasons, this Court is unable to grant the prayer as sought for. However, considering the facts and circumstances of the case, a direction is issued to the Deputy Inspector General of Police, Tirunelveli, who is supposed to be the higher authority of the region to monitor and supervise the investigation along with the Superintendent of Police, Kanyakumari District. The Investigation Officer is directed to complete the investigation within a period of three months from the date of receipt of copy of this order. The petitioner as well as the impleaded respondents are at liberty to furnish the materials available with them, if any, to the Investigation Officer and cooperate. It is also made clear that the observations made in this writ petition would not have any bearing on the investigating agency.

13. The writ petition is disposed of accordingly. However, there is no order as to costs. The Registry is directed to mark a copy of this Order to the Deputy Inspector General of Police, Tirunelveli and the Superintendent of Police, Kanyakumari.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, St.Fort George,
Chennai - 600 009,
2. The Secretary,
Home Department,
Government of Tamil Nadu,
Secretariat, St.Fort George,
Chennai - 600 009,
3. The Director General of Police,
Mylapore, Chennai - 600 004.
4. The Deputy Inspector Gneral of Police,
Tirunelveli,
5. The Superintendent of Police,
Kanyakumari District,
Kanyakumari.

+3cc's to Mr.T.Sivagnanasambandam, Advocate, S.R.No.60522
+1cc to Mr.N.Sivakumar, Advocate, S.R.No.60842
+1cc to the Government Pleader, S.R.No.60925

W.P.No.23963 of 2015

SK(CO)
CA(06/11/2015)

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