

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.32885 of 2016
& WMP.No.28426 & 28427 of 2016

R.Paramasivan

... Petitioner

Vs

1. The Home Secretary
Government of Tamilnadu
Secretariat, Chennai.
2. The Director General of Police
DGP Office, Mylapore,
Dr.Radhakrishnan Salai
Chennai-5.
3. The Superintendent
Central Prison, Puzhal
Chennai.
4. The Dean
Government Royapettah Hospital
No.1, West Cott Road,
Chennai 600 014.
5. The Additional Director
Central Bureau of Investigation
Rajaji Bhavan, Chennai.
6. The Dean
Kilpauk Medical College Hospital
Poonamallee High Road,
Kilpauk, Chennai-10.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of mandamus directing the 2nd respondent to take immediate and necessary steps to entrust the case to the 5th respondent, an independent agency to conduct investigation of the murder of deceased Ramkumar, S/o.Paramasivan.

For Petitioner : Mr.R.Sankarasubbu

For RR 1 to 3 : Mr.R.Rajarathinam
Public Prosecutor

For RR 4 to 6 : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.R.Rajarathinam, learned Public Prosecutor accepting notice on behalf of the respondents 1 to 3 and Mr.A.N.Thambidurai, learned Special Government Pleader accepting notice on behalf of the respondents 4 to 6.

2. The petitioner has filed this writ petition praying for issuance of a writ of mandamus, to direct the 2nd respondent to take immediate and necessary steps to entrust the case to the 5th respondent, an independent agency to conduct investigation of the murder of deceased Ramkumar, S/o.Paramasivan.

3. This Court, at the very inception, pointed out to Mr.R.Sankarasubbu, learned counsel for the petitioner that the prayer sought for in this writ petition, could be heard only by the Court dealing with the petitions under section 482 Cr.P.C. Faced with this situation, the learned counsel for the petitioner submitted that for the present, he is not pressing this relief.

4. The anxiety of the petitioner who is the father of the deceased Ramkumar, is to ensure that the postmortem is performed in a proper manner and it should be fully videographed and one doctor of the petitioner's choice should be also present during the course of postmortem. In this regard, the learned counsel for the petitioner referred to the decisions of the Division Bench of this Court in [a] HCP No.1265/2013 dated 12.07.2013 [Ramesh V. The State rep.by the District Collector, Dharmapuri District, Dharmapuri] ; [b] MP.NO.1/2015 in HCP No.1541/2015 dated 26.06.2015 [Parthiban Vs. The State rep. by the Commissioner of Police, Salem City, Salem District] ; and [c] WA.No.156/2016 dated 11.02.2016 [Elumalai Vs. The State of Tamilnadu rep.by its Secretary, Department of Home, Fort St. George, Chennai-9] .

5. The learned counsel for the petitioner further referred to the letters addressed by the Chairpersons of the National

Human Rights Commission dated 10.08.1995 ; 03.01.2001 and 21.12.2001 respectively to impress upon this Court that the National Human Rights Commission was of prima facie view that the local doctor succumbs to the police pressure which leads to distortion of the facts and the Commission would like that all postmortem examination done in respect of deaths in police custody and in jails, should be video-filmed and the cassettes should be sent to the Commission along with the Postmortem Report.

6. During the course of argument, the learned Public Prosecutor intervened and submitted that the respondents would concede the said requirement and they will videograph the entire postmortem. This submission is placed on record.

7. The learned counsel for the petitioner further referred to the other paragraphs in the said three communications of the National Human Rights Commission. Therefore, the petitioner would state that the victim's father is the writ petitioner and the investigation should instill confidence in the mind of the victim's family and therefore, it is necessary that a doctor chosen by the petitioner should also form part of the Team which does the postmortem.

8. The learned Public Prosecutor, on instructions, submitted that normally the postmortem is performed by one of the doctors of the Forensic Sciences Wing, but, in the instant case, a Team has been constituted consisting of

[a] Dr.S.Selvakumar, Professor, Forensic Science, KMC, Kilpauk, Chennai ;

[b] Dr.Manikandaraja, Assistant Professor, Forensic Science, KMC, Kilpauk, Chennai ; and

[c] Dr.K.V.Vinod, Assistant Professor, Forensic Science, KMC, OD @ Government Royapettah Hospital, Chennai.

It is submitted by the learned Public Prosecutor that all the three doctors are now presently at the Government Royapettah Hospital, waiting for directions from this Court, so that the postmortem could be done.

9. I have elaborately heard the learned counsels appearing for the parties and perused the materials placed before it.

10. The first aspect of the matter to be taken into consideration is whether this Court should accept the demand made by the petitioner to enable him to nominate a doctor of his choice to be included in the team of doctors who have already

been nominated for the purpose of conduct of postmortem on the victim's body presently lying in the Government Royapettah Hospital. The decisions referred in the case of Parthiban [cited supra], pertain to a Habeas Corpus Petition and it appeared to be a case of honour killing and the Hon'ble Division Bench, while permitting one of the doctors of the petitioner's choice to form part of the team, recorded that there is no tenable objection on the side of the learned Additional Public Prosecutor appearing for the respondents in this regard. Thus, the said order in HCP NO.1541/2015 appears to be passed on concession of the prosecution. Insofar as the order passed in WA.No.156/2016 is concerned, the petitioner was the father of the deceased and their request was for re-postmortem and the Court took into consideration, the facts of the case and since it was re-postmortem, directed that it should be done in the presence of a doctor who is the Head of the Department of Forensic Science of a deemed University. Therefore, the facts of the said case are entirely different from the case on hand, as that case related to re-postmortem and the Court thought fit to order the same and therefore, the said decision cannot be made applicable to the facts of the present case. In the case of Ramesh [cited supra], in HCP No.1265/2013, it was also a matter arising out of a Habeas Corpus Petition, wherein the direction sought for was to videograph the entire postmortem and a doctor of the petitioner's choice to be nominated. After elaborately referring to the facts of the case as well as the earlier orders, this Court, came to the conclusion that apart from videograph being done, a doctor of the petitioner's choice therein, should be permitted. Therefore, to apply the said decision, first of all, it has to be seen as to whether the facts are identical. However, in the instant case, the death has occurred yesterday and it is reported by the respondent police that it is due to electrocution. In my view, to enable the victim's family to seek for a nominee on their behalf to form the team of doctors to conduct postmortem, would arise only when the petitioner is able to make out a case to discredit the team or for any reason, with reasonable material to show that the team of doctors would be biased.

11. Therefore, there can be no automatic presumption in this regard to discredit the team of Government Doctors headed by the Professor, Forensic Sciences, Kilpauk Medical College, Chennai and accompanied by two Assistant Professors of his Department. Therefore, in the absence of any credible material placed by the petitioner to discredit the above mentioned three doctors, this Court is of the view that confidence should be reposed on those doctors that they will discharge their duties in a free and fair manner, unbiased and uninfluenced by any external factors.

12. The Court, in the preceding paragraphs had referred to the letters of various Chairpersons of the National Human Rights Commission. In fact, in the letter dated 10.08.1995, the Commission was of the prima facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Court has referred to the same only to put it to the team of doctors that the duty enshrined on them is sacred and they should ensure that there is no room for any grievances or complaints and also bear in mind the consequences that will follow in the event of the report being distorted or if any important fact is missed out.

13. Therefore, this Court, with these observations, is not inclined to accept the request of the petitioner to nominate a doctor of his choice ; but this Court would direct that the team of three doctors should also contain one more doctor from another Government Hospital.

14. Accordingly, Dr.Balasubramanian, Professor, Forensic Medicine, Stanley Hospital, Chennai, is nominated, who will also form the team along with Professor Dr.S.Selvakumar, Dr.Manikandaraj and Dr.K.V.Vinod, in the order of their seniority in the Government service.

15. The above direction shall be scrupulously followed without any deviation or room for complaints. It is made clear that since the relief granted in this writ petition pertains only to postmortem, all other issues are left open to enable the petitioner to agitate the same at the appropriate stage.

16. The writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Home Secretary
Government of Tamilnadu
Secretariat, Chennai.

2. The Director General of Police
DGP Office, Mylapore,
Dr.Radhakrishnan Salai
Chennai-5.

3. The Superintendent
Central Prison, Puzhal
Chennai.

4. The Dean
Government Royapettah Hospital
No.1, West Cott Road,
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5. The Additional Director
Central Bureau of Investigation
Rajaji Bhavan, Chennai.

6. The Dean
Kilpauk Medical College Hospital
Poonamallee High Road,
Kilpauk, Chennai-10.

7. The Public Prosecutor
High Court, Madras.

8. The Government Pleader,
High Court, Madras.

Copy to:-

1. The Dean
Stanley Hospital, Chennai.

2. Dr.Balasubramanian, सतयमेव जयते
Professor, Forensic Medicine,
Stanley Hospital, Chennai.

3. Dr.S.Selvakumar,
Professor, Forensic Medicine,
K.M.C., Kilpauk, Chennai.

4. Dr.Manikandaraja,
Assistant Professor, Forensic Science,
K.M.C., Kilpauk, Chennai.

5. Dr.K.V.Vinod,
Assistant Professor,
Forensic Science, K.M.C.,
OD @ Government Royapettah Hospital,
Chennai.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.52939
+1cc to the Government Pleader, S.R.No.52908
+1cc to the Public Prosecutor, S.R.No.52927

W.P.No.32885 of 2016

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CA(19/09/2016)



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