

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.05.2019

CORAM:

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN
AND
THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Habeas Corpus Petition No.925 of 2019

Rohin Kumar

... Petitioner/Son of the Deceased

versus

- 1.The District Collector,
Coimbatore District,
Coimbatore.
- 2.The Superintendent of Police,
Coimbatore District,
Coimbatore.
- 3.The Inspector of Police,
Karamadai Police Station,
Coimbatore District.
- 4.The Dean,
Coimbatore Medical College and Hospital,
Coimbatore,
Coimbatore District.

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a direction to direct the respondents to conduct Re-postmortem of the body of the detenu Palanisamy, son of Thirumoorthy by a Team of Doctors, one Doctor of the choice of the petitioner at Government Hospital, Coimbatore.

For Petitioner : Mr. R.Sankarasubbu

For Respondents: Mr. R.Prathap Kumar, Addl.P.P.

O R D E R

(Order of the Court was made by C.V.KARTHIKEYAN, J.,)

The Habeas Corpus Petition has been filed by the son-Rohin Kumar, aged 19 years of Palanisamy. Palanisamy was a cashier employed in an office dealing with sale of Lotteries, by name Martin Agencies. The Income Tax officials had thought it fit to commence investigation into the working of the Lottery Agency

and naturally, since the father of the petitioner was a cashier, he was also one of the many of the persons, who was called to participate in the enquiry. He was asked to give statements and it is the allegation of the petitioner that he was interrogated.

2. It is stated that he was interrogated from 30.04.2019 in the residence from about 4.00 P.M till early in the morning on 01.05.2019. He was thereafter taken to the Martin's office by the Income Tax Officials. He was brought home on 02.05.2019 at midnight. It is also alleged that he left again with the Income Tax Team on 03.05.2019. He left home at 7.00 a.m on 03.05.2019 again for interrogation. He never returned back home. Thereafter, his dead body was found.

3. It is alleged by the petitioner that the death was due to unnatural causes and an enquiry should be conducted regarding the same. In these circumstances, the petitioner herein had originally given a complaint to the Sub-Inspector of Police, Karamadai Police Station in Coimbatore District on 03.05.2019. In that complaint, he had stated that his father died of suicide. Based on the said complaint, an F.I.R in Crime No.134 of 2019 was registered by the Karamadai Police Station under Section 174 Cr.P.C. and Section 306 of I.P.C. The case was taken up for investigation. Thereafter, the second complaint was given on 04.05.2019 by the petitioner herein. He again gave a third complaint on 06.05.2019. Since the investigation is in progress, we feel that it would be inappropriate to comment upon the nature of the complaint or the course with which the investigation is now proceeding. However, as a fact, the Investigating Authorities have entrusted the inquest proceedings to the Revenue Divisional Officer, who had also conducted the same and a report has also been forwarded to this Court. Thereafter, the Post-mortem was done by a Team of Doctors.

4. When the matter first came up before another co-ordinate Bench of this Court, the respondents were directed to produce a videograph of the Post-mortem and also the postmortem certificate. In the present Habeas Corpus Petition, the relief sought for is to conduct Re-post-mortem of the body of the deceased along with the Team of Doctors with one Doctor to be chosen by the petitioner herein.

5. In the background of these facts, this Court heard the arguments advanced by Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

6. It is informed by the learned Additional Public Prosecutor that it was based on the complaint given by the petitioner herein that the Revenue Divisional Officer was directed to conduct inquest and further the investigation had

been handed over to the District Crime Branch, Coimbatore and an officer in the level of Deputy Superintendent of Police is in process of investigating the entire issue. It had been stated that status report had been filed by the Deputy Superintendent of Police, District Crime Branch, who is now investigating the issue and he had stated that the Sections in the First Information Report had been altered to Sections 294(b), 324, 306 I.P.C read with Section 3(1)(r), 3(1)(s), 3(2)(V) of SC & ST (POA) Act, 1989 Amendment Act, 2015.

7. It is also stated that final opinion on the post-mortem could not be given in view of the fact that the viscera samples have been forwarded for chemical analysis and Diatom examination to the Regional Forensic Science Laboratory, Coimbatore. Further, the status report had been forwarded to the Court today and it had been clarified on a question raised by the Court that the body has been kept in deep freezer in accordance with necessary norms for preservation of the dead body.

8. Mr.Sankarasubbu, learned counsel for the petitioner drew the attention of this Court to the Judgment of the Hon'ble Supreme Court reported in (1997) 1 SCC Page 416 [D.K.Basu vs.State of W.B] wherein in Paragraphs 29 & 30 reads as follows:-

"29. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third-degree methods during interrogation.

30. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard,

Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, RAW, Central Bureau of Investigation (CBI), CID, Traffic Police, Mounted Police and ITBP, which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well. Death of Sawinder Singh Grover, Re, (to which Kuldip Singh, J. was a party) this Court took suo motu notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge an FIR and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay a sum of Rs.2 lakhs to the widow of the deceased by way of ex gratia payment at the interim stage. Amendment of the relevant provisions of law to protect the interest of arrested persons in such cases too is a genuine need."

9. In paragraph No.30 of the above decision, the Hon'ble Supreme Court had in its wisdom, stated that the custodial death could also happen under various other arms of the investigation team including agencies like the Directorate of Revenue intelligence, Directorate of Enforcement and also investigations done for economical offences and also under Foreign Exchange Regulation Act etc.

10. It is urged by Mr.R.Sankarasubbu, learned counsel for the petitioner that there are several injuries visible on the body of the deceased which are not shown in the post-mortem report. In the post-mortem report which had been forwarded to this Court, the following other findings are given:

Other Findings:-

- Peritoneal and Pleural cavities:empty
- Rib marks noted over the surface of lower lobe of right lung,

cut section shows decomposition changes.

-Heart:Flabby. Cut section shows decomposition changes.

-Stomach contains about 10 grams of blue and white granules, no specific smell, mucosa found eroded with congestion in patchy areas.

-Small intestine contains about 10 ml of mucous fluid, with smell of decomposition, decomposition changes seen in mucosa

-Brain:Pasty

-Liver, Spleen and Kidney:cut section shows decomposition changes. Urinary bladder - empty.

-Viscera preserved and sent for chemical analysis report.

-Sternum preserved for Diatom test.

11. There was a doubt raised with respect to the injuries on the eye balls, tongue and blood stained mouth. This has been clarified by the Doctor who stated that they are the post-mortem injuries normally found in the decomposed body and when death is by drowning. We are keeping all the opinions open, since we feel that in the present case, the father of the petitioner herein was technically under the custody of the Income Tax officials. He was under their control for all practical purposes. His movements were subject to their control. He has been questioned by them. It is a moot question whether statement had been recorded from him. The Hon'ble Supreme Court had expanded the term "Investigating officials" to include the other investigating agency also and we find no reason to hold that the term should not be expanded to include Income Tax officials during the course of investigation including summoning witnesses for further clarity on the subject which they are investigating. The term "custody" should also be further expanded to include having control over the movements of the witnesses who have been summoned to give statements and to divulge the opinions regarding the office over which the Income tax officials are investigating.

12. When there is a custodial death, Section 176 Cr.P.C had been suitably amended and it had been laid down that enquiry by the learned Judicial Magistrate is mandatory. When the specific provision has been laid down in the Criminal Procedure Code (Cr.P.C), even though the petitioner herein had approached this Court by way of Habeas Corpus Petition, we feel no reason why sufficient confidence cannot be placed on the Judicial Magistrate to enquire into the entire circumstances surrounding the unfortunate death of the father of the present petitioner.

13. Accordingly, without expressing any opinion on the nature of the death or on the circumstances surrounding the death, we direct the Chief Judicial Magistrate of Coimbatore District to nominate a Judicial Magistrate to conduct an enquiry in accordance with the provisions of Sections 176(A) of

Cr.P.C. The petitioner herein/his Advocate are at liberty to participate and make their representations before the nominated Judicial Magistrate, who may take necessary decisions including a decision to conduct re-post-mortem on the body of the deceased. While conducting the re-post-mortem, the Judicial Magistrate may also form a team of Doctors to conduct such Postmortem as laid down in the catena of decisions of this Court and also by the Supreme Court and also include a Doctor to be nominated by the petitioner herein, and it is hoped that such a Doctor would be a Government Doctor.

14. The respondent-Police are also directed to permit the petitioner and his family members and an Advocate to have a look at the body of the deceased father Palainsamy. This request is granted because it is natural that the family members would only be anxious to see the body of their own relative who had died under unfortunate circumstances. The Judicial Magistrate may have all necessary powers as granted to him under the Code of Criminal Procedure (Cr.P.C) to conduct the enquiry into the aspect and he/she may submit a report to the Chief Judicial Magistrate in a sealed cover which shall in turn be forwarded to the Investigating Officer. If at a later stage, any further enquiry is to be done, he/she may give a copy of that report through the Investigation Officer to the petitioner and if necessary, the petitioner may take appropriate action if he deems it fit.

15. We are not giving any further opinion on the nature of the post-mortem already conducted and we hold that this Court does not suspect any infirmity while conducting such post-mortem. But only to clarify the doubts raised by the petitioner, a decision to conduct the re-post-mortem may be taken by the Judicial Magistrate in his/her own wisdom. The Chief Judicial Magistrate is directed to nominate a Judicial Magistrate in Coimbatore District to conduct the enquiry under Section 176(A) Cr.P.C. within 2 working days from the date of receipt of a copy of this order. The nominated Judicial Magistrate may take all efforts to complete the duty assigned expeditiously.

16. With the above observations, this Habeas Corpus Petition is closed.

s/d-

Assistant Registrar (VO)

True Copy

Sub-Assistant Registrar

To

- 1.The District Collector,
Coimbatore District,
Coimbatore.
 - 2.The Superintendent of Police,
Coimbatore District, Coimbatore.
 - 3.The Inspector of Police,
Karamadai Police Station,
Coimbatore District.
 - 4.The Dean,
Coimbatore Medical College and Hospital,
Coimbatore,
Coimbatore District.
 5. The Chief Judicial Magistrate
Coimbatore
 6. The Judicial Magistrate
Coimbatore
 7. The Public Prosecutor
High Court, Madras 104.
- +1 CC to Mr.R.Sankarasubbu, Advocate sr 43872.

H.C.P.No.925 of 2019

VBA(CO)
SP(17/05/2019)

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