



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2017

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD) No.424 of 2017

G.Bhavani

... Appellant/Petitioner/
Petitioner

-vs-

- 1.The Home Secretary
Government of Tamil Nadu
Secretariat, Chennai
- 2.The Inspector General of Police
(South Zone), New Natham Road,
Madurai-2
- 3.The Deputy Inspector General of Police
Rameshwaram Main Road,
Collectorate (Post)
Ramanathapuram & District
- 4.The District Collector
Ramanathapuram District
- 5.Manivannan
Superintendent of Police
SP Office, Ramanathapuram
- 6.Vijaya Kumar
Deputy Superintendent of Police
Thiruvadanai TK
Ramanathapuram District
- 7.The Inspector of Police
Thondi Police Station
Ramanathapuram District
- 8.Thangam Muniya Samy
Sub-Inspector of Police
Rannad B.S.Town Police Station
Ramanathapuram District



9.The Government General Hospital
Rep. By its Dean
Ramanathapuram District

10.The Additional Director
CB-CID, No.83, 3rd Cross Street
Vishalakshipuram, Madurai-625 014

11.The Additional Director
Central Bureau of Investigation
Rajaji Bhavan, Chennai

... Respondents/Respondents/
Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order, dated 18.04.2017 made in W.M.P(MD) No.5644 of 2017 in W.P.(MD).No.7143 of 2017, on the file of this Court.

Prayer in WMP(MD). 5644/ 2017 in WP(MD)No.7143/2017 is filed praying to direct the 9th respondent to conduct the re-post mortem of the petitioner's husband deceased Govindans body through a special team of doctors under the full video coverage in view of on the NHRC guidelines and pending disposal of the writ petition.

Prayer in WP(MD). 7143/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus I) To direct the 10th respondent to hand over the file of the Cr.No.291/2017 which was registered by the Kenikarai Police Station and Cr.No.111/2017 which was registered by the 7th respondent to the 11th respondent for investigation. ii) To direct the 1st respondent to take suitable departmental action against the 8th respondent and in particularly to place him under suspension in view of the judgment rendered by the Apex Court, Arumuga Servai - Vs- State of Tamil Nadu 2011 (6) SCC Page 405 and (iii) to direct the 4th respondent immediately to provide relief amount to the Petitioner Contemplated under Rule 12 (4), Annexure-1 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 r/w Amended Act, 2015.

For Appellant : Mr.P.Vijendran

For Respondents : Mr.B.Pugalendhi, Addl., Advocate
General
Assisted by Mr.S.Chandrasekar, G.A.,
For R1 to R4, R7, R9 & R10

J U D G M E N T

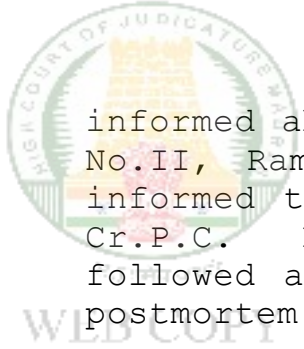
T.S.SIVAGNANAM, J.,

The appellant, Tmt.G.Bhavani, is before this Court being aggrieved by the order passed in W.M.P.(MD) No.5644 of 2017 in W.P.(MD) No.7143 of 2017, dated 18.04.2017. She is the petitioner in the said writ petition praying for the following directions:

- i. to direct the tenth respondent to transfer the file relating to Crime No.291 of 2017, on the file of the Kenikarai Police Station and Crime No.111 of 2017, registered by the Thondi Police Station, to the file of the Central Bureau of Investigation.
- ii. to direct the Government of Tamil Nadu, represented by the Home Secretary, to take suitable departmental action and to place the officers under suspension.
- iii. to direct the District Collector, Ramanathapuram District, to provide relief amount to the appellant in terms of Rule 12(4), Annexure-1 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 r/w Amendment Act, 2015.

2. Along with the writ petition, the appellant had filed two miscellaneous petitions for grant of stay of all further proceedings in Crime No.291 of 2017 and Crime No.111 of 2017 pending on the file of the tenth respondent and for a direction to direct the Dean of the Government General Hospital, Ramanathapuram, to conduct re-postmortem of the body of the petitioner's husband, through a Special Team of Doctors under full video coverage in terms of the guidelines of the National Human Rights Commission (NHRC). The prayer sought for re-postmortem of the body of the petitioner's husband was not granted and it was held that it is not a fit case, in which second postmortem needs to be ordered. This appeal is directed against the said order, dated 18.04.2017, in W.M.P.(MD) No.5644 of 2017.

3. The case of the appellant is that her husband Thiru.Govindan, who was a daily wage earner, was done to death by the eighth respondent with the aid and help of the police personnel entrusted by the fifth and sixth respondents. The appellant would state that the eighth respondent has admitted to the killing and it was converted into FIR No.111 of 2017 registered by the seventh respondent. According to the FIR, the eighth respondent opened fire below the knee of the deceased, but ~~he was injured with bullet injuries particularly in chest, intestine, right handside upper jaw.~~ Further, it is submitted that neither the appellant nor her relatives were



informed about the postmortem and the learned Judicial Magistrate No.II, Ramanathapuram, who conducted the inquest ought to have informed the relatives, as contemplated under Section 176 (4) of Cr.P.C. Further, the guidelines issued by NHRC have not been followed as it is a case of a fake encounter and therefore, re-postmortem should be conducted.

4. On the date, when we heard the appeal for admission, the body of the appellant's husband was lying in the mortuary in the Government General Hospital, Ramanathapuram.

5. We heard the learned counsel for the appellant and the learned Government Advocate for the respondents on 20.04.2017 and noted their respective submissions and passed the following order:

"Heard Mr.P.Vijendran, learned counsel appearing for the appellant.

2. This writ appeal is directed against the rejection of interim relief sought for by the appellant in W.M.P.(MD) No.5644 of 2017 in W.P.(MD) No.7143 of 2017.

3. In the miscellaneous petition, in W.M.P.(MD) No.5644 of 2017, the appellant herein sought for a direction to the ninth respondent / Dean, Government General Hospital, Ramanathapuram District, to conduct re-postmortem on the dead body of her husband, through a Special Team of Doctors under the full video coverage in view of the guidelines issued by the National Human Rights Commission.

4. The learned Single Judge found that the postmortem has been done admittedly by a team of Doctors in the presence of the learned Judicial Magistrate No.II, Ramanathapuram, and the same has also been video-graphed. Further, by referring to Section 114 of the Evidence Act, it was pointed out that there is a presumption that judicial and official acts have been performed properly. Therefore, the Court found that there is no reason to suspect any foul play in the postmortem proceedings, especially, when the same has been done in the presence of the learned Judicial Magistrate and the same has also been video-graphed. Further, the Court observed that a body should not be subjected to repeated postmortem as that would only further obliterate the material evidence. In the absence of any reason to suspect the action of the Doctors, who did the postmortem in the presence of the learned Judicial Magistrate No.II, Ramanathapuram, the Writ Court was of the view that



it was not a fit case, in which second postmortem needs to be ordered.

5. The learned counsel appearing for the appellant submitted that the appellant is the wife of the deceased and the death was caused by the eighth respondent, who had opened fire on her husband. It is submitted that though it has been stated that the eighth respondent opened fire below the knee of the deceased, but his whole body was injured by the bullet and in particularly right-hand side upper jaw of the deceased, chest and the intestine were avalanched from the body. Further, it is submitted that the learned Judicial Magistrate No.II, Ramanathapuram, ought to have informed the relatives of the deceased as contemplated under Section 176(4) Cr.P.C., and the failure to follow the same is violative of Article 21 of the Constitution of India. It is further submitted that the appellant is seeking for re-postmortem as the FIR, which has been registered in Crime No.111 of 2017, says that the bullet injury was under the knee, but in fact the whole body was injured. Thus, the learned counsel would submit that it is a prima facie case of murder and the Court should direct re-postmortem of the dead body.

6. Mr.S.Chandrasekar, learned Government Advocate, who accepts notice on behalf of the respondents 1 to 4, 7, 9 and 10, on instructions from the Police present in Court, submitted that the postmortem was conducted in a proper manner strictly following the rules and regulations and it was done in the presence of the learned Judicial Magistrate No.II, Ramanathapuram and it has been video-graphed and therefore, the learned Single Judge was right in rejecting the interim relief sought for by the appellant.

7. The Court wanted to peruse the relevant documents to establish that the proper procedures had been followed. In this regard, the learned Government Advocate submits that he requires time to get instructions in the matter and place all the particulars in the form of affidavit.

8. We are inclined to consider the request made by the learned Government Advocate. But, the



8. After hearing the learned counsels for the parties, on 24.04.2017, we passed the following the order:

"Counter affidavit has been filed stating that as if the close relatives of the deceased were informed, but they refused to come for inquest. The copy of the inquest report has not been made available.

Therefore, we direct the learned Judicial Magistrate No.II, Ramanathapuram to forward the inquest report along with all annexures and other relevant materials pertaining to the said case by Special Messenger today itself.

Registrar (Judicial) is directed to communicate this order to the Judicial Magistrate No.II, Ramanathapuram over phone / fax so that the record reaches the Registry today itself or latest by tomorrow morning before 10.30 a.m.

List the matter on 25.04.2017."

9. In terms of the above direction, the learned Judicial Magistrate No.II, Ramanathapuram, forwarded the inquest report and we perused the report and *prima facie* found the injuries on the deceased have been noted in the accident register as well as by the learned Judicial Magistrate in the inquest report.

10. In order to consider as to whether the guidelines laid down by the Honourable Supreme Court in the case of *PUCL (supra)* had been adhered to, we wanted to verify as to the manner in which the postmortem was done and therefore, on 25.04.2017 we directed the Resident Medical Officer, Government General Hospital, Ramanathapuram, to forward the postmortem report in a sealed cover by passing the following order:

"Pursuant to the order dated 24.04.2017, the learned Judicial Magistrate No.II, Ramanathapuram has forwarded the inquest report along with other relevant materials in Crime No.111 of 2017, on the file of the Thondi Police Station. We have carefully perused the report and contents thereof as well as the annexure of the report. After perusal of the report and the annexure, we have heard the learned counsel for the appellant, who would submit that the guidelines which have been laid down by the Hon'ble Supreme Court in the case of *"People's Union for Civil Liberties and another vs. State of Maharashtra and others, reported in (2014) 10 SCC 635, have to be adhered to by the respondent Police and the said guidelines / procedure also stipulates the manner in which postmortem has to be ordered etc., Before we consider the submissions of the learned counsel for the appellant we would like to peruse the postmortem report. Therefore, the Resident Medical Officer,*



Government General Hospital, Ramanathapuram, is directed to forward the postmortem report in a sealed cover to the Registrar (Judicial) of this Court, not later than 10 a.m., on 26.04.2017.

List the case on 26.04.2017."

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11. Pursuant to the above direction, the postmortem report was placed before us, from which we *prima facie* find that the injuries on the deceased have been noted.

12. The Honourable Supreme Court in *PUCL* (supra) laid down certain guidelines as to how the investigation should be conducted into the incident / encounter and what are the important points to be adhered to in the process of such investigation and two of the guidelines therein would be relevant for the case on hand, which are as follows:

"31.3. An independent investigation into the incident / encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry / investigation shall, at a minimum, seek:

(a).....

(b).....

(c).....

(d).....

(e).....

(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Whether applicable tests for gunshot residue and trace metal detection should be performed."

13. From the counter affidavit filed by the respondent Police we *prima facie* find that the guideline (f) (supra) has been complied with inasmuch as the postmortem has been conducted by a team of Doctors in the presence of the learned Judicial Magistrate and has been fully videographed. As pointed out earlier, the accident register, inquest report and the postmortem report records the injuries sustained by the deceased. However, it is not clear from the postmortem report as to whether the Doctors, who performed the postmortem conducted test for gunshot residue and trace metal detection on the body of the deceased. This being a guideline stipulated by the Honourable Supreme Court while conducting inquiry / investigation into the



incident / encounter should be adhered to. Thus, we are inclined to issue appropriate directions in this regard alone and not inclined to issue directions for re-postmortem as sought for by the appellant.

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14. In the result, the order, dated 18.04.2017, passed in W.M.P.(MD) No.5644 of 2017 in W.P.(MD) No.7143 of 2017, is affirmed for reasons other than recorded by the Writ Court and for the reasons recorded by us in the preceding paragraphs.

15. The ninth respondent / the Dean of the Government General Hospital, Ramanathapuram, is directed to ascertain as to whether during the course of postmortem performed on the body of the deceased, whether test for gunshot residue and trace metal detection has been performed on the body of the deceased (which we *prima facie* find was not done) and if not performed the same to be performed and sample of the tissue around the injuries be preserved and sent for necessary chemical examination.

16. With the above directions, the writ appeal is disposed of. No costs.

Sd/-

Assistant Registr(RTI)

/True Copy/

Sub-Assistan Registrar

To:

- 1.The Home Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Inspector General of Police,
(South Zone), New Natham Road,
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- 3.The Deputy Inspector General of Police,
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- 5.The Inspector of Police,
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6.The Dean,
Government General Hospital,
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7.The Additional Director
CB-CID, No.83, 3rd Cross Street
Vishalakshipuram, Madurai-625 014

8. The Additional Director
Central Bureau of Investigation
Rajaji Bhavan, Chennai

+One cc to Mr.P.VIgendran, Advocate, SR.No.54582

krk
RL/10C/10P/MR/SAR2/28.4.2017

JUDGMENT
IN
W.A. (MD) No.424 of 2017
27.04.2017