



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. (MD)No.3863 of 2020

K.Kalaikkumar

...Petitioner

-Vs-

1.State of Tamil Nadu,
Rep by its Principal Secretary,
Department of Home, Secretariat,
Fort St. George, Chennai-600 009.

2.The Director General of Police,
Beach Road, Chennai-4.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the first respondent to provide adequate compensation to the tune of Rs.1 Crore for the failure of investigation by the State in respect of the brutal murder and rape of the petitioner's daughter on 09.03.2011 within the time period stipulated by this Court.

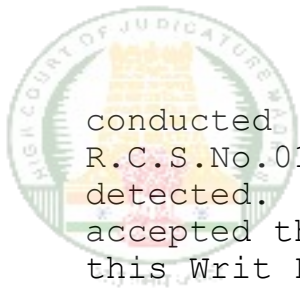
For Petitioner : T.Lajapathi Roy
Senior Counsel

For Respondents : Mr.R.Shunmuga Sundaram,
Advocate General,
assisted by Mr.A.Thiruvadikumar,
Additional Public Prosecutor.

ORDER

This Writ Petition is filed to direct the respondents to pay compensation of Rs.1 Crore for not detecting the accused, who caused death of the minor daughter of the petitioner, aged about 15 years.

2.It is an undisputed fact that the daughter of the petitioner was found murdered in her house. The First information Report has been filed immediately and investigation is carried out. However, the accused could not be arrested or detected. Though the investigation was originally conducted by the jurisdictional police, later it was transferred to CBCID as per the order of this Court dated 13.12.2011 made in CrI.O.P.[MD]No.9319 of 2011. As no progress has been shown by the CBCID, again the matter has been transferred to CBI as per the order of this Court dated 27.09.2013 made in CrI.O.P.[MD]no.4644 of 2013. Thereafter, the CBI has



conducted investigation and filed closure report in R.C.S.No.01/2019, contending that the real accused could not be detected. The learned Chief Judicial Magistrate, Trichy, had accepted the closure report, by order dated 10.10.2019. Thereafter, this Writ Petition is filed, seeking aforesaid relief.

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3.The learned Senior Counsel appearing for the petitioner would submit that as the offender could not be detected and there was no proper investigation carried out by the concerned police, the State is liable to pay compensation and the petitioner is certainly entitled to compensation as per the Tamil Nadu Victim Compensation Scheme, 2013 (hereinafter referred to as 'the scheme').

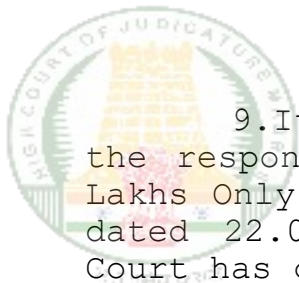
4.The learned Advocate General appearing for the respondents fairly submitted that as per the scheme, the victim is entitled for compensation and it is also brought to the notice of this Court the order of the learned Chief Judicial Magistrate, directing the destruction of the properties after the expiry of the revision period. According to the learned Advocate General, such order is to be set aside and it amounts to destroying the evidence collected by the investigation agency.

5.As rightly pointed out by the learned Advocate General, while accepting the closure report, the learned Chief Judicial Magistrate ought not to have passed the order for destruction of the material objects. Therefore, this Court at the first instance set asides the order dated 10.10.2019 passed by the learned Chief Judicial Magistrate, directing the destruction of the property after the revision period is over.

6.It is to be noted that at the initial stage of investigation, the jurisdictional police made an attempt to plant some other accused, which was noticed by this Court. Therefore, investigation has been handed over to the specialised agency i.e., CBCID and CBI and those agencies despite their efforts, investigation could not detect the offender. Therefore, taking note of the duration of the investigation, they filed closure report.

7.Merely because the closure report is filed, it will not amount to wipe out the charges against the accused. The closure report will remain in the file of the concerned Magistrate. Whenever the offender is found or traced, the closure report is to be taken into consideration and the offender is to be tried.

8.In the present case, the minor girl was murdered and the petitioner is non other than the father of the victim and as per the scheme, for the loss of life of the woman, compensation of Rs.10 lakhs is provided. Irrespective of the fact that the offender is arrested or not, the victim or dependents are entitled to compensation as per the scheme.



9.It is stated by the learned Advocate General appearing for the respondents that already a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) as compensation is given as per the order of this Court dated 22.06.2015, made in W.P.(MD)No.3513 of 2015, wherein this Court has observed as follows:-

"10.Until the introduction of Section 357-A of the Code of Criminal Procedure, the victims of crimes were, in fact, a forgotten lot. In order to alleviate their grievance and to compensate such victims of the crimes, the Parliament thought it fit to make a special provision by introducing Section 357-A to 357-C. Under Sub-Section (1) of Section 357-A of Cr.P.C., every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents, who have suffered loss or injury as a result of the crime and who require rehabilitation. Though such a scheme was not immediately introduced in this State by the State Government, now the State has introduced a scheme by which a corpus has also been created. It is informed to this Court that as per the Tamil Nadu Victim Compensation Scheme, 2013 issued under Section 357-A of Cr.P.C. Victim Compensation fund has been created and as of now, in the said fund, a sum of Rs.1.70 crores has been allocated to the Unit Officer, under the control of the Director General of Police and a sum of Rs.30 lakhs has been kept as Reserve Fund. As per the said scheme, in respect of a death on account of commission of the crime, the victims are entitled for compensation of Rs.3 lakhs. It is true that as per Section 357-A of Cr.P.C., where the offenders is not traced and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation. On receipt of such application, it is for the State or the District Legal Services Authority to award adequate compensation which may extend to Rs.3 lakhs to the victims in a case of death. In this case, going by the fact that the petitioner has been waiting for justice for the past four years, I am of the view that it is not necessary to drive him to approach the District Legal Services Authority for compensation, instead, I am inclined to exercise the power of this Court under Section 482 Cr.P.C., to order for payment of compensation out of the said scheme. In my considered view, that course alone would meet the ends of justice and wipe out the tears of the petitioner and his family members to some extent.

11.So far as the investigation part is concerned, the CBI shall continue to do the investigation and submit



a status report in respect of the investigation of the case. In the meanwhile, this State Government viz., the Secretary, Home Department shall issue order to the Director General of Police to pay a sum of Rs.3 lakhs as compensation out of the Reserve Fund as kept under the scheme to the petitioner and his wife Mrs. M.Rajan on or before 27.07.2015. It is directed that the cheque or demand draft drawn in the name of the petitioner and his wife Mrs.M.Rajam shall be handed over to them in the open Court before this Court by an officer to be deputed either by the second respondent or the Director General of Police. The petitioner and his wife are directed to be present before this Court on that day. It is directed that if the offenders are traced, appropriate steps may be taken to recover this amount from the offender."

10.In such view of the matter, the first respondent shall issue order to the second respondent to pay a sum of Rs.7,00,000/- immediately to the District Legal Services Authority, Trichy for disbursing the remaining compensation, within a period of two months from the date of receipt of a copy of this order. Thereafter, the District Legal Services Authority, Trichy shall disburse the said amount of Rs.7,00,000/- as per the scheme to the petitioner as expeditiously as possible.

11.In view of the above, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary,
State of Tamil Nadu,
Department of Home, Secretariat,
Fort St. George, Chennai-600 009.

2.The Director General of Police,
Beach Road, Chennai-4.

3.The Chief Judicial Magistrate,
Trichy.



4. The Officer in charge,
District Legal Service Authority,
Trichy.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-13290[F] dated
21/03/2022)

W.P. (MD) No. 3863 of 2020
18.03.2022

NSN (CO)
KB (06.04.2022) 5P 7C