



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP (MD) Nos.14516 and 14614 of 2018
and
WMP (MD) No.13108 and 13160 of 2018

WP (MD) No.14516 of 2018

Esakki Sankari

... Petitioner

Vs.

1. The Secretary to the Government of Tamil Nadu,
Home Department,
Fort Saint George,
Chennai.
2. The Director General of Police,
Chennai.
3. The Additional Director of General of Police,
Chennai.
4. The Inspector General of Police,
Southern Zone,
Madurai.
5. The Superintendent of Police,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 5th respondent herein to handover the investigation of the case in Crime No.41 of 2018 on the file of the Tirunelveli Medical College Police Station, to CBCID by considering the representation given by the petitioner dated 03.04.2018.

For Petitioner
For Respondents

:Mr.E.Somasundaram
:Mr.Chellapandian,
Additional Advocate General
Assisted by Mr.B.Bhagavathi
Government Advocate

WP (MD) No.14614 of 2018
<https://hcservices.courts.gov.in/hcservices/>

P.Poornam

... Petitioner

**Vs.**

1. The Secretary to the Government of Tamil Nadu,
Home Department,
Fort Saint George,
Chennai.
2. The Director General of Police,
Chennai.
3. The Additional Director General of Police,
Chennai.
4. The Inspector General of Police,
Southern Zone, Madurai.
5. The Superintendent of Police,
Tirunelveli District.

... Respondents

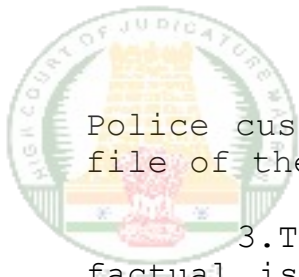
PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 5th respondent herein to handover the investigation of the case in Crime No.42 of 2018 on the file of the Tirunelveli Medical College Police Station, to CBCID by considering the representation given by the petitioner dated 03.04.2018.

For Petitioner	:Mr.E.Somasundaram
For Respondents	:Mr.Chellapandian, Additional Advocate General Assisted by Mr.B.Bharathi Government Advocate

COMMON ORDER

These petitions have been filed for transfer of investigation in Crime Nos.41 of 2018 and 42 of 2018, which are now pending investigation before the 5th respondent.

2.The petition in WP(MD)No.14516 of 2018 has been filed by the mother of the deceased Manickaraj and WP(MD)No.14516 of 2018 has been filed by the wife of the deceased Murugesan. It is the case of the petitioners that on 26.03.2018, both the deceased persons were taken by the Police officials and they were physically assaulted in the middle of the road and the physical assault continued even in the Police Station. Till 29.03.2018 they were kept in illegal custody and were detained by the Police. On 29.03.2018, the deceased persons were admitted in the Hospital and on 30.03.2018 at about 6.50 pm Murugesan died in the Hospital and on 31.03.2018, at about 6.45 am, Manickkam died in the Hospital. The case is thereafter being investigated by the fifth respondent and the petitioners have taken a plea that the deceased persons have died while they were in



Police custody and therefore the case has to be transferred to the file of the CB-CID.

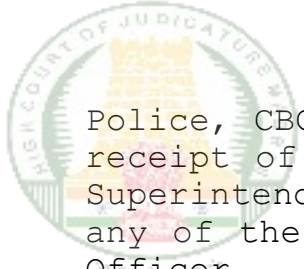
3.The learned Counsel for the petitioners raised several factual issues in this case, in order to substantiate the plea of the petitioners that the deceased persons were brutally attacked by the Police. However, this Court does not want to go in the factual issues, since any finding on the same, will have a serious impact on the investigation.

4.Mr.Chellapandian, learned Additional Advocate General, representing the learned Government Advocate appearing for the respondent Police has relied upon the counter affidavit filed by the fifth respondent in both the writ petitions. The fifth respondent has taken a stand that the deceased persons were habitual offenders and were history sheeters. The fifth respondent has submitted that the case in Crime Nos. 41 and 42 of 2018 have been registered under Section 176 (1A) (i) of CrPC. According to the fifth respondent, both the deceased persons died because of the serious injury caused to them in their right leg due to a motor accident that took place on 28.03.2018. The fifth respondent has also taken a stand that this injury was noted by the learned Judicial Magistrate at the time of remand of the accused persons on 30.03.2018. The said injury is also reflected in the Accident Register on 29.03.2018. The fifth respondent has also stated that in view of Section 179 (1A)(i) of CrPC, the enquiry is conducted by the learned Judicial Magistrate -I, Tirunelveli and the same is pending. Therefore, the fifth respondent has refuted all the allegations made by the petitioners in the respective writ petitions.

5.In a case of this nature, wherein the deceased persons have died while they were in Police custody, the interest of justice would require the investigation to be conducted by an independent agency in order to ensure a free and fair investigation. The inquest conducted by the learned Judicial Magistrate under Section 179(1A) (i) of CrPC is in the nature of a Judicial Enquiry and the same does not either form part of the investigation or partake the character of investigation. The Police is expected to parallelly investigate the case and after the completion of the Judicial Enquiry collect the copies of the statements and other documents collected by the Magistrate and make it as part of the investigation. At the time of filing of the final report under Section 173 of the Code of Criminal Procedure, the record of proceedings of the Judicial Magistrate shall also be kept as part and parcel of the case records.

6.In the facts and circumstances of the case, this Court deems it fit to transfer the investigation in Crime Nos.41 and 42 of 2018 from the file of the fifth respondent to the file of the Superintendent of Police, CBCID forthwith.

7.The fifth respondent is directed to handover the entire case file in Crime Nos.41 and 42 of 2018 to the Superintendent of



Police, CBCID, Chennai within a period of ten days from the date of receipt of a copy of this order. On receipt of the case files, the Superintendent of Police, CBCID, is directed to allot the case to any of the Inspector of Police, CBCID of his choice and direct the Officer to start the investigation afresh. The enquiry conducted by the learned Judicial Magistrate-I, Tirunelveli, can proceed parallelly. After the completion of the Judicial Enquiry, the records pertaining to the enquiry can be handed over to the Inspector of Police, CBCID, who is to be entrusted with the cases for investigation. The entire investigation shall be conducted effectively and completed expeditiously and thereafter a final report shall be filed before the competent Court.

8. The writ petitions are disposed of with the above direction. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Secretary to the Government of Tamil Nadu,
Home Department,
Fort Saint George,
Chennai.
2. The Director General of Police,
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3. The Additional Director General of Police,
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4. The Inspector General of Police,
Southern Zone, Madurai.
5. The Superintendent of Police,
Tirunelveli District.
6. The Superintendent of Police,
CBCID, Chennai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 82495

DSK

TE/SKN/SAR-1 : 27/09/2018 : 4P/8C