

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Tuesday, the Twenty Second day of December Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice T. RAVINDRAN

WMP No.24061 of 2020

in

WP NO.19462 of 2020

PRABHA

[PETITIONER]

VS.

1. THE SECRETARY TO GOVERNMENT [RESPONDENTS]

HOME DEPARTMENT
FORT. ST. GEORGE
CHENNAI 600 009.

2. THE DIRECTOR GENERAL OF POLICE

TAMIL NADU POLICE
DR. RADHAKRISHNAN SALAI
MYLAPORE, CHENNAI 600 004

3. THE DISTRICT COLLECTOR

CHENNAI DISTRICT
CHENNAI 600 001

4. THE COMMISSIONER OF POLICE

GREATER CHENNAI
EGMORE, CHENNAI 600 008.

5. S. SARAVANAN

INSPECTOR OF POLICE
D3, ICE HOUSE POLICE STATION
CHENNAI 600 005

Writ Miscellaneous Petition filed under Article 226 of the Constitution of India praying to grant interim direction, direction the respondents to conduct re-postmortem of the body of Mahalingam,, Son of Kandasamy, aged 38 years, deceased in crime No. Not known of 2020 on the file of the Inspector of Police, J4, Kotturpuram Police Station, Chennai 600 085, (WMP.24061/2020) pending disposal of the above writ petition. WP.19462/2020

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.R.SANKARASUBBU, Advocate for the petitioner and of MR.A.NATARAJAN, PUBLIC PROSECUTOR on behalf of the Respondents 1 TO 4 the court made the following order:-

The Writ Petition has been laid by the petitioner to pass an order of direction or writ particularly a writ of mandamus directing the respondents 1 to 4 to take action on the petitioner's representation dated 10.12.2020 and further order CBCID investigation, Chennai and to award compensation of Rs.1 crore for the custodial death of her husband Mahalingam at the hands of the 5th respondent and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

2. Along with the Writ Petition, the petitioner has filed WMP No.24601 of 2020 seeking for a direction to the respondents to conduct re-postmortem of the body of Mahalingam, Son of Kandasamy, aged 38 years, the deceased in Crime No.Not known of 2020 on the file of the Inspector of Police, J4, Kotturpuram Police Station, Chennai 600 085, pending disposal of the Writ Petition.

3. The other WMP No.24058 of 2020 has been laid for awarding an interim compensation of Rs.50.00 lakhs to the dependants of the deceased Mahalingam, who died due to the custodial death caused by the 5th respondent, pending disposal of the Writ Petition.

4. The WMP No.24059 of 2020 has been laid seeking for an interim direction to transfer the case in Crime No. Not Known of 2020 on the file of the Inspection of Police, J4, Kotturpuram Police Station, Chennai 600 085, to the Inspector of Police, CBCID, Chennai, pending disposal of the Writ Petition.

5. The Writ Petition along with the abovesaid WMPs came up for consideration before this Court for the first time on 18.12.2020 and the Additional Public Prosecutor, taking notice on behalf of the respondents, sought time to file her response in writing and, accordingly, this Court has directed the respondents to file the counter on 21.12.2020.

6. On 21.12.2020, only the status report has been filed by the respondents along with typed set of documents without serving the copy of the same to the petitioner's counsel and it was also represented by the learned Public Prosecutor that this Court may refrain from serving the copy of the status report and the typed set of documents to the petitioner's counsel for the present. Taking into consideration the abovesaid factors, the status report and the typed set of documents filed by the respondents were directed to be kept in the custody of the Registrar-Judicial for the present until further orders.

7. The counsel for the petitioner contended that without knowing the stand of the respondents with reference to the issues raised by him in the Writ Petition and in the WMPs, he would be handicapped in presenting this case effectively and accordingly sought for a direction to the respondents to file the counter with reference to the same. Accordingly, on the Public Prosecutor seeking time to file the counter by today, this Court directed the learned Public prosecutor to file the counter with reference to the issues raised by the petitioner counsel in the matter by today after serving copy of the counter to the petitioner's counsel in advance.

8. Today, when the matter came up for consideration, the petitioner's counsel represented that he has received the copy of the counter and the typed set of documents put forth by the respondents.

9. Considering the issue as to whether a re-postmortem of the deceased is required to be conducted as prayed for by the petitioner at the earliest without any delay, leaving aside the other issues raised by the petitioner in the Writ Petition, the submissions were made by the petitioner's counsel and the learned Public Prosecutor only confining to the points as to whether a re-postmortem should be ordered as prayed for by the petitioner on the deceased Mahalingam's body.

10. Shorn of unnecessary details, according to the petitioner, her husband Mahalingam, an auto driver, was murdered by the 5th respondent and the 5th respondent took him into illegal custody on 06.12.2020 without informing the reasons and on learning about the same, she rushed to the 5th respondent police station on 07.12.2020 and she was apprised that her husband was taken into custody for enquiry relating to the ganja case. She refused to leave the police station without knowing the details and further according to the petitioner, on 08.12.2020, on repeated requests, she was allowed to see her husband in Saidapet Sub Jail and on seeing her husband, she was shocked to find that her husband's body was full of injuries and swelling in the fore arm, knee and abdomen caused by severe beating by hard object and when she questioned about the same to the 5th respondent, he had replied that he had been beaten for the purpose of enquiry and according to the petitioner, her husband has been falsely implicated in the ganja case in Crime No. 1659 of 2020 for the offence punishable under Section 8(c) r/w 20 (b)(ii) B of NDPS Act and further according to her, her husband, while in the detention of the police, had been tortured and caused to death by the police and therefore, according to her, she had lodged the complaint to take action against the 5th respondent, who had caused her husband's death on 10.12.2020. But, no action had been taken on the said complaint and further stated that even the Metropolitan Magistrate, who had been nominated to conduct the enquiry as contemplated under Section 176(1) A Cr.PC, had not evinced interest in unearthing the truth by informing her to have the assistance of her own doctor to bring home the truth qua the death of her deceased husband and further stated that the postmortem was conducted in a hurried manner with a view to conceal the truth and protect the police officers involved in the

death of her husband and further according to her, the postmortem was not done in accordance with the guidelines fixed by the Apex Court in the PUCL's case and accordingly seeking for appropriate reliefs, she has laid the Writ Petition.

11. The learned Public Prosecutor during the course of arguments reiterated the averments put forth in the counter filed by the respondents and stated that the case in Crime No. 1659 of 2020 had been registered against one Neelakandan and the petitioner's husband Mahalingam (since deceased) under Section 8(c) r/w 20(b) (ii) (B), 25 of NDPS Act, 1985 on the ground that they were in the possession of 8 Kg of ganja and after they were apprehended, they were brought to the police station and kept in the police station and after the registration of the FIR for the purpose of their production before the competent Magistrate as per law and the accused persons were treated in a proper manner and no illtreatment or torture was caused to them and they were kept in the lock up attached to the police station on 07.12.2020 and on the next day the accused persons were taken to the hospital for Covid-19 test and general medical test along with the constables and the doctor opined that the accused, in particular the petitioner's husband, were fit for remand and nothing had been complained by the accused persons about any illtreatment caused to them before the medical officer and after the medical check up, the relatives of the accused persons were duly informed about the arrest and after completing all the procedures as contemplated under law, the accused persons were sent for remand and before the jurisdictional Magistrate, the accused persons had not complained of any illtreatment or torture at the hands of the police and recording his satisfaction, the jurisdictional magistrate remanded the accused to custody till 23.12.2020 and it is further put forth by him that as per available records, the petitioner's husband, along with the other accused, was lodged at Saidapet Sub Jail on 08.12.2020 at about 20.30 hours. Due to the ill health of the petitioner's husband, he was taken to Saidapet Government hospital, where he was declared brought dead at 22.30 hours on 09.12.2020 and following the death while in judicial custody, the FIR has come to be registered in Crime No.1156 of 2020 on the file of the Kotturpuram Police Station under Section 176 (1A) (1) of Cr.PC and the IX Metropolitan Magistrate has been nominated to conduct the judicial enquiry. The IX Metropolitan Magistrate made arrangements for the inquest and the postmortem and the inquest was conducted by the Magistrate in the presence of the petitioner and the relatives of the deceased and their statements were recorded and following the same, on the direction of the Magistrate, the postmortem was conducted as per the guidelines fixed by the NHRC by the competent and experienced doctors at Rajiv Gandhi Government Hospital on 10.12.2020 and the same has been video graphed in the presence of the Magistrate and despite all these procedures followed as per law, the petitioner and her relatives refused to receive the body of the petitioner's husband and consequently, the petitioner's husband body had been kept in the cold storage at the Rajiv Gandhi Government hospital. Accordingly, the learned Public Prosecutor put forth that inasmuch as all the guidelines issued by NHRC and

the Apex Court had been studiously followed, there is no necessity for re-postmortem and therefore, sought for the dismissal of the petition.

12. The petitioner's counsel during the course of arguments pointed out serious doubts and infirmities in the typed set of documents projected by the respondents. According to him, the identification marks had not been mentioned in the arrest memo and further according to him, in the Covid-19 test slip said to have been issued by Government Medical College Omandurar Hospital, the phone number mentioned therein does not belong to either the petitioner or her husband and the same is the cell phone number of one Vijay Joray and further put forth that in the patient's sheet enclosed in the typed set of documents, the date and time has not been mentioned, as to who had issued the patients slip and the signature of the Doctor has not been affixed and in the ECG attached to the typed set of documents, against the patient's name, sex is mentioned as female without affixing the age and to mislead the court, the name of Mahalingam has been written subsequently and further more, the date and time of death has not been mentioned in the FIR in Crime No.1156 of 2020 and further according to him, the magistrate who had been nominated to conduct the judicial enquiry under Section 176 (1A) (1) of Cr.PC, had not endeavoured to examine the petitioner and her relatives regarding the cause of death of her husband and not even provided legal assistance as to her entitlement to ascertain the cause of death of her husband and the cause of her husband's death has been kept shrouded in mystery without disclosing any details pertaining to the same and even at present, neither the postmortem certificate nor the opinion of the doctor who had conducted the postmortem had been furnished and therefore, when according to the petitioner, her husband's death has been caused only due to the ill treatment and torture caused to her husband at the hands of the police, particularly the 5th respondent, while he was kept in the lock up, with a view to ascertain the true cause of the death of her husband, according to the petitioner's counsel, the re-postmortem of her husband's dead body is essential and only the same would disclose the truth and hence, accordingly sought for the re-postmortem of her husband's dead body.

13. Per contra, the learned Public prosecutor contended that inasmuch as the petitioner's husband had died only during the judicial custody and his death has not been caused due to the illtreatment and torture at the hands of the respondent police as alleged by the petitioner and following the death, the judicial enquiry has been ordered and the postmortem has been conducted as per the guidelines fixed by the Apex Court, according to him, the re-postmortem as prayed for by the petitioner is unnecessary.

14. Considering the facts and circumstances of the case, when it is found that the respondents have not come out in the counter as to for what reasons, the petitioner's husband had died in the judicial custody other than barely stating that after his lodgment at Saidapet Sub Jail following the remand order on 08.12.2020 at about 20.30 hours, due to ill health he was taken to Saidapet Government Hospital and he was declared brought dead at 22.30 hours

on 09.12.2020. However, when according to the respondent police, the petitioner's husband was in a fit state for remand as per the medical records projected in the matter, the respondent should have come out with a clear case as to what caused the sudden demise of the petitioner's husband at the lock up. With reference to the same, no reason, whatsoever worth acceptance, has been mentioned in the counter, particularly, the respondents have not come out with the clear picture for what specific reason the petitioner's husband died while in the judicial custody. This creates a serious suspicion regarding the death of the petitioner's husband. Moreso, when the petitioner's husband was taken into custody, even as per the case of the respondents, on 07.12.2020 following the registration of the ganja case against him, he had been kept in the lockup attached to the police station on 07.12.2020 and only on the next day he had been produced before the Judicial Magistrate for remand and thereafter lodged in Saidapet Sub Jail, therefore, considering the whole scenario, it is seen that within 24 hours of the arrest of the petitioner's husband, he has died mysteriously. Now the allegation of the petitioner is that only due to the illtreatment and torture caused to her husband by the 5th respondent after detaining him on 06.12.2020, her husband sustained serious injuries and consequently died. Therefore, when a serious doubt has crept in as to what caused the death of the petitioner's husband, that too, within 24 hours of his arrest by the respondent police, in my considered opinion, particularly the petitioner projecting the case of illtreatment and torture of her husband while in custody and her husband having died immediately thereafter, to alleviate the doubts entertained by the petitioner, the IX Metropolitan Magistrate should have taken a call, being the authority under Section 176(1A) (1) Cr.PC as to whether the re-postmortem of her husband's dead body should be ordered to elicit the truth as to the real cause of her husband's death.

15. 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 the 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, when as above noted her husband had died immediately following the arrest within 24 hours during the judicial custody and when no reason has been given as to for what reason her husband had died during the judicial custody by the respondents, when a serious doubt arises with reference to her husband's death particularly when according to the respondents themselves, her husband was found to be fit and healthy as per the medical records, when such disputed questions of facts cannot be adjudicated under section 482 Cr.PC, hence 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."

16. Following the abovesaid dictum/direction made by the Division Bench, inasmuch as it is now represented that the IX Metropolitan Magistrate, Saidapet, Chennai, 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 IX Metropolitan Magistrate, Saidapet, Chennai 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 IX Metropolitan Magistrate, Saidapet, Chennai, is directed to consider the representation made by the petitioner/her Advocate with reference to the cause of the 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 the receipt of the copy of the representation of the petitioner.**

(iii) The IX Metropolitan Magistrate, Saidapet, Chennai 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.

17. With reference to the other reliefs sought for by the petitioner in the Writ Petition and other Writ Miscellaneous Petitions, the same would be considered appropriately on the next hearing date.

18. With the abovesaid observations/directions, the WMP No.24061 of 2020 is accordingly ordered.

19. Post the Writ Petition and the other Writ Miscellaneous Petitions in the first week of January 2021.

-sd/-
22/12/2020

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1. THE IX METROPOLITAN MAGISTRATE, SAIDAPET, CHENNAI
2. THE SECRETARY TO GOVERNMENT
HOME DEPARTMENT
FORT. ST. GEORGE
CHENNAI 600 009.
3. THE DIRECTOR GENERAL OF POLICE
TAMIL NADU POLICE
DR. RADHAKRISHNAN SALAI
MYLAPORE, CHENNAI 600 004
4. THE DISTRICT COLLECTOR
CHENNAI DISTRICT
CHENNAI 600 001
5. THE COMMISSIONER OF POLICE
GREATER CHENNAI
EGMORE, CHENNAI 600 008.
6. THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.
7. THE INSPECTOR OF POLICE,
J4, KOTTURPURAM POLICE STATION,
CHENNAI 600085
8. THE REGISTRAR JUDICIAL
HIGH COURT MADRAS

C.C. to MR.L.GOVINDARAJ Advocate S.R.NO.6408

Order

WEB COPY

in
WMP.24061/2020

in
WP.19462/2020

Date :22/12/2020

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MJ 23/12/2020

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