



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.21752 of 2021

L.Ramalakshmi

... Petitioner

vs.

1.The Principal Secretary,
Home Department,
Secretariat, Chennai-600 009.

2.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3.The District Collector,
Ramanathapuram,
Ramanathapuram District.

4.The District Superintendent of Police,
Ramanathapuram, Ramanathapuram District.

5.The Deputy Superintendent of Police,
Mudukulathur Sub Division,
Ramanathapuram District.

6.The Tahsildar, Mudukulathur Taluk,
Ramanathapuram District.

7.The Revenue Divisional Officer,
Mudhukulathur Taluk, Ramanathapuram District.

8.The Inspector of Police,
Keelathooval Police Station,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to conduct re-postmortem and to take appropriate legal action based on the petitioner's representation dated 06.12.2021 and direct the second respondent to appoint a competent senior police officer to conduct a fair and impartial investigation.

For Petitioner : Mr.D.Selvam

for Mr.B.Dineshkumar

For Respondents : Mr.Veerakathiravan

Additional Advocate General,

assisted by Mr.T.Senthil Kumar

Additional Public Prosecutor



ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents.

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2.The petitioner's son Manikandan was apprehended by the police personnel attached to Keelathooval Police Station, Ramanathapuram District on 04.12.2021. He was taken to the police station. According to the petitioner, she was called to police station a few hours later and instructed to take her son home.

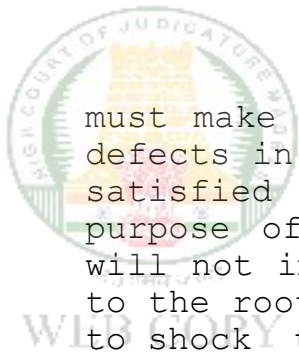
3.The case of the petitioner is that her son complained that he was beaten up in the police station. Manikandan died at his residence on the very next day. The petitioner's specific allegation is that her son's death is directly attributable to the custodial treatment which he received within the premises of the Keelathooval Police Station. In this regard, Crime No.258 of 2021 was registered under Section 174 of Cr.P.C. Postmortem was done at Mudukulathur Government Hospital.

4.According to the petitioner, postmortem was not properly done and that only a re-postmortem would reveal the truth. Though such a request was made in this regard, since it did not elicit a favorable response, the present writ petition came to be filed.

5.The learned counsel appearing for the petitioner reiterated the contentions set out in the affidavit filed in support of this writ petition. In particular, he would emphasise that the directions given by this Court in W.P.(MD)No.12608 of 2020 dated 02.12.2020 (***Santhosh Vs. The District Collector and others***) were not followed.

6.The learned Additional Advocate General appearing for the respondents submitted that during the postmortem process, the victim's family was fully associated. Dr.Prabakaran of Government Hospital, Keelakarai was permitted to participate when the postmortem took place. The victim's family had suggested the name of Dr.Prabakaran. The entire postmortem was duly videographed. Neither external injury nor any internal injury was found. No injuries were found on the private parts of the deceased also. According to the learned Additional Advocate General, everything was conducted in a transparent manner and therefore, there is absolutely no justification in seeking re-postmortem.

7.I carefully considered the rival contentions and went through the materials available on record. I make it clear that the materials available as of now are absolutely insufficient to point any needle of suspicion at the police. Re-postmortem cannot be ordered for the asking. The person demanding a second postmortem



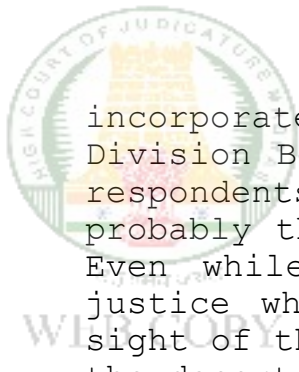
must make out a case therefor. He must catalogue the omissions and defects in the first postmortem. The conscience of the court must be satisfied that there is a need for a second postmortem for the purpose of arriving at the truth. Minor infractions of procedure will not impel the court to order re-postmortem. The issue must go to the root of the matter. Something fundamental must have happened to shock the court's conscience.

8. Now that the yardstick has been laid down, let me see if the petitioner has met this threshold. The learned Additional Advocate General would strongly urge that since the death of the petitioner's son had taken place in her house, the death in question cannot be termed as custodial death. The learned Additional Advocate General may be technically right. But the fact remains that some few hours prior to his death, he was in the custody of the police. The petitioner alleges a nexus between the two. Therefore, respondents ought to have treated the matter as if the case pertains to one of custodial death. Vide order dated 02.12.2020 in WP(MD)No.12608 of 2020 (*Santhosh vs. The District Collector, Madurai District, Madurai*), I had issued a set of directions that must be followed by the authorities in such cases. One vital direction was that the autopsy shall be carried out by a team of two doctors who have a master's degree in forensic medicine and are attached to a Medical College and Hospital in the State. In other words, what is called as forensic autopsy must be conducted. In this case, the autopsy was conducted in Mudhukulathur Government Hospital and not in a Medical College and Hospital. The postmortem doctors admittedly did not have a master's degree in forensic medicine. In other words, forensic autopsy was not conducted in this case. This ground is sufficient to persuade me to order a re-postmortem.

9. The writ petition is allowed and the fourth respondent is directed to make arrangements for carrying out a second postmortem on the body of the petitioner's son by keeping in mind the directives given in *Santhosh* case. The postmortem shall be done in Ramanathapuram, Medical College and Hospital. He shall appoint a senior and experienced Deputy Superintendent of Police to carry out the investigation in Crime No.258 of 2021 and ensure that the final report is filed as early as possible.

10. The petitioner through her counsel gives an undertaking that immediately after the second postmortem is conducted, she would receive the body. The body will be taken under police escort from Ramanathapuram Medical College and Hospital thereafter to the cremation ground at Mudhukulathur directly. Final rites will be performed without any delay. No funeral procession will be permitted. There cannot be any politics over the dead body and no communal color will be given.

11. I cannot help remarking that the police personnel were not aware of the directions given in *Santhosh* case. I had also



incorporated the comprehensive directions issued by the Hon'ble Division Bench in WP(MD)No.78 of 2019 on 28.09.2020. If only the respondents had followed what was laid down in *Santhosh* case, probably the demand for re-postmortem would not have arisen at all. Even while affirming that a dead person is equally entitled to justice which may be called as posthumous justice, I cannot lose sight of the fact that a second postmortem does inflict indignity on the departed soul.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

skm

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

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Home Department,
Secretariat, Chennai-600 009.
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7.The Revenue Divisional Officer,
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8.The Inspector of Police,
Keelathooval Police Station,
Ramanathapuram District.

9. The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.B.DINESH KUMAR, Advocate (SR-37645[F] dated 07/12/2021
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W.P. (MD) No.21752 of 2021
07.12.2021

RD(08.12.2021) 5P 11C