

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 08.11.2019
Judgement Pronounced on : 13.11.2019

CORAM
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.30137 of 2003
and
W.M.P.No.36817 of 2003
&
W.M.P.No.32197 of 2019

Mrs.Egavalli

... Petitioner

-Versus-

1.The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

2.The Revenue Divisional Officer,*
Vellore.

[*Impleaded suo motu as 2nd respondent as per order dated
19.04.2004] ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st respondent to entrust the complaint of the petitioner dated 15.09.2003 to the Central Bureau of Investigation or any other independent investigating agency for investigation into the custodial death of the husband of the petitioner by name K.Baskar Son of Kasinathan when he was in custody of the officials of Virudhampet police station termed as "Encounter Death" on 30.08.2003.

For Petitioner : Mr.J.Mahalingam

For Respondent(s) : Mr.R.Govindasamy,
Special Government Pleader
for RR1 and 2

ORDER

The wife of the deceased one K.Baskar is before this court with this writ petition seeking a direction to the 1st respondent to entrust her complaint dated 15.09.2003 either to the CBI or any other independent investigating agency to

investigate into the alleged encounter of her husband - K.Baskar by the police officials of Virudhampet police station.

2. According to the petitioner, her husband was working as an Electrician. On 21.04.2003 at about 09.30 p.m. some police officials from Virudhampet police station took her husband into their custody in connection with a double murder that took place at R.M.S. Colony in Vellore. He was however released by the police within two hours. Thereafter, on 22.04.2003, her husband was again taken into custody by the police at about 08.30 p.m. and he was illegally detained at Virudhampet police station for six days. She had sent a representation to the Superintendent of Police, Vellore, and also the State Human Rights Commission besides to the Director General of Police and the Chief Minister's Special Cell. But, the same did not evoke any response from any one of them.

3. While so, on 27.04.2003, the police let her husband free. One week thereafter, again the police took the deceased into their custody and detained him for 4 days illegally. During such custody, the police had physically tortured the deceased in order to extort a statement confessing his guilt. On 08.05.2003, the deceased was taken to Chennai for lie detector test and was released by the police thereafter. As there was no evidence to link the deceased with the murder, out of frustration to solve the case, the police harassed her husband frequently.

4. Thereafter, once again on 29.08.2003, at about 06.00 p.m., four police constable from Virudhampet police station came and took the deceased from his resident promising her to produce him back in a couple of hours. But, they police did not produce him on that day. Therefore, on 30.08.2003 she along with her mother-in-law rushed to the police station, but, the police did not reveal any information about her husband. Later on, on the next day, she came to know that her husband was killed in an encounter. There was an agitation and demonstration against the police by the villagers. The petitioner came to understand that her husband was killed in a fake counter and she is having solid evidence to prove that her husband was done to death in the police station and thereafter, bullets were pumped into his body to make it appear as if it was an encounter. According to the petitioner, her husband was an innocent person and the police had manipulated the records, tampered with the evidence to convert the case of custodial death into one of encounter death.

5. On 08.09.2003, the petitioner sent a complaint to the Superintendent of Police, Vellore, for appropriate action into the death of her husband. But, no action was taken on the same. Therefore, on 15.09.2003, she had sent a detailed representation

to the 1st respondent for investigation by CBI into the circumstances leading to the alleged encounter death of her husband. As there was no response from the 1st respondent, she was constrained to move a petition in CrI.O.P.No.33090 of 2003 before this court for a direction against the Superintendent of Police, Vellore. This court by order dated 29.03.2003 issued a direction to the Superintendent of Police to consider and dispose of the complaint of the petitioner dated 08.09.2003 in accordance with law.

6. In the mean time, the Revenue Divisional Officer, Vellore had conducted inquiry into the death of the deceased in which the petitioner appeared along with her Advocate. During enquiry, her Advocate was threatened and a false case was also foisted against him. Some of the persons who had raised objection in the inquiry conducted by the Revenue Divisional Officer, were also subjected to harassment and criminal cases were also foisted against them. Apprehending that fair and impartial investigation would not be conducted by the State police, the petitioner is before this court with this writ petition for transfer of investigation to CBI.

7. The 1st respondent filed counter affidavit stating that based based on a complaint from one A.Umashankar alleging murder of one Tmt.Premakumari wife of Kumaresan and her son and also theft of jewels, a case in crime No.154 of 2003 was registered under Section 380 and 302 of IPC on the file of Virudhampet police station. During the course of investigation of the above said case, based on the confession of one of the accused, the husband of the petitioner, the deceased in the instant case, was arrested on 29.08.2003 at about 18.30 hours.

8. During investigation, the deceased had given a statement voluntarily confessing his guilt of having murdered Premakumari and her son and also theft of jewels. Pursuant to such confession, on 30.08.2003, the police took the deceased to Chittoor to identify the stolen jewels which were entrusted to the custody of a person at Chittoor. On the way to Chittoor, the deceased wanted to attend call of nature and one Shri.Damodharan, Head Constable took the deceased few feet away in front of the jeep and allowed the deceased to attend call of nature. The Head Constable who was armed with musket fitted with bayonet was standing behind the deceased. Within a short while, the deceased had suddenly turned around and snatched away the musket forcibly from the hands of the Head Constable and assaulted him with bayonet which resulted in bleeding injuries to the Head constable. On noticing the same, one Shri.Chakravarthy, Sub Inspector of Police, attempted to catch hold the deceased and tried to snatch away the musket from the deceased. But, the deceased assaulted the Sub Inspector also. On

seeing the sudden attack, the Inspector of Police, Katpadi Circle, who was standing near the jeep rushed near the accused and he was also attacked by the deceased in which the Inspector of Police also sustained bleeding injuries. Immediately, the Sub Inspector of Police, warned the deceased not to attack the Inspector of Police, but, the accused not minding the warning, turned menacingly towards the Sub Inspector with musket fitted with bayonet and attempted to kill him. Sensing danger to their lives, having no other option, the Sub Inspector of Police in exercise of self defense, took his pistol and fired two rounds at the deceased and the deceased fell down with musket. Immediately the police personnel took the deceased to the Vellore Government Medical College Hospital and admitted the deceased. The injured police personnel were also admitted for treatment.

9. On examining the deceased, the Doctor at the Government Hospital declared the deceased was brought dead. Based on the statement given by the Inspector of Police, Katpadi police, a case registered in crime No.420 of 2003. Immediately, a copy of the FIR was sent to the Revenue Divisional Officer, Vellore, for the conduct of inquiry under PSO 151 into the death of the deceased. Accordingly, the Revenue Divisional Officer had conducted inquiry into the issue.

10. Earlier, the petitioner filed a petition in CrI.O.P.No.33090 of 2003 seeking a direction to the Superintendent of Police, Vellore, to take action on her complaint dated 08.09.2003. Pursuant to the order of this court, an inquiry was conducted by the Superintendent of Police in which as many as 28 persons were examined and the Superintendent of Police filed his report dated 01.11.2003. The Revenue Divisional Officer also conducted an independent magisterial inquiry under PSO 151. Thereafter, post mortem was conducted on the body of the deceased by a team of doctors. The autopsy report revealed that the injuries on the body were all ante-mortem. Thereafter, pursuant to the order of this court in a writ petition, the body was exhumed for post mortem by a panel of doctors from JIPMER Hospital at Puducherry. But, the doctors who conducted the second post mortem could not arrive at any opinion regarding the cause of death of the deceased. The allegations in the writ petition are false and concocted and also baseless. The incident of death happened only after the deceased started attacking the police personnel brutally with musket fitted with bayonet. The writ petition for transfer of investigation is not maintainable either in law or on facts and the same deserves only to be dismissed.

11. The learned counsel for the petitioner would contend that the story of encounter is concocted by the police. The

deceased was in fact subjected to custodial violence and he died while in custody at the police station due to custodial violence. Thereafter, the police had manipulated the records and developed a story of encounter. Since the State police themselves involved in the occurrence, if investigation is allowed to be carried on by the State police, they would not conduct fair and impartial investigation and they would manage to cover up the issue to project the death of the deceased as if it was an encounter. The petitioner believes that if only the investigation is transfer either to the CBI or to any other independent investigating agency she would get justice. Therefore, the learned counsel for the petitioner prays this court to transfer the investigation the CBI or to any other independent agency to investigate into the death of the deceased husband of the petitioner.

12. Per contra, the learned Special Government Pleader appearing for the respondent would contend that the deceased in this case was the main accused in a double murder for gain and he was killed in encounter when he had started attacking the police personnel on the way to Chittoor to recover the stolen jeweleries pursuant to his confession statement. The Sub Inspector of Police who was a part of investigating team of the double murder case had opened two rounds of fire at the accused only in exercise of self defense when the deceased had acted menacingly and assaulted the police personnel with musket and bayonet snatched away from one of the Head Constables and died in the encounter.

13. The learned Special Government Pleader would further contend that the deceased was not subjected to custodial torture and died due to custodial violence as alleged by the petitioner. The inquiry conducted by the Revenue Divisional Officer would also go to show that the deceased had started attacking the police personnel, only in exercise of self defence, the police personnel fired at him. There is nothing adverse in the report of the Revenue Divisional Officer except the finding that the police personal had not taken adequate care while taking the deceased for the purpose of recovery of stolen articles pursuant to his confession statement. Based on such report, appropriate departmental proceedings had already been initiated against the erring police personnel. However, according to the learned Special Government Pleader in absence of any materials warranting transfer of investigation, at this length of time, the writ petition is liable to be dismissed.

14. I have considered the rival submissions carefully.

15. The occurrence took place on 30.08.2003. According to the petitioner, the deceased was subjected to custodial torture

and he died at the police station due to the injuries sustained on account of custodial violence. Thereafter, the body of the deceased was taken near to Chittoor border and bullets were pumped on the dead body and the records were manipulated by the police in order to concoct a story as if the deceased died in an encounter. Further according to the petitioner, she has got voluminous of evidence to show that the deceased died due to custodial violence at the police station. It is the contention of the respondent that the deceased was an accused in the double murder and it was a case of murders for gain. While he was taken to Chittoor for the purpose of recovery of stolen articles and crime weapon, pursuant to his confession, on the way, at his request, he was dropped to attend call of nature. Within a short while, the deceased snatched the musket with bayonet from one of the Head Constable and assaulted attacked every police personnel who were in the investigation team and caused injuries to them. Only in private defence, a Sub Inspector of Police opened fire from his pistol which resulted in the death of the deceased.

16. Though the petitioner claimed that voluminous of materials are available with her to prove that her husband was done to death by the police at the police station, absolutely, there is no material produced by her before this court in support of her contention. Except the representation sent by the petitioner to various authorities, there is nothing placed on record by the petitioner even to prima facie substantiate her claim. On the other hand, after the death of the deceased, a magisterial inquiry was ordered under order 151 of PSO to inquire in the death of the deceased. Accordingly, the Revenue Divisional Officer / Executive Magistrate conducted a detailed inquiry into the death of the deceased. During inquiry, the Revenue Divisional Officer examined as many as 36 witnesses and filed a detailed report. The inquiry report would go to show that the police personnel were attacked by the deceased and only in private defence, the Sub Inspector of Police, opened two rounds of fire at the deceased which resulted in his death. The death was due to gun shot and the first post mortem report would also indicate that the injuries were ante-mortem. from the findings in the inquiry report of the Revenue Divisional Officer prima facie it could be seen that the death of the deceased was not due to any custodial violence. Therefore, in the absence of any material to prima facie show that deceased was killed by the police while he was in custody. Considering the above circumstances, this court is of the view that ordering an investigation by CBI or by any other investigating agency at this point of time would not serve any purpose and it would only be a wasteful exercise. Therefore, the petitioner is not entitled for any relief in this writ petition and the writ petition deserves only liable to be dismissed.

17. During arguments, the learned counsel for the petitioner brought to the notice of this court that the petitioner has already filed a miscellaneous petition in this writ petition seeking a direction to the respondents to pay a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the family of the deceased for the death of the husband of the petitioner in a staged fake encounter and made his submissions on the entitlement of the petitioner for compensation. If at all the petitioner feels that she is entitled for compensation, it is always open for her to work out her remedy in the manner known to law in appropriate proceedings and that relief cannot be granted in this writ petition. Accordingly, the petition seeking for compensation is also liable to be dismissed. However, it is made clear that this court is not expressing any opinion on the entitlement of compensation.

In the result, this Writ Petition is dismissed. W.M.P.No.32197 of 2019 is also dismissed. No costs. Consequently, connected WPMP No.36817 of 2003 is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

2.The Revenue Divisional Officer,
Vellore, Vellore District.

+2cc to Mr.J.Mahalingam, Advocate, S.R.No. 94277
+1cc to the Government Pleader, S.R.No. 94618

Writ Petition No.30137 of 2003

LN(CO)
GN(13/12/2019)