



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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W.A(MD)No.280 of 2022

T.M.Nadar @

Thankarajan Muthayyan Nadar

.. Appellant / Petitioner

Vs

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Home (Police) Department,
Fort St. George,
Chennai.
2. The Commissioner of Police,
Tirunelveli City,
High Ground,
Tirunelveli District.
3. The Deputy Commissioner of Police(L &O),
Tirunelveli City, Tirunelveli.
4. The Assistant Commissioner of Police (L&O),
Palayamkottai,
Tirunelveli City,
Tirunelveli District.
5. The District Collector,
Tirunelveli District.
6. The Inspector of Police,
Melapalayam Police Station,
South Bye Pass Road,
Near New Bus Stand,
Tirunelveli District.
7. The Inspector of Police,
Perumalpuram Police Station,
Palayamkottai Taluk,
Tirunelveli District.
8. The Inspector of Police,
Nithiravilai Police Station,
Nithiravilai Taluk,
Tirunelveli District.

.. Respondents / Respondents



PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 07.01.2022 made in W.P.(MD)No. 14724 of 2021.

Prayer in WP(MD). 14724/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS or any other appropriate writ or order or direction particularly in the nature of writ, directing the respondents to conduct fair investigation and to take steps to exhume the body of the petitioner's married daughter viz. T.Nancy and to conduct Autopsy/Forensic Postmortem by a Civil Surgeon in the presence of a Team of All India Institute of Medical Sciences (AIIMS) Doctor having Master Degree in Forensic Science at the expense of State Government in the presence of the petitioner and the entire Autopsy/Forensic Postmortem may be ordered to be X-rayed and video-graphed in the presence of the petitioner and subsequently direct the respondents to handover the body remains of T.Nancy to the petitioner's family for reburial in the house property, after completion of the postmortem formalities fully.

For Appellant : Mr.P.Krishnasamy

For Respondents : Mr.K.Balasubramani,
Special Government Pleader.

JUDGMENT

[Delivered by PARESH UPADHYAY, J.]

Challenge in this appeal is made to the order dated 07.01.2022 recorded on W.P(MD)No.14724 of 2021.

2. The petition was filed with the following prayer:

"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or Direction particularly in the nature of a Writ, directing the respondents to conduct fair investigation and to take steps to exhume the body of the petitioner's married daughter, viz. T.Nancy and to conduct Autopsy/Forensic Postmortem by a Civil Surgeon in the presence of a Team of All India Institute of Medical Sciences (AIIMS) Doctors having Master Degree at the expense of State Government in the presence of petitioner and the entire Autopsy/Forensic Post-mortem may be ordered to be X-rayed and video-graphed in the presence of the petitioner and subsequently direct the respondents to handover the body remains of



T.Nancy to petitioner's family for reburial in their house property after completion of the post-mortem formalities fully, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice".

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3. Learned Single Judge has, after hearing the parties and considering the material on record, arrived at the conclusion as noted in para : 10 thereof, which reads as under:-

"Admittedly, the petitioner's daughter passed away on 09.08.2020. She was buried a day later. We are now in January 2022. This writ petition itself came to be filed only on August 2021. At this point of time, no purpose will be served in directing the authorities to conduct the postmortem or autopsy. Be that as it may, when the petitioner has given the complaint as early as on 15.10.2020 and also several subsequent reminders have been sent, it is the duty of the seventh respondent to hold an enquiry and intimate the petitioner about the outcome. In this case, the complaint given by the petitioner has not been given a formal disposal. The seventh respondent claims in the counter affidavit that he had conducted enquiry with the doctors concerned. If that be so, the seventh respondent is directed to prepare a report and serve the same on the petitioner forthwith and without any delay. It is for the petitioner to take action in the manner known to law, thereafter. All the rights and the remedies of the petitioner are left open".

4. We have heard learned advocate for the appellant at length.

5. During the course of hearing reference was also made to the representation of the appellant / writ petitioner dated 16.12.2020 addressed to the Inspector of Police, Perumalpuram Police Station, Palayamkottai, Dist. Tirunelveli, Tamil Nadu - 627 007. Para : 9 of the said representation reads as under:

"Domestic violence was meted out to my daughter by her in-laws punishable under Section 498A IPC and my daughter was made to reside all alone on the first floor of 45/248, N.H.Colony, 7th Cross Street, Perumalpuram after she came to India. Abroad also my daughter is stated to have mentioned to her friend there that there was no body to take care of her....".

<https://hcservices.ecourts.gov.in/hcservices/> Para 13 of the said representation reads as under:



"It is, therefore, prayed to lodge an FIR & prosecute all the named offenders & others who are involved in the offence punishable under Section 302 IPC specially together with the provisions of Sections 304A, 120B, 34, 379 and 498A IPC but whose names I do not know, in accordance with law".

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7. The conjoint consideration of the above would show that the petitioner wants direction from this Court to take steps to exhume the body of his daughter who has died, according to him, unnatural death on 09.08.2020. According to him that could be an offence under Section 302 IPC read with other Sections. Such petitions can not be entertained on assumptions of the parties. Further, the direction to exhume the body of the petitioner's daughter, can also not be granted. We find that refusal to exercise discretion in that regard, can not be said to be an error, much less any error apparent on the face of record, which may call for any interference in this intra-court appeal.

8. We further find that, if at all the grievance of the petitioner was to be examined, the persons against whom he intends filing of First Information Report, that too under Section 302 IPC, were necessary parties, who are not joined as party respondent(s). This is an additional ground, why this appeal can not be entertained.

9. For the above reasons, this appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn/2

To

1. The Secretary to Government,
Home (Police) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai.

2. The Commissioner of Police,
Tirunelveli City,
High Ground,

<https://hcservices.courts.gov.in/hcservices>
Tirunelveli District.



3. The Deputy Commissioner of Police(L &O),
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4. The Assistant Commissioner of Police (L&O),
Palayamkottai,
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+1 CC to M/s.SPL GP (SR-15048[F] dated 29/03/2022)

+1 CC to M/s.P.KRISHNASAMY, Advocate (SR-15193[F] dated
29/03/2022)

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