

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2016

DATED : 29.02.2016

CORAM

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

and

The Hon'ble MR.JUSTICE M.M.SUNDRESH

Review Application No.41 of 2015
in W.P.No.4082 of 2010

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

....Applicant

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-6.

6.S.Jayasree

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

...Respondents

Prayer: Review Application is filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure as against the order dated 03.03.2016 made in W.P.No.4082 of 2010 by this Court.

For Applicant : Mr.M.Radhakrishnan

For Respondents : Mr.S.T.S.Moorthy,
Government Pleader for
Mr.V.Shanmughasundar,
Government Advocate for R1 to R5

ORDER

M.M.Sundresh,J.

Basing reliance on a newspaper report dated 09.02.2010, the applicant approached this Court seeking a direction to the first respondent to register a case against respondents 4 and 5 for the alleged offence under Section 300 of the Indian Penal Code (hereinafter referred to as "IPC") punishable under Section 302 IPC.

2. This Court, by an order dated 03.03.2015, has dismissed the writ petition holding that in the absence of any factual premise leading to a conclusion of an offence having been committed, the prayer sought for cannot be granted. Incidentally, it has been held that the decision of the Apex Court relied on by the applicant cannot have an application to the facts of the case. Seeking to review the said order passed, the present review application has been filed.

3. The learned counsel appearing for the applicant submitted that no reliance ought to have been placed on the report of the Revenue Divisional Officer. There was no enquiry by the Magistrate into cause of death as mandated under Section 176 (1-A) of the Code of Criminal Procedure, 1973. The affidavit filed by the mother of the deceased was not taken into consideration.

4. Admittedly, the writ petition was filed by the applicant based upon a newspaper report. Thus, the prayer was declined after finding that there was no material to hold that an offence having been committed by

the respondents 4 and 5. It was held that the applicant, not being in possession of the requisite facts, on a complaint given by the injured police personnel, the respondents 4 and 5 cannot be charged for the offence under Section 300 IPC. Thus, the submissions made by the learned counsel for the applicant cannot be accepted.

5. As there is no factual premise, there is no necessity to consider the compliance under Section 176(1-A) of Code of Criminal Procedure, 1973. We cannot presume that the deceased died during the police custody. There is no basis to hold that the deceased was in police custody. The affidavit filed by the mother of the deceased for the first time before this Court, who incidentally was not an eye witness, cannot be the basis for allowing the writ petition. The report of the Revenue Divisional Officer was taken note of only with reference to the statements made by the family members of the deceased. For the aforesaid purpose, the report of the Revenue Divisional Officer was relied upon. The applicant has not argued before us earlier on the applicability of Section 176(1-A) of Code of Criminal Procedure, 1973. The prayer was to register the case under

Section 302 IPC. Even otherwise, as discussed above, we do not think that Section 176(1-A) of Code of Criminal Procedure, 1973, is applicable to the case on hand. The alleged occurrence was on 08.02.2010. Now more than six years have elapsed. Therefore, we do not find any error apparent in the order dated 03.03.2015 in W.P.No.4082 of 2010 warranting a review. Accordingly, this Review Application stands dismissed.

(S.K.K., CJ.) (M.M.S.,J.)
29.02.2016

Index:Yes/No
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.

**The Hon'ble The Chief Justice
and
M.M.Sundresh, J.**

(raa)

**Pre-Delivery Order in
Rev. Appln.No.41 of 2015
in W.P.No.4082 of 2010**

29.02.2016