



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.03.2018

Pronounced on : 19.06.2018

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CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.19678 of 2017

and

WMP (MD) Nos.15939 & 15940 of 2017

Nagajothi

..Petitioner

versus

1. The Home Secretary
Government of Tamil Nadu
Secretariat,
Chennai - 9.
2. The Director General of Police,
D.G.P. Office, Mylapore,
Dr.Radhakrishnan Salai
Chennai-5.
3. The Superintendent
Central Prison,
Madurai.
4. The Commissioner of Police,
Madurai City,
Madurai.
5. The Inspector of Police,
Rajathani Police Station,
Theni District.
6. The Inspector of Police,
C-5, Karimedu Police Station,
Madurai City,
Madurai, (Cr.No.584/2017)
7. The Additional Director General of Police,
Office of A.D.G.P.
Crime Branch Crime Investigation Department (C.B.C.I.D)
No.220, Pantheon Road,
Egmore, Chennai - 8.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondent No.1 to entrust the investigation from sixth respondent to the



seventh respondent in Cr.No.584 of 2017 on the file of the respondent No.6 for a fair and impartial investigation and direct the seventh respondent to file periodical report to this court on the progress made in the investigation.

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For Petitioner : Mr.R.Karunanidhi
For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

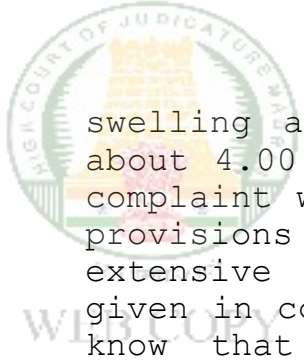
O R D E R

This writ petition has been filed by the wife of the deceased Karuppasamy to issue a Writ of mandamus or any other appropriate order or a direction in the nature of writ directing the first respondent to withdraw the investigation in Cr.No.584 of 2017 from the sixth respondent and transfer the investigation to the seventh respondent for a fair and impartial investigation and to direct the seventh respondent to file periodical report to this court.

2. The brief facts are as follows:

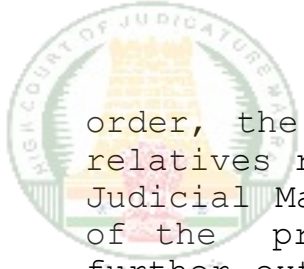
The petitioner and her husband Karuppasamy belong to the Hindu Pallar caste which falls under Scheduled Caste community. They were engaged in agricultural daily wage work. On 19.07.2017, it was alleged that a tussle took place between the petitioner's husband and one Raju of Thekkampatti area and a complaint was lodged by the said Raju against the petitioner's husband before Rajathani police station. Based on the said complaint, a case was registered in Cr.No.338 of 2017 u/s. 294(b) and 307 of IPC. On 20.07.2017 at the early hours, three policemen came to the petitioner's house and they had taken her husband for enquiry and subsequently arrested him in the aforesaid case. On 20.07.2017, the petitioner's husband was taken to hospital and after completing medical check-up, he was produced before the Judicial Magistrate and as per the order passed by the Judicial Magistrate, he was sent to the Central Prison, Madurai. On 23.07.2017 at about 04.30 a.m., three police men came to the petitioner's house and asked her husband's cell phone number. She informed them that her husband's cell phone was taken away by the police at the time of taking him to custody. Thereafter the police men received the petitioner's brother-in-law viz., Vigneswaran's cell number and left her house. After 15 minutes, a police man called the said Vigneswaran and informed him that the petitioner's husband died at the hospital. Hence, the petitioner approached the sixth respondent in person on 23.07.2017 and asked him to conduct autopsy with proper expert. The petitioner's husband was hale and healthy and previously, he had no illness.

3. The petitioner is having serious doubts about the cause of death of her husband. Hence, he lodged a complaint on 23.07.2017 before the fifth respondent police and requested to initiate necessary actions against the perpetrators. The petitioner found



swelling and contusions on her husband's face on 24.07.2017 at about 4.00 p.m., On 25.07.2017 also, the petitioner has lodged a complaint with the sixth respondent to register a case under proper provisions of law. After receiving the complaint and after extensive discussions at the police station only a receipt was given in complaint receipt No.515 of 2017. The petitioner came to know that the sixth respondent has registered a case u/s. 176 (1-A) of Cr.P.C., in Cr.No.584 of 2017 on 23.07.2017 at about 12.15 hours. The petitioner suspects that her husband might have been died due to the brutal torture of police and prison officials. The petitioner strongly believed that the autopsy was not properly conducted and hence, she filed a writ petition in W.P.(MD)No.13974 of 2017 seeking for conducting re-postmortem. This court has allowed the said Writ Petition by the order dated 04.08.2017 and appointed Dr.Juliana and Dr.Rajavelu, Professors of Forensic Department, Madurai Medical College and Dr.Selvakumar, Professor of Forensic Medicine, Kilpauk, Medical College Hospital, Chennai. Accordingly, re-postmortem was conducted on 09.08.2017. As per the re-postmortem report, 11 abrasions were noted as external injuries and 21 contusions were noted. Duration of injuries - 1 to 4 days prior to death and further it was mentioned that the manner of causation of injuries was blunt force. Though the sixth respondent has registered a case u/s.176 (1-A) of Cr.P.C., on 23.07.2017, even after passing of more than 70 days, no effective investigation was done. It clearly shows the negligent act of the sixth respondent and therefore, the investigation should be conducted by an independent agency.

4. The sixth respondent has filed a status report stating that on 23.07.2017 at about 12.15 hrs Dharmaraj, Jailor, Central Prison, Madurai, has sent a complaint through police constable viz., Murugayya stating that the remand prisoner Karuppasamy died while he was taken to the Government Rajaji Hospital, Madurai from Central Prison for medical treatment. Based on the said complaint, a case was registered u/s.176 (1-A) of Cr.P.C., in Cr.No.584 of 2017. He further stated that the said Karuppasamy was remanded at Central Prison, Madurai on 20.07.2017 in connection with the case in Cr.No.338 of 2017 u/s.294 (b) and 307 IPC of Rajathanai Police Station, Theni District. He further stated that in the said complaint, it was stated that on 21.07.2017, due to Chronic Alcoholic Withdrawal with Psychiatric illness, the said Karuppasamy was admitted in the hospital located inside the campus of Central Prison, Madurai on 23.07.2017 at about 00.55 hrs due to excessive sweating and Blood Pressure not recordable. The said prisoner was sent to Government Rajaji Hospital at 01.05 hrs through ambulance vehicle. It was also stated that after check-up of the abovesaid prisoner, the Doctor from Government Rajaji Hospital at about 02.35 hours has informed that the prisoner died while he was on the way to the hospital. He also stated that the body of the deceased was kept in the mortuary. Subsequently on 25.07.2017, the Judicial Magistrate No.V had instructed the Government Doctor to conduct the post-mortem and to record the video coverage. Based on the said



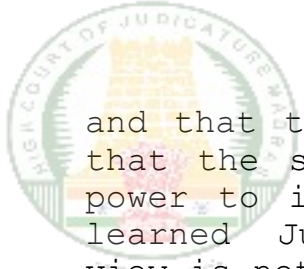
order, the post-mortem was conducted. Since the petitioner and her relatives refused to receive body of her husband on 26.07.2017, the Judicial Magistrate No.V had issued another order to place the body of the prisoner in the mortuary for three days and the same was further extended. He further stated that the petitioner has already approached this court by filing a writ petition in W.P.No.13974 of 2017 requesting to conduct a re-post mortem. This court has allowed the said writ petition on 04.08.2017 and directed to conduct re-post mortem by three doctors viz., Dr.Juliana, Dr.Rajavelu and Dr.Selvakumar. Accordingly, the aforesaid Doctors have conducted re-post mortem. He further stated that the final opinion report was received only on 29.11.2017 and now the present case is pending enquiry before the Judicial Magistrate No.V Madurai.

5. The learned counsel for the petitioner has submitted that the second respondent post-mortem report would clearly show that the petitioner's husband was attacked with the blunt edged weapon. He further submitted that the petitioner's husband was taken into custody by the police from the petitioner's house, on 20.07.2017 and at that time, he was not having any injury on his body. He further submitted that only after the arrest, the petitioner's husband might have been subjected to harassment by the police and also by the jail authorities and only due to the said harassment, he would have died. He further submitted that even though the FIR was registered on 23.07.2017, till date, the sixth respondent has not done any investigation in the above case and hence, he requests to transfer the investigation to the seventh respondent.

6. The learned Additional Government Pleader has submitted that since this is the case of custodial death, the Judicial Magistrate No.V, Madurai, has conducted enquiry and filed a report stating that the cause of death is not known. He further submitted that the sixth respondent is sincerely conducting the investigation and therefore, the investigation need not be transferred to the seventh respondent.

7. The sub-section (1-A) inserted u/s. 176 of Cr.P.C., after its amendment in 2006 states that where any person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under Cr.P.C., in addition to the enquiry investigation held by the police, an enquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within where local jurisdiction, the offence has been committed what is contemplated in the said provision is an enquiry by a Judicial Magistrate, in addition to the enquiry held by the police.

8. In this case, the status report submitted by the fifth respondent would show that after registering the case, he has not taken the matter for investigation. He has simply stated that the Judicial Magistrate No.V is only entitled to conduct further enquiry



and that the enquiry is still pending before her. So, it is clear that the sixth respondent is under the impression that he has no power to investigate the matter. According to him, it is for the learned Judicial Magistrate No.V to conduct the enquiry. The said view is not correct. As per the aforesaid provision, the police has to enquire or investigate the matter in a routine manner. In addition to the said enquiry or investigation held by the police, Judicial Magistrate or Metropolitan Magistrate, as the case may be, also shall conduct an enquiry. In this case, admittedly the sixth respondent has not taken any steps. After registering the case, he is simply keeping the case without conducting any investigation.

9. The learned Judicial Magistrate No.V, Madurai, in the concluding paragraph of her report has stated as follows:

"From the material documents available and the inquest conducted by me and the statements recorded by this court, it is seen that would help to conclude that the suspicion of foul play arise regarding the death of the prisoner. But the fact remains that the death stands unexplained even by the final opinion given by the experts. With this Court lacking any special tools of investigation that the police may possess, and with passage of time, it is for the investigation agency to determine the cause and reason for the deceased prisoner's death, which, I hope would be done during the investigation process".

10. From the aforesaid report, it is very clear that it is for the investigating agency to determine the cause or reason for the death of the prisoner. Therefore, the Investigating Officer has to investigate the matter and find what is the cause of the death. If the investigation reveals that any person was responsible for the death of the petitioner's husband, he should be prosecuted under the relevant provisions of law.

11. It is seen from the complaint lodged by the petitioner that on 20.07.2017, the petitioner's husband was subjected to medical examination and only thereafter, he was produced before the concerned Judicial Magistrate, and he was remanded to Judicial custody in Cr.No.338 of 2017 u/s. 294 (b) and 307 of IPC of Rajathani Police Station, Theni District. It is not known why the petitioner's husband was sent to the medical examination even before he was produced before the Judicial Magistrate. It appears that Judicial Magistrate, who conducted the enquiry u/s.176 (1-A) of Cr.P.C., has not collected the particulars from the Judicial Magistrate, Andipatti as to whether any complaint has been made before him at the time of remanding the petitioner's husband. So, this Court is of the view that a thorough investigation has to be done as to when the petitioner's husband has sustained injuries, whether it was before the arrest or after arrest or after remand. As already pointed out that the sixth respondent has not initiated any investigation. He was simply waiting for the report



of the Judicial Magistrate No.V, Madurai. The petitioner's only grievance is that the sixth respondent has not initiated investigation and for that the investigation need not be transferred to the seventh respondent. Therefore, this court is of the view that the fourth respondent can be directed to appoint an Officer not below the rank of Deputy Superintendent of Police for fair and proper investigation.

12. For the aforesaid reasons, the fourth respondent is directed to appoint an Officer not below the rank of Deputy Superintendent of Police to investigate the matter in Cr.No.584 of 2017 on the file of the sixth respondent. It is further ordered that the fourth respondent has to monitor the progress of the investigation. It is seen from the letter sent by the learned Judicial Magistrate No.V, Madurai to the Registrar (Judicial) of this court, dated 21.02.2018 that she has sent the inquest report/inquiry report to the Investigating Officer. As per the order passed by this court in R.Kasthuri Vs.State, (2015) 1 MLJ (Cr1) 455 on completing the inquiry, the Judicial Magistrate/Metropolitan Magistrate shall draw a report and keep the statements of the witnesses, documents collected and the report drawn by him as part of case records. Hence, the Judicial Magistrate No.V, Madurai, is directed to call for the said report with enclosures and keep along with the case records. She shall furnish copies to the said report and other documents to the Investigating officer without delay.

13. With the abovesaid observations, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Home Secretary
Government of Tamil Nadu
Secretariat,
Chennai - 9.
- 2.The Director General of Police,
D.G.P. Office, Mylapore,
Dr.Radhakrishnan Salai
Chennai-5.
- 3.The Superintendent
Central Prison,
<https://hcservices.ecourts.gov.in/hcservices/>
Madurai.



4. The Commissioner of Police,
Madurai City,
Madurai.

5. The Inspector of Police,
Rajathani Police Station,
Theni District.

6. The Inspector of Police,
C-5, Karimedu Police Station,
Madurai City,
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7. The Additional Director General of Police,
Office of A.D.G.P.
Crime Branch Crime Investigation Department (C.B.C.I.D)
No.220, Pantheon Road,
Egmore, Chennai - 8.

Copy to:

The Judicial Magistrate No.V,
Madurai.

+1cc to M/S.R.Karunanidhi, Advocate SR.No. 68894
+1cc to Special Government Pleader, SR.No. 68843

order made in
W.P. (MD) No.19678 of 2017
and
WMP (MD) Nos.15939 & 15940 of 2017
19.06.2018

gv/vs
JM/SKN RSK/SAR 2/22.06.2018/7P/11C