

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 01/09/2017

PRONOUNCED ON 08/09/2017

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THE HONOURABLE MR.JUSTICE P.D. AUDIKESAVALU

W.P.No.17041 of 2004 &
W.P.M.P.No.20209 of 2004

E.Natesan

.... Petitioner

VS-

1.Government of Tamil Nadu,
Rep. by its Home Secretary,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai-8.

3.The Inspector of Police,
R-3 Police Station,
Ashok Nagar, Chennai.

सत्यमेव जयते Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to pay the Petitioner, jointly and severally, a compensation of any amount that this Court may deem it fit and proper.

For Petitioner : Mr.R.Mannar Mannar

For Respondents : Mr.E.Manoharan
Additional Government Pleader

ORDER

The case of the Petitioner in the affidavit filed in support of the Writ Petition is that his eldest son Kumaresan and another son Saravanan were arrested by one R.Natarajan, Sub Inspector of Police, R-3 Ashok Nagar Police Station and Constables 3283, 1502 and others at Vellimadu Village, Kavanthandalam Post, Kancheepuram Taluk at 08.00 a.m. on 24.08.1991 and were immediately taken to Madras. The Petitioner had received information from a constable attached to R-3 Ashok Nagar Police Station stating that his eldest son Kumaresan died under mysterious circumstances in the lock-up of that Police Station on the night of 24.08.1991 and that information in that regard was passed on to the Petitioner at his native village, Vellimadu near Kavanthandalam on the next day i.e., 25.08.1991. The Petitioner was taken to Royapettah Hospital in Madras, where body of said Kumaresan was kept and the Police Officers did not inform him of the reason for that death. According to the Petitioner, the deceased Kumaresan had received beatings and had been severely tortured by the Police persons on duty on 24.08.1991 in the lock-up and his other son viz., Saravanan, who was also arrested along with the said Kumaresan, is an eyewitness to the same. The Petitioner had earlier filed a Writ Petition bearing W.P.No.23 of 1992 in this Court seeking direction to furnish a copy of post-mortem certificate of the deceased Kumaresan, who

died in R-3 Police Station, Ashok Nagar on 24.08.1991 which came to be disposed on 11.02.2000 by the following order:-

"3. Even though notices were served on the respondents on 24.03.1994, today the learned Special Government Pleader requests for time to get instructions. Considering the lapse of time and the nature of request, I am of the view that there is no need to grant any further time for the learned Government Pleader to get instructions. After all the Petitioner wants the post-mortem certificate of his deceased son, which he is legally entitled to. Hence, the first respondent herein is directed to obtain the post-mortem certificate of the Petitioner's son Kumaresan, who died on 24.08.1991 in the police lock up at R-3 Police station and hand over the same to the Petitioner within four weeks from the date of receipt or production of a copy of this order.

4. The Writ Petition is ordered in the above terms. No costs. Consequently, the above W.M.P. is closed."

2. Subsequent to the direction of this Court in the aforesaid Writ Petition, the Petitioner had received the post-mortem certificate. It is claimed by the Petitioner in his affidavit that he had also sent legal notice through his counsel to the District Collector to furnish a copy of the R.D.O's report for the death of his son-Kumaresan on 08.08.2003.

3. In the aforesaid factual backdrop, the present Writ Petition has been filed for issuance of a Writ of Mandamus to direct the respondents to pay to the Petitioner, jointly or severally a compensation of any amount that this Court may deem fit and proper.

4. When the Writ Petition came up on admission on 22.06.2004, the counsel appearing for the Petitioner was absent and the matter was directed to be listed during the following week. Again on 02.07.2004 the matter was directed to be listed in the following week. Since there was no representation for the Petitioner during the hearing on 15.07.2004, the Writ Petition was dismissed for default. On an application bearing W.P.M.P.No.26187 of 2004 the Writ Petition was restored to file by order dated 23.12.2004 on payment of cost of Rs.750/- to the State Legal Services which was complied. During the hearing on 16.03.2005, this Court admitted the Writ Petition and directed counter to be filed within a period of four weeks and posted the same for final disposal in the third week of April 2005. Thereafter, the matter was listed before this Court on 07.07.2017 and at the request of the learned Government Advocate appearing for the respondents, the matter was adjourned to 13.07.2017. There was no representation for the Petitioner during the hearing on 13.07.2017 and hence, the matter was directed to be listed under the

caption "for dismissal" on 19.07.2017. On that date, a representation was made by a learned counsel representing the counsel on record for the Petitioner expressing inability to appear due to personal inconvenience and the matter was directed to be posted under the same caption on 26.07.2017. When the matter was taken up by this Court on 01.09.2017, the learned counsel for the Petitioner informed the Court that the Writ Petition may be disposed on the basis of available records and did not make any other submission on the merits of the case.

5. On a perusal of the affidavit filed in support of the Writ Petition as well as the documents in the typed-set, it is noticed that there is no explanation from the Petitioner for not having approached this Court within a reasonable time from 24.08.1981 when the death of the said Kumaresan in Police lock-up is said to have taken place. The Writ Petition had been filed after a period of 12 years on 30.04.2004 and except for the reference to the Writ Petition filed in the year 1994 seeking for post-mortem report, which came to be disposed in the year 2000 as aforesaid, there is nothing indicated in justification for the inordinate delay. Though normally in such circumstances, when there is inordinate and unexplained delay in seeking recourse to this Court by way of a Writ Petition the same ought not to be entertained while exercising discretionary powers under 226 of the Constitution. However, having due regard to the fact that the present case relates to the matter of custodial

death in Police lock-up, which, if established, would amount to flagrant violation of right to life guaranteed under Article 21 of the Constitution, it would certainly be a travesty to the acclaimed supremacy of the Rule of Law in a civilized Nation to brush aside a serious complaint that apparently shocks the judicial conscience without any investigation to get at the truth. At the same time, the matter entails thorough examination of witnesses for determining disputable questions of fact and the materials placed on record so far are bereft of requisite particulars for an effectual adjudication of the same in this summary proceeding. Hence it is expedient to secure the ends of justice by relegating the matter to the State Human Rights Commission, Tamil Nadu for enquiry into the complaint of violation of human rights invoking Section 12(a) of the Protection of Human Rights Act, 1993, as amended by Act 43 of 2006, which has come into force with effect from 23.11.2006. It is further clarified that in view of the fact that the matter has been referred to the State Human Rights Commission by an order of Court, the jurisdictional prohibition of enquiring into the matter after the expiry of one year from the date on which the act constituting violation of Human Rights is alleged to have been committed stipulated in Section 36(2) of the Protection of Human Rights Act, 1993, would not be applicable in view of the rulings of the Hon'ble Supreme Court of India to that effect in ***Paramjit Kaur vs. State of Punjab and others*** [(1992) 2 SCC 131] and ***N.C.Dhondial vs. Union of India & others*** [(2004) 2 SCC 579]. The State Human Rights Commission, Tamil Nadu after issuing notice

to all parties concerned and affording them full opportunity of hearing in the matter following the prescribed procedure shall not be inhibited to pass appropriate orders on merits in accordance with law. A copy of the final order passed by the Commission on disposal of the matter is requested to be sent to the Registrar (Judicial) of this Court.

6. The Writ Petition is disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

08/09/2017

Speaking Order

Index : Yes / No.
Internet : Yes / No.

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To

1.The Home Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.

2.The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai-8.

3.The Inspector of Police,
R-3 Police Station,
Ashok Nagar, Chennai.

P.D. AUDIKESAVALU, J.

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Copy to:

The Registrar (Judicial),
Madras High Court,
Chennai.

Note: (i) The Registry is directed to send a copy of this order to:-

State Human Rights Commission,
Represented by its Secretary,
No.43, P.S.Kumarasamy Raja Salai,
Chennai - 600 028.
Tamil Nadu.

along with a copy of Petition, Affidavit and Typed-set in the Writ Petition.

Note: (ii) Issue order copy on 11.09.2017



Pre-Delivery Order made in
W.P.No.17041 of 2004 &
W.P.M.P.No.20209 of 2004

WEB COPY

08/09/2017