

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.17886 of 2020
and
Crl. M.P. No.6971 of 2020

S. Prema
W/o. Selvamurugan

...Petitioner

Vs.

1. The Superintendent of Police
Cuddalore District, Cuddalore.
2. The Deputy Superintendent of Police
Neyveli Division
Neyveli, Cuddalore District.
3. The Station House officer
Neyveli Town Police Station, Neyveli
4. The Jail Superintendent
Sub-Jail, Virudhachalam
Cuddalore District.
5. Arumugam
The Inspector of Police
Neyveli Police Station
Neyveli, Cuddalore District.
6. Sudhakar
Attached to DSP Office
Crime Team
Neyveli, Cuddalore District.
7. Arivazhagan
Crime Team,
Attached to DSP Office,
Neyveli, Cuddalore District

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC praying to direct the first respondent to register a case against the respondents 5 to 7 based on the petitioner's complaint dated 05.11.2020 and to investigate same in accordance

with law and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of this case.

For Petitioner : Mr. P. Kumaresan
for M/s. S. Manoharan
For Respondents
For R1 to R4 : Mr. A. Natarajan
Public Prosecutor

ORDER

The Criminal Original Petition has been laid by the petitioner mainly to grant an interim direction to the respondents 1 to 3 to conduct the postmortem of the deceased Selvamurugan, her husband, by appointing doctors from JIPMER Hospital, Puducherry and also sought for a direction to the first respondent to register the case against the respondents 5 to 7 based on her complaint dated 05.11.2020 and to investigate the same in accordance with law.

2. Complaining that her husband had been missing from 28.10.2020 and despite her efforts to prefer a complaint with reference to the same in the police station with the help of her relatives, however, her efforts with reference to the same ended in vain and it is further stated that the officials belonging to DSP office crime team, Neyveli, namely Sudhakar and Arivazhagan forced her to part with 10 sovereigns of gold chain for releasing her husband and the same had been turned down by her on 29.10.2020 and on 30.10.2020, the third respondent, namely, the Station House Officer, Neyveli Town Police Station, Neyveli, had called upon her to come to the police station and at the police station, she saw her husband weeping and apprised her that he was threatened and coerced to admit the theft cases and beaten all over the body with lathi and thereby unable to walk and her husband looked very tired and further it is stated that she had handed over a sum of Rs.5,000/- as directed by the police through her relative and on 02.11.2020, when she went to visit her husband at Virudhachalam Sub Jail, her husband was unable to talk with her and showed only his hand and she was informed that her husband sustained injury on the throat and was unable to eat and her husband was taken to the Government Hospital, Virudhachalam and despite her insistence to treat her husband as inpatient, the jail/police authorities got discharged her husband from the hospital and took him to jail. Again on 04.11.2020, she was informed by the jail authorities that her husband was admitted in Virudhachalam Government Hospital and when she went to Virudhachalam Government Hospital, she was further informed that her husband had died and thus it is alleged by the petitioner that her husband was brutally attacked by the officials of the DSP Crime Party, namely, Sudhakar and

Arivazhagan and one Arumugam, the inspector attached to Neyveli Town Police Station and therefore, prayed for taking necessary action against the abovesaid persons and register her complaint against them with reference to the death of her husband. Further it is alleged that no proper postmortem would be conducted on the dead body of her husband as police officials are involved in the death of her husband and the postmortem would be influenced by the respondent police to get a favourable report and thereby they are endeavouring to tamper with the evidence and accordingly prayed for the relief of conducting the postmortem by appointing doctors from JIPMER Hospital, Puducherry and for the other relief as aforestated.

3. When the matter came up for hearing before this Court on 10.11.2020, the State Public Prosecutor entered appearance on behalf of the respondents 1 to 4 and put forth that the postmortem of the deceased had already been conducted on 06.11.2020 in the presence of the team of doctors and the same was videographed and the postmortem was also forwarded to the concerned Magistrate and further reported that the investigation has been transferred to CB CID for conducting further investigation in the matter. For filing counter in the matter, the matter stood adjourned to 18.11.2020 i.e. today.

4. When the matter is taken up for enquiry, the counter has been filed by the second respondent. Now according to the counter, following the death of the deceased, the case had been registered in Crime No.2144/2020 under Section 176(1-A) Cr.PC in Virudhachalam Police Station. Further it is stated that the Chief Judicial Magistrate, Cuddalore had nominated the Judicial Magistrate No.I, Virudhachalam, for conducting the enquiry contemplated under Section 176(1-A) Cr. PC. It is also put forth that following the direction of the Judicial Magistrate No.I, Virudhachalam, the postmortem was conducted by a team of qualified doctors as per the guidelines of the NHRC and the same was videographed and the post mortem had commenced at 3.00 p.m on 06.11.2020 and ended at 4 p.m. and thereby it is contended that since the postmortem had been done under the supervision of the Judicial Magistrate No.I, Virudhachalam, there is no necessity for re-postmortem as prayed for and denied that the deceased had been taken to illegal custody on 28.10.2020 itself. Whereas, according to the respondent police, he had been taken to custody in crime No.1073/2020 dated 30.10.2020 only on 30.10.2020 at 10.40 a.m and produced before the Magistrate at 11.45 P.M. According to the police, only after the remand, as the deceased is found to be suffering from epilepsy and the same had also been confirmed by the petitioner, accordingly he was advised for further treatment and on account of the another attack of epilepsy by the deceased, he was immediately rushed to the Government Hospital, Virudhachalam and was declared dead by

the duty doctor and thereby the postmortem had been done by the doctors as above mentioned.

5. Now according to the petitioner's counsel, when she had alleged that her husband had been taken to unlawful custody on 28.10.2020 itself, the case of the prosecution that he had been arrested only on 30.10.2020 can be taken only with a pinch of salt. It is further put forth that the petitioner is having materials to substantiate the abovesaid allegation. Further it is stated that the petitioner's husband had been subjected to cruelty at the hands of the respondent police, particularly, the officials of the DSP Office Crime Team as aforestated and thereby only on account of the injuries inflicted on her husband by the police officials, her husband's death had occurred and with a view to suppress the same, the police had hurriedly conducted the postmortem for hiding the cause of death of her husband and thereby tampered with the evidence and therefore, put forth that this Court, considering the unique facts and circumstances of the case, should direct a re-postmortem of the deceased as per law for culling out the truth. As aforestated, the State Public Prosecutor reiterated the contentions put forth in the counter and contended that the postmortem had been conducted by the competent doctors in accordance with the directions of the Magistrate and there is no necessity for ordering re-postmortem as prayed for by the petitioner and therefore prayed that the relief sought for by the petitioner for re-postmortem need not to be entertained and the petition is liable to be dismissed.

6. The custodial death had occurred qua the petitioner's husband. Now the petitioner has complained of ill treatment and torture of her husband by the police officials. The same had been controverted by the respondent police. Only on account of the police torture, it is stated that when the petitioner met her husband at the jail he was unable to converse with her and he had also complained about the illtreatment meted out to him when she met him at the police station at the first instance.

7. In the light of the abovesaid factors, when a serious doubt has been raised with reference to the cause of death of the deceased, namely, the petitioner's husband during custody, the petitioner alleging that her husband died only due to the injuries meted out to him by the torture and illtreatment caused by the police officials and though according to the respondent police the deceased had been taken to custody only on 30.10.2020 at 10.40 a.m. and produced before the Magistrate at 11.45 p.m. for remand, however, no proper explanation has been assigned as to why there is a delay in producing the accused /deceased at 11.45 p.m. when he is alleged to have been arrested at 10.40 a.m. itself and whereas, according to the police, the deceased

had died only on account of the epilepsy, when disputed questions of facts cannot be adjudicated under Section 482 Cr.P.C, keeping all the abovesaid points open and to obviate the doubts entertained by the petitioner and when it is further informed that the dead body is lying in the hospital, in similar and identical circumstances, the Division Bench of this Court in the decision reported in 2019 SCC on line mad 1491 (Rohin Kumar vs. District Collector and others), has considered the issues involved and accordingly gave directions to the Magistrate who is to conduct the enquiry under Section 176(1-A) of Cr.P.C to take a call on the grievances of the petitioner whether to conduct a re-postmortem as per his/her wisdom and in accordance with law. The following observations/directions made by the Division Bench are relevant for considering the issues involved in this matter and the same are extracted below:

"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 Palanisamy. 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 duly assigned expeditiously."

8. Following the abovesaid dictum/direction made by the Division Bench, inasmuch as it is now represented that the Judicial Magistrate No.I, Virudhachalam has been nominated to conduct the enquiry under Section 176(1-A) Cr.PC, and when according to the petitioner's counsel, the petitioner has not been examined by the abovesaid Magistrate during the inquest, particularly, as regards the cause of the death of her husband, without expressing any opinion on the nature of the death of the deceased as put forth by the petitioner and the circumstances surrounding the death as claimed by the respondent, I am inclined to issue the following directions.

(i) The petitioner/her Advocate are directed to submit their representation to the Judicial Magistrate No.I, Virudhachalam, qua the cause of death of her husband as claimed by the petitioner immediately without delay i.e. positively on the next day of the receipt of the copy of this order.

(ii) The Judicial Magistrate No.I, Virudhacalam is directed to consider the representation made by the petitioner/her Advocate with reference to the cause of death of her husband and accordingly take a decision whether a re-postmortem is to be conducted on the deceased as sought for by the petitioner in his or her own wisdom and in accordance with law particularly the procedures outlined under Section 176(1-A) Cr. P.C. within two days from the date of receipt of copy of the representation of the petitioner.

(iii) The Judicial Magistrate No.I, Virudhacalam is directed to complete the task assigned expeditiously and in accordance with law as directed above and is also directed to strictly adhere to the guidelines formulated by the Division Bench referred to supra.

9. With reference to the relief sought for by the petitioner for a direction to the first respondent to register the case against the respondents 5 to 7, based on the complaint dated 05.11.2020, in the light of the peculiar facts and circumstances of the case, the first respondent is directed to adhere to the guidelines formulated by the Apex Court in the decision reported in 2014-1-LW (crl) 1 (Lalithakumari Vs. Govt. of UP) and take a decision with reference to the same and dispose of the same in accordance with law.

10. With the abovesaid observations/directions, the Criminal Original Petition is closed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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Copy to

1. The Judicial Magistrate No.I, Virudhacalam
2. The Superintendent of Police
Cuddalore District
Cuddalore.
3. The Deputy Superintendent of Police
Neyveli Division
Neyveli, Cuddalore District.

4. The Station House officer
Neyveli Town Police Station
Neyveli

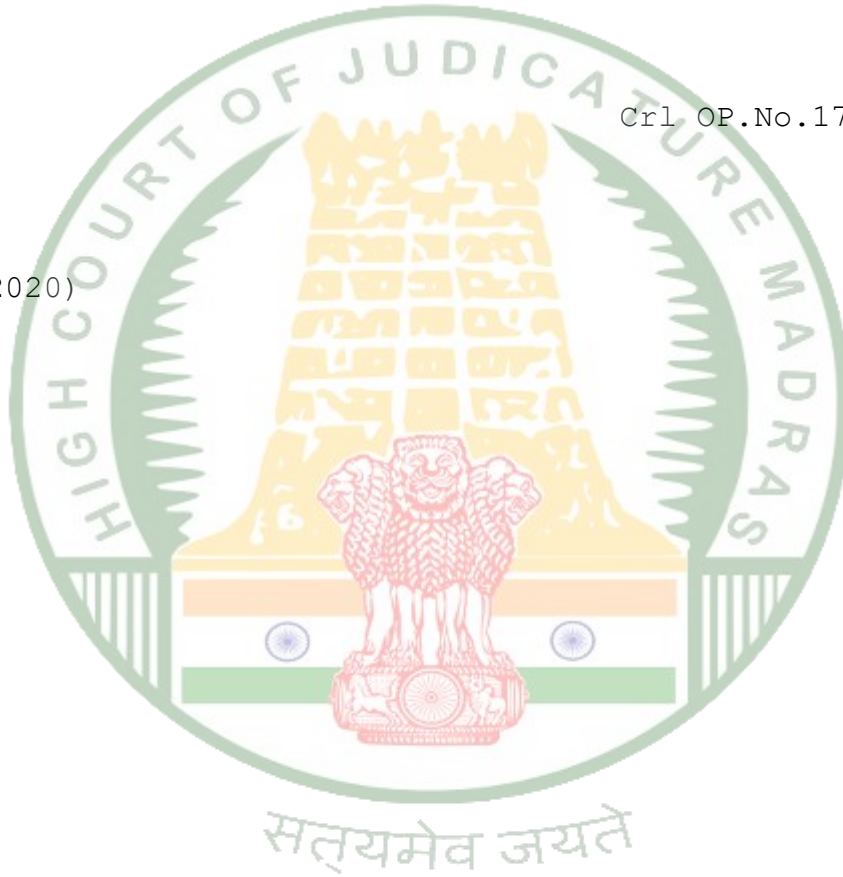
5. The Jail Superintendent
Sub-Jail, Virudhachalam
Cuddalore District.

6.The Public Prosecutor, High Court, Madras

+1 CC to Mr.E. Manoharan, Advocate sr 37018.

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SAI (CO)
SP(19/11/2020)



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