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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

W.P. (MD) No. 2076 of 2019

and

W.M.P. (MD) .No. 1671 of 2019

S.Premi Ninija

... Petitioner

/Vs./

1. The State of Tamil Nadu
represented by
The Principal Secretary,
Home Department, St. George Fort,
Chennai.
2. The District Collector,
Office of the Collector,
Kanyakumari District.
3. The Joint Director,
Central Bureau of Investigation,
Subba Road Avenue,
Thousand Lights, Chennai-600 006.
4. The Director General of Police,
Office of the D.G.P.,
Dr. Radhakrishnan Salai,
Mylapore, Chennai-600 004.
5. The Superintendent of Police,
Office of the Superintendent of Police,
29, Acharimar South 2nd Street,
Meenakshipuram, Vadiveeswaram Village,
Ozhigunasery, Nagercoil-629 001.
6. The Inspector of Police,
Manavalakurichi Police Station,
Kanyakumari District.

... Respondents

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to take action on the Respondent No.6 Police officials who are responsible for the custodial death of the petitioner's husband by name Sahaya Raj Thobiyas and to grant compensation for the custodial death of the petitioners husband and take criminal action against the police Respondent No.6 and officials in accordance with law, within the time stipulated by this Court.



For Petitioner
For Respondents

: Mr. Alagumani
: Mrs. S. Shakthi
Government Advocate (Crl. Side)

ORDER

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This petition is filed seeking a direction to the respondents to take action against the sixth respondent Police Official, who according to the petitioner is responsible for the custodial death of her husband, late Sahaya Raj.

2. The learned counsel appearing for the petitioner submitted that the petitioner is working as a Scavenger, that on 03.11.2018, she received a phone call from the Sub Inspector of Police, Manavalakurichi, that her husband had been admitted in the Asaripallam Government Medical College Hospital. When the petitioner rushed to the hospital with certain Selvaraj, son of her family friend Ponnibas, she came to know that her husband was dead. She would further allege that the petitioner's husband was taken into custody of the Police between 12.00 noon and 01.00 p.m. While the petitioner stated that he was arrested and remanded in connection with some other cases and hence, he came under the police custody. During submissions, the learned counsel made a submission that a statement in the petition that the petitioner's husband was remanded is inadvertently made by mistake and that he was only taken custody of. According to the petitioner, the petitioner was tortured in the Police Station, he was kicked by the Police officials with their shoes which ultimately led to his death.

3. The typed set of papers indicate that the Assistant Superintendent of Police, Manavalakurichi, has communicated the Superintendent of Police, Nagercoil, to hold an inquest, based on which, the Magisterial inquest has been taken place.

4. The learned Government Advocate (Crl. side) had circulated a copy of the inquest report of the Magistrate in which two points that go against the Police are that till 08.00 p.m. no First Information Report was registered and that this delay according to the Assistant Superintendent of Police, on the spot was due to the fact that he was waiting for the Magistral inquest to be concluded to register the First Information Report. The learned Magistrate finds that there were no external injuries, on the body of the deceased. He also finds that there was a surgical-scar on the chest area indicating that the person had underwent an open heart surgery.

5. The learned Magistrate appeared to have stated that during the postmortem, about 400 ml of Ethanol was found in the stomach of the person and that except a contusion on the chest area, there are no other injuries. The medical report is also to the effect that the heart and the lungs were abnormal in size than the normal one and the medical opinion is that the petitioner's husband might have died of cardiac failure. Here, it is necessary to insist that the



petitioner's husband had cardiac issues earlier and appears to have underwent an open heart surgery.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. side) appearing for the respondents.

7. *Prima facie* from the report this Court comes to the conclusion that the petitioner's husband was not particularly tortured as to require transfer of investigation by the third respondent. This Court does not find any material whatsoever for transferring the investigation. No material has yet been placed before this Court to indicate that the death of the petitioner's husband could be un-natural or could be due to custodial torture. Turning to the prayer sought for by the petitioner, while *prima facie* this Court does not find any immediate material to direct the fourth respondent or the fifth respondent to direct an enquiry against the sixth respondent, yet it grants liberty to the petitioner to approach the fifth respondent with any materials or information which have not been hitherto brought, in order to find out, if the death of the petitioner's husband was due to custodial torture.

8. With the above observations, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

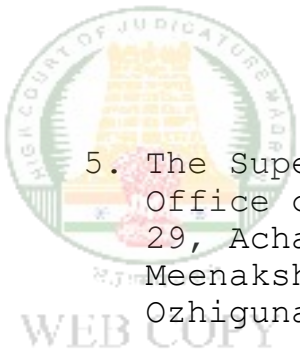
sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

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Order made in
W.P. (MD) No.2076 of 2019
11.03.2019

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