

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10-8-2015

Pronounced on : 24-8-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.12394 of 2008
M.P.No.1 of 2008

Lakshmi

.. Petitioner

Vs.

1. State of Tamil Nadu,
rep by its Secretary,
Department of Home,
Fort St.George,
Chennai - 600 009.
 2. The Director General of Police,
Tamil Nadu Circle,
Mylapore,
Chennai - 600 004.
 3. The District Collector,
Dharmapuri District at Dharmapuri
 4. The Superintendent of Police,
Dharmapuri District, Dharmapuri
 5. The Superintendent of Police,
'Q' Branch, Chennai.
 6. The Assistant Director General of Police,
CBI, Chennai.
- .. Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to direct the 4th respondent to register and investigate the complaint dated 26.4.2008 of the petitioner's son Naveen @ Naveen Prasad's murder, in accordance with law.

For Petitioner	:	Mr.R.Sankarasubbu
For Respondents 1 to 5	:	Mr.C.Emalias, Addl. Public Prosecutor
For 6th Respondent	:	Mr.K.Srinivasan, Special Public Prosecutor

O R D E R

It is the case of the petitioner that her son Naveen @ Naveen Prasad was forcibly abducted on 12.4.2008, tortured by the Police and ultimately he was done to death on 19.4.2008 by branding him as a Naxalite. It is her contention that her son was working for the upliftment of dalits and tribal people, and that, he was eliminated in a fake encounter.

2. It is the case of the Police that on specific information that the members of CPI (Maoists group), a banned organisation, were moving about in Elampirai forest area in Kodaikkanal Taluk, the Special Task Force went on a combing operation on 19.4.2008, and in the forest they confronted the members of the group, who opened fire at the Police and in retaliation, the Police also opened fire, in which Naveen @ Prasad @ Prasanth @ Suresh died. The Police recovered fire arms, grenades, electrical detonators and other explosives from him. On the complaint given by the Special Task Force, the Inspector of Police, Pattiveeranpatti Police Station registered a case in Crime No.111 of 2008 for the offences under Sections 147, 148, 307 IPC and Sections 25(ii), 27 of the Indian Explosives Substances Act and Sections 3, 5 of the Indian Arms Act and Section 174 of Cr.P.C. on 19.4.2008.

3. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer was informed immediately and he conducted inquest over the body of the deceased under Section 174 Cr.P.C. The petitioner, who is the mother of the deceased Naveen was also examined on 20.4.2008 by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer and she has stated that she has no contact with her son since he left home at a very early age, and that she came to Kodaikkanal only after coming to know about the incident from Newspaper reports. No external injury was noted by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer on the body of the deceased, except of course the bullet injuries.

4. Postmortem was conducted on 20.4.2008 by a team of Doctors at Kodaikkanal Government Hospital and the entire postmortem was videographed as per the guidelines of National Human Rights Commission. After completion of the postmortem, the body of the deceased was handed over to the relatives of the deceased.

5. A preliminary enquiry report was submitted by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer on 20.4.2008. The District Collector ordered for magisterial enquiry as per PSO 150 (3) by proceedings dated 28.4.2008 and the terms of the reference were as follows:

- a) The circumstances leading to opening of fire by Police
- b) Whether the opening of fire was done in self-defence

- c) Whether the opening of fire was inevitable
- d) Was there any excess action been committed by Police officials
- e) Whether the opening of fire by the Police is for justified reasons.

6. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer has filed a counter affidavit dated 26.8.2008, wherein he has detailed the steps taken by him, which reads as under,

"8. I submit that after the receipt of the orders, I gave wide publicity in the newspapers about the enquiry and invited the public to give evidence in the proceedings. The dates for the enquiry were fixed as 7.5.2008 to 21.5.2008. The notice copies were also affixed in all the Government Offices and public places in and around Kodaikkanal.

9. I respectfully submit that during the course of the enquiry, the following persons were examined:-

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|-----|-----------------------|---------------|
| 1. | Tmt.Lakshmi | on 20.4.2008 |
| 2. | Tr.V.Loganathan | on 20.4.2008 |
| 3. | Tmt.Asiammal | on 20.4.2008 |
| 4. | Tr.PKP Rajaram | on 20.4.2008 |
| 5. | Tr.R.Thirunacukkarasu | on 27.6.2008 |
| 6. | Tr.P.Arumugam | on 27.6.2008 |
| 7. | Tr.K.Viswanathan | on 01.7.2008 |
| 8. | Tr.Amirtharaj | on 08.7.2008 |
| 9. | Tr.Arumugam | on 08.7.2008 |
| 10. | Tr.Tr.Ayyappan | on 08.7.2008 |
| 11. | Tr.M.Anandan | on 31.7.2008 |
| 12. | Tr.S.Ravichandran | on 31.7.2008 |
| 13. | Tr.C.Pandian | on 01.8.2008 |
| 14. | Tr.Senthilkumar | on 01.8.2008 |
| 15. | Tr.M.P.Chellathurai | on 01.8.2008 |
| 16. | Tr.K.Ilayaraja | on 30.7.2008 |
| 17. | Tr.M.Selvam | on 30.7.2008 |
| 18. | Tr.M.Anandan | on 30.7.2008 |
| 19. | Tr.K.Chandran | on 13.8.2008 |
| 20. | Tr.S.Selvasuresh | on 13.8.2008 |
| 21. | Tr.P.Thirupathiraja | on 13.8.2008" |

The Sub-Divisional Magistrate-cum-Revenue Divisional Officer completed the enquiry and submitted a report on 9.9.2008 to the District Collector, along with depositions and documents. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer in his report has stated that the viscera was sent to the Regional Forensic Science Laboratory, Madurai and after receipt of the viscera and postmortem report, the cause of death was found to be "death due to shock and hemorrhage and due to multiple fire arm injuries". It is the finding of the Sub-Divisional Magistrate-cum-Revenue Divisional Officer that

there was exchange of fire between the Police and Maoists on 19.4.2008 in which petitioner's son died and there was recovery of weapons and explosives from the place of occurrence. It is the further finding that the Additional Superintendent of Police warned the extremists to surrender, but they lobbed hand grenades and fired at the police and it became imperative for the Police to open fire in self-defence.

7. In the affidavit filed by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer in paragraph 7 it is stated as follows:

"7. After careful perusal of Inquiry report and other materials submitted by the Sub-Divisional Magistrate and Revenue Divisional Officer, Kodaikanal, which was conducted under PSO 150(3), the then District Collector sent a detailed report along with copy of Enquiry report of the Sub-Divisional Magistrate and Revenue Divisional Officer, Kodaikanal and her findings to the Government vide Letter No.16992/2008/C.2, dated 15.11.2008. In this connection, a detailed report was also sent to the National Human Rights Commission, New Delhi vide Letter No.16992/2008/C.2 dated 17.11.2008. It is submitted that after careful perusal of the enquiry report of Sub Divisional Magistrate and Revenue Divisional Officer, Kodaikanal under P.S.O.150(3) and report of the District Collector, Dindigul, the Government in G.O.(1D)No.471, Public (Law and Order-C) Department, dated 6.12.2014 has accepted the Enquiry report of Sub-Divisional Magistrate and Revenue Divisional Officer, Kodaikanal and recommendations of the District Collector, Dindigul and issued orders to the effect that there were no police excesses committed by the Police officials in the exchange of fire between Police officials and members of Maoist Organisation in Vadagouchi village, Elampirai forest area on 19.04.2008, in which Naveen @ Prasanth @ Prasad @ Suresh was killed, the Police opened fire only for self defence and the opening of fire was for justified reasons."

8. Mr.R.Sankarasubbu, learned Counsel appearing for the petitioner relied upon an unreported judgment of this Court dated 27.3.2012 in *Nirmala v. State of Tamil Nadu & Others* (W.A.No.1023 of 2001) wherein a Division Bench of this Court relied upon the judgment of the Supreme Court in *State of A.P. v. N.Venugopal* (1964 (3) SCR 742 : AIR 1964 SC 33) wherein the Hon'ble Supreme Court has held that the provisions of PSO 145 are merely administrative in nature and the report submitted by the Revenue Divisional Officer in terms of PSO 145 is a weak piece of evidence to nullify the doubt raised by the petitioner therein. Relying upon this judgment the Hon'ble Division Bench of this Court had ordered CBI enquiry in that case. In that case, the Hon'ble Division Bench had certain other materials, especially the supporting affidavit of one Siva @ Parthiban, who is

said to have been picked up by the Police along with the deceased. Siva @ Parthiban has given a supporting affidavit before this Court in which he had stated that the deceased and himself were picked up by the Police on 6.1.2000 and the deceased was eliminated. Thereafter Siva @ Parthiban also died in police encounter on 24.11.2002 at 11.00 pm. All these facts did weigh in the minds of the Division Bench of this Court in ordering CBI investigation in that case.

9. In the case on hand, the mother of the deceased Lakshmi appeared before the Sub-Divisional Magistrate-cum-Revenue Divisional Officer on 20.4.2008 itself and gave a statement that she lost contact with the deceased Naveen long ago. Much thereafter, she resiled from her statement and came up with the version that her son was picked up from the house.

10. As regards the injuries alleged on the body of the deceased, this Court perused the postmortem report carefully and found that the postmortem Doctors have observed only bullet injuries on the body, and an abrasion has been observed on the left lateral chest, which is too insignificant to be blown out of proportion. The postmortem has been videographed and has been submitted to the NHRC also.

11. Mr.R.Sankarasubbu, learned Counsel relied upon the judgment of the Supreme Court in People's Union for Civil Liberties & Another v. State of Maharashtra & Others (Criminal Appeal No.1255 of 1999 dated 23.9.2014), wherein several guidelines have been given for investigation of such cases. The said judgment was delivered by the Hon'ble Supreme Court on 23.9.2014 and a reading of the judgment shows that the guidelines given therein are to be followed by the authorities now. The case on hand is of the year 2008, and therefore the guidelines given thereunder cannot be made applicable for this case.

12. Mr.R.Sankarasubbu also relied upon the judgment of a learned single Judge of this Court in P.Pugalenthil v. State ((2015) 1 MLJ (Cr1) 424) and R.Kasthuri v. State ((2015) 1 MLJ (Cr1) 455), wherein this Court has given detailed instructions as to the procedures to be adopted by the Judicial Magistrates while dealing with an enquiry under section 176(1A) of Cr.P.C.

13. Section 176(1A) of the Cr.P.C. applies to the cases where a person dies while in the custody of the Police. Whereas, in the instant case, the deceased never came into the custody of the Police, and that he died in the exchange of fire with the police.

14. In Kasthuri's case, while formulating the conclusions this Court in paragraph 39(8) stated as follows:

"39(8) If the case relates to police encounter, as directed by

the Hon'ble Supreme Court in People's Union for Civil Liberties and Another v. State of Maharashtra and Others (supra), the investigation shall be entrusted to either CBCID or a police team of another police station under the supervision of a senior police officer (at least a level above the head of the police party engaged in the encounter)."

The facts in Kasthuri's case (supra) is that the accused was already in custody of the Police and he died when he tried to escape from custody. In those circumstances the said decision was rendered.

15. The learned Additional Public Prosecutor has relied upon the Division Bench judgment of this Court in Government of Tamil Nadu v. Muthulakshmi (2006 (2) CTC 285) which relates to the death of forest brigand Veerappan, wherein similar contentions were raised. The Division Bench of this Court relying upon the judgments of the Honourable Supreme Court in Common Cause, A Registered Society v. Union of India ((1999) 6 SCC 667) and Secretary v. Sahngoo Ram Arya ((2002) 5 SCC 521) held as follows:

"The above decision of the Supreme Court makes it clear that unless materials placed before this Court disclosed a prima facie case calling for an investigation by the C.B.I. or any other similar agency, the same cannot be done as a matter of routine or merely on the basis of some allegations made by party."

16. To recapitulate, the Sub Divisional Magistrate-cum- Revenue Divisional Officer has conducted thorough enquiry in which the petitioner was also examined and statement was recorded, and only thereafter he has given a finding as afore-stated. No material has been placed before this Court warranting CBI investigation or re-investigation in this case.

In the result, this Criminal Original petition is devoid of merits and accordingly the same is dismissed.

vr

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Secretary, Department of Home,
Fort St.George, Chennai - 600 009.

2. The Director General of Police, Tamil Nadu Circle,
Mylapore, Chennai - 600 004.
 3. The District Collector,
Dharmapuri District at Dharmapuri
 4. The Superintendent of Police,
Dharmapuri District, Dharmapuri
 5. The Superintendent of Police,
'Q' Branch, Chennai.
 6. The Assistant Director General of Police,
CBI, Chennai.
 7. The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr.R.Sankarasubbu, Advocate SR 45665

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