



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MS. JUSTICE V.M. VELUMANI

Writ Appeal (MD).No.1268 of 2015

and

M.P. (MD).No.3 of 2015

1. The State of Tamil Nadu
represented by its Secretary to Government,
Public (Law and Order-A) Department.
Fort St. George,
Chennai-9.
 2. The District Collector,
Madurai.
 3. The Revenue Divisional Officer,
Madurai.
- ... Appellants/Respondents
- Vs.

1. Balasundaram,
Sub Inspector of Police (Law and Order),
Teppakulam Police Station,
Madurai.
2. Udayasooriyan,
Head Constable No.405,
B-3, Teppakulam Police Station,
Madurai.
3. Velappan,
Head Constable No.3222,
B-3, Teppakulam Police Station,
Madurai.
4. Dharmaraj (died),
Head Constable No.1002,
B-3, Teppakulam Police Station,
Madurai.
5. Bayas Mohan,
I Grade Constable No.1778,
B-3, Teppakulam Police Station,
Madurai.



6. Krishnan,
I Grade Constable No.2952,
B-3, Teppakulam Police Station,
Madurai.

7. D.Parimala

(R7 impleaded as LR of deceased fourth respondent
as per the order of Court dated 29.10.2015

made in M.P.(MD).No.2 of 2015 in W.A.(MD).SR.No.

29053/2014 by (RSJ & VMVJ).

.. Respondents/Petitioners

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order passed by this Court in W.P.(MD).No.14136 of 2009 dated 01.04.2013.

Prayer in WP(MD). 14136/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ of certiorari calling for the records relating to the govt. order in G.O.MS.NO.12, PUBLIC (LAW AND ORDER - A) DEPARTMENT dated 07.01.2009 of the 1st respondent herein and quash the same.

For Appellants : Mr.M.Murugan
Government Advocate

For R1 to R3,
R5 & R6 : Mr.K.P.Narayanakumar

J U D G M E N T

(Judgment of the Court was made by **M. SATHYANARAYANAN, J.**)

The respondents were working as Sub-Inspector of Police (Law & Order), Head Constables, I-Grade Constables respectively at Teppakulam Police Station, Madurai City. One Mr.Arunachalam had lodged a complaint against Sateesh Kumar, which resulted in registration of the case in Crime No.302 of 2006, under Sections 341 and 307 of I.P.C. Thereafter, the accused viz., Sateesh Kumar was arrested and produced before the Jurisdictional Magistrate, who in turn, remanded him under judicial custody on 26.02.2006. It is the specific case of the respondents that at the time of arrest, the accused did not co-operate and therefore, minimum force was used for the purpose of remanding him.

2. The respondents would further state that the accused viz., Sateesh Kumar was granted bail, vide order dated 10.03.2006 in CrI.M.P.No.914 of 2016 and thereafter, he has given a complaint against the respondents and also against one M.Manivannan, who was working as Additional Superintendent of Police, Prohibition and Enforcement Wing, alleging custodial torture.



3. Therefore, an enquiry was conducted under Section 151 of the Police Standing Orders and in the meanwhile, Sateesh Kumar was also lodged a complaint against the respondents as well as the above said Police Official. Since no case was registered, he filed CrI.O.P.No.1701 of 2006, by invoking the jurisdiction of this Court under Section 482 of Cr.P.C., and pursuant to the order, a case in Crime No.1173 of 2006 was registered and after investigation, it was closed as 'Mistake-of-Fact', on 05.02.2007 and subsequently, the said accused had also filed a private complaint in C.C.No.165 of 2008 on the file of the Court of Judicial Magistrate No.VI, Madurai and the same is pending.

4. The third petitioner has sent an enquiry report under Section 151 of Police Standing Orders, dated 31.01.2007, recommending criminal action against the then Assistant Commissioner of Police and 8 other Police personnel including the respondents for their alleged excesses and also for tampering with and fabricating the records. The third petitioner was again requested by the second petitioner to re-examine the report and once again, the third petitioner vide his report dated 23.05.2007, recommended departmental action against Thiru Godwin Jagadeeshkumar and Thiru.Krishnamoorthy, Head Constable-cum-driver for serious lapse of causing injuries, while the said Sateesh Kumar was under police custody and also other police personnel.

5. However, the grievance expressed by the respondents is that without taking note of the said report, the Government passed G.O.Ms.No.12 Public (Law and Order-A) Department dated 07.01.2009 ordering criminal prosecution and departmental enquiry against Thiru Manivannan as well as against the respondents and also Thiru Godwin Jagadeeshkumar and one Thiru.Krishnamoorthy, who have been implicated in the Police Standing Order Enquiry.

6. One Mr.Manivannan, who was similarly placed like that of the respondents, had approached this Court by filing W.P.(MD). No.2541 of 2010 praying for quashment of the said Government Order and the Learned Single Judge of this Court, vide order dated 25.07.2012, elaborately considered the points and quashed the said Government Order, insofar as the Manivannan alone is concerned and admittedly, no further challenge has been made to the said order.

7. The respondents by submitting that the Police Standing Order Enquiry implicates only Thiru Godwin Jagadeeshkumar and Thiru.Krishnamoorthy and that they are also similarly placed like that of Manivannan, who has filed a Writ Petition in W.P.(MD). No.2541 of 2010, which came to be allowed, they came forward to file W.P.(MD)No.14136 of 2009 praying for quashment of the said Government Order insofar as they are concerned. The learned Judge, after taking note of the order dated 25.07.2012 in W.P.(MD). No.2541 of 2010 filed by Mr.Manivannan and also taking note of the



submissions made by the learned Government Advocate that the writ petition is also covered by the above said order, has allowed the writ petition and thereby quashed the impugned Government Order insofar as the petitioners therein are concerned. The official respondents, aggrieved by the said order in allowing the writ petition, had filed this writ appeal.

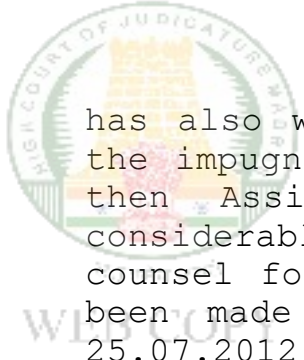
8. Mr.M.Murugan, the learned Government Advocate appearing for the petitioners submits that, since the respondents are facing serious charges in the departmental proceedings for giving torture to the concerned accused, while he was in police custody, they have to necessarily face the investigation, but, the learned Judge without properly appreciating the relevant facts and circumstances, has erroneously allowed the writ petition by placing reliance upon the order dated 25.07.2012 made in W.P.(MD). No.2541 of 2010 and therefore, prays for allowing the writ appeal.

9. Per contra, Mr.K.P.Narayanakumar, the learned counsel appearing for the respondents 1 to 3, 5 and 6 would contend that admittedly, during the course of argument in the writ petition, the learned Government Advocate also made a submission that the issue involved in this writ petition is squarely covered by the order passed in W.P.(MD).No.2541 of 2010 and the learned Judge on independent application of mind, pointed out that the issue is squarely covered, rightly allowed the writ petition and hence, prays for dismissal of the writ appeal.

10. This Court has paid it's anxious consideration to the rival submissions made by the learned Government Advocate appearing for the petitioners and the learned counsel appearing for the respondents 1 to 3, 5 and 6 and perused the materials available on record.

11. Admittedly, the said Mr.Manivannan, who was similarly placed like that of the respondents, had moved this Court by filing W.P.(MD)No.2541 of 2010 for quashment of G.O.Ms.No.12 Public (Law and Order-A) Department, dated 07.01.2009 insofar as he is concerned and the said writ petition was allowed on 25.07.2012. The appellants herein, who arrayed as respondents in the said writ petition, did not make a challenge to the said order and it has become final.

12. A perusal of the impugned G.O.Ms.No.12 discloses departmental action was ordered against Thiru Manivannan and the respondents as well as the accused Thiru Godwin Jagadeeshkumar and Thiru.Krishnamoorthy and admittedly, the said Government Order has been quashed insofar as the said Manivannan is concerned. In terms of the above said order passed in the writ petition, it is a categorical order and of the respondents that in the Police Standing Order Enquiry, action recommended only against Thiru Godwin Jagadeeshkumar and Thiru.Krishnamoorthy alone and the said fact



has also weighed with the mind of the learned Judge in quashing the impugned Government Order against the said Mr.Manivannan, the then Assistant Commissioner of Police. This Court finds considerable force in the said submission made by the learned counsel for the respondents. Admittedly, no further challenge has been made against the order in W.P.(MD)No.2541 of 2010 dated 25.07.2012 filed by Mr.Manivannan and the learned Judge, during the course of argument made in the writ petition in W.P.(MD) No.14136 of 2009, has also taken note of the fact that the learned Government Advocate himself has submitted that the matter in issue also squarely covered by the above said order. In the light of the circumstances coupled with the fact that the order dated 25.07.2012 made in W.P.(MD)No.2541 of 2010 has not been put to any challenge by the appellants, this Court is of the view that the writ appeal lacks merit and substance and is liable to be dismissed.

13. In the result, the writ appeal is dismissed, confirming the order dated 01.04.2013 made in W.P.(MD).No.14136 of 2009. However, in the circumstances, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Public (Law and Order-A) Department.
Fort St. George, Chennai-9.
2. The District Collector, Madurai.
3. The Revenue Divisional Officer, Madurai.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 53959
+1 CC to Mr.K.P.NARAYANA KUMAR, Advocate, SR No.53440

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19.09.2016

akv

SH/CK:20.10.2016:5P/6C