

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.02.2016

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.156 of 2016
and
C.M.P.No.2246 of 2016

Elumalai ..Appellant/Petitioner/Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Home,
Fort St. George, Chennai - 9.
- 2.The Secretary,
Department of Health
Fort St. George, Chennai - 9.
- 3.The District Collector,
Villupuram District,
Villupuram.
- 4.The Additional Director General of Police,
CBCID, No.220, Pantheon Road,
Egmore, Chennai - 8.
- 5.The Inspector of Police,
CBCID, Villupuram, Villupuram District.

6.Vasuki ..Respondents/ Respondents/ Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 09.02.2016 and made in W.M.P.No.3670 of 2016 in W.P.No.4317 of 2016 praying for conducting a repost mortem of body of the deceased Saranya, aged about 20 years, D/o.Elumalai, the Appellant herein.

Prayer in WMP.NO.3670/2016:-

To issue a direction, directing the respondents 1 to 5 to conduct the post mortem of the petitioner daughter Saranya by a team of doctors in Kilpauk Government Hospitals at Chennai with the presence of his doctor as per the guidelines of National Human Rights Commission (WMP.NO.3670/2016) pending disposal of the above (WP.4317/2016).

Prayer in WP.NO.4317/2016:-

Petition filed under Article 226 of the Constitution of India in the nature of writ of Mandamus, Directing the respondents 1 to 3 to pay compensation of Rs.25 Lakhs to the petitioner as compensation within a time frame fixed by this Honourable Court.

For Appellant : Mr.R.Sankarasubbu
For Respondents : Mr.S.Shanmugavelayutham
Public Prosecutor for R1 to R5

J U D G E M E N T
[Judgment of the Court was delivered by
M.VENUGOPAL, J.]

Mr.S.Shanmugavelayutham, learned Public Prosecutor accepts notice on behalf of respondents 1 to 5. Notice to the 6th respondent is dispensed with, at this stage, as no adverse order is passed against her, in this writ appeal.

2.With the consent of the learned counsel for the appellant and the learned Public Prosecutor for respondents 1 to 5, the main writ appeal itself is taken up for final disposal at the admission stage.

3.Heard both sides.

4.The appellant/writ petitioner has focused the instant writ appeal before this court as against the order dated 09.02.2016 in W.M.P.No.3670 of 2016 in W.P.No.4317 of 2016 passed by the learned Single Judge.

5.The learned Single Judge, while passing the impugned order in W.M.P.No.3670 of 2016 in W.P.No.4317 of 2016, on 09.02.2016 (filed by the appellant/writ petitioner), at paragraph 16, had observed as follows:

"16.At this juncture, learned counsel for the petitioner would submit that after 15 days, it is possible to find out contusion. However, parents of Saranya, without making any objection, buried her body. After re-postmortem of Monisha only, the petitioner has come forward with the petitions, which shows the intention of the petitioner to drag on the investigation. As already stated that first postmortem was conducted by the team of Government Doctors and the same was properly videographed. A portion of internal organs have been collected, which was sent for Forensic

Science Department for detection. In such circumstances, I am of the view, as per the ratio decidendi in both the decisions, the petitioner has not disclosed any defects in performing autopsy, not warranted re-postmortem."

and resultantly, dismissed the miscellaneous petition.

6.Assailing the correctness, validity and legality of the impugned order dated 09.02.2016 in W.M.P.No.3670 of 2016 in W.P.No.4317 of 2016 passed by the learned single Judge, the learned counsel for the appellant/writ petitioner submits that the impugned order of the learned single Judge is contrary to law, weight of evidence and probabilities to the case. According to the learned counsel for the appellant, the learned single Judge had failed to take note of the fact that the victim's father viz., the appellant/writ petitioner is crying for justice and in reality ought to have allowed the prayer for conducting re-postmortem of the body of the appellant's daughter Saranya.

7.The learned counsel for the appellant/writ petitioner urges before this Court that this Court in W.M.P.No.2345 of 2016 in W.P.No.2807 of 2016 (filed by N.K.Tamilarasan - father of Monisa) had passed an order on 27.01.2016 for conducting re-postmortem, which material fact was not taken note of by the learned single Judge at the time of passing the impugned order, which had resulted in serious miscarriage of justice.

8.Per contra, it is the submission of the learned Public Prosecutor for respondents 1 to 5 that the body of the appellant/writ petitioner's daughter Saranya was already buried on 24.01.2016 and that the said body was in decomposed stage and therefore it is not feasible for conducting re-postmortem. Furthermore, the re-postmortem on the appellant's daughter Saranya may not be ordered by this Court, since the same is not warranted because of the reason that the first postmortem conducted by the Government Doctors was videographed.

9.In the instant case, it is not in dispute that the appellant/ writ petitioner is the father of the girl Saranya (deceased). Admittedly, the first postmortem was performed on the body of the appellant's daughter. In fact, the appellant/writ petitioner in W.M.P.No.3670 of 2016 in W.P.No.4317 of 2016 seeks for issuance of a direction by this Court to conduct re-postmortem on his daughter's body viz., Saranya by a team of Doctors from Kilpauk Government Hospital at Chennai in the presence of his Doctor, which was negated by the learned single Judge.

10.The learned counsel for the appellant/writ petitioner takes a stand that the plea for re-postmortem on the body of

the appellant's daughter is sought for by the appellant/writ petitioner since he has a suspicion/cloud/shroud over the death of his daughter.

11. On a careful consideration of respective contentions and also this Court taking note of the plea made on behalf of the appellant/petitioner that re-postmortem be conducted on the body of the appellant's daughter by the team of Doctors as stated supra and also this Court taking note of the fact that the appellant/writ petitioner's family ought to have subjective satisfaction in regard to the factum of death of his daughter and also this court opines that no serious prejudice or hardship would be caused to anyone by ordering the re-postmortem and also this Court in the interest of justice, fair play, equity and good conscience and also this Court, taking note of the attendant facts and circumstances which float on the surface and even as a matter of prudence, orders for the conduct of re-postmortem on the body of Saranya [to be videographed] by the Doctors attached to the Dr. Rajiv Gandhi Government General Hospital, Chennai - 600 003 (to be assigned/ deputed by the Dean, Dr. Rajiv Gandhi Government General Hospital, Chennai). For this purpose, the body of the appellant's daughter Saranya should be brought to Chennai and when the re-postmortem is conducted by the Doctors attached to the Dr. Rajiv Gandhi Government General Hospital, Chennai and the same should be done in the presence of Dr. P. Sampath, Head of the Department of the Forensic Department Vice Principal of Sri Ramachandra Medical College, Porur, Chennai within a period of two days from the date of receipt of a copy of this order and submit a report to the Investigating Agency (with a copy being supplied to the appellant/writ petitioner). In case, the body of the appellant's daughter Saranya is not in a condition to be brought here for the purpose of conducting re-postmortem at the Dr. Rajiv Gandhi Government General Hospital, Chennai, then, this Court orders that the re-postmortem on the body of the appellant's daughter Saranya is to be conducted by the said team of Doctors, who should proceed to the place where the body of the appellant's daughter was buried and conduct the re-postmortem at the spot itself [to be videographed], of course, in the presence of Dr. P. Sampath, Head of the Department of the Forensic Department, Vice Principal of Sri Ramachandra Medical College, Porur, Chennai, within a period of two days from the date of receipt of a copy of this order and submit a report to the Investigating Agency (with a copy being supplied to the appellant/writ petitioner).

12.With the aforesaid observations and directions, the Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/-
Assistant Registrar (Cs-VI)

/TRUE COPY/

Sub-Assistant Registrar

mmi

To

- 1.The Dean,
Dr.Rajiv Gandhi Government General
Hospital, Chennai - 3.
- 2.Dr.P.Sampath,
Head of the Department of
Forensic Department,
Vice Principal of Sri Ramachandra
Medical College, Porur, Chennai.
(Through the Dean)
- 3.The Secretary to Government,
Department of Home,
Fort St. George, Chennai - 9.
- 4.The Secretary,
Department of Health
Fort St. George, Chennai - 9.
- 5.The District Collector,
Villupuram District, Villupuram.
- 6.The Additional Director General of Police,
CBCID, No.220, Pantheon Road, Egmore, Chennai - 8.
- 7.The Inspector of Police,
CBCID, Villupuram, Villupuram District.
- 8.The Public Prosecutor,
High Court, Madras.

+1 CC to MR.R.Sankarasubbu Advocate. SR.NO. 8809
+1cc to the Public Prosecutor Sr.9247 [21/06/2016]

W.A.No.156 of 2016

CO-BVR

JD 11/02/2016