



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 05.02.2018

Order Pronounced on : 16.03.2018
CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P(MD) No.2019 of 2018
and
W.M.P(MD).No.2242 of 2018

Sekar

... Petitioner

-Vs-

1.State rep. by the
District Collector,
Madurai District,
Madurai.

2.The Superintendent of Police,
Madurai District,
Madurai.

3.The Inspector of Police,
Cholavandhan Police Station,
Madurai District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue writ of mandamus directing the respondents to exhume the petitioner's brother namely Samikannu @ Saminathan's body for conducting an autopsy under the supervision of a team of forensic doctors by considering the petitioner's representation dated 18.01.2018.

For Petitioner

: Mr.S.M.A.Jinnah

For Respondents

: Mr.V.Anand

Govt. Advocate

O R D E R

This writ petition has been filed to issue a writ of mandamus directing the respondents to exhume the petitioner's brother namely Samikannu @ Saminathan's body for conducting autopsy under the supervision of a team of doctors by considering the petitioner's representation dated 18.01.2018.

2.Heard both sides.



3.The learned counsel for the petitioner has submitted that the petitioner is practising as an Advocate in Madurai. He further submitted that in the year 1993, the petitioner's brother namely Samikannu @ Saminathan married one Mariammal, who belong to Bommanapatti. He further submitted that out of wedlock, three daughters were born to them and for the past 13 years, the said Samikannu @ Saminathan was residing at his wife's residence viz., Bommanapatti. He further submitted that four years ago, the brother-in-law of the said Samikannu @ Saminathan namely Aathimoolam called the petitioner's sister Rajalakshmi over phone and informed that the said Samikannu @ Saminathan died and immediately, the petitioner's brothers namely Ravikumar and Karuppasamy rushed to Bommanapatti Village and found that Samikannu @ Saminathan was brutally attacked and thrown into bushes. He further submitted that the petitioner's brothers namely Ravikumar and Karuppasamy rescued Samikannu @ Saminathan and admitted him in a private hospital and saved his life and thereafter, his wife made compromise talks and brought him with her to the village.

4.He further submitted that the petitioner and his brothers used to visit the said Samikannu @ Saminathan occasionally and that being so, on 11.01.2018, again, the brother-in-law of the said Samikannu @ Saminathan contacted the petitioner's sister Rajalakshmi at midnight at about 12'o clock and informed that the said Samikannu @ Saminathan died. Immediately, the petitioner along with his family members rushed to the Bommananapatti Village on 12.01.2018 and they reached the village at 02.00 p.m and after their arrival, the body of the said Samikannu @ Saminathan was buried and at that time, the petitioner found bleeding in his brother's ears and nose and also found froth on his mouth. Hence, the petitioner has asked explanation from his brother's wife and in-laws. But, they refused to give any answer and buried the dead body in a hurried manner. He further submitted that the petitioner's brother's wife and in-laws had enmity against the petitioner's brother and they did not maintain good relationship with him and hence, the petitioner suspects that his brother's death would not be a natural one and therefore, he lodged a complaint before the respondent No.3 on the same day to exhume the body and conduct autopsy to find out the cause of death. He further submitted that the respondent No.3 has not taken any steps and hence, the petitioner has sent representation to the respondents 2 and 3 on 18.01.2018 and also to the Chief Minister's Special Cell and even thereafter, no steps has been taken and hence requests to direct the respondents to exhume body of the deceased Samikannu @ Saminathan and conduct autopsy.

5.The learned Government Advocate has denied the allegation that on the same day, i.e on 12.01.2018, the petitioner has lodged a complaint before the third respondent. He further submitted that only on 18.01.2018, the respondents 2 and 3 have received a complaint by post and thereafter, the third respondent has conducted

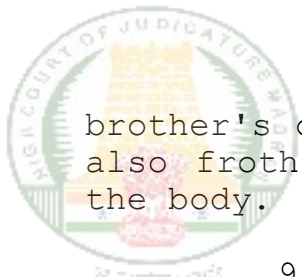


a preliminary enquiry and found that the deceased Samikannu @ Saminathan addicted to the habit of drinking liquor. On 11.01.2018 without taking food, he drank three quarter bottles of liquor and because of that, he died at 07.00 p.m. He further found that the said fact was informed to the sister of the deceased Rajalakshmi over phone and thereafter, on 12.01.2018 at about 6.00 p.m, the body was buried. It was also found that the petitioner and his family members did not give any share in the family property to the wife and children of the deceased and even they did not extend any monetary help for performing funerals. He further submitted that since the deceased died due to over-drinking of liquor, his body need not be exhumed and sent for autopsy.

6.The petitioner has stated in his affidavit, which has been filed in support of the above writ petition that on the date of burial itself, i.e on 12.01.2018, he lodged a complaint before the third respondent for registering a case, but, he has not produced a copy of the said complaint before this Court. Further, he has not produced any proof to show that he has lodged a complaint on the same day i.e on 12.01.2018 itself before the third respondent. Under the said circumstances, the contention of the petitioner that he has lodged a complaint before the third respondent on 12.01.2018 itself cannot be accepted.

7.The petitioner has further stated in his affidavit that he has sent representation to the respondents 2 and 3 and also to the Chief Minister's Special Cell on 18.01.2018. A copy of the said representation also not filed before this Court. However, he has filed the postal acknowledgments, which would show that the respondents 2 and 3 have received complaints on 18.01.2018. So, it appears that only on 18.01.2018, the petitioner has sent a complaint to the respondents 2 and 3 by registered post. But, since he has not filed a copy of the said complaint, it is not known what he has actually stated in the said complaint. He has filed in the typed set, a copy of the representation sent by him to the first respondent herein, in which, it is stated that the said complaint was sent on 19.01.2018. In the said complaint, the petitioner herein has stated that on 11.01.2018, night at 12'o clock, his sister namely Rajalakshmi has received a phone call from one Athimoolam, who is brother-in-law of the deceased as the deceased died and thereafter, on the next day, i.e on 12.01.2018, the petitioner, his parents and sisters went to Bommanapatti at about 2.00 p.m and the body of the deceased was taken to burial ground at about 3'o clock and at that time, he noticed that blood was oozing from ears and nose and also found froth in his brother's mouth and thereafter, his brother's body was buried.

8.It is to be pointed out that the petitioner is an Advocate and not a layman. But, he has not raised any objection as soon as he has noticed oozing of blood from ears and nose and froth in the mouth of the deceased. He simply allowed to bury his



brother's dead body. If really, he has noticed oozing of blood and also froth from the dead body, he would have objected for burying the body.

9.As already pointed out that the petitioner has not immediately lodged a complaint before the Police. The evidence on record would show that he has sent the complaint only on 18.01.2018 and it shows that as an after-thought, he has lodged a complaint belatedly after six days.

10.The Inspector of Police (3rd respondent) has stated in his report that the petitioner and his family members did not attend the marriage of the daughter of the deceased and they never went to the house of the deceased to see him and his children. Further, he has stated that the petitioner and his family members did not give the share of the deceased in the family property.

11.Taking into consideration of all the aforesaid facts, this Court is of the view that the petition is lacking bonafide and the same is liable to be dismissed.

12.In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The District Collector,
Madurai District, Madurai.
- 2.The Superintendent of Police,
Madurai District, Madurai.
- 3.The Inspector of Police,
Cholavandhan Police Station,
Madurai District.

+One cc to Mr.S.M.A.Jinnah, Advocate, SR.No.56456

+One cc to The Special Government Pleader, SR.No.56250

vs

RL/6C/4P/SKN/RSK/SAR1/23/3/2018

Order made in
W.P(MD) No.2019 of 2018

16.03.2018