

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.31871 of 2012
& M.P.No.1 of 2012

G.Palani

...Petitioner

Vs

1. The Chief Secretary of Tamil Nadu Government,
Secretariat, Chennai - 9.
2. The Principal Secretary to Government,
Home Department, Secretariat, Chennai -9.
3. The Principal Secretary to Government,
Education Department, Higher Education,
Secretariat, Chennai -9.
4. The Director General of Police,
Office of the General of Police,
Chennai.
5. The Inspector General of Police,
O/o. Inspector General of Police,
West Zone, Coimbatore.
6. The Superintendent of Police,
Office of the Superintendent of Police,
Erode District, Erode.
7. The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Perundurai, Erode District, Erode.
8. Inspector of Police,
Office of the Inspector of Police,
Perundurai, Erode District, Erode.
9. The District Collector,
Erode District, Erode.

10. The Vice Chancellor,
Anna University,
Guindy Campus, Chennai.

11. The Secretary,
Admission Section,
Anna University,
Guindy Campus, Chennai.

12. The Principal,
Kongu Engineering College,
Perundurai, Erode District, Erode.

13. The Correspondent,
Kongu Engineering College,
Perundurai, Erode District, Erode.

14. The Hostel Warden,
Deeran Hostel,
Kongu Engineering College,
Perundurai.

..... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to transfer the investigation to any other agency in Crime No.306 of 2012 on the file of the Inspector of Police, Perundurai.

For Petitioner : M/s.N.Kannan

For RR1 to 9 : Mr.S.Diwakar, Spl.G.P.

For R10 : Mr.L.P.Shanmugasundaram

For R11 : No Appearance

For R12 to 14 : Mr.R.Krishnamoorthy, S.C.
for Mr.K.Kumaresh Babu

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O R D E R

"The fate leads those who follow it; drags those who avoid it."

The petitioner has filed this petition praying to direct the respondents to transfer the investigation to any other agency in Crime No.306 of 2012 on the file of the Inspector of Police, Perundurai.

2. The petitioner is the father of one Aravind Raj. Aravind Raj secured 1110 / 1200 marks in the 12th standard and got admission in an Engineering College in Perundurai for ECE Course. The petitioner stated that, after initial payment, he had borrowed nearly a sum of Rs.4,00,000/- and paid the fees. The petitioner's son was accommodated in the hostel on 21.07.2011, for which a sum of Rs.40,000/- was paid and he was given Room No.216. The petitioner stated that on 10.04.2012, he received a call from the College that his son was missing from the College and there was no information. The petitioner and his relatives reached the College to ascertain about the missing son and they were not permitted to go inside the college, nor information was given by the College authorities and threatened them that they have connection with political leaders, IAS and IPS officers and the petitioner cannot be permitted to meet the College Hostel Warden and the friends of his son.

3. The petitioner then searched for his son in various places and could not find him. Hence, he filed a complaint on 11.04.2012, in which, it is stated that the petitioner's son was kidnapped and murdered by the students. But the complaint was not entertained. Even after speaking to the Inspector General of Police, the case was not registered. According to the petitioner, the police were in hand in glove with the College authorities and did not register the complaint. This made the petitioner to give complaint by way of Registered Post, which was received by the Superintendent of Police, but no action has been taken. The petitioner then approached the District Collector and the P.A. to the Collector informed him that the instructions were given to the Superintendent of Police to register FIR, but when the petitioner approached the Deputy Superintendent of Police, Perundurai, to register the complaint, the same was not entertained. The Police, instead of receiving the petitioner's complaint, has received the complaint from one Arun and registered a case in Crime No.306 of 2012 as 'Boy Missing' knowing very well that his son was drowning in a canal situated at Erode Main Road. Finally, FIR was registered on 11.04.2012 and that the petitioner son's body was recovered from the Canal around 4.30 pm on 11.04.2012 and post-mortem was conducted. The petitioner stated that the grandfather of Arun voluntarily approached him and offered Rs.5,00,000/- for burial expenses. Even though the petitioner tried to speak to other students, college authorities did not permit the students to speak to him. According to the petitioner, the police has acted mala-fidely. One Panner Selvam made a statement under Section 161(3) Cr.P.C. on 10.04.2012, wherein he has stated that he stayed in the hostel room with the petitioner's son, but while the petitioner's brother contacted him, he has stated that he has not stayed in the hostel room on 10.04.2012 and that he had gone to his house from the hostel on 09.04.2012 itself.

4. According to the petitioner, the investigation was not

properly conducted and that the police have acted with mala-fide intention. The police did not report to the Tahsildar immediately in respect of the suspicious death of the petitioner's son. The College authorities failed to protect the petitioner's son, as he was in the hostel accommodation and in the custody of the college. According to the petitioner, since serious crime has been committed, the police ought to have registered FIR under Sections 304 (A), 304 (ii), 34 and 366 of IPC and the police have failed to register the case. Since there is inaction on the part of the respondents 12 and 13, they have to pay a compensation of Rs.20,00,000/- for their negligence.

5. The respondents 12 to 14 have filed detailed counter and denied the averments and allegations made against them and it has been stated that the College authorities have extended full co-operation to the parents to take the dead body through ambulance to their native place and there is no negligence on the part of the management in regard to the unfortunate regrettable accidental death, which occurred due to voluntary act of the deceased hostler. According to the respondent 12 and 13, 10.04.2012 was declared as local holiday on account of Bannari Amman Temple Festival and on that day the deceased and his friends left the hostel without the knowledge of the warden and College authorities and they also did not enter their names in the register. It is represented that on 10.04.2012 at around 3.30 PM, telephonic information was received about the incident and fire service station was contacted and police was also informed, but unfortunately the attempt of the fire service employees and other local people to trace out the deceased Arvind Raj on 10.04.2012 went in vain. It is stated that the parents were informed about the missing of the deceased in the water. The parents came to the hostel and they have been taken to the spots. The tracing of the body was carried on throughout the night and he was found on 11.04.2012 at 4.30 P.M. and the same was identified by his parents. In the meantime, one of the students by name Arun has lodged a Police complaint and the same was registered on the file of the Inspector of Police, Perundurai, as "boy missing" and investigation was conducted.

6. It is further stated that the writ petitioner has filed a petition in Crl.M.P.No.1376 of 2012 on the file of the learned Judicial Magistrate, Perundurai for direction under Section 156 (3) Cr.P.C. to register the complaint and to hold proper investigation and the same was returned by the Magistrate. Against the order of the learned Magistrate, the petitioner has filed Criminal Original Petition in Crl.O.P.No.15271 of 2012, which was dismissed by this Court on 02.07.2012. For the reasons best known to the writ petitioner, the said relevant facts have not been disclosed by the petitioner. The enquiry was conducted in accordance with law and the accidental death of the deceased took place voluntarily and due to negligent act on his part, these respondents cannot be held liable in the light of the

doctrine of "Volenti Non-fit Injuria".

7. The allegations of kidnapping and murdering the petitioner's son and the Inspector of Police refusing to register the complaint in order to save the College students and name of the College are completely incorrect. The respondents have submitted that the police have registered the earliest complaint given by a co-student, by name Arun.

8. The 6th respondent has filed counter affidavit narrating the details collected by the police and stated that FIR has already been registered on the complaint given by one Arun and hence, registering second FIR does not arise. It is further stated that the body of the petitioner's son was traced in the LBP Canal near Mettupalayam and the body was identified by the petitioner and his relatives. Hence the FIR registered was transferred from the District Munsif-cum-Judicial Magistrate Court, Perundurai to the Executive Magistrate / Tahsildar, Perundurai. It is further stated that the petitioner has given statement before the Police that the petitioner's son did not know swimming. The complaint made by Arun was that on 10.04.2012 at about 2.30 P.M., the deceased and others gone to LBB Canal and took bath and that the petitioner's son suddenly moved into a very deep area of the Canal. The petitioner's son did not know swimming and he drowned in the water suddenly. Arun and his friends informed the neighbours to rescue the petitioner's son, but the deceased could not be traced by the neighbours and he informed the same to the College. At the time of occurrence, Arun and other friends warned the deceased that it was very dangerous area and not to go deep, but the deceased told them that he knew swimming. It has been stated that there is a caution board in that area, stating that the persons who are not aware of swimming were advised not to get into the water, and in vernacular, it is stated that, @vr;rhpf;if: ,J mghafukhd gFjp/ePr;ry; bjhpahjth;fs; ,g;gFjpapy; ,w';fnth. Fspf;fnth ntz;lhk; vd vr;rhpf;fg;gLfpwhh;fs;/@

9. It is stated that the deceased was already prepared to take bath in the Canal, as he came with towel, slipper and soap box. The Inspector of Police has examined 15 persons and prepared rough sketch and observation Magazar in the presence of local witnesses. Post-mortem Doctor opined that the deceased would have died 2 to 3 days prior to autopsy and the Forensic Analysis Report states that "asphyxia as a result of drowning". Those statements have been recorded and all the materials have been collected and after completion of investigation on 27.06.2012, the Inspector has closed the case as further action dropped, since the death was due to drowning. The further action dropped report was accepted by Executive Magistrate / Tahsildar, Perundurai.

10. From the narration of the above incident, it is very

clear that the proper investigation has been done by the police, students have been examined and the death has occurred on account of drowning and the father of the petitioner has also not stated that he has already approached the Court and his plea was refuted. The above facts clearly show that the petitioner wanted further investigation with regard to the death of his son. The students have gone out of the College without informing the Warden or anyone, as 10.04.2012 was declared as holiday on account of Bannari Amman Temple Festival. In this case, due investigation has been done, eye witnesses have spoken that the deceased along with others have gone to LBP Canal for swimming knowing the caution. The petitioner's son does not know swimming, which fact was confirmed by the petitioner and he succumbed to death by drowning for which none of the respondents can be blamed. I find that there is no substance in the contention of the petitioner, and the same does not warrant any interference by this Court and the relief sought for by the petitioner is liable to be rejected.

11. Unfortunately, the petitioner has lost his son, which is a fate. As the petitioner's son has left the hostel without informing anyone, much less the warden and went to the reservoir without knowing swimming and without observing the warning / precaution as extracted supra. This Court can pity on the death of the petitioner's son, and death is on account of fate. Hence, I find no merits in this writ petition. Hence, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is stated that the belongings of the petitioner's son are in the College. If the petitioner son's belongings are retained in the College, the College authorities are expected to return the same, after taking necessary affidavit from the petitioner.

sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

pvs

To

1. The Chief Secretary of Tamil Nadu Government,
Secretariat, Chennai - 9.
2. The Principal Secretary to Government,
Home Department, Secretariat, Chennai -9.

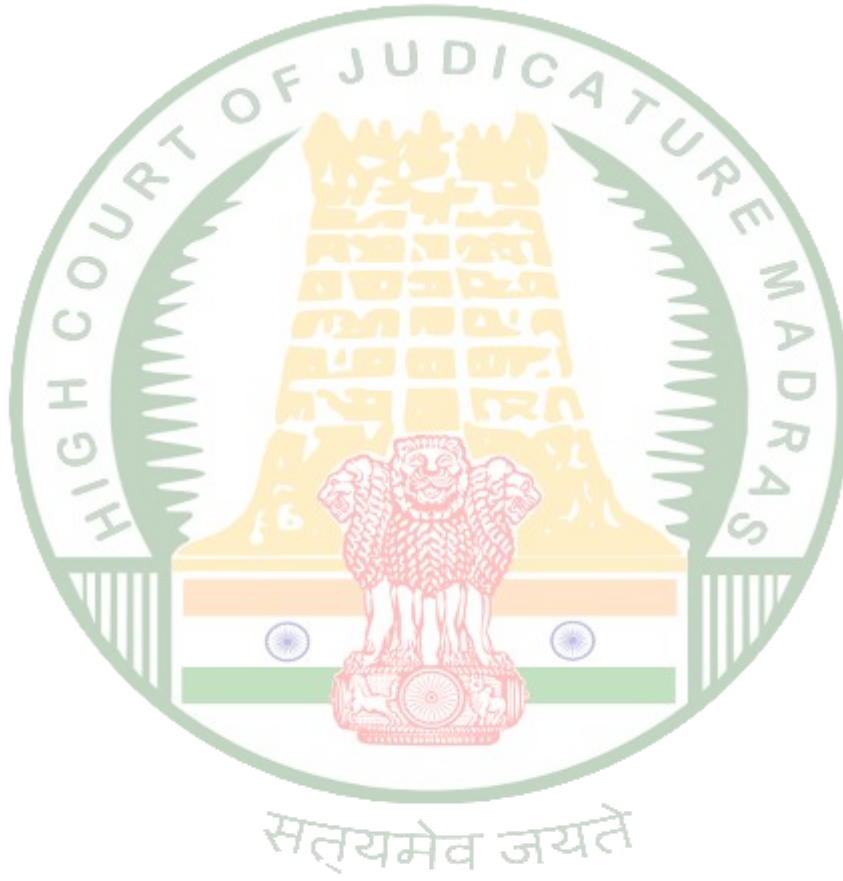
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 12. The Hostel Warden,
Deeran Hostel,
Kongu Engineering College,
Perundurai.
- + 1 CC to M/s.N.Kannan, Advocate sr.75025
- + 2 CC to Government Pleader, sr.no.76266, 75732
- + 1 cc to Mr.K.Kumaresh Babu, Advocate sr.75376

+ 1 cc to Mr.L.P.Shanmugasundaram, sr.75844

W.P.No.31871 of 2012
& M.P.No.1 of 2012

SV [CO]
RR 20/11/2017



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