



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.900 of 2021

and

C.M.P (MD)No.4044 of 2021

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Lieutenant Colonel. S.Ganesan (Retd.)... Appellant / Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Chief Secretary,
Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The State of Tamil Nadu,
represented by the Home Secretary,
Department of Home,
Fort St.George,
Chennai-600 009.
- 3.The Director General of Police,
Office of the Director General of Police,
Beach Road, Mylapore,
Chennai-600 004.
- 4.The Deputy Inspector General of Police,
O/o the Deputy Inspector General of Police,
Madurai Range,
New Natham Road,
Madurai.
- 5.The District Collector,
Collectorate,
Virudhunagar District.
- 6.The Superintendent of Police,
O/o the Superintendent of Police,
Virudhunagar District,
Virudhunagar.
- 7.The Revenue Divisional Officer,
Revenue Divisional Office,
Aruppukottai,
Virudhunagar District.



8.The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.

9.Kumaravel,
Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District
presently working at
District Crime Branch,
Nagercoil.

10.Jeyaseelan,
Sub-Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District
presently working at
Special Cell, SP Security,
Office of Commissioner of Police,
Egmore, Chennai.

11.Ramar,
Grade II Police Constable(1847),
Aruppukottai Town Police Station,
Virudhunagar District
presently working at
Aruppukottai Town Police Station,
Virudhunagar District.

12.Elangovan
Head Constable,
Presently working at
Aruppukottai Town Police Station,
Virudhunagar District.

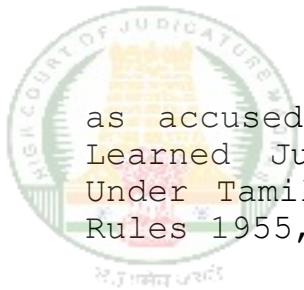
13.Gurusamy,
Grade II Police Constable(631),
presently retired
Notice sent through
The Superintendent of Police,
Virudhunagar District.

... Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 15.10.2020 made in W.P.[MD] No.238 of 2014 on the file of this Court.

Prayer in WP(MD). 238/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents No.1 to 6 to conduct and complete enquiry against the erring police officials shown



as accused in the case in C.C.No.207 of 2012 pending before the Learned Judicial Magistrate, Aruppukottai, Virudhunagar District Under Tamil Nadu Police Subordinate Services Discipline And Appeal Rules 1955, within the time stipulated by this Honble Court

For Appellant : Mr.T.Selvan
For Respondents 1 to 8 : Mr.K.P.Krishnadoss,
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This writ appeal filed by the appellant / writ petitioner is directed against the order, dated 15.10.2020 passed in W.P.[MD] No.238 of 2014.

2.The said writ petition was filed by the appellant to direct the appellant to conduct and complete the departmental enquiry against the erring Police Officers, who have been arrayed as accused in C.C.No.207 of 2012 pending on the file of the Judicial Magistrate Court, Aruppukottai, under the provisions of the Tamil Nadu Police Subordinate Services Disciplinary and Appeal Rules, 1955.

3.We have heard Mr.T.Selvan, learned Standing Counsel for the appellant and Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents 1 to 8. Since the respondents 9 to 13 did not enter appearance in the writ petition, though the writ petition was pending from 2014 and disposed of only in the year 2020 and noting that there is a factual error has occurred while disposing of the writ petition, we dispensed with the notice to the respondents 9 to 13.

4. The learned Writ Court had dismissed the writ petition on the ground that the criminal case has been quashed by this Court in CrI.O.P(MD) Nos.20970 of 2013 and 4423 of 2015, dated 26.04.2018.

5.The learned counsel for the petitioner has drawn our attention to Ground No.8 in the memorandum of grounds, which reads as follows :

"8.The common order in both CrI.OP.No.4423 of 2015 and 20970 of 2013 has been extracted below :-

PARA 1 TO 6. xxx xxxx xxxxx xxx

7.This Court is of the view that the materials on record conclusively establish that Lieutenant Colonel Thiru.Ganesan (then captain) is a victim at the hands of the accused Police personnel. This



Court had allowed the quash petition filed by the police only on a technical ground. This Court had earlier held that a private complaint by the Executive Magistrate will not lie. It is only in that view of the matter, Crl.O.P.(MD) No.4423 of 2015 filed by the Police personnel has been allowed by this Court.

PARA 8 TO 11. xxx xxxx xxxxx xxx

12. The order of this Court allowing Crl.O.P. (MD) No.4423 of 2015 quashing C.C.No.207 of 2012 will not come in the way of Lieutenant Colonel Thiru.Ganesan from taking such steps as are available to him in law for prosecuting the erring police personnel."

6.The learned counsel for the appellant submitted that he did not have the copy of the order, but the operative portion of the order passed in the Criminal Original Petitions as above.

7.On going through the above order, it is seen that though the criminal cases were quashed, the Court observed that the said order will not come in the way of the appellant before us from taking such steps as available to him in law for prosecuting the erring Police Personnel. It appears that this observation was not brought to the notice of the learned Writ Court and had it been done, probably the result would have been different in the writ petition.

8.In any event, since quashing of the criminal case was held to be not a bar for the appellant to take steps as are available to him in law for prosecuting the erring Police Personnel, the writ petition could not have been dismissed for the reasons stated in the impugned order.

9. It is seen that the petitioner though prayed for a Writ of Mandamus to be issued against respondents 1 to 6, we find that there is no representation submitted by the appellant to the authorities, which is a prerequisite for a person to invoke the extraordinary remedy of this Court under Article 226 of the Constitution of India. Therefore, the appellant should submit a representation and thereafter, it can be directed to be considered by the concerned official respondent.

10.In the result, this Writ Appeal is allowed and the order passed in the writ petition is set aside and the writ petition in W.P(MD)No.238 of 2014, is disposed of, by giving liberty to the appellant to submit a representation to the sixth respondent, namely, the Superintendent of Police, Virudhunagar District and if service response/representation is submitted, the same shall be considered and



orders be passed on merits and in accordance with law, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CSIII)

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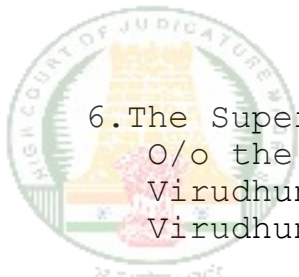
/ /2021

Sub Assistant Registrar(CS)

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Chief Secretary,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Home Secretary,
State of Tamil Nadu,
Department of Home,
Fort St.George,
Chennai-600 009.
- 3.The Director General of Police,
Office of the Director General of Police,
Beach Road, Mylapore,
Chennai-600 004.
- 4.The Deputy Inspector General of Police,
O/o the Deputy Inspector General of Police,
Madurai Range,
New Natham Road,
Madurai.
- 5.The District Collector,
Collectorate,
Virudhunagar District.



6.The Superintendent of Police,
O/o the Superintendent of Police,
Virudhunagar District,
Virudhunagar.

7.The Revenue Divisional Officer,
Revenue Divisional Office,
Aruppukottai,
Virudhunagar District.

8.The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.

+1 CC to M/s.T.SELVAN, Advocate (SR-17013[F] dated 22/04/2021)

W.A.[MD]No.900 of 2021
21.04.2021

TP(CO)
KB(08.06.2021) 6P 10C