



WEB COPY



W.P(MD)No.16183 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.06.2021
Pronounced on : 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.16183 of 2017
and
W.M.P(MD)No.12859 of 2017

Selvendran

... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Represented by Principal Secretary,
Home Department,
Fort St.George,
Secretariat, Chennai.
- 2.The Director General of Police,
Office of the Director General Of Police,
Beach Road, Chennai.
- 3.The Joint Director,
Central Bureau of Investigation,
3rd Floor, Sastri Bavan,
Nungampakkam, Chennai.
- 4.The Additional Director General of Police,
(CBCID),
Office of the Additional Director General of Police
(CBCID), Chennai.
- 5.The Superintendent of Police,
Office of the Superintendent of Police,
Sivagangai District.



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6.The Inspector of Police,
Taluk Police Station,
Sivagangai District.

7.Boominathan,
Sub Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for a writ of mandamus directing the to transfer the investigation of the case relating to the fake encounter of the petitioner's son by name Karthigaisamy from respondent No.4 to respondent No.3 consequently to direct the respondent No.3 to register FIR against respondent No.7 on the basis of the complaint preferred by the petitioner dated 22.07.2017 relating to the fake encounter of the petitioner's son by name Karthigaisamy and take appropriate action in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.Manoj

for M/s.R.Alagumani

For Respondent : Mr.Veera Kathiravan,
Nos.1 to 6 Senior Standing Counsel

For Respondent : Mr.G.R.Sathish
No.7

ORDER

The petitioner's son one Karthigaisamy was killed in an encounter on 11.01.2017 by the police. This petitioner/father of said Karthigaisamy has filed the present writ



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petition for transfer of the investigation of the case relating to the encounter of his son Karthigaisamy from the Inspector of Police, CBCID to the Joint Director CBI/ 3rd respondent and for consequential direction to 3rd respondent CBI to register FIR against 7th respondent one Boominathan, Sub Inspector of Police, Sivagangai Taluk Police Station.

2.The brief facts leading to the filing of this case are as follows:

i.On 10.01.2017 at about 8.45 pm the petitioner's son one Karthigaisamy went to a petrol bunk at about 8.45 in Sivagangai District to fill up fuel to his car. After filling up fuel, he attempted to leave the petrol bunk without making payment and when the employee of the petrol bunk demanded money, he is said to have attacked the employee and fled the place. In this connection, a case in Crime No.14 of 2017 was registered on the file of the Koodakovil Police station of Madurai District as against the suspected accused of the car bearing registration No.TN 59 W 8685 for the offences punishable under

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Sections 147, 148, 294(b), 323, 324, 506(ii) and 307 IPC and Section 37 of TNPPDL Act. The said car was also intercepted by the Police on 11.01.2017 around 6.30 am near Kayankulam and the passengers of the car are said to have assaulted the police and in that incident one Velmurugan, Police Constable was assaulted. Therefore, a case in Crime No.7 of 2017 was registered on the file of the SIPCOT Police Station, Sivagangai for the offence under Sections 147, 148, 294(b), 323 and 307 IPC. A special police team was formed and they were in search of the accused. When the special team was in search of the accused, the said Karthigaisamy is said to have attacked the police with sword and therefore, the Police opened fire, the accused karthigaisamy suffered two pellet injuries. Immediately he was taken to the Government Hospital, Sivagangai for treatment, but the Doctor therein reported him as brought dead. Based on the complaint of the Boominathan, Sub Inspector of Police/ 7th respondent, a case in Crime No.12 of 2017 was registered on the file of the Sivagangai Taluk Police Station for the offence under Sections 294(b), 332 and 307 IPC r/w Section 176(1A) of CrPC.



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ii.Since the case was registered under Section 176(1A) CrPC, the Chief Judicial Magistrate, Sivagangai ordered for a judicial enquiry, nominated Judicial Magistrate No.II, Sivagangai to conduct enquiry as to the nature of the death. The Judicial Magistrate has also conducted enquiry and filed his report. In the meantime by the orders of the Director General of Police, the investigation was also transferred from Sivagangai Taluk Police Station to CBCID, Sivagangai. The Inspector of Police, CBCID Sivagangai, has conducted investigation and also filed his final report before the Judicial Magistrate No.II, Sivagangai and the final report was accepted by the trial Court and it was closed on 25.04.2019. In this backdrop this writ petition is filed by the father of the deceased Karthigaisamy for transfer of the investigation to CBI.

3.This writ petition was filed on 16.07.2019 and was taken up for final hearing in the year 2021.

4.The learned Counsel for the petitioner submits that the petitioner's son Karthigaisamy was murdered by respondent No.7 and it is a fake encounter.



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According to him, no such occurrence has taken place as projected by the respondent Police on 11.01.2017. The petitioner claims that he was available with the deceased son along with his friends at the occurrence place on 11.01.2017 and no such occurrence as stated by respondent No.7 had ever taken place. By referring the orders of the Hon'ble Supreme Court in People's Union for Civil Liberties and another Vs State of Maharashtra reported in 2014 (11) SCALE submits that if the death had occurred by use of firearm it would amount to offence under the Indian Penal Code. He also sought for compensation for the death of his son by referring the provisions of Section 357 of CrPC.

5.The learned Senior Standing Counsel appearing for the State submits that the occurrence had taken place on 11.01.2017 and the case registered in Crime No.12 of 2017 on the file of the Sivagangai Taluk Police Station was transferred to CBCID by the orders of the Director General of Police on 19.01.2017 and the CBCID, Sivagangai registered a case in Crime No.1 of 2017, examined 78 witnesses, collected postmortem certificate of deceased

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Karthigaisamy, wound certificate of the police constable, inquest report, ballistic report, serological and viscera report and also collected RC Book of the car bearing Registration No.TN 09 AE 8371. The investigation agency has also examined the co-accused of the deceased Karthigaisamy, 1.Manamadurai Balamurugan and 2. Thirupachethi Colony Pandi and after completion of the investigation, they filed the final report in RCS No.1 of 2019 and the same was accepted by the Judicial Magistrate concerned.

6.The learned Senior Standing Counsel submits that the deceased Karthigaisamy was a notorious criminal and history sheet was opened against him in SIPCOT Police Station, Sivagangai District. He also involved in 34 other cases falling under various Police Stations and a list of the same is also produced. The learned Senior Standing Counsel has also relied on the judgment of the Hon'ble Supreme Court in Sikiri Vasu Vs State of UP reported in (2008) 1 MLJ (Cr1) 1393 (SC) and the State of West Bengal Vs the Committee for Protection of Democratic Rights reported in 2010 (2) CTC 84.

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7.This Court considered the rival submissions and perused the materials placed on record.

8.The petitioner's son Karthigaisamy died in an encounter, which is said to have taken place on 11.01.2017. On the complaint of respondent No.7, the case was registered on the same day in Crime No.12 of 2017. As per Section 176(1A) CrPC, judicial enquiry by the learned Judicial Magistrate was ordered. The Judicial Magistrate No.II, Sivagangai has examined the officials and the relatives of the deceased and also after verifying other connected records including the medical records, he filed his report that the police opened the fire only to safeguard the lives of the police personnel as defence is justified and there is no foul play in this incident. The investigation was also transferred from Sivagangai Taluk Police Station to CBCID and was investigated by CBCID, Sivagangai, wherein 78 witnesses were examined and none of those witnesses had stated that the petitioner, the father of Karthigaisamy was present in the place of occurrence on 11.01.2017. This petition is filed on the ground that the petitioner was also present



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along with his son and his son's friends and no such occurrence had ever taken place as stated by the respondent. Apart from this investigation, judicial enquiry was also conducted, it was also arrived at a conclusion that there is no foul play and the police opened fire only to safeguard them as defence. The list of cases furnished by the respondent Police also discloses that the petitioner's son is involved in 34 cases registered under various police stations in different districts.

9.This Court is not inclined to entertain this writ petition based on the vague averment made by the petitioner that he was also present along with his son and friends at the time of occurrence and no such occurrence has taken place.

10.Accordingly, this writ petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

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To

- 1.The Principal Secretary,
Home Department,
Fort St.George,
Secretariat, Chennai.
- 2.The Director General of Police,
Office of the Director General Of Police,
Beach Road, Chennai.
- 3.The Joint Director,
Central Bureau of Investigation,
3rd Floor,Sastri Bavan,
Nungampakkam, Chennai.
- 4.The Additional Director General of Police,
(CBCID),
Office of the Additional Director General of Police
(CBCID), Chennai.
- 5.The Superintendent of Police,
Office of the Superintendent of Police,
Sivagangai District.
- 6.The Inspector of Police,
Taluk Police Station,
Sivagangai District.
- 7.Boominathan,
Sub Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.



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B.PUGALENDHI, J.

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