

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.13288 of 2020
and Crl.M.P.No.5166 of 2020

S.Govindammal,
W/o. Selvaraj,
No.3/5, K.K.Nagar II Street,
Ayanavaram,
Chennai - 600 923.

...Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
2. The Inspector of Police,
K-2, Ayanavaram Police Station,
Chennai - 600 023.
3. The Superintendent of Police,
Crime Branch CID,
North Zone, Egmore,
Chennai - 8.
(R3 is suo-motu impleaded as
per the order dated 01.09.2020
in Crl.O.P.No.13288 of 2020
and Crl.M.P.No.5166 of 2020)

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the respondents to transfer the case in Crime 979 of 2020 on the file of the Inspector of Police, K-2 Ayananvaram Police Station, Chennai - 600 023, to CBCID, Chennai or any other competent authority.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.A.Natrajan

State Public Prosecutor.

Assist by Mr.M.Mohamed Muzammil
Government Advocate (Crl.Side)

ORDER

This petition has been filed for direction directing the respondents to transfer the case in Crime No.979 of 2020 from the file of the second respondent to any other competent

authority. The petitioner also sought for interim direction to direct the respondent to conduct re-post-mortem on the body of the deceased Shankar, S/o.Selvaraj in Crime No.979 of 2020.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the mother of the deceased, who was murdered by one Natarajan, Inspector of Police, K2 Ayanavaram Police Station, Chennai. While the deceased was in the course of illegal custody of the second respondent, on 21.08.2020 at about 5.30 a.m., the petitioner was kept dark. He further submitted that without her consent and without showing the deceased to her, the post-mortem was conducted on 22.08.2020 and the body was handed over to the petitioner for burial. He further submitted that the learned V Metropolitan Magistrate, Egmore, conducted inquest under Section 176(1A) of Cr.P.C., evinced no interest in unearthly the truth by informing the petitioner to have assistance of her doctor to bring home the truth of murderous attack on the body of the deceased Shankar. The post-mortem was conducted in a hurt hush manner without objective manner and hurriedly concluded due to tension. The petitioner and her family members were prevented from taking legal steps and they could not be able to present at the time of post-mortem. The petitioner and her family members were kept under dark and as such they were not able to take legal steps while conducting post-mortem on the body of her deceased son.

2.1. The learned counsel appearing for the petitioner also relied upon the report submitted by the learned V Metropolitan Magistrate, Egmore, Chennai and submitted that the learned Magistrate did not follow the procedure laid down under the provisions of Cr.P.C., while conducting inquest and also post-mortem on the body of the deceased. This Court and also the Hon'ble Supreme Court of India repeatedly held that while conducting post-mortem, the family members, Advocate and their team of doctors to be present at the time of the post-mortem. Such opportunity was never given to the petitioner and her family members and they were kept under dark and did not permit them to take legal steps by the second respondent herein.

2.2. Even according to the report submitted by the learned Magistrate, the petitioner and her family members were informed through second respondent policemen, who has murdered the petitioner's son. The learned Magistrate ought to have sent summon through his own staffs or by the revenue officials. Without following the said procedure conducted post-mortem on the body of her son. The petitioner was also physically prevented to reach the hospital to attend the post-mortem, when the petitioner was very much available on 21.08.2020, there was absolutely no difficult for her to come to hospital on 22.08.2020.

2.3. He further submitted that the post-mortem also conducted by incompetent and inexperienced doctors who have got only two years experience and another doctor only has experience of two months. It is also seen from the injuries mentioned in the post-mortem report that there are three firearm injuries. As per the post-mortem all the three firearm injuries are ante-mortem in nature. According to the second respondent, when the deceased was tried to escape, he attacked the second respondent and the second respondent escaped from the attack by the deceased. Immediately, the second respondent opened fire in which the deceased sustained first firearm injuries. Therefore on the first firearm, the deceased died and thereafter the second respondent did not require to open the second and third round of fire. But according to the doctors, all the fire arm injuries are ante-mortem in nature. It shows that they have no experience and they are incompetent for doing post-mortem. Further he submitted that on the first shot itself the deceased died and when the second and third firearm injuries, the deceased was not at all alive. Therefore, according to the case of the second respondent, the doctors gave post-mortem only to support the case of the second respondent.

2.4. He further submitted that other than three firearm injuries, there are 12 injuries in the deceased body and there is absolutely no explanation for the said injuries by the doctors, who conducted the post-mortem. All the 12 injuries are nothing but, when the deceased was illegally custody, he was undergone cruelty thereby he sustained those injuries. In fact, the police officials have exclusive place for illegal detention and the deceased was taken to there and caused injuries. He further submitted that the petitioner submitted her representation on 21.08.2020 to all the higher officials in respect of injustice done to her son and murdered him by encounter. Again she also sent another representation on 25.08.2020 to all the higher official and seeking justice and also seeking re-post-mortem but all are went in vain. Therefore the petitioner filed this petition for seeking re-post-mortem on the body of her son Shankar. In support of his contention, the learned counsel relied upon the following judgments:-

Sl.No.	Date	Description
1	07.10.1988	Order in W.P.No.6000 of 1988 passed by the Madras High Court
2	12.07.2013	Order in H.C.P.No.1265 of 2013 passed by the Madras High Court.
3	23.09.2014	Order in CrI.Apeal No.1255 if 1999 passed by the Supreme Court of India

Sl.No.	Date	Description
4	29.12.2014	Order in W.P.No.35004 of 2014 passed by the Madras High Court
5	26.06.2015	Order in H.C.P.No.1541 of 2015 passed by the Madras High Court
6	11.02.2016	Order in W.A.No.156 of 2016 passed by Madras High Court
7	16.05.2019	Order in H.C.P.No.925 of 2019 passed by the Madras High Court
8	13.07.2020	Order in W.P.(MD)No.8160 of 2020 passed by Madurai Bench of Madras High Court.
9	27.03.2012	W.A.No.1023 of 2020 passed by the Madras High Court
10	1993 SCC Crl.527	Nilabati behera alias Lalit behera vs State of Orissa and ors. passed by the Supreme Court of India.

3. Per contra, Mr.A.Natrajan, learned State Public Prosecutor submitted that while pending this petition, the entire investigation in Crime No.979 of 2020 has been transferred from the file of the Assistant Commissioner of Police, Kilpauk Range, Chennai to the file of the third respondent herein and entrusted to the Deputy Superintendent of Police, CBCID, Metro Wing-I, Egmore, Chennai. Therefore, the main prayer sought for in this petition become infructuous.

3.1. Insofar as the interim prayer for repost-mortem is concerned, the learned Additional Public Prosecutor filed counter by the second respondent and also filed status report by the third respondent herein and submitted that on 14.08.2020 as directed by the Deputy Commissioner of Police, Kilpauk, for execution of non bailable warrant, they formed a special team headed by the second respondent. Accordingly on 20.08.2020, the second respondent with his team mates around 22.00 hours intercepted one Dhilipkumar and found that he was in possession of 10 packets of Ganja. On his confession, he stated that he got the contraband from his mother Rani and from one Shankar, who is an habitual goonda and history sheeter in Ayanavaram. Further on securing the said Rani on 21.08.2020 at about 2.00 hours, the said Rani was interrogated and 2 Kg of Ganja was recovered from her possession. On her confession, the deceased was arrested and he confessed that he kept the contraband Ganja at Ayanavaram new Avadi Road, opposite to RTO office.

3.2. He further submitted that the said Shankar is an habitual offender and so far he involved in 54 cases including 3

murder cases, 11 attempt to murder cases and 2 NDPS cases. He was also detained under Goodas on nine times. He also involved in the cases of robbery. They are pending before various Courts and he did not appear before the trial Court as such, the trial Court issued non bailable warrant against him and number of non bailable warrants are pending as against the said Shankar. While executing the said non-bailable warrant, the second respondent arrested the deceased Shankar.

3.3. He further submitted that the second respondent seized contraband from one Rani and on her confession, the deceased was arrested and on his confession, the second respondent team reached to Ayanavaram new Avadi road, opposite to RTO office at about 06.30 am., on 21.08.2020. He further submitted that the said Shankar suddenly took a patta knife hidden inside the cluster of stones with the pretext of taking Ganja stored there and tried to assault and attempted to kill the second respondent. The second respondent narrowly escaped from the attack by the said Shankar and advised to drop the weapon and surrender. But the deceased refused to drop the weapon and again he launched attack on the second respondent. Therefore, the second respondent had left with no other choice to protect himself, opened fire pointing towards his legs to incapacitate him. Despite the defence attack, the deceased attacked the other constable one Mubarak and caused serious injuries on his right arms and left shoulder. Therefore, the second respondent again opened fire on the deceased legs in defence of his life and other policemen. When the deceased ducked to escape the fire and got injuries on his body. Immediately both the deceased and Police constable were taken to the hospital, where the doctor declared that the deceased brought dead. Immediately he prepared special report to the Assistant Commissioner of Police, Kilpauk Range, for further process and on the basis of the special report, the case was registered in Crime No.979 of 2020 for the offences under Sections 332, 307 of IPC and Sections 8(c) r/w 20 (b) (ii) (B) of NDPS Act, r/w 176(I-A) (i) of Cr.P.C., against the accused person.

3.4. The learned Additional Public Prosecutor further submitted that it was duly reported to the Magistrate concerned and the higher officials and all the evidences at the scene of occurrence were gathered and report along with the properties packed and labelled. The deceased body was handed over to the medical experts for post-mortem. The learned V Metropolitan Magistrate, Egmore, Chennai, conducted inquest on the body of the deceased and the body was identified by his sister and mother viz., the petitioner herein, in Mortuary. The learned Magistrate also recorded the statements and give requisition to conduct post-mortem to the Professor, Head of the Department and Forensic Medicolegal cases, Kilpauk Hospital, Chennai, on

21.08.2020. But the doctors stated that if post-mortem is started, it will go up to night hours. Therefore, the learned Magistrate informed the petitioner as well as the sister of the deceased that the post-mortem will be conducted on 22.08.2020 at about 10.30 a.m., and directed them to be present in the hospital.

3.5. On 22.08.2020, the learned Magistrate along with his assistant was present and directed his assistant to inform to the petitioner as well as the deceased sister about the post-mortem. On verification, the assistant stated that they were not available in the hospital premises. Thereafter as directed by the learned Magistrate, the police official visited the house of the petitioner as well as the sister of the deceased and found that their houses were locked and they were not available in the hospital premises also. As per the direction of the learned Magistrate, the post-mortem was conducted by the team of doctors of Kilpauk hospital, on the supervision of Professor Dr.R.Selvakumar, MD, Forensic Medicine (Head of the Department) Assistant Professor Dr.Sivakumar, MD Forensic Medicine and Dr.Vishnu Rajkumar, MD, Forensic Medicine, Chennai, in the presence of the learned Magistrate.

3.6. He further submitted that entire post-mortem was videographed and photographed. Therefore all the procedure contemplated under the Cr.P.C., is duly followed and the post-mortem was conducted by the team of qualified doctors. All the doctors are well experienced and they had full knowledge in forensic field and they are experienced doctors. He further submitted that under supervision of Dr.Selvakumar, who is the Head of the Department of Forensic Medicine, the Assistant Professors conducted post-mortem. He further submitted that without experience they would not be posted as Assistant Professors. Therefore they have got well experience to conduct post-mortem. Now the petitioner filed this petition with unclean hands and only to drag the proceeding in different direction. The deceased viz., the son of the petitioner is an habitual offender and he involved in 54 cases. Therefore, the second respondent had done his duty and while the second respondent and his team mates were discharging their official duty only to their self defence, the second respondent opened fire on the deceased, when he attempted to kill the second respondent. Now the deceased involved in three murder cases and already he brutally murdered the government employee. Therefore, if the second respondent did not fire on the deceased, he would have been killed by the deceased. Therefore, the interim direction sought for by the petitioner is nothing but only to defeat the investigation in Crime No.979 of 2020.

3.7. He also submitted that in respect of investigation is concerned, the third respondent viz., the Deputy Superintendent of Police, CBCID, Metro Wing, Egmore, Chennai, had taken over the investigation. So far, he examined the second respondent and his team mates and recorded their statement. He also examined the revenue officials and recorded their statement. Now the investigation is under progress in full-fledged manner to find out the real truth in the above case. As per the post-mortem report, three firearm injuries are sufficient to cause death and all the three injuries are ante-mortem in nature. In respect of other wounds 1 to 12 are concerned, they were happened to the deceased, while he was tried to escape from the custody of the second respondent and he fell down on the cluster of stones and sustained injuries. Therefore, there is absolutely nothing warrant to conduct re-post-mortem on the body of the deceased. He further submitted that after conducting post-mortem the body of the deceased was handed over to the petitioner and her relatives for his last rites. After receipt of the body, on the same day, the petitioner and her relatives buried the body. If any grievances over the post-mortem, the petitioner would have very well kept the body in cold storage and sought for re-post-mortem. The body was buried on 22.08.2020 and now almost one month over. Therefore, the re-post-mortem also would not helpful to the petitioner and hence he sought for dismissal of this petition.

4. Heard Mr.R.Sankarasubbu, learned counsel appearing for the petitioner and Mr.N.Natrajan, learned State Public Prosecutor appearing for the respondents.

5. The petitioner is the mother of the deceased Shankar. The second respondent as directed by the Deputy Commissioner of Police, Kilpauk, formed a special team for execution of non-bailable warrant pending against the accused person viz., deceased. On 20.08.2020, while intercepting one Dhilipkumar, he found to be in possession of 10 packets of Ganja and the same was seized under the mahazar. On interrogation, he confessed that the said contraband was received from his mother one Rani and one from Shankar viz., the deceased. On his confession the said Rani was interrogated and she was also found in possession of 2 Kg of Ganja. After recording her confession, the second respondent arrested the deceased at about 4.30 am., on 21.08.2020.

6. The deceased Shankar was an habitual offender and he involved in 54 cases on the file of the various police station in and around Ayanavaram. In which, three of them are murder cases (302 IPC) and 11 cases are attempt to murder cases (307 IPC) and 2 NDPS cases and other cases are robbery (397 IPC). In fact, he was detained under Goodas on nine times. He never

appeared before the trial Court as such there are six non-bailable warrants are pending as against the deceased.

7. On his confession and on his information, the second respondent and his team mates reached new Avadi road opposite to RTO office at about 6.30 a.m. The deceased was directed to take the Ganja which was hidden by him. But he suddenly took a patta knife, which was hidden inside the cluster of stones and attempted to kill the second respondent. Fortunately, he escaped from the attack and had no other option than to open the fire towards the legs of the accused to incapacitate him. When the deceased ducked to escaped from the fire, he got injuries on his body. Again the deceased attempted to attack the policeman viz., Mubarak and as such he sustained injuries over his right arm and left shoulder. Therefore, the second respondent was constrained to open firearm on the deceased, thereby he sustained injury by the bullets on his body. Immediately both the injured persons ie., the constable and the deceased were taken to the Kilpauk hospital for treatment by the second respondent, where the deceased was declared as died.

8. Thereafter the second respondent filed his special report and on the basis of the special report, the Assistant Commissioner of Police, Kilpauk Wing, registered the FIR in Crime No.979 of 2020 for the offences under Sections 332, 307 of IPC and Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, r/w 176(I-A) (i) of Cr.P.C. Thereafter the entire investigation has been transferred to the file of the third respondent herein viz., Superintendent of Police, CBCID, North zone, Chennai. On receipt of the entire case, the third respondent deputed the Deputy Superintendent Police, CBCID Metro wing-I, Egmore, Chennai for investigation. Therefore, the main prayer sought for in this petition is considered by the first respondent and now the investigation is handed over to the file of the Deputy Superintendent Police, CBCID Metro wing-I, Egmore, Chennai.

9. Insofar as the interim prayer for repost-mortem is concerned, the learned counsel appearing for the petitioner would submit that incompetent and inexperience doctors conducted the post-mortem and as such necessarily the repost-mortem to be conducted. He also raised ground that the petitioner and her family members were not given opportunity of participation in the post-mortem and they were not duly informed about the post-mortem and they were not permitted to present in the course of post-mortem. In this regard, the learned counsel appearing for the relied upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.1255 of 1999 dated 23.09.2014 in the case of Peoples Union for Civil Liberties & anr Vs. State of Maharashtra & ors, which held as follows :-

"28. Universal Declaration of Human Rights (UDHR) has framed certain general

principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions. The principles so framed police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(1A) Where,- (a) any person dies or disappears, or (b) 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 authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty- four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State

Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation.- In this section, the expression "relative" means parents, children, brothers, sisters and spouse.

1. Requiring states to provide the investigative authority with sufficient power to compel any relevant parties including the official implicated to testify (Provision 10).

2. Obligating states to provide for an independent inquiry into alleged police misconduct through an appointed commission when existing procedures are inadequate or when there are allegations of such inadequacies. The commission members must be independent of individuals implicated in the incident (Provision 11).

3. Requiring that those conducting autopsies must be able to function independently and impartially (Provision 14).

4. Requiring states to protect those who witness or allege police misconduct and obligating states to remove the implicated officers from any involvement in the investigation (Provision 15).

5. Affording the victim's family and legal representative the right to request that an independent qualified representative be present during the autopsy of the victim's body (Provision 16) by the UDHR are intended to guarantee independence while investigating police killings and help in preventing potential for abuse, corruption, ineffectiveness and neglect in investigation.

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31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant - PUCL, amicus curiae and the affidavits filed by the Union of India, State

Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

(1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form.

Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved.

Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.

However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the

case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports:

- (i) Date and place of occurrence.
- (ii) Police Station, District.
- (iii) Circumstances leading to deaths:
 - (a) Self defence in encounter.
 - (b) In the course of dispersal of unlawful assembly.
 - (c) In the course of affecting arrest.
- (iv) Brief facts of the incident.
- (v) Criminal Case No.
- (vi) Investigating Agency.
- (vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:
 - (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and

(b) whether use of force was justified and action taken was lawful.

(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

(12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer / counselling, same must be offered.

(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

10. In the above case, the Hon'ble Supreme Court of India held that the post-mortem must be conducted by two doctors in the District Hospital and the post-mortem shall be videographed and preserved. In the case on hand, report called for from the learned Magistrate, who ordered post-mortem and also present in

the post-mortem. He submitted his report dated 07.09.2020 vide Dis.No.107/2020 as follows :-

"I most humbly submitted that after receiving the requisition I went along with my office assistant Mr.Gopi to the Kilpauk Hospital and conducted the inquest after the body was identified by one Renuga, sister of the said Sankar and Govindammal, mother of the deceased Sankar in mortuary and I prepared a death report in the presence of the said Govindammal and Renuga and I had recorded the statement of the said Govindammal and Renuga and submitted requisition to conduct the post-mortem to the professor and Head of the department and forensic medicolegal cases, Kilpauk Hospital, Chennai, on 21.08.2020 itself. But the doctors stated that if post-mortem is started it will finished in the night hours. Hence as per the judgment of the Hon'ble High Court post-mortem could not be done in the night hours. Hence I informed to the Sankar's sister Renuka and Sankar's mother Govindammal that post-mortem will be conducted on 22.08.2020 at 10.30 am. After that I visited the occurrence place and I had gone to the police station and verified the registers and obtained true copy of the registers.

I most humbly submitted that on 22.08.2020 I had gone to the Kilpauk Medical College Hospital with office Assistant Mr.Gopi at 10.20 am., and directed my office Assistant to inform to the said Govindammal and Renuka ie., the mother and sister of the said Sankar. The office Assistant Gopi stated that the said Govindammal and Renuka are not available in the hospital premises and after that I directed the police officials to intimate the relatives of the deceased Sankar regarding the post-mortem and they stated that the house of the Sankar's mother Govindammal and Sister Renuka is locked and there are not available in the hospital premises also. Then I directed the police to take video of the post-mortem. Since, as per Section 176(1A)(5) of Cr.P.C., within 24 hours, post-mortem should be done. Hence

post-mortem was conducted in my presence and on the supervision of professor and Head of the Department of Forensic Science, Kilpauk, Government Medical College Hospital, Dr.R.Selvakumar and Asst. Professor of Forensic Medicine Dr.S.Sivakumar, Dr.J.Visnu Rajkumar, and the post-mortem is videographed by Mr.P.Jeevanantham, 35, B Block, Osankulam, Kilpauk, Chennai -10 and Mr.M.Monish Balu, 15, Mangalapuram 5th Street, Chetpet, Chennai-31 from 11.30 a.m., and the post-mortem completed at 01.50 p.m., on 22.08.2020 and I handed over the body of the said Sankar to Mr.K.Muthukumar HC 36114, K2 Police Station and directed to handed over the body of the said Sankar to the relatives of the Sankr for last rites, and original post-mortem report and C.D's and memory card is handed over to me through sealed cover through office Assistant Mr.Gopi and the doctors Mr.s.Sivakumar and Mr.J.Visnu Rajkumar were examined by me. I herewith enclosed the requisition given by the Assistant Commissioner of Police, Kilpauk and requisition given by me to the Head of the department, forensic science to conduct post-mortem and copy of the post-mortem and statements of the doctors herewith."

As per the above report the post-mortem was conducted on the supervision of Dr.R.Selvakumar, Professor and Head of the department of Forensic Science, Kilpauk Hospital, by the Assistant Professor Dr.Sivakumar, MD Forensic Medicine and Dr.Vishnu Rajkumar, MD, Forensic Medicine, Chennai. Further entire post-mortem was videographed and the CD and the memory card were also available with the Magistrate. Therefore, the guidelines issued in the PUCL cases have been duly followed in the case on hand.

11. Next the other ground raised by the petitioner is that, the petitioner and her family members were never informed about the post-mortem and they ought to have been served with the summons through the learned Magistrate or by the revenue officials. It is seen from the report submitted by the learned V Metropolitan Magistrate, the petitioner and her family member were duly enquired on the inquest conducted by the learned Magistrate on the body of the deceased on 21.08.2020 and informed that the post-mortem will be conducted on 22.08.2020 at about 10.30 am., since on 21.08.2020 itself, the post-mortem was

not able to conduct by the doctors for the reason that the post-mortem would go up to night hours and it would not be permissible under law. Therefore, on 22.08.2020, the learned Magistrate went to the hospital and directed the police personnel to inform about the post-mortem to the petitioner as well as her family members. In fact, the learned Magistrate directed his assistant to inform the petitioner and he found that nobody was available in the hospital premises and thereafter, the police officials were directed to inform to their respective houses. They found that the houses of the petitioner as well as the sister of the deceased were locked out and the same was duly informed to the learned Magistrate. Therefore, the petitioner and her relatives were duly informed that the post-mortem to be conducted on 22.08.2020.

12. In respect of the injuries as mentioned in the post-mortem, it is relevant to extract the wound description as follows :

1. FIREARM INJURY (1):

Entry wound: Oval shaped entry wound with inverted reddish marginal abrasion of 08cmX1cmXCavity deep seen over the outer aspect of mid szillary line corresponding to the 5th intercoastal space. The surrounding area of the wound shows tatooing. On further dissection of the wound, it has perforated obliquely in the lower aspect of the right lobe of the lung (lateral to medial aspect) and perforated out downwards through the left side mid axillary line corresponding to the 8th intercoastal space. The entire path of the bullet travelled shows extravasation of blood and clotted blood in the surrounding soft tissues.

Thoracic Cavity :- Right side thoracic cavity contains 340 grams of dark red clotted blood and 800 ml of fluid blood and left side thoracic cavity contains 1450ml of fluid blood.

Exit wound :- Perforating wound of 1.5cm X1.2cm with everted margins seen over the left side mid axillary line corresponding to the 8th intercoastal space. This wound is 19 cm vertically downwards from the center of szilla and 132 cm vertically upwards from the left foot.

The track of the wound is 46 cm (obliquely and downwards).

2. FIREARM INJURY (2)

Entry wound :- Oval shaped entry wound with inverted reddish marginal abrasion of 1 cm X 0.8cm X Cavity Deep seen over the front of middle 1/3 of left side of the chest. The entry wound is 18 cm vertically below the medial end of left clavicle. On further dissection of the wound, it has perforated obliquely into the front of lower aspect of pericardial sac and perforated out through the heart. Perforating wound of 1 cmX1cmX cavity deep seen over the front of lower aspect of the pericardial sac. Pericardial sac contains 80 ml of fluid blood with 60 mg of dark red clotted blood.

On further dissection of the heard it has perforated the right ventricle of the heard and perforated out through the back of lower 1/3 of left side of the chest corresponding to the lateral borders of D-7 and D-8 Thoracic Vertebrae. Glancing injury to the lateral aspect of D-7 and D-8 Vertebrae is noticed (Portion of the thickness of the bone is taken out). The entire path of the bullet wound shows extravasation of blood and clotted blood in the surrounding soft tissues.

Exit wound : Perforating wound of 1.5 cm X 1.3 cm with everted margins seen over the back of lower 1/3 of left side of the chest corresponding to the lateral aspect of D-7 and D-8 Thoracic Vertebrae's. This wound is 28 cm vertically downwards from the C-7 Cervical vertebrae and 128 cm vertically upwards from the left foot. Left side Thoracic Cavity contains 1450ml of fluid blood.

The track of the wound is 26 cm (Anteriorly, slightly upwards and medially)

3. FIREARM INJURY (3)

Entry wound:- Over shaped entry wound with inverted reddish marginal abrasion of 1cm X0.9cm X Cavity deep seen over the front of centre of the upper quadrant of the abdomen in the epigastric region. On further dissection of the wound, it has penetrated the anterior surface of right

upper lobe of the liver, perforated out through the posterior surface of the right upper lobe of the liver and exited out through the back of middle 1/3 of right side of the chest corresponding to D-7 thoracic vertebrae. The entire path of the bullet travelled shows extravasation of blood and clotted blood in the surrounding soft tissues.

Peritoneal Cavity :- contains 630 ml of fluid blood with 40 mg of dark red clotted blood.

Exit wound : Perforating wound of 1.5 cm X 1.2 cm with everted margins seen over the back of middle 1/3 of right side of the chest. This wound is 14 cm vertically downwards from the lower border of right scapula and 127 cm vertically upwards from the right foot.

The track of the wound is 28 cm (Inwards, upwards, laterally)

D. OTHER WOUNDS:-

1. Dark red contusion of 9 cm X 6 cm X muscle over the back of right wrist
2. Dark red contusion of 7 cm X 7 cm X muscle over the back of left wrist
3. Dark red contusion of 11 cm X 15 cm X done deep over the front of right knee.
4. Dark red contusion of 5 cm X 3 cm X muscle deep over the back of middle 1/3 of the left forearm.
5. Brownish black abrasion of 1 cm X 0.5 cm over the back of lower 1/3 of right forearm.
6. Brownish black abrasion of 3 cm X 1 cm obliquely placed over the back of right wrist.
7. Brownish black abrasion of 2 cm X 1 cm over the outer aspect of right knee.
8. Brownish black abrasion of 2 cm X 1 cm, 1.5 cm X 1 cm over the front of left knee.
9. Brownish black abrasion of 4 cm X 2 cm over the back of right knee
10. Brownish black abrasion of 9 cm X 3 cm over the back of upper 1/3 of left leg.
11. Brownish black abrasion of 4 cm X 2 cm over the back of middle 1/3 of left leg.
12. Brownish black abrasion of 3 cm X 2 cm over the back of middle 1/3 of left

leg.

There are no other injuries anywhere over the dead body.

.....

OPINION:-

i) Probable time since death (Keep all factors including observations at inquest)

The approximate time since death is 24 to 48 hours prior to post-mortem examination

ii) Cause & manner of death - The cause of death to the best of my knowledge and belief is

a) Immediate cause - Hemorrhage and shock

b) Due to - Firearm injury to chest and abdomen

c) Which of the injuries are ante-mortem/post-mortem and duration of ante-mortem?

All the injuries mentioned in the post-mortem certificate are ante-mortem in nature.

d) Manner of causation of injuries : Injuries caused by a firearm.

e) Whether injuries (individually or collectively) are sufficient to cause death in ordinary course of nature or not?

Injuries mentioned in the post-mortem certificate are sufficient to cause death in the ordinary course of nature.

iii) Any other :- Nil"

The above post-mortem report revealed that the firearm injuries 1 to 3 are ante-mortem in nature and they are sufficient to cause death in the ordinary course of nature.

13. Further it seen from other wounds viz., 12 numbers are all contusion wound on the wrist on both hand and forearm and front side of the knees and legs, were according to the prosecution, happened while the deceased was trying to escape and fell down on the cluster of stones. Insofar as the wound Nos.5 to 12 all are abrasions. On receipt of the post-mortem report, the investigating officer viz., the Deputy Superintendent of Police, CBCID has started investigation and it is pending. Therefore, the re-post-mortem would not help the petitioner in any way, as pointed out by the learned counsel appearing for the petitioner. All the judgments relied upon by the learned counsel appearing for the petitioner had arisen on different set of facts on different circumstances. Therefore those judgments are no way helpful to the case on hand. Further the petitioner buried the dead body of his son on 22.08.2020

itself. Therefore, this Court is of the opinion that there is no necessity for the repost-mortem on the body of the deceased.

14. In view of the above discussion, this Court finds no reason for ordering re-post-mortem on the body of the deceased viz., the son of the petitioner herein. Therefore, this petition is devoid of merits and the interim direction sought for by the petitioner is dismissed. Insofar as the transfer of investigation is concerned, the case in Crime No.979 of 2020 has already been transferred to the file of the third respondent viz., Deputy Superintendent of Police, CBCID, Metro Wing-I, Chennai and the investigation is under progress. The third respondent is directed to complete the investigation and file final report within a period of twelve weeks from the date of receipt of a copy of this Order.

15. With the above directions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

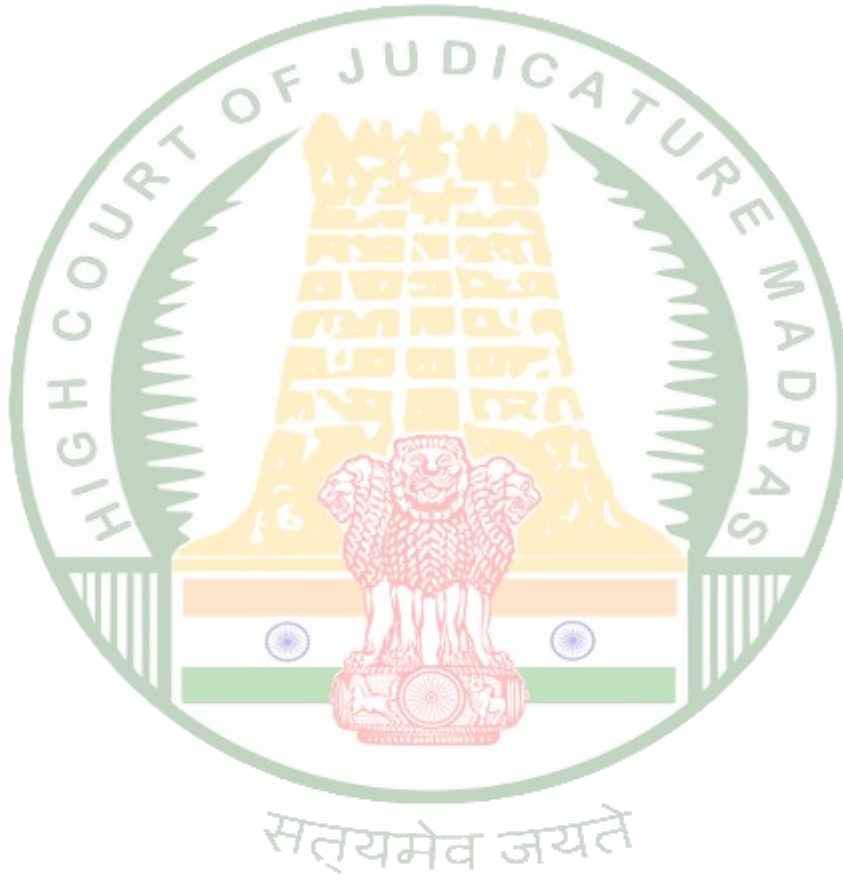
To

1. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai - 600 007.
2. The Inspector of Police,
K-2, Ayanavaram Police Station,
Chennai - 600 023.
3. The Superintendent of Police,
Crime Branch CID,
North Zone, Egmore,
Chennai - 8.
4. The Deputy Superintendent Of Police,
CBCID, Metro wing-I, Chennai
5. The Public Prosecutor
Madras High Court,
Chennai.

+1cc to Public Prosecutor, Advocate, S.R.No.31892

CRL.O.P.No.13288 of 2020
and Crl.M.P.No.5166 of 2020

SV(CO)
RV(11/11/2020)



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