



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2020

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.14226 of 2015

K.Rukmani

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Chief Secretary,
Fort St.George Chennai.

2.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai - 600 004.

3.The District Collector,
Thoothukudi District, Thoothukudi.

4.The Superintendent of Police,
Thoothukudi District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to pay a sum of Rs.25,00,000/- as compensation for the death of the petitioner's son, viz., Arumugaraja due to the inaction and negligence on the part of the respondents 3 and 4.

For Petitioner :Mr.I.Robert Chandra Kumar
for Mr.G.Prabhu Rajadurai

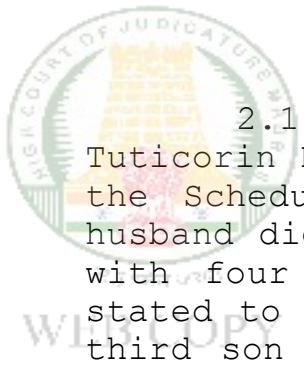
For Respondents : Mr.K.Chellapandian
Additional Advocate General

Assisted by Mr.A.Muthu Karuppan
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus to direct the respondents to pay a sum of Rs.25,00,000/- as compensation for the death of the petitioner's son, viz., Arumugaraja due to the inaction and negligence on the part of the respondents 3 and 4.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:



2.1.The petitioner is a resident of Navaladiyur Village in Tuticorin District. It is admitted that the petitioner belongs to the Schedule Caste community. The petitioner states that her husband died in the year 2010 leaving behind the petitioner along with four sons to look after. The petitioner's elder son is stated to be working as a Scientist in abroad. The petitioner's third son was also working in USA earlier and at present he is settled in Chennai. The petitioner's fourth son has completed his Engineering Degree and stayed at New Delhi for preparing Civil Service Examination. The petitioner's second son, who was with the petitioner, has assisted the petitioner in the agricultural, even though he has completed Diploma in Mechanical Engineering.

2.2.It is to be noted that in and around the petitioner's village, several incidents of communal clashes have been noticed earlier. Though the petitioner states that this particular area is notorious for discrimination of Schedule Caste community by the dominant caste, it is admitted that several incidents of communal clashes or violence are reported in this particular area. Though the petitioner's family has achieved educational and economic status, it is stated by the petitioner that the petitioner and other youngsters in the village again discriminated by denying social status by the people belonging to dominant community. It is further stated by the petitioner that there was physical threat by the people belonging to the other community and that the people belonging to Schedule Caste community are forced to tolerate many of the atrocities. It is submitted by the petitioner that since the petitioner's family members reached high position by acquiring educational qualification, the same itself made the dominant people in the locality to build envy and enmity against the petitioner and her family members.

2.3.The petitioner has lodged a complaint earlier against one Kasi and five others, who belonged to Mangalakurichi village, alleging that the accused visited the petitioner's house with deadly weapons and abused the petitioner and her family members and made an attempt to murder her son, by name, Arumugaraja. It is stated by the petitioner that her son escaped from an attempt to his life. It is also stated by the petitioner that the complaint lodged by the petitioner was registered in Cr.No.77 of 2013 in Sri Vaikundam Police Station for criminal intimidation and for atrocities. It is stated by the petitioner that the criminal case was not handled properly by the police. The petitioner, thereafter, found that their plantain crops are destroyed by fire causing loss to the petitioner. The petitioner, therefore, forced to lodge a second complaint before the Sri Vaikundam Police Station for the damages caused to the petitioner's property. Though the complaint was registered for serious offences, the main accused were not arrested, as per the version of the petitioner.



2.4.The petitioner submitted a representation to the District Collector on 25.04.2013 seeking protection to their life and properties. Besides submitting a representation to the District Collector, the petitioner has also submitted representations to the Director General of Police and other police officials in person and by sending registered post. It is in the said circumstances, the petitioner was constrained to file a Writ Petition in W.P.(MD)No.8399 of 2013 before this Court seeking police protection. This Court, by order, dated 23.05.2013, disposed of the said Writ Petition in the following lines:

"3.It is not in dispute that the petitioner is a widow and she is said to be living alone. Already a case was registered at her instances against third parties. Thereafter, the respondents will have to look into the grievance of the petitioner and enquire the persons against whom she alleges harassment. The petitioner is also at liberty to bring it to the notice of the respondents about the continued harassment by name persons, as it is stated by the learned Government Advocate that peace prevails as of now. As and when the petitioner brings to the knowledge of the respondents about the harassment, appropriate action will have to be taken including giving adequate protection to her. It is also open to the respondents to conduct peace committee meeting, it so required.

4.Accordingly, the Writ Petition is disposed of with a direction to the respondents to give adequate protection to the petitioner as and when she makes out her grievance of harassment at the hands of named persons. No costs. Consequently, connected miscellaneous petition is closed."

2.5.Since this Court has directed the respondents to convene a peace committee meeting, it is stated that the Tahsildar, Srivaikundam, based on the request of the District Collector, Tuticorin, convened a peace committee meeting. The petitioner states that she attended the peace committee meeting. Thereafter, a resolution was passed showing that some of the villagers were also present for the peace committee meeting. Though the petitioner, who was compelled to attend the peace committee meeting, this Court is able to see that the persons, who were posing potential threat to the petitioner and her son, were neither summoned nor directed to appear before the Committee. In the representation of the petitioner, dated 31.05.2013, the petitioner cautioned the officials that the accused are not the type to listen to elder and therefore, there can be assurance to protection to the life of petitioner and her son only if the accused are called for the peace meeting.

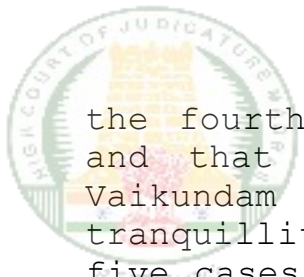


2.6.A specific allegation was also made against the District Collector, who did not conduct the peace committee meeting to serve a meaningful purpose. In other words, it is contended by the petitioner that the said peace committee meeting was only an eyewash not to take action against the accused in the two criminal cases in the manner known to law. It is also stated that the resolution was made for namesake, even though none of the prominent elders of the accused groups were not even brought to the mediation table to solve the problem or to mitigate the tension that prevailed in that area during the relevant time.

2.7.Since the petitioner apprehended the situation and suspected that the life of her son is in danger, being a lady and she could not move around, she requested the assistance of respondents only for police protection to her son. It is also the specific case of the petitioner that the respondent police neglected their duty to give protection to the petitioner's son, even though they have gathered some information through their intelligence wing regarding the intention of the caste Hindus to group a force, so as to gave a message to Schedule Caste community that they will be taken to task, if they raise their voice against the caste Hindus or expect equal rights with the dominant community people in all walks of life.

2.8.It is admitted that on 02.04.2015, the accused in the first complaint had hacked the petitioner's son, by name, Arumugaraja in a place very near to the Sri Vaikundam Police Station. A case was registered in Cr.No.102 of 2015 for murder. It is stated by the petitioner that due to the wilful inaction on the part of the Government, particularly, the District Administration and the Superintendent of Police, Tuticorin emboldened the criminal elements to carry out their objectives. The murder and several atrocities were executed by one Kasi and others, who were also the accused in the first complaint. When there was an attempt to life of petitioner's son earlier, stating that the murder of her son was only due to the wilful negligence and inaction on the part of the District Collector and the Superintendent of Police, the petitioner come before this Court by way of this Writ Petition for issuing a Writ of Mandamus to direct the respondents to pay compensation to the petitioner for a sum of Rs.25,00,000/-.

3.A detailed counter affidavit has been filed by the fourth respondent, *inter alia* pointing out that preventive action was sufficiently taken by the law enforcing agency. Referring to the five criminal cases in 2013 and 82 cases in 2014 and 25 cases in 2015 under Section 110 Cr.P.C., against the dominant community person for keeping peace and good behaviour, it is contended by



the fourth respondent that every cases were dealt with properly and that the police department and the officers of the Sri Vaikundam Police Station have done their best to keep peace and tranquillity. It is stated further by the fourth respondent that five cases under the provisions of SC and ST Act and two and four cases were registered in the year 2014 and 2015 respectively. It is further stated that the police department investigated all the cases promptly and charges were framed in every other cases registered by the police department.

4.The fourth respondent also stated proper actions were taken by the police department pursuant to the first complaint in Cr.No.77 of 2013 lodged by the petitioner. It is stated by the fourth respondent that A2 and A3 in Cr.No.77 of 2013 were arrested on 23.04.2013 and A5 to A7 were arrested on 06.07.2013. It is further stated that the remaining accused had surrendered before the Court and that blood stained weapons were also seized from the accused. While the fourth respondent admitted the direction of this Court in W.P.(MD)No.8399 of 2013 to give police protection, it is submitted that the accused involved in Cr.No.77 of 2013 were apprehended and all possible protections were given to the petitioner.

5.After narrating the efforts taken by the respondent police to conduct peace committee meeting and the steps taken by the respondents to bring peace in the locality through peace committee meeting and other steps, it is reported by the fourth respondent that preventive measures were taken and initiated under Section 110 Cr.PC. against the rowdy elements of dominant community under Act 14 of 1982. Since a sum of Rs.5,00,000/- has been given to the victim as statutory compensation and the police had taken all the preventive measures to restore the feelings of security to the SC and ST people, the fourth respondent also referred to the proceedings taken to arrest the accused under Act 14 of 1982. However, the respondents have not produced before this Court any materials to show that the accused in Cr.No.77 of 2013 had been booked and arrested under the provisions of Tamil Nadu Act 14 of 1982.

6.The learned Counsel for the petitioner relied upon a judgment of Honourable Supreme Court in the case of **Ajab Sing and another vs State of Uttar Pradesh and others**, reported in **AIR 2000 SC 3421**. While awarding compensation by directing the State of Uttar Pradesh under the public law, a further direction was also issued to the respondents by the Honourable Supreme Court to pay compensation without prejudice to the rights of the legal heir of the victim to claim compensation in private law, if they are entitled to in law. The learned Counsel for the petitioner has not produced any other Statute by which the petitioner, as the



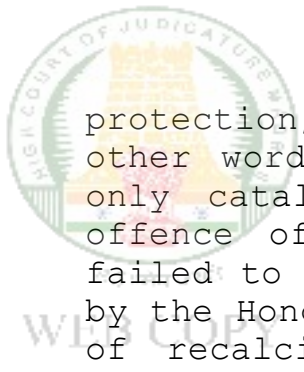
legal heir of the victim, is entitled to get compensation under any private law. Hence, this Court is unable to get any lead from the above judgment of Honourable Supreme Court.

7.The learned Counsel for the petitioner also relied upon a judgment of Honourable Division Bench of this Court in the case of **K.Kabali @ Kabaleswaran vs The State of Tamil Nadu and others**, reported in **(2006) 2 MLJ 28**, wherein, the Honourable Division Bench has considered the violation of basic human rights as well as the fundamental rights for getting compensation due to the negligence of police personnel causing death of an innocent public.

8.The learned Counsel for the petitioner relied upon an unreported judgment of this Court in W.P.(MD)No.187 of 2011, dated 01.02.2012 in the case of **Ganesan and another vs State of Tamil Nadu and others**, wherein, a sum of Rs.10,00,000/- was awarded by this Court for the death of petitioner's son on account of explosion of bomb in a bus.

9.Though it is stated that no wilful negligence or inaction has been committed by the police department or any other statutory authority, the respondents have not explained to the acceptance of this Court that they have strictly followed the procedure prescribed in law to its logical end to bring the peace and normalcy in the locality. It is to be seen that in a case like this, this Court is not supposed to decide the issue, if there are serious factual disputes. In the present case, the fact that the petitioner's son was hacked in daylight very near the Police Station is not in dispute. The criminal complaint that was lodged on 22.04.2013 in Cr.No.77 of 2013 and the failure on the part of the police officials to complete the investigation to its logical end within a reasonable time, cannot be ignored. Mishandling of the criminal complaint in 2013 has also paved way for the accused repeatedly threatening the life of petitioner and her second son. The petitioner realised the seriousness of the situation prevailed not only at the time of giving complaint in 2013, but also subsequently.

10.It is to be seen that the FIR in Cr.No.77 of 2013 would indicate that the petitioner's son was targeted not for his action against the persons of dominant community, but because the dominant community wanted to convey a message. The dispute between two factions is not personal, but communal. The accused in murder case belongs to a particular community and that the previous complaint in Cr.No.77 of 2013 in Sri Vaikundam Police Station would indicate that the petitioner's representation seeking police protection to the petitioner and her son and the



protection, made the position still worse for the petitioner. In other words, the police protection obtained from this Court has only catalysed the accused to go further and commit a grave offence of murder by killing the petitioner's son. The police failed to give police protection despite direction of this Court by the Honourable Division Bench. Hence, the murder was on account of recalcitrant attitude and the improper way of handling a serious complaint without considering the tension prevailed in the area by the police officials. The peace committee meeting was again an eye wash as it is stated by the petitioner. The accused were not called upon and proceedings could have been properly initiated under Section 107 of Criminal Procedure Code to mitigate the situation. In other words, the failure to handle the situation by the Executive Magistrate as well as the police department has resulted in the murder of petitioner's son.

11. Since the petitioner has lost her son and the loss is directly attributable to the negligence of the respondents, this Court is inclined to direct the respondents to compensate the petitioner. Regarding quantum of compensation, it is stated that the petitioner is entitled to the statutory compensation under the provisions of Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act 1989. The petitioner is entitled to compensation in terms of Annexure-I of Schedule-1 under the Act. In relation to the offence of murder, the petitioner is entitled to a minimum amount of Rs.5,00,000/-. As per the schedule, the petitioner has been paid the minimum amount prescribed. The question is whether the amount paid to the petitioner as prescribed under the Act is sufficient and it will absolve the liability of the respondent State. This Court is of the view that if the statutory compensation is not adequate in the circumstance of the case, this Court can direct the respondents to compensate the petitioner for the loss of her son. The petitioner also stated that her son is holding the Diploma in Mechanical Engineering and that he was looking after agricultural operation, as the petitioner's husband died earlier in 2010. The petitioner's other two sons are employed abroad and her social and financial status as projected by her is not in dispute.

12. The petitioner stated that she has substantial properties. It is no wonder that the petitioner with several properties enabled her sons to go abroad and it is not in dispute that two of the sons of the petitioner got employment abroad (though one has returned to Chennai at present). The economical status of the petitioner is not disputed. The petitioner's son, who was looking after agricultural operation was murdered. The compensation in the present case is not only by taking into consideration the economic status of the petitioner, but also the other factors. The murder of the petitioner's son is as a result



of the activities of anti-social elements, which should be curbed to give a sense of social security to every citizen of this Country. A widow has lost her son, when she was 43 years and when she was in need of him for her protection and solace after the death of her husband. She had lost her hope in the State, who failed to give protection and she has to remain with a fear, which is painful.

13.Considering the educational qualification and the income of the petitioner's son from agriculture and the fact that the murder of petitioner's second son was on account of communal violence, the State has to be reminded of its duty and Constitutional obligation to realise that incidents of that nature cannot be allowed in future. This Court, though find that the compensation claimed by the petitioner is not adequate to compensate her loss and sufferings, having regard to the fact that the petitioner has confined to get Rs.25,00,000/- as compensation for the death of her son, namely, Arumugaraja, is inclined to accept the quantum as reasonable and award a sum of Rs.25,00,000/- as compensation to the petitioner.

14.As a result, this Writ Petition is allowed and the first respondent is directed to pay a sum of Rs.25,00,000/- as compensation for the death of petitioner's second son, by name, Arumugaraja, due to the inaction and wilful negligence on the part of the respondents 3 and 4 within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Chief Secretary to
the Government of Tamil Nadu,
Fort St.George Chennai.



2.The Director General of Police,
Government of Tamil Nadu,
Mylapore, Chennai - 600 004.

3.The District Collector,
Thoothukudi District, Thoothukudi.

4.The Superintendent of Police,
Thoothukudi District.

+1 CC to SPL GP (SR-4559[F] dated 04/02/2020)

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-4806[F] dated
05/02/2020)

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