

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 05.03.2018

Pronounced on : 18.05.2018

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CORAM:

THE HONOURABLE MR.JUSTICE **P.RAJAMANICKAM****WP. (MD) Nos.22069 & 22070 of 2017****and****WMP (MD) Nos.18383 to 18385/2017 & 18386 to 18388/2017**

G.Mariammal ...Petitioner in WP.No.22069/2017

Anantha Selvi ...Petitioner in WP.No.22070/2017

versus

1. The Home Secretary,
Home Department,
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 Additional Director General of Police,
O/o.Additional Director General of Police (A.D.G.P)
Crime Branch Crime Investigation Department (C.B.C.I.D)
No.220, Pantheon Road, Egmore,
Chennai - 8.
4. The District Superintendent
O/o. Superintendent of Police,
Virudhunagar District 626 002.
5. The District Collector,
Collector Office,
Virudhunagar District.
6. The Revenue Divisional Officer,
R.D.O.Office, Aruppukottai,
Virudhunagar District 626 101.



7. The Chief Medical Officer,
Government Hospital,
Virudhunagar District- 626 002.

8. The Inspector of Police,
Vachakarapatti Police Station,
Vachakarapatti.
Virudunagar District 626 204.
(Cr.No.471/2017)

...Respondents in both the WPs.

Common Prayer: These Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondent Nos.1 and 2 to entrust the investigation from the eighth respondent to the third respondent in Cr.No.471 of 2017 on the file of the respondent No.8 for a fair and impartial investigation and direct the third respondent to the periodic reporting to this court on the progress made in the investigation.

For Petitioners in both Wps. :Mr.R. Karunanidhi

For Respondents

:M/s.B.Pugazhendi
Additional Advocate General VII
Assisted by Mr.V.Anand,
Government Advocate

C O M M O N O R D E R

W.P(MD).No.22069 of 2017 has been filed by the wife of one of the deceased persons viz., Gnanasekar, to issue a Writ of Mandamus or any other appropriate Writ or order or direction in the nature of Writ, directing the respondents 1 and 2 to withdraw the investigation from eighth respondent and transfer to the third respondent in Cr.No.471 of 2017 which is pending on the file of the eighth respondent for a fair and impartial investigation and also to direct the third respondent to file periodical reports to this court with regard to the progress made in the investigation.

W.P.(MD).No.22070 of 2017 has been filed by the wife of the one of the deceased persons viz., Thilagar Raj to issue a Writ of Mandamus or any other appropriate Writ or order or direction in the nature of Writ, directing the respondents 1 and 2 to withdraw the investigation from eighth respondent and transfer to the third respondent in Cr.No.471 of 2017 which is pending on the file of the eighth respondent for a fair and impartial investigation and also to direct the third respondent to file periodical reports to this court with regard to the progress made in the investigation.

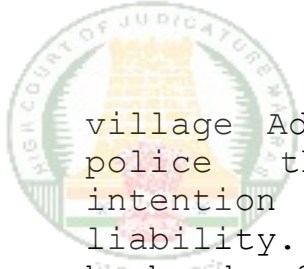


2. Since in both the petitions, the point to be decided is one and the same, these two writ petitions are being disposed of by a common order.

3. Heard Mr.R. Karunanidhi, learned counsel for the petitioner in both the petitions and M/s.B.Pugazhendi, Additional Advocate General VII, assisted by Mr.V.Anand, Government Advocate.

4. The case of the petitioners is that they are residing at Nadusoorangudi, Sattur Taluk, Virudhunagar District and they are belonging to Hindu Paraiyar Caste which falls under the Scheduled Caste Community. On 20.11.2017, at about 6.00 p.m., the petitioners' husband viz., Gnanasekar and Thilagar Raj and their friends went by an auto. But the said Gnanasekar and Thilagar Raj did not return to the home till the next day morning. In these circumstances, the police men attached to the Sattur Police Station came to Thilagar Raj's house on 21.11.2017 at about 7.00 a.m., and informed that the said Gnanasekar and Thilagar Raj have been kept in the eighth respondent's police station in a sand theft case. In the mean time, the other police personnel came and informed that dead bodies of the said Gnanasekar and Thilagar Raj have been kept in the seventh respondent hospital. After hearing the news, the petitioners and their family members rushed to the said hospital and there they have found the dead bodies of Gnanasekar and Thilagar Raj. They found bleeding from the nose and mouth of Gnanasekar and they also noticed contusion and other wounds all over the body and on the body of the Thilagar Raj also, contusion and other wounds were found and they also took photographs of the dead bodies, the petitioners came to know through one Baskaran that the deceased persons and other persons were taken by one Govindasamy on 20.11.2017 at about 6.00 p.m., for the purpose of excavating sand at Arjuna river bed. The said Baskaran and others informed the petitioners that one Ayyanar, Sub-Inspector of Police and his police team chased the petitioners' husbands when they were excavating sand from river bed on 20.11.2017 at about 8.30 p.m., They also informed that except the deceased persons, others have escaped from the river bed.

5. Their further case is that the police officers cunningly received a complaint from the said Baskaran under coercion and registered a case on 21.11.2017 in Cr.No.471/2017 u/s.302, 201 of IPC r/w 3 (1) (r) , 3(1) (s), 3 (2) (v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. The police officials did not reveal to the petitioners how they received the information about the suspicious deaths of two persons. When they arrived to the occurrence place. The police officers did not inform about the deaths to the jurisdictional



village Administrative Officer and other Revenue Officials. The police themselves shifted the bodies to the hospital with an intention to save the said Ayyanar and others from the criminal liability. The conduct of the police clearly reveals that the husband of the petitioners were illegally taken by the said Ayyanar and his police team and killed the two innocent persons. The petitioners made request to the police officers to take action against the said Sub-Inspector of Police viz., Ayyanar and his police team. Further, they had demanded for video recorded post-mortem. The eighth respondent has issued a complaint receipt No.173/2017 on 23.11.2017. But the police officials did not conduct post mortem as per the guidelines of the National Human Rights Commission. Further they did not take any action against the police officials who have committed murder of the husbands of the petitioners. The petitioners suspect that the police officials viz., Ayyanar and his police team might have murdered the petitioners' husbands. Further, compensation is also not given to the petitioners as per Section 357 (A) of Cr.P.C., Hence the petitioners prayed to transfer the investigation to the third respondent.

6. The learned counsel for the petitioners has submitted that the police officials did not reveal how they got information about the death of petitioners' husbands. He further submitted that as per the directions of the fourth respondent, the Deputy Superintendent of Police, Virudhunagar Sub-division, has been investigating the case. He further submitted that since Sub-Inspector of Police, Ayyanar and his team are subordinates to the said Deputy Superintendent of Police, Virudhunagar, he has been conducting the investigation in a biased manner with a view to save the said police officials and hence the investigation may be transferred to the third respondent for fair and proper investigation.

7. Mr.B.Pugazhendi, learned Additional Advocate General VII has submitted that the FIR in Cr.No.471 of 2017 dated 21.11.2017 has been registered on the file of the eighth respondent based on the complaint given by one Baskaran, who is the own brother of one of the deceased persons viz., Thilagar Raj. He further submitted that the defacto complainant has stated in his complaint that he and ten others including the deceased persons were engaged in illegal sand mining and at that time, the Special police party came to the mining spot and seized the vehicles. He also stated that those who are engaged in mining including the deceased persons have ran away from the spot so as to escape from the police. He further submitted that with regard to the aforesaid occurrence, Ayyanar, attached to the Special Police party lodged a complaint before the Appainaickenpatti Police Station on 24.11.2017 at 09.00 p.m., and based on the said complaint, an FIR was registered in the Appainaickenpatti Police Station in Cr.No.112/2017 u/s.379 of IPC under 21(1) of the Mines and

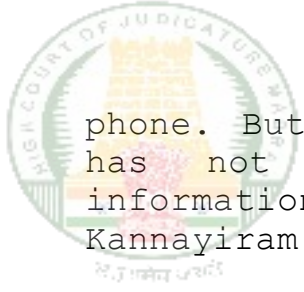


Minerals (Development and Regulation Act, 1957). He further submitted that the complaint given by the said Baskaran further reveals that the deceased who were escaped from the mining spot have not returned home and they have been lying dead in the agricultural field of one Kannayiram. He further submitted that after registering a case, investigation has been taken over by Deputy Superintendent of Police, Virudhunagar, as per the orders issued by the Superintendent of Police, Virudhunagar. During investigation, inquest has been done and the deadbodies were sent for post mortem. The investigation reveals that the owner of the agricultural field in Appainaickenpatti is one Kannayiram. He and his son Udayakumar had fenced their agricultural field with wire fences so as to protect the agricultural field from the outsiders and animals. They gave a high voltage electric connection to the said wire fencing and when the police party chased the persons who were indulged in mining sand, the deceased persons escaped from the river bed and ran into the agricultural field of the said Kannayiram without noticing the wire fencing and has been electrified and contacted the said wire fencing and died due to electrocution.

8. Mr.B.Pugazhendi, learned Additional Advocate General-VII further submitted that the Deputy Superintendent of Police, in continuation of investigation has arrested the said Kannayiram and his son Udayakumar. Based on the confession given by them, he seized fencing materials and also altered the case into u/s.304(II) 201 of IPC r/w 3 (1) (r) , 3(1) (s), 3 (2) (v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. He further submitted that as per the order of this court, re-post mortem has been conducted by the two doctors and entire post-mortem has been videographed. He further submitted that the re-post mortem certificate also reveals that the death was due to electrocution. He further submitted that these petitions have been filed with a view to get compensation from the Government by making false allegations against the police officials and therefore, he requests to dismiss these writ petitions.

9. It is seen from the FIR that even before lodging of complaint, the dead bodies were shifted to the Government Hospital Virudhunagar. But it is not known who brought the dead bodies to the Government Hospital and when the dead bodies were brought to the Government Hospital. There is no explanation for these questions from the prosecution side.

10. The case diary produced by the eighth respondent perused. In the observation mahazar prepared by the Deputy Superintendent of Police dated 22.11.2017, it is not stated that whether there was any symptom of fencing the land of Kannayiram. In the <https://hcservices.com/hcservices/> statement said to have been given by the accused persons viz., Kannayiram and Udayakumar, it is stated that the said Kannayiram gave information to the police station over



phone. But it appears that the Deputy Superintendent of Police has not investigated the matter that who received the information and when received the information from the accused Kannayiram with regard to the death of two persons in his land.

11. It is also to be pointed out that in the alleged confession statements, it is stated that the accused Kannayiram has rolled the fencing wire and kept under the meter box and the accused No.2 Udayakumar has taken a portion of the fencing wire and put fire near his house and the remnants of the said wire were thrown in the nearby thorn fence. But in the seizure mahazar, it is stated that the fencing wire which was seized as per the confession statement given by the accused Kannayiram are also in burnt condition.

12. It is also to be pointed out that in the inquest report of Thilagar Raj, it is stated that the dead body was first seen by the said Kannayiram in his agricultural field, whereas in the inquest report of Gnanasekar, it is simply mentioned that the dead body has been first seen in the agricultural land of Kannayiram, but it is not mentioned that by whom it was first seen.

13. It is also to be pointed out that in the statement recorded u/s.161(3) Cr.P.C., of the petitioners herein, it is stated that their husbands died due to electrocution, but on 23.11.2017 itself, one of the petitioners viz., Mariammal gave a complaint to the Sattur Taluk Police Station stating that their husbands have been murdered by the Sub-Inspector of Police, Ayyannar and his team and the same has been informed by the defacto complainant Baskaran. She has also stated that the said Baskaran has informed her that a complaint was obtained from him by coercion. Under the said circumstances, the petitioners would not have given statement before the Deputy Superintendent of Police that they came to know that their husbands were died due to electrocution. The aforesaid circumstances would lead to an inference that the Deputy Superintendent of Police, Virudhunagar, has not conducted the investigation in a diligent manner. In this case, the petitioners have made complaint against Sub-Inspector of Police, Ayyannar and his team that they might have murdered their husbands. Under the said circumstances, this court is of the view that some independent agency should investigate the matter in order to bring out the truth.

14. For the aforesaid reasons, the respondents 1 and 2 are directed to withdraw the investigation from the Deputy Superintendent of Police, Virudhunagar and entrust the matter to the third respondent. The third respondent, in turn, has to appoint an investigating officer not below the rank of Deputy Superintendent of Police for fair and proper investigation. The third respondent is further directed to monitor the investigation.



With the aforesaid observations, these writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar

To

1. The Home Secretary,
Home Department,
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 Additional Director General of Police,
O/o. Additional Director General of Police (A.D.G.P)
Crime Branch Crime Investigation Department (C.B.C.I.D)
No. 220, Pantheon Road, Egmore, Chennai - 8.
4. The District Superintendent
O/o. Superintendent of Police,
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5. The District Collector,
Collector Office, Virudhunagar District.
6. The Revenue Divisional Officer,
R.D.O. Office, Aruppukottai,
Virudhunagar District 626 101.
7. The Chief Medical Officer,
Government Hospital, Virudhunagar District-626 002.
8. The Inspector of Police,
Vachakarapatti Police Station,
Vachakarapatti, Virudhunagar District 626 204.

+2cc to Mr. R. Karunanidhi, Advocate Sr.No. 65968

+1cc to Spl. Government Pleader Sr.No. 65963

GV/VS

VB/SV/MMS/SAR1/11.06.2018/7P/12C

Order made in
WP. (MD) Nos. 22069 & 22070 of 2017 and
WMP (MD) No. 18383 to 18385/2017
& 18386 to 18388/2017
18.05.2018