



W.P.(MD)No.11610 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 11.07.2023

Delivered on: 26.07.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.11610 of 2013

R.Senthil Kumar

... Petitioner

Vs.

- 1.The State of Tamil Nadu represented by
The Home Secretary,
Fort St.George, Secretariat,
Chennai-1.
- 2.The Director General of Police,
O/o.The Director General of Police,
Beach Road, Chennai-1.
- 3.The District Collector/District Magistrate,
Collectorate,
Ramanathapuram District,
Ramanathapuram.
- 4.The Superintendent of Police,
O/o.The Superintendent of Police,
Ramanathapuram District.



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5.The Superintendent of Police,
CBCID, B.B.Kulam, Narimedu,
Madurai District.

6.The Inspector of Police,
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District.

7.Sivakumar

8.Subash

9.Enathi Muniasamy

10.Arumugam Nainar

11.Velu

12.Gothandaraman

13.Gnanakunasekaran

14.Devanderan

15.Nethi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the fourth respondent to transfer the case in Crime No.427 of 2012 dated 03.10.2012 on the file of the sixth respondent and entrust the same to the fifth respondent for investigation of the case by a competent officer and file a final report before the jurisdictional Magistrate within the time stipulated by this Court pertaining to the custodial death of the



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petitioner's brother R.Vengatesan S/o.Ramanujam (26/11) at Emaneswaram Police Station, Paramakudi Taluk, Madurai District on 03.10.2012 by the respondents Nos.8 to 15 and initiate necessary departmental action against the respondents Nos.7 to 15 within the time stipulated by this Court and consequently directing the first respondent to provide adequate compensation of Rs.50 Lakhs to the victim's family due to custodial death made by the respondents Nos.8 to 15.

For Petitioner : Mr.C.M.Arumugam

For R1 to R6 : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This writ petition has been filed to direct the fourth respondent to transfer the case in Crime No.427 of 2012 dated 03.10.2012 on the file of the sixth respondent and entrust the same to the fifth respondent for investigation of the case by a competent officer and file a final report before the jurisdictional Magistrate within the time stipulated by this



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Court pertaining to the custodial death of the petitioner's brother R.Vengatesan S/o.Ramanujam (26/11) at Emaneswaram Police Station, Paramakudi Taluk, Madurai District on 03.10.2012 by the respondents Nos.8 to 15 and to initiate necessary departmental action against the respondents Nos.7 to 15 within the time stipulated by this Court and consequently, to direct the first respondent to provide adequate compensation of Rs.50 Lakshs to the victim's family due to custodial death made by the respondents Nos.8 to 15.

2.According to the petitioner, he is the brother of one Vengatesan. The said Vengatesan was leading very peaceful life with his wife and new born child. Unfortunately, the said Vengatesan was implicated by the seventh respondent herein in a jewel theft case in C.C.No.116 of 2010 and the said case is pending. One of the accused namely A.Ayyappan, S/o.Anjudhasan, who is arrayed as A2 in the above said case, was known to his brother as they were living nearby in their childhood at Paramakudi for some years. Out of the friendship only, without knowing the true intention and nature of their act, his brother helped the accused persons to sell the jewel in the said case.



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3.Mr.Sivakumar, Inspector of Police, Paramakudi Town, who is the seventh respondent herein, Mr.Saravanan, who was working as Sub-Inspector of Police, Paramakudi Police Station along with Mr.Enathi Muniasamy, who is ninth respondent, in order to get unlawful advantage over his brother's plight, started demanding and obtaining huge money from them under the pretext that the seventh respondent would implicate his brother in other cases falsely, if he was not satisfied the illegal demand of the seventh, ninth and tenth respondents. On 03.10.2012, when his brother went to Paramakudi to appear before the Judicial Magistrate, Paramakudi in C.C.No.116 of 2010, the eighth to fifteenth respondents on the instructions given by the seventh respondent, took him to Emaneswaram Police Station and he was detained there. In the name of enquiry, his brother was brutally attacked and tortured by the respondents 8 to 15 and thereby, his brother sustained injuries all over his body and succumbed to death. The said incident had happened on the very same day and next day i.e. on 04.10.2012 at about 06.00 am., the dead body of his brother was taken by the police personnels, as if his brother suffered with illness while he was in custody.



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4.While his brother was kept at Government Hospital, Paramakudi,

he noticed several blood stains and injuries in all over his body. While facts are being so, the respondent police came up with the false case alleging that the police personnels, while on patrol, on 03.10.2012, at about 3.20 am., near the jewellery bazar in Paramakudi, tried to nab his brother. But he tried to escape by his motorcycle. At that time, he fell down from his motorcycle and sustained injuries. Thereafter, he was taken to the police custody and suffered illness and died later. Thereafter, FIR was registered by the sixth respondent in Cr.No.427 of 2012 dated 03.10.2012, under Section 176 (1) Cr.P.C., and the same is pending. On 16.04.2013, the petitioner sent detailed representation to the second respondent seeking impartial enquiry from the Central Investigating Agencies and further, he is claiming compensation for the custodial death and also he requested for taking action as against the police officials for the criminal action done by them. However, no action was taken by the second respondent. Therefore, the petitioner preferred the present petition to transfer the investigation in Cr.No.427 of 2012 and to take action as against the police officials and also to provide Rs.50 Lakhs as compensation to the victim's family.



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5.The first respondent filed counter stating that the case was already transferred to the fifth respondent and departmental action was also initiated as against the police personnels without prejudice to the outcome of the pending investigation by the fifth respondent and compensation of Rs.5,00,000/- had been handed over to the mother of the deceased on 22.01.2020 by the District Collector, Ramanathapuram District as per G.O.(Ms)No.660, Public (Law & Order E) Department, dated 31.07.2017. Further, it is stated in the counter that when the Paramakudi Sub Division Crime Sub Inspector of Police, Paramakudi Town Police Station, Mr.Muniyasamy and Grade I Police Constable (No. 1374) Mr.Gnanasekaran were patrolling near jewellery bazaar, Paramakudi, on 0310.2012, at about 03.20 hrs., they found one crime accused Venkatesan S/o.Ramanujam, who involved in Paramakudi Town Police Station Crime No.93 of 2010 under Section 392 IPC, was going in two wheeler bearing Reg.No.TN59AT3027. When they tried to secure him, he escaped from that place and fell down near Gandhi statue and sustained injury. Then police personnels secured him and brought to the police station. A case was registered against the accused in Paramakudi



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Town Police Station in Cr.No.426 of 2012 under Section 307 IPC, on the complaint given by the Sub Inspector Mr.Muniyasamy, on 03.10.2012, at 06.00 hours. While accused was in police custody, he fell ill and was taken to the Government Hospital, Paramakudi, on the instructions of Paramakudi Town Police Station Inspector through medical memo and was admitted in the Government Hospital for taking treatment on 03.10.2012 at 1315 hrs. Later, he died in the Government Hospital on the same day, at 13.18 hrs. In this regard, a case was registered in Paramakudi Town Police Station in Cr.No.427 of 2012 under Section 176(1) Cr.P.C. Thereafter, the said case was transferred for investigation as per GO.Ms.199 Public (Law & Order-E) Department, dated 13.03.2017 and Memorandum in Rc.No.041929/Cr 3(2)/2017 dated 13.04.2017 of the Director General of Police, Tamil Nadu to the fifth respondent. The Sub Inspector of Police, CBCID re-registered the case as Cr.No.1 of 2018 under Section 176(1-A) Cr.P.C., on 18.01.2018 and now, it is under investigation. Already the case was transferred to the fifth respondent and appropriate Departmental action was also initiated as against the police officials and compensation of Rs.5,00,000/- was also awarded to the mother of the deceased. Hence, the all prayers in this



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writ petition are infructuous and therefore, this petition is liable to be dismissed.

6.The fifth respondent filed status report and he also narrated all the averments as stated by the first respondent. Further, stated that for the slackness on the part of the police officials concerned with regard to the custodial death of Vengatesan, one Mr.Subash, Inspector of Police, Mr.Arumuga Nainar, Sub-Inspector of Police, Mr.Muniyasamy, Sub-Inspector of Police, Mr.Kothandaraman, Head Constable 728, Mr.Neethi, Grade One Police 291, Mr.Krishnavelu, Head Constable 1662, Mr.Devendran, PC 1253 and Mr.Gnanasekaran, Head Constable 1374 were placed under suspension on 04.12.2012, 05.10.2012 and 06.10.2012 respectively. After submission of the Judicial report to the Government, all of them subsequently, revoked from suspension on 04.04.2013. Further, Mr.Muniyasamy, SI of Police was died on 07.06.2021. The other police personnels viz., HC 1374, Gnanasekaran, HC 1462, Krishnavelu and HC 872 Kothandaraman absented themselves and deserted the force from 24.11.2020 and they were dealt on charges under Rule 3(b) of TNPSS (D&A) Rules 1955 in PR.No.76/2021, PR.No.29/2021 and



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PR.No.63/2021 respectively. On completion of disciplinary proceedings against them, they were awarded each with a punishment of “Postponement of increment for a period of three years which shall operate to postpone their future increments” by the Superintendent of Police, Ramanathapuram District and were taken back for duty. On appeal, their punishments were modified into that of “Reduction to a lower stage by two stages in the pay for a period of one year with cumulative effect” by the Deputy Inspector General of Police, Ramanathapuram Range. On completion of investigation in Cr.No.1 of 2018 under Section 176(1-A) Cr.P.C., charge sheet was laid by CBCID officials against the above said Mr.Muniyasamy(since died), Mr.Gnanasekaran, Mr.Krishnavelu and Mr.Kothandaraman, before the learned Judicial Magistrate No.II, Ramanathapuram on 25.05.2022 for the offence punishable under Sections 330, 348, 302 IPC r/w 34 IPC. Further, compensation of Rs.5,00,000/- was also disbursed to the mother of the deceased, namely R.Indhira on 22.01.2020.

7.The learned counsel appearing for the petitioner has contended that the petitioner’s brother was brutally attacked by the respondents 8 to



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15 and thereby, he died in the police station. But the respondents have falsely registered case as against his deceased brother alleging that he involved in another crime and he also attempted to escape from the custody of police and at that time, he fell down from his two wheeler and thereby got injuries and he was taken to the hospital and died.

8.The learned counsel for the petitioner further contended that though investigation was transferred to the fifth respondent the fifth respondent has not filed charge sheet as against all the accused involved in this case and only filed charge sheet as against four accused persons. For the remaining persons, the fifth respondents has failed to add in the final report. As far as departmental proceedings is concerned, the respondent police have awarded very lesser punishment and the compensation of Rs.5,00,000/- is also very meagre amount. Therefore, this Court has to award adequate compensation and to direct the fifth respondent to investigate the matter by implicating all the accused persons.



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9.The Additional Public Prosecutor appearing for R1 to R6 has contended that already all the prayers of the petitioner were considered and investigation transferred to the fifth respondent and departmental action also taken as against the police officials, who involved in the crime and compensation also paid as per GO(Ms)No.660, dated 31.07.2017. Therefore, this petition is liable to be dismissed.

10.Heard both sides and perused the materials available in the record.

11.The main prayer in this writ petition is to transfer the investigation in Cr.No.427 of 2012 from the file of sixth respondent to the file of fifth respondent and the second prayer is to initiate departmental action as against the respondents 8 to 15 and the third prayer is to award adequate compensation of Rs.50,00,000/-.

12.As far as the first prayer is concerned, already the case was transferred from the file of sixth respondent to the file of the fifth respondent and the fifth respondent also investigated the matter and filed



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final report as against the for accused persons. Therefore, relief in respect of the first prayer would not arise, since the case was already transferred. The learned counsel for the petitioner brought to the knowledge of this Court that the fifth respondent failed to include all the accused persons, who are all involved in the crime and filed final report only as against four accused persons. Since the prayer is only for transferring the investigations from the sixth respondent to the fifth respondent and the same was already done, this Court need not go into other facts. If at all the petitioner aggrieved by the investigation done by the fifth respondent, he can very well approach the trial Court for his redressal by way of filing appropriate application in accordance with law.

13.As far as the second prayer is concerned, as per the status report of the fourth respondent, departmental proceedings were initiated and adequate punishments were also awarded to them. Since the initiation of departmental proceedings is vested with Superintendent of Police, Ramanathapuram and he already initiated the departmental proceedings against the officials, this Court need not go into in this regard further. If the petitioner aggrieved by the said departmental proceedings, he can



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also workout his remedy before the Higher officials in accordance with the rules.

14.As far as the third prayer is concerned, already police department have paid Rs.5,00,000/- as per GO.(Ms).No.660, dated 31.07.2017. The learned counsel appearing for the petitioner has argued that since the respondents being police officials, have committed brutal murder and the deceased who was having tender age child and wife, an adequate compensation has to be awarded. This Court has power to award compensation for the custodial death. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported in (1993) 2 SCC 746 in a case of Nilabati Behera Alias Lalita Vs State of Orissa and others wherein the Hon'ble Supreme Court held that the High Courts can award compensation for the custodial death by invoking Article 226 of the Constitution of India. Further, in a decision of this Court reported in (2008) 6 MLJ 869 in a case of Chairman, Bar Council of Tamil Nadu, Chennai Vs. State of Tamil Nadu rep by its Secretary to Government (Home Department), Chennai and others, this Court awarded compensation for the assault made by the



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police by invoking provision under Article 226 of the Constitution of India.

15. On careful reading of the above said judgments, it is clear that this Court can award compensation by invoking Article 226 of the Constitution of India for the custodial death. However, for deciding the quantum, there is no formula for custodial death. Therefore, this Court safely follows the method adopted in MCOP cases.

16. According to the petitioner, the deceased was aged about 26 years and no earnings was mentioned in the petition. However, this Court can take Rs.15,000/- as monthly income of the deceased. According to the case of Sarala Verma Vs. Delhi Transport Corporation, the multiplier for the age group of 26 years is 17. According to the case of National Insurance Company Limited Vs. Pranay Sethi and others, reported in 2017(2) TN MAC 609 (SC), the future prospects for the deceased is 40%. Therefore, the income of the deceased can be calculating as follows:



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- Monthly income of the deceased would come as Rs.21,000/- (Rs.15,000/- + Rs.6,000/- = Rs.21,000). Annual income of the deceased would come Rs.2,52,000/-(Rs.21,000/- *12= Rs.2,52,000/-).
- Considering the dependency of the deceased, 1/3 of the income of the deceased has to be deducted for his personal expenses and thereby, the annual income of the deceased would come Rs.1,68,000/-(Rs.2,52,000 – 84,000 = Rs.1,68,000/-)
- By applying the multiplier 17 for the age group of 26 years, the amount would come as Rs.28,56,000/-(Rs.1,68,000/- *17 = Rs. 28,56,000/-).

17.Further, a sum of Rs.15,000/- is awarded for the loss of estate. The wife of the deceased is entitled to get Rs.40,000/- for consortium. Further, the legal heirs of the deceased are entitled to get Rs.15,000/- towards funeral expenses. Once in three years, 10% of the consortium, loss of estate and funeral expenses have to be increased as per judgment reported in 2017(2) TN MAC 609 (SC) in a case of National Insurance Company Limited Vs. Pranay Sethi and others. Thereby, 20% of the



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amount has to be increased in the above said heads of account.

(Rs.70,000/- + Rs.14,000/- = Rs.84,000/-) Hence, award amount would come Rs.28,56,000/- + Rs.84,000/- = Rs.29,40,000/- and the same will be rounded as Rs.30,00,000/-.

18. Therefore the legal heirs i.e., mother, wife and son of the deceased are entitled for compensation of Rs.30,00,000/-. All the legal heirs of the deceased are entitled to get Rs.10,00,000/- each towards compensation. They are also entitled to get interest at the rate of 6% per annum from the date of death of the deceased till the realisation of the amount. The respondents 1 to 4 are directed to pay a sum of Rs.30,00,000/- to the deceased family members, i.e., mother, wife and son, after proper identification, within a period of two months from the date of receipt of a copy of this order. The compensation amount already paid to the mother of the deceased by the Government shall be adjusted with her compensation amount. If any difficulties, the official respondents can take assistance of the District Legal Services Authority, Ramanathapuram District.



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19. With the above observations and directions, this writ petition is

disposed of. No costs.

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Index :yes/No

Internet:yes/No
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- 1.The State of Tamil Nadu represented by
The Home Secretary,
Fort St.George, Secretariat,
Chennai-1.
- 2.The Director General of Police,
O/o.The Director General of Police,
Beach Road, Chennai-1.
- 3.The District Collector/District Magistrate,
Collectorate,
Ramanathapuram District,
Ramanathapuram.
- 4.The Superintendent of Police,
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- 5.The Superintendent of Police,
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- 6.The Inspector of Police,
Paramakudi Town Police Station,
Paramakudi,
Ramanathapuram District.



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Pre-Delivery Order
made in
W.P.(MD)No.11610 of 2013

26.07.2023