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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2017

PRONOUNCED ON : 11.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
W.A. (MD) .No.1189 of 2017
and
C.M.P. (MD) .Nos.8296 of 2017

K.Natarajan .. Appellant / Petitioner
Vs.

1. The District Collector,
Madurai District,
Madurai.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Revenue Divisional Officer,
District Collector Office Campus,
Madurai, Madurai District.
4. The Thasildar,
Madurai North,
Madurai,
Madurai District.
5. The Inspector of Police,
S.S. Colony Police Station,
Madurai City, Madurai

...Respondents/ Respondents

PRAYER: This appeal has been filed under Clause 15 of the Letters Patent, against the order, dated 14.06.2017, passed by a learned Single Judge of this Court in W.P.(MD).No.19767 of 2014.

Prayer in WP(MD). 19767/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to exhume/disinter the dead body of the petitioner's daughter by name Sujatha and perform the post mortem.



For appellant : Mr.Ram Prakash Rajagopal
For respondents : Mr.D.Muruganandham,
Addl. Government Pleader

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JUDGMENT

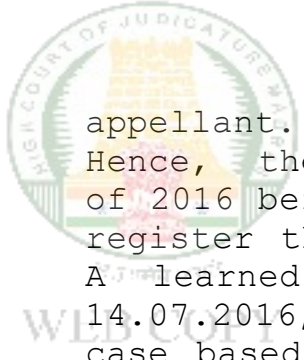
[Judgment of the Court was made by **R.SUBBIAH, J.**]

The writ petitioner is the appellant. This appeal has been filed by the appellant aggrieved by the order passed by a learned Single Judge of this Court in W.P.(MD).No.19767 of 2016, dated 14.06.2017, whereby and whereunder the relief sought for by the appellant / petitioner ie., to direct the respondents to exhume / disinter the dead body of his daughter, by name Sujatha and perform the postmortem, was rejected.

2. The brief facts, which are necessary to decide this appeal, are as follow s:-

(a) The marriage between the appellant's daughter and one Krishnakumar was solemnized at Kumbakonam on 10.12.2014 with the consent of both the families. According to the appellant / petitioner, from the date of marriage, she was subjected to harassment and cruelty by demanding additional dowry by the said Krishnakumar viz., son-in-law of the appellant and his family members. At the time of marriage, the said Krishnakumar was working in a private concern at Chennai. After marriage, in January, 2015, the said Krishnakumar went to America on account of his job and stayed at Okalahoma (OK STILL WATER APARTMENT 4, 75 S UNIVERSITY PLACE, AMERICA). In March, 2015, the appellant's daughter had also gone to USA and joined her husband viz., Krishnakumar. But, according to the appellant / petitioner, the said Krishnakumar had continued the cruelty and harassment on his daughter in USA also. While so, on 07.03.2016, the appellant was informed that her daughter died due to ill-health. The appellant requested to bring the dead body of the deceased to Kumbakonam for funeral. But, the said Krishnakumar and his family members brought the dead body to Madurai and hurriedly buried the dead body at Thathaneri Burial ground.

(b) Since the death of the daughter of the deceased was within seven years of the marriage and also because she died in a suspicious manner, the appellant had lodged a detailed complaint before the 5th respondent Police. As the 5th respondent Police did not take any steps to register the complaint, the appellant had filed a petition in CrI.M.P.No.1696 of 2016 before the Mahila Court (Magisterial cadre), Madurai for registration of his complaint. The learned Magistrate, by an order dated 05.06.2016, directed the 5th respondent to register the complaint of the



appellant. But, the 5th respondent did not register the complaint. Hence, the appellant had filed a petition in CrI.O.P.(MD).No.1696 of 2016 before this Court for a direction to the 5th respondent to register the case as per the direction of the learned Magistrate. A learned Single Judge of this Court, by an order dated 14.07.2016, strictly directed the 5th respondent to register a case based on the complaint of the appellant and as such, a case has been registered in Crime No.872 of 2016 for the offences punishable under Sections 498(A), 306, 506(i) and 201 IPC. Though the 5th respondent police recorded the statement of the appellant, according to the appellant, the 5th respondent did not take any steps to disinter the dead body of the deceased for postmortem. In this regard, the appellant has also sent a representation to the respondents 1 to 4. But, there was no response to the same. Therefore, the appellant has filed the writ petition for a direction to the respondents to exhume/disinter the dead body of the appellant's daughter by name Sujatha and perform the postmortem.

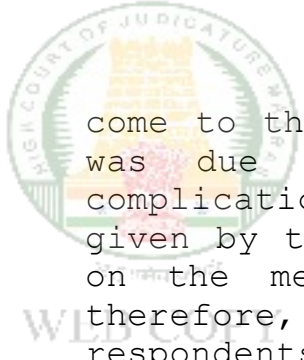
(c) During the pendency of the said writ petition, the appellant has also filed CrI.O.P.(MD).No.4317 of 2017 seeking a direction to the Inspector of Police to record the statement of the other witnesses, who knew about the incident, expedite the investigation and file a final report in Crime No.872 of 2016 on the file of the respondent Police.

(d) A learned Single Judge of this Court, by common order dated 14.06.2017, dismissed both the writ petition as well as the criminal original petition, however, with a direction to the 5th respondent Police to complete the investigation expeditiously and file necessary closure report before the jurisdictional Court under intimation to the appellant. Challenging the dismissal order of the writ petition, the appellant has filed this appeal.

3.The learned counsel appearing for the appellant submitted that though the body of the deceased was buried, the learned Single Judge, while passing the order in the first paragraph has made an erroneous observation that the body of the deceased was cremated, which is totally prejudicial to the appellant. He would further submit that the observation of the learned Single Judge in the order as if the dead body was cremated reflects the prejudicial mind of the learned Single Judge while passing the order, which lead to an erroneous order and therefore, the impugned order is liable to be set aside.

4. The learned counsel for the appellant would further submit that for conducting investigation, necessarily the postmortem should be conducted on the body of the deceased and without

<https://hccourts.com/hccases/> case of the appellant could not succeed. But, the learned Single Judge by relying upon the opinion given by the Government Doctors in the Rajaji Government Hospital, Madurai, has



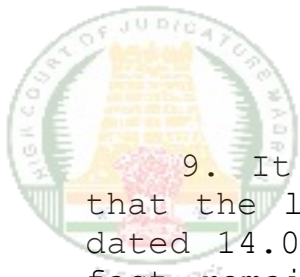
come to the conclusion that the death of the appellant's daughter was due to Systemic Lupus Erythematosus and its attendant complications. It is pertinent to note that such opinion was given by the Doctors of the Government Rajaji Hospital only based on the medical records produced by the proposed accused and therefore, the said opinion cannot be relied upon. Further, the respondents have not taken any steps to verify the veracity of the said medical records by contacting the Still Water Medical Centre at USA. Therefore, the learned Single Judge ought not to have relied upon the opinion given by the Government Doctors based on the untrustworthy documents and rejected the relief sought for by the appellant.

5. The learned counsel for the appellant would further submit that as the husband of the deceased viz., Krishnakumar is a research person in the treatment of various types of cancer, he might have injected cancer cells in the body of the deceased, which resulted in the death of the deceased. Thus, he prayed to set aside the order passed in the writ petition.

6. The learned Additional Government Pleader appearing for the respondents submitted that based on the direction given by this Court, a case was registered by the 5th respondent and during the course of investigation, the 5th respondent has sent a letter through E.mail as well as through post to the Chief Medical Officer, Still Water Medical Center, USA, requesting to submit the history of treatment and death certificate with details of real cause of death of the deceased. But, they have not received any reply from the said centre. After examination of the medical records, the team of experts of the Government Rajaji Hospital opined that the death of the appellant's daughter was due to Systemic Lupus Erythematosus and its attendant complications. Therefore, the learned Single Judge by considering all the above aspects dismissed the writ petition and the same need not be interfered with.

7. Keeping the submissions made on either side, we have carefully gone to the entire materials available on record.

8. Admittedly, in this case, after marriage, the appellant's daughter and her husband viz., Krishnakumar lived in USA for about one year. The appellant's daughter died on 07.03.2016. The funeral was held on 16.03.2016 as per their customs at the Thathaneri burial ground and the body was buried in front of the family members of both the family, including the appellant. At that time, the appellant did not raise any objection. But, suspecting the death of the daughter, the appellant gave a complaint only on 05.04.2016. In the complaint itself, the appellant admitted that he attended the funeral of his daughter, along with his family members and at his instance only, the body was buried.

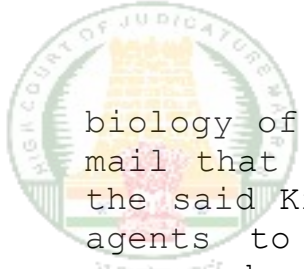


9. It is contended by the learned counsel for the appellant that the learned Single Judge in the first paragraph of the order dated 14.06.2017 has observed that the body was cremated, but the fact remains that the body was only buried. Such an observation made by the learned Single Judge, according to the learned counsel for the appellant, would have prejudiced the mind of the Court, which resulted in arriving at an erroneous conclusion to refuse the relief sought for by the appellant. We are not inclined to accept the same. We are of the view that it is only a typographical error. As it is stated by the learned counsel for the appellant, if the word "cremated" prejudiced the mind of the learned Single Judge, the learned Single Judge would have noted that "as the body has already been cremated, the relief sought for by the petitioner cannot be granted". But, it is not stated so in the impugned order. The prejudicial mind of the learned Single Judge, as stated by the learned counsel for the appellant, does not reflect in the order, which is impugned in this appeal. Therefore, the first submission of the learned counsel for the appellant is rejected.

10. As far as the next submission of the learned counsel for the appellant with regard to the trustworthiness of the medical documents are concerned, it is seen that the body of the deceased was brought to India from USA with necessary medical records and Death Certificate. After verifying the records, the Consulate General of India has issued 'No objection' to transport the body to India. Then, after analysing the documents relating to the treatment given to the appellant's daughter in Still Water Medical Centre, a team of experts in the Government Rajaji Hospital opined that the death was due to the Systemic Lupus Erythematosus and its attendant complications and that there is no evidence of malignancy in the available records and there is no obvious obstetrics and gynecological complication.

11. A perusal of the documents viz., death certificate, medical report and history sheet, filed in the typed set of papers would go to show that the trustworthiness of those documents cannot be doubted. More over, the appellant did not produce any material against the said Krishna Kumar and his family members. The 5th respondent Police, after investigation, found that there is no *prima facie* material against the accused. Therefore, the second contention is also rejected.

12. So far as the third contention is concerned, it is seen that the Professors of Oklahoma State University sent a mail to the Inspector of Police stating that the said Krishna Kumar has been working under their supervision as a candidate for the degree in Chemistry and he has been engaged in synthetic organic chemistry and he is not involved with any biological research and therefore, he does not have any contact with the



biology of the synthetic materials. It is also stated in the said mail that as advisors, they would supervise all the activities of the said Krishna Kumar and that their research is focused upon new agents to treat a variety of cancers and that all the final compounds will be submitted externally for biological screening and to the National Institutes of Health (NIH), which is the health agency of the United States. Considering the said letters, we are of the view that the third contention of the learned counsel for the appellant cannot be accepted.

13. From the above discussions, we are of the view that there is no merit in the appeal and the order of the learned Single Judge need not be interfered with.

14. In the result, this writ appeal is liable to be dismissed and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai District,
Madurai.
2. The Commissioner of Police,
Madurai City,
Madurai.
3. The Revenue Divisional Officer,
District Collector Office Campus,
Madurai, Madurai District.
4. The Thasildar,
Madurai North,
Madurai,
Madurai District.
5. The Inspector of Police,
S.S. Colony Police Station,
Madurai City, Madurai.
6. The Additional Public Prosecutor,
Madurai, Madurai District.



+1cc to Mr.M.Pitchai Muthu, Advocate Sr.No.92507

+1cc to Spl.Government Pleader Sr.No.92237

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VB/MR/KKR/SAR3/22/12/2017/7P/9C

Judgment in
W.A. [MD].No.1189 of 2017
Dated:11.12.2017