



W.P.(MD).No.2306 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.09.2022

ORDER PRONOUNCED ON : 12.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.2306 of 2013
and MP(MD).No.1 of 2013**

B.Devi

....Petitioner

Vs

1.The State of Tamil Nadu represented by
The Secretary
Home Department
Secretariat
Fort.St.George
Chennai

2.The District Collector
Dindigul District
Dindigul

3.The Superintendent of Police
Dindigul District
Dindigul

4.Mr.Asokan
The then Inspector of Police
Dindigul Taluk Police Station
Dindigul
Presently the Inspector of Police
Vilampatti Police Station
Madurai District



W.P(MD).No.2306 of 2013

5.Mr.Kasirajan
The then Sub Inspector of Police
Dindigul Taluk Police Station
Dindigul
Presently the Sub Inspector of Police
Ammaiyanaickanoor Police Station
Dindigul District

6.Ms.P.Amutha
The Sub Inspector of Police
Dindigul Taluk Police Station
Dindigul District

7.RajaRespondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd respondents to pay a sum of Rs.15/- lakhs as compensation to the petitioner and consequently, direct the 3rd respondent to initiate criminal and departmental proceedings against the respondents 4 to 7.

For Petitioner	: Mr.Hendri Thipene For Mr.R.Karunanidhi
For R1 to R3	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.S.Shanmugavel Additional Government Pleader

ORDER

The present writ petition has been filed for a mandamus directing the respondents 1 and 2 to pay a compensation of Rs.15/- lakhs to the petitioner



W.P(MD).No.2306 of 2013

and consequently, direct the third respondent to initiate criminal and departmental action against the respondents 4 to 7 for custodial death of her husband.

The contentions of the learned counsel for the petitioner are as follows:

2.The petitioner is married to the deceased Bose and having two sons. The deceased was working as a butcher. On 25.02.2010, when the petitioner had gone to her parents house, respondents 5 and 6, the police officials who were attached to Dindigul Taluk Police Station had come to the residence, dragged the deceased and beaten him and taken him into custody in a police jeep. This incident was witnessed by the petitioner's co-sister and her uncle Selvaraj. Though both of them tried to follow the Jeep, they were not successful. Thereafter, they approached the police constable attached to Ambathurai Police Station and he informed that the deceased was taken by the police relating to some enquiry and he would be released in the next morning.

3.The petitioner had further contended that on 26.02.2010 from 08.30 a.m onwards she was running from pillar to post and finally at 4.00 p.m, she came to know that her husband had died by consuming oleander seed and the body was placed in Dindigul Government Hospital Mortuary. On seeing, she



W.P(MD).No.2306 of 2013

found that her husband's nose was swollen and there were injuries in the shoulders, hands and legs caused by beating with lathi. Hence, she understood that her husband had died due to physical torture of the police officials attached to Vilampatti Police Station.

4.The petitioner had further contended that when the Revenue Divisional Officer reached the hospital to conduct an enquiry, all the villagers have attempted road roko but they were pacified by the police officials that R.D.O will look into the matter. On 27.02.2012, though postmortem was conducted, they were not appraised of the result. She came to know that one Raja had lodged a complaint before the Dindigul Taluk Police Station in Crime No.174 of 2010 contending that the petitioner's husband had consumed oleander seeds. While, he was taking him to the Hospital in an auto, he had passed away. Later, the Accident Register of Dindigul Hospital revealed that he was brought dead at about 08.05.a.m.

5.According to the petitioner, the lodging of F.I.R in Crime No.174 of 2010 will clearly indicate that it is a cooked up story and no one would reveal his entire history while he was urgently moving to a hospital. Hence, according to the petitioner, her husband was beaten by police officials and hence, the present writ petition seeking compensation and for initiation of



W.P(MD).No.2306 of 2013

appropriate criminal and departmental proceedings as against the concerned police officials.

6.Per contra, the learned Additional Advocate General appearing for the respondent police officials had contended that F.I.R has been registered as against the petitioner's husband in Crime No.172 of 2010 in Dindigul Taluk Police Station for the offence under Section 302 I.P.C. The petitioner's husband had apprehended that he is likely to be secured by the police in connection with the said crime number and he had consumed poison. The petitioner's husband Bose had sought help of one Raja, who was travelling in a Auto and before reaching Government Hospital, Dindigul, he had died. As per the hospital records, he was brought dead. Thereafter, based on the statement of the said Raja, F.I.R in Crime No.174/2010 under Section 174 Cr.P.C was registered by the Dindigul Taluk Police Station.

7.The learned Additional Advocate General had further contended that at no point of time, the petitioner's husband ever secured by the police or brought to Police Station. The co-accused in Crime No.172 of 2010 was arrested only on 27.02.2010 at about 06.00 a.m and hence, the contention of the writ petition that her husband was taken away by the respondents at mid-night on 25.02.2010 is not factually correct. He had further contended



W.P(MD).No.2306 of 2013

that the petitioner is residing away from her husband for the past four years due to some matrimonial dispute and she was not aware what had happened in the mid-night of 25.02.2010. Though it is contended by the petitioner that the incident was seen by her co-sister Rani, she has not stated so in her statement before the R.D.O. The petitioner has also not stated anything about her personal knowledge that the police having taken the petitioner's husband during R.D.O enquiry. In the writ petition, it is stated that they had approached one Police Constable Murugan of a different police station. The said Murugan was also enquired during the R.D.O enquiry and he has specifically stated that he was not available in Town on the said date. Hence, the entire allegation on the side of the writ petitioner that the said Bose was forcibly taken by the police on the mid-night of 25.02.2010 is not supported by any oral or documentary evidence.

8.The learned Additional Advocate General had further contended that all the allegations have been made only in the representation dated 01.03.2010. Though a representation have been sent on 01.03.2010, the present writ petition has been filed after three years on 04.02.2013 for the reasons best known. He had further contended that the final opinion of the Doctors would clearly indicate that death might have been due to poisoning nature of which could not be made out. Hence, it is clear that the petitioner's



W.P(MD).No.2306 of 2013

husband had committed suicide apprehending that he is likely to be secured by the police in connection with a murder case. This fact is also supported by the F.I.R lodged by one Raja in Crime No.174 of 2010 who had given lift in an Auto to the petitioner's husband so as to reach the hospital. He had further contended that the RDO had conducted a detailed enquiry. In the said enquiry, the petitioner, petitioner's co-sister, the constable referred in the affidavit namely Murugan, Raja who had given lift in an auto to the hospital, the said Auto driver all have been examined. The Revenue Divisional Officer had arrived at a finding that no internal or external injuries are reflected in the postmortem report and the petitioner's husband seems to have been committed suicide by consuming oleander seeds. Hence, a proper enquiry has been conducted by the revenue officials.

9.The learned Additional Advocate General had further contended that since the police have not taken the petitioner's husband for enquiry, nor he died while in police custody, the question of conducting enquiry by the Judicial Magistrate does not arise. Since there is no fault on the part of the police official, the question of payment of compensation or initiation of criminal or departmental action as against the police officials does not arise. Hence, he prayed for dismissal of the writ petition.



W.P(MD).No.2306 of 2013

10.I have considered the submissions made on either side and perused the materials available on record.

11.The petitioner has specifically contended that at the mid-night of 25.02.2010 her husband taken away from the house by the respondents 5 and 6 who were in civil rests. At the time of taking away the petitioner's husband, he was beaten by the police and the petitioner has specifically contended that this occurrence was witnessed by her co-sister and her uncle Selvaraj. However, in the R.D.O enquiry, she has not stated anything about the alleged happening at the mid-night of 25.02.2010. In fact, the statement of her co-sister indicates that for the past three years, the petitioner is residing away from her husband due to matrimonial dispute. The co-sister in her statement before RDO has also denied the fact that she had seen the police officials taking away the petitioner's husband. After 5.00 p.m on 25.02.2010, she had never met the deceased Bose. The submission of the writ petitioner and her co-sister before the R.D.O have not been disputed in the writ petition which is filed three years after enquiry by the Revenue Divisional Officer.

12.The representation alleging police excess have been sent to various officials on 01.03.2010 by way of telegram and representation. However, no reasons have been assigned in the affidavit for not filing the present writ petition for more than three years. The postmortem certificate issued by the



W.P(MD).No.2306 of 2013

Doctor does not reflect any fracture or any serious injuries except small abrasions. However, toxicology report indicates that no poison was detected in the viscera of the deceased. Based upon the toxicology report, the Doctors have given their final opinion that the postmortem appearances are consistent with the death due to poisoning, nature of which could not be made out. After correlating the toxicology report and the final opinion of the Doctor along with postmortem, this Court can easily come to a conclusion that there are no internal or external injuries in the body of the deceased Bose and the cause of the petitioner's husband death has not been concretely made out. The petitioner has not placed on record any document to establish, that her husband was secured by the respondent police officials on 25.02.2010 at mid-night. When the custody of the petitioner's husband by the police could not be established, the question of blaming the said officials for the death of the petitioner's husband may not be legally sustainable. Moreover, the petitioner has taken a different stand before the R.D.O enquiry than the one reflected in the present writ affidavit. The close relatives of the petitioner have also not supported the case of the petitioner and her averments in the writ affidavit.

13. In view of the above said facts, the petitioner has not established that her husband was secured by the police and he had died only due to police



W.P(MD).No.2306 of 2013

excess while in their custody. Unless the primal issue of custody taken by the police is established, the question of building up the case of police excess does not arise. The cause of death still remains unknown.

14. In view of the above said facts, the writ petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2022

Internet : Yes/No
Index : Yes/No
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To

1. The Secretary
State of Tamil Nadu
Home Department
Secretariat
Fort. St. George
Chennai

2. The District Collector
Dindigul District
Dindigul

3. The Superintendent of Police
Dindigul District
Dindigul



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W.P.(MD).No.2306 of 2013

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.2306 of 2013
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12.09.2022