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W.P.(MD).No.14381 of 2010



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2023

PRONOUNCED ON : 22.02.2023

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD).No.14381 of 2010
and
M.P.(MD).Nos.1 &2 of 2010

P.Balakrishnan

... Petitioner

Vs

- 1.The State,
Rep.by the Secretary to Government,
Home Department,
Secretariat Building, Chennai.
- 2.The Inspector General of Police,
Chennai.
- 3.The Inspector General of Police,
South Zone, Madurai
- 4.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
- 5.The Superintendent of Police,
Thoothukudi District, Thoothukudi.
- 6.The Inspector General of Police,
Pasuvanthanai Police Station,
Ottapidaram Taluk, Thoothukudi District.



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7. Joseph Jetson,
Inspector of Police,
Pasuvanthanai Police Station,
Ottapidaram Taluk,
Thoothukudi District.

8. The Dean,
Government Medical College Hospital,
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the 1st to 7th respondents to pay a compensation to the petitioner for a sum of Rs.5,00,000/-, more particularly by recovering from the pocket of the 7th respondent for the excess force and third degree treatment imposed by the 6th and 7th respondents upon the petitioner.

For Petitioner : Mr.P.Pethu Rajesh

For Respondents : Mr.M.Prakash
Additional Government Pleader for RR1 & 8

: Mr.R.M.S.Sethuraman
Additional Public Prosecutor for RR2 to 6

: Mr.K.P.Krishnadoss for R7

ORDER

The petitioner in this case claims the excessives have been committed by the 6th and 7th respondents, who are police officers and



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seeks a direction to direct payment of compensation of a sum of Rs.

5,00,000/- (Rupees Five Lakhs only) to the petitioner.

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2.Heard Mr.P.Pethu Rajesh, learned counsel appearing for the petitioner and Mr.M.PRakash, learned Additional Government Pleader appearing for 1st and 8th respondents and Mr.R.M.S.Sethuraman, learned Additional Public Prosecutor appearing for 2nd to 6th respondents and Mr.K.P.Krishnadoss, learned counsel appearing for 7th respondent.

3.Learned counsel for the petitioner would submit that he is a Salai Paniyalar under the Highways Department and is a resident of Kannangkattai, Ottapidaram Taluk, Thoothukudi District. He would further submit that his brother Vellathurai had two girl children and that his wife had died. After the death of his brother's wife, since the brother namely the said Vellathurai was not taking care of his daughters and that he was leading an immoral life, the petitioner took the custody of both the children and was bringing them up as his own daughters. However, his brother Vellathurai seems to claim that he wanted to give his daughter in adoption to one unnamed police constable belonging to the Railway Protection Force. The petitioner refused to give the custody of the child



Mottaiammal. The said child also refused to go with the petitioner's brother.

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4. But on one day, Mottaiammal had gone to graze the cattle, did not return to the house. Hence, the disappearance was informed to the brother of the petitioner and that the brother of the petitioner along with villagers and the petitioner had made serious search and had lodged a complaint with the 6th respondent/ police. However, on 21.11.2010, the body of the child Mottaiammal was found floating in the village well and it was sent to postmortem. The 6th respondent suspecting the petitioner to be involved in the disappearance and death of the said Mottaiammal had taken custody of himself and his son and had tried to extort a confession statement of their involvement. The 6th respondent had ill-treated the petitioner and he was beaten black and blue. He was in illegal custody of the 6th respondent till the evening of 24.11.2010 and again he was taken into custody on 25.11.2010 till 29.11.2010. Even during that period the petitioner was subjected to severe physical torture. As the petitioner was innocent, he refused to yield to the pressures put by the 6th respondent. Due to the third degree treatment, the petitioner had suffered fracture in the neck and contusion coupled with lacerated injuries all over the body.



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The petitioner would further claim that he had forwarded a complaint to the State Human Rights Commission and in spite of such complaint, no steps have been taken to redress his grievance.

5.The petitioner would further claim that he got himself admitted as an in-patient in a Government Hospital, Thoothukudi on 30.11.2010 and was discharged from the hospital on 07.12.2010, without giving full treatment to his wounds because of the pressure exerted by the 6th respondent. Since no action was initiated on the representations and the complaint made by the petitioner, the petitioner had approached this Court with the present Writ Petition seeking for rightful compensation, the petitioner is entitled to.

6.He would further submit that when the Writ Petition was taken up for admission, this Court, being shocked by the treatment met out by the petitioner, had directed the 8th respondent to examine the petitioner's health condition and that since the same was not complied with, by a further order, this Court had directed the 8th respondent to appear in person before this Court on 30.12.2010 and examine the petitioner and submit a report. Pursuant to the said direction, a report has also been filed



by the Medical Superintendent of the 8th respondent enclosing investigations made on the petitioner not only by the 8th respondent but also a team of Doctors. Hence, he would submit that there is a clear police excessives committed by the 6th respondent and therefore, he should be duly compensated by the respondents 1 to 7 and the amount of compensation recovered from the 7th respondent, who was holding the office of the 6th respondent.

7. Countering his arguments, learned Additional Public Prosecutor appearing for the respondents 2 to 4 would submit that the case of the victim Mottaiammal had been closed as non-traceable and the Report also has been filed before the Competent Court. He would further submit that the allegations made in the Writ Petition are all imaginary. Since the said victim Mottaiammal was last seen in the custody of the petitioner, the petitioner was originally considered to be a prime suspect. But, however, after detailed investigation with the villagers, the suspicion was found to be faulted. In spite of serious efforts to trace the accused in this case, the respondent police was not able to track any substantial evidence to pin down any individual. If the allegation of the petitioner is that he was taken into custody on 21.11.2011 and set at liberty on 24.11.2011, the



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petitioner would have immediately approached various authorities or at least the higher officials namely the 5th respondent bringing it to his notice about the excesses by the 6th respondent. However, he further alleges that he was again taken into custody on 25.11.2011 and was kept in illegal custody till 29.11.2011.

8.He would further submit that the allegations the petitioner was taken into illegal custody and meted out third degree from the 3rd respondent and suffered fracture and severe lacerations have been found to be false in the light of the wound register made, when the petitioner got himself admitted on 30.11.2011 at the Government Hospital, Thoothukudi. He would also rely upon the examination done by the team of Doctors as directed by this Court and contended that even the said team of Doctors have not found any injury on the petitioner as claimed by him in the Writ affidavit. This itself would suffice to show that the petitioner have come with unclean hands to wriggle out of any investigation against him with the disappearance and the death of the victim Mottaiammal. He would further contend that all the allegations made by him are imaginary. Therefore, requested this Court to dismiss the Writ Petition with costs.



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9.Mr.M.Prakash, learned Additional Government Pleader appearing on behalf of the 8th respondent would submit that he is only a formal party and that pursuant to the directions issued by this Court, he had also with the help of a team of Doctors has examined the petitioner. He would further submit that the team of Doctors have noted the injuries on the petitioner and submit that there was no injury upon the petitioner as claimed by him in the affidavit filed by the petitioner in support of this Writ Petition.

10.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

11.At the outset, I am of the view that this Court has been unnecessarily burdened with this Writ Petition. The complaint of the petitioner would have been well adjudicated before this State Human Rights Commission. Even though, the petitioner in his affidavit has stated that he approached the State Human Rights Commission, there is no statement as to when he had approached the State Human Rights Commission and what was the result of his complaint. Be that as it may, I



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now, after a period of 13 years do not propose to relegate the petitioner to approach the State Human Rights Commission. Before advertng to the allegations and the counter allegations made by the respective parties, I have called upon the learned Additional Public Prosecutor to produce the case diary with reference to the disappearance and death of the victim Mottaiammal.

12.I have perused the entire case diary. Even though, the girl went missing on 14.11.2011, a complaint has been made only in the midnight of 16.11.2011 and the petitioner himself had accompanied the complainant to the Police Station and had given a statement. The case diary do not suggest any suspicion on any individual including the petitioner. The police seems to have enquired various individuals on various dates. The body of the victim was found on 21.11.2011 and the respondent have continued to conduct investigation by examining various persons and since they were not able to trace any culprits they had closed the complaint in the year 2013.

13.As rightly pointed out by the learned Additional Public Prosecutor even if an illegal custody as claimed by the petitioner was



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made by the 6th respondent, he was at liberty between the evening of 24.11.2011 and the morning of 25.11.2011 even according to him. Had the petitioner had been in such illegal custody either he would have complained of such Police excesses during the said alleged period when the petitioner was at liberty or any of his relatives including his wife would have rung the alarm bells by approaching the Higher Authorities. That had not happened in this case. The further allegations in the affidavit that he has suffered grievous injuries including fracture has been negated by the wound certificate issued by the Government Hospital on 17.02.2011 and the examination conducted by the 8th respondent pursuant to the direction issued by this Court.

14. In such view of the specific finding of the fact, I am of the view that the petitioner had not approached this Court with clean hands. As rightly pointed out by the learned Additional Public Prosecutor that the victim Mottaiammal was last seen in the custody of the petitioner, the petitioner is trying to take advantage of making these allegations, to instill fear upon the Investigation Officer to investigate against him.



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15. In view of the aforesaid findings, I do not find any merits in the Writ Petition and the Writ Petition is accordingly dismissed. Consequently, connected miscellaneous petitions are closed.

Index: Yes/no
Speaking/non-speaking
gba

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for the State,
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