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Writ Petition (MD)No.20783 of 2013



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.09.2023

Delivered On : 29.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition (MD)No.20783 of 2013

K.Petchiammal

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its,
Secretary to Government,
Home Department,
George Fort,
Chennai.
- 2.The Inspector General of Police,
South Zone,
Madurai.
- 3.The District Collector,
Thoothukudi District,
Thoothukudi.
- 4.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.
- 5.The Inspector of Police,
Sri Vaikundam Police Station,
Sri Vaikundam Taluk,
Thoothukudi District.



6.The Inspector of Police,
CBCID,
Tirunelveli.

7.Padmanaban

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing 5th respondent to handover the case file in Crime No.99 of 2013 registered under Section 309 of IPC to the 6th respondent and consequently directing the 6th respondent to investigate the case of petitioner husband's murder namely Kambaiah independently and file a report before the competent Court.

For Petitioner : Mr.P.M.Vishnuvarthanam

For Respondents 1 to 6 : Mr.R.M.Anbunithi

Additional Public Prosecutor

For 7th Respondent : Mr.T.Antony Arul Raj

ORDER

The petitioner has filed this writ petition in a nature of Writ of Mandamus, directing the 5th respondent to handover the case file in Crime No.99 of 2013 registered under Section 309 of IPC to the 6th respondent and consequently directing the 6th respondent to investigate the case of petitioner husband's murder namely Kambaiah independently and file a report before the competent Court.

2.According to the petitioner, she is the wife of one Kombiah and her



husband was doing business of purchasing goat skin. On 07.05.2013, her husband went to Kalvai village to purchase goat skin in temple festival. After purchasing the goat skin in the temple festival, while he was going back to his village, on 08.05.2013 he parked the vehicle and had a tea near the respondent police station, at that time, his cycle along with goat skin were missing thereby he went to the fifth respondent police station to lodge the complaint. At that time, the seventh respondent who was working as the Inspector abused her husband and then he narrated about the missing of goatskin and requested to take action but the police scolded him that this is silly matter and then assaulted her husband. When he attempted to escape from the assault, they chased outside the police station, and thereby, he dashed against the electric pole and fallen down. After falling of her husband, again the police official assaulted him and thereby, he sustained injuries and thereafter, he was taken to the Government Hospital, Srivaikundam. Due to critical condition, he was referred to medical college Hospital, Palayamkottai. On 09.05.2013, the petitioner's husband told her that his lower limb has no sense and he narrated the happenings and the harassment made by the respondents in the police station on 08.05.2013. Thereafter, several representations were made to the Superior Officers of the seventh respondent and also fifth respondent. But no any action was taken



based on the complaint given by the petitioner.

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3. Thereafter, the writ petition in W.P.No.8631 of 2013 filed with miscellaneous petition praying the Court directing the learned Judicial Magistrate, Srivaikundam to record the statement of the husband of the petitioner. Thereafter, based on the direction given by this Court, the learned Judicial Magistrate, Srivaikundam recorded the statement of her husband on 23.05.2013. In the meanwhile, the petitioner came to know that on 16.02.2013, the auto driver namely Hariharan had given a complaint at Police station, stating that on 08.05.2013, when he was crossed the respondent police station, an unidentified man tried to commit suicide climbing over the electric post. Based on the aforesaid complaint, the respondent Police registered a case in Crime No.99 of 2013. The aforesaid case is absolutely false. After eight days, from the date of occurrence, in order to escape from the clutches of law, the auto driver henchman of the seventh respondent Inspector has given the false complaint. The said acts of the seventh respondent is abuse of process of law and he created a false case against the petitioner's husband. In the meantime on 06.06.2013, at about early morning 12.00 hours, the petitioners husband died in the hospital.



4. Thereafter, she approached the learned Judicial Magistrate, Srivaikundam to conduct inquest and the learned Judicial Magistrate conducted detailed enquiry. The learned Judicial Magistrate, Srivaikundam finally passed an order that he could not come to the conclusion that the seventh respondent assaulted her husband. At the same time, injuries were found on the husband's body and the criminal case filed by the respondents police creates strong suspicious about the seventh respondent action. The learned Judicial Magistrate, Srivaikundam has recommended her husband's murder case is to be investigated by the CBCID or any other independent Investigation Agency. Though the learned Judicial Magistrate passed the order as early as possible on 26.08.2013 but the fifth respondent has not taken any steps to hand over the case of her husband's death which is registered in Crime No.99 of 2013. Therefore, the respondents are intentionally and unlawfully attempting to save the seventh respondent who committed all the illegalities and irregularities to escape from the clutches of law. Hence, this petition is filed.

5. The fourth respondent has filed counter alleging that the petitioner has filed this petition for seeking investigation by a particular agency of his choice and that the petitioner has not approached this Court with clean



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hands. The averments of the petitioner herein in paragraph no.2 of the affidavit are denied and in fact only on the information received from the Government Hospital, Srivaikundam on 08.05.2013 at 04.00 pm., by the Srivaikundam Police Station that an unknown person under the influence of alcoholic intoxication with severe injuries was brought by an unknown auto driver and he was referred to Tirunelveli Medical College Hospital. Thereafter, the Special Sub Inspector of Police, Srivaikundam Police Station proceeded to the hospital recorded the statement of the injured Kombiah at Tirunelveli Medical College hospital on 09.05.2013 and the same was entered in the general dairy of the station. On enquiry, it was found that an auto driver namely V.Harikaran, son of Vaikundaperumal Devar, brought to the injured to the hospital and the complaint was received from him and FIR in Crime No.99 of 2013 under Section 309 of IPC was registered on 16.05.2013.

6.In the meanwhile, a writ petition in W.P.(MD)No.8631 of 2013 was filed by the petitioner and this Court was pleased to direct the jurisdictional Magistrate to record the statement of the injured. Accordingly the deceased Kombiah gave a statement before the learned Judicial Magistrate, Srivaikundam. The said Kombiah succumbed on 06.06.2013 at 12.15 hours.



Thereafter, Crime No.99 of 2013 was altered to Section 174 Cr.P.C., from Section 309 of IPC. Thereafter, the learned Magistrate has conducted inquest on the deceased. The petitioners husband Kombiah is not a goatskin businessman. He is known as a full time drunkard and used to collect money from the general public and using the same for his drinking purpose.

7.The real fact is that on 08.05.2013 at 04.00 p.m., the said Kombiah fully under the influence of liquor stood in front of the Srivaikundam Police Station in an intoxicated frenzy uttering unintelligible which the sentry police was not able to understand. The sentry police did not allow him inside the station and sent him away. Thereafter, the said Kombiah appears to have climbed up on a transformer, which is located in front of the Union Office and some 150 feet away from the Police Station on the Eastern side. On seeing the same, a small crowd, comprising the auto drivers and staff of the Panchayat Union office, Srivaikundam gathered and shouted at the said Kombiah to come down. Due to the electric force or some other reason, he had fallen down from a height of about 10 feet and appeared to have suffered abrasions on his body. Immediately he was taken to the Government Hospital, Srivaikundam by the aforesaid auto driver. The body and mental condition of the said Kombiah has been noted in the accident



register. After first aid, he was referred to Tirunelveli Medical College Hospital for further treatment. On enquiry, it is confirmed that nothing had happened to the said Kombiah either at the police station or by the police personal as alleged. It is false to allege that the seventh respondent and some other police officials assaulted the said Kombiah.

8.The averment of the petitioner in paragraph no.5 of the affidavit is motivated, after-thought and devoid of truth. The injuries sustained by the husband of the petitioner are purely due to his attempt to commit suicide by climbing over the transformer. The petitioner's husband was in a drunken condition and therefore, he was not allowed inside the police station. The learned Judicial Magistrate, Srivaikundam has never recommended that the case of the petitioner's husband is to be investigated by the 6th respondent. The injuries sustained by the petitioner's husband are purely due to his attempt of committing suicide by climbing over the transformer due to his inebriated. The investigation done revealed that nobody was a cause for the loss of life of the petitioner's husband in any manner and none of the respondents denied the right to life of the petitioner's husband. The respondent police have also conducted detailed enquiry by examining 15 witnesses and recording their statements under Section 161(3) of Cr.P.C., and no foul play was either suspected or attributed against the police



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personnel for the death of the deceased which is his own making only in his drunken state. Therefore, the petition is liable to be dismissed.

9.The learned counsel appearing for the petitioner would contend that the petitioner's husband Kombiah who was selling goatskin on 08.05.2013, after purchasing goatskin he parked the vehicle near police station, Srivaikundam and when he was taking tea, his cycle along with goatskin were missing. In order to give complaint about the same, he went to the police station but the police assaulted and tortured him stating that this is silly matter and why you brought silly matter to the police station. Thereafter, he was taken to hospital by henchmen of police and he was admitted in Government Hospital. The petitioner went to the medical College Hospital and she heard the occurrence through her husband and thereafter, she made a complaint against the police officers to the higher authorities but no action was taken. Thereafter, in order to escape from the clutches of law, the respondent police have registered a case as against the husband of the petitioner in Crime No.99 of 2013 as if one Hariharan, auto driver had given complaint that the husband of the petitioner attempted to commit suicide. In the meantime, the husband of the petitioner died in the hospital on 06.06.2013. Thereafter, Section was altered and investigation



was not conducted in a proper manner. The allegation as against the respondent police is that the same respondent police have investigated the case and thereby, the case has to be transferred from the fifth respondent to some other agency.

10. The learned Government Advocate appearing for the respondents contended that the husband of the petitioner in a drunken mood entered into police station and the same was stopped by the Sentry since he was in intoxication and thereafter, the police came to know that the husband of the petitioner climbed to the electric pole and they shouted at him to come down. Due to electric force, he had fallen down from the electric pole from the height of 10 feet. Thereby, he sustained injuries and he was taken to Srivaikundam hospital by one auto driver Hariharan and thereafter, he was taken to Government Hospital Medical College and then based on the complaint given by one auto driver, the case in Crime No.99 of 2013 under Section 309 of IPC as against the petitioner's husband was registered. Thereafter, the petitioner's husband died on 06.06.2013. Then Section was altered into Section 174 of Cr.P.C., from Section 309 of IPC. The investigation was conducted by the respondent police. As per investigation report, the deceased was died due to the fall from the electric pole. There is



no any nexus between the death of the deceased and the respondent police.

The petitioner has filed this petition with false allegations and already investigation was completed and the petition is liable to be dismissed.

11.This Court heard both sides and perused the materials available on records.

12.On perusal of the records, it is observed that according to the petitioner on the date of occurrence, the husband of the petitioner was present in the police station. According to the petitioner, the husband of the petitioner entered into the police station without permission, and he entered into office of the Inspector of Police to complain about the missing of the goatskin. For that due to irritation, the Inspector scolded the petitioner's husband that why you brought the silly matter to the police station and for that the husband of the petitioner replied that why you are shouting for giving complaint. Irritating the same, the Inspector of Police and other Police Personnel who were present at the time of duty have assaulted the petitioner and thereafter, when he was attempted to escape from the police he dashed against the electric pole and then he fell down. Even after that the police assaulted him and thereafter he become unconscious and do not know what had happened.



13. At the same time, the contention of the respondent police is that the petitioner's husband was in a drunken mood and attempted to enter into office and at the same time, the Sentry did not allow him to enter into the police station since he was in intoxication. After some time he came to know that the petitioner's husband was climbing electric post and then he fell down and sustained injuries.

14. From the aforesaid pleadings, this Court can infer that the deceased approached the police station for some grievances but the petitioner's husband was not allowed to enter into the police station. This version shows that something had happened on the date of occurrence between the police and husband of the petitioner. It is also admitted fact that the petitioner's husband sustained injuries on the date of occurrence. Thereafter, the petitioner's husband was admitted in the hospital on 08.05.2013. But there is no any complaint registered till 16.05.2013 that too based on the complaint given by the said Hariharan as against the petitioner's husband as if he attempted to commit suicide. This creates suspicion over the case of prosecution.



15. On the date of occurrence, the husband of the petitioner came to police station and he climbed into electric pole and then fell down was known to the public and public was also gathered in the place of occurrence. While so, no complaint was given by anybody with regard to aforesaid incident, even though the place of occurrence is very close to the police station.

16. Per contra, the auto driver had given complaint only on 16.05.2013. Had the auto driver taken the victim to the hospital on 08.05.2013, then he could have given complaint on the same day itself, and he could give details to the Doctor at the time of admission in the Government Hospital. Immediately after admission in the hospital, the complaint was not given and the present complaint was lodged on 16.05.2013. These facts create serious doubt over the fair investigation. Further, the investigation was conducted by another Officer who was working in the same police station. Once the allegation levelled against the respondent police they ought to have entrusted the investigation to some other agency. But unfortunately in this case, the same police have investigated the case and investigation was also completed. As per



investigation, there is no nexus to the occurrence and the police. However the date of alleged occurrence is in the year 2013, now after completion of 10 years it is not appropriate to transfer the investigation. Even this court ordered for transfer of investigation due to lapse of 10 years no witnesses could recollect their memory and the purpose will not be served.

17.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Anant Thanur Karmuse v. The State of Maharashtra and Ors.** In **Criminal Appeal No.13 of 2023**, wherein the Hon'ble Supreme Court in para no.13 held as follows:-

“13. Now, so far as the submission on behalf of the accused that earlier the State through learned AG opposed the writ petition and submitted that there was a fair investigation and now with the change in power, the State agency has changed its stand is concerned, the Courts are not concerned with the stand taken by the State at the relevant time and now. Suffice it to say that at the relevant time when the State police agency took a particular stand, accused No. 13 was in power and sitting Minister. The facts narrated hereinabove would suggest the manner in which the earlier investigation was carried out and that the accused No. 13 was only chargesheeted in the second supplementary charge sheet in the month of



March, 2022 and not prior to that when the first charge sheet was filed, the supplementary chargesheet was filed and even when the charges against the other accused were framed. The endeavor of the Court should be to have the fair investigation and fair trial only. Therefore, in the facts and circumstances of the case narrated hereinabove, we are of the opinion that a case is made out for further investigation and the State agency may be permitted to conduct a further investigation and to bring on record the further material, which may be in the furtherance of fair investigation and fair trial. The High Court has committed a very serious error in not ordering and/or permitting the State police agency to further investigate into the FIR bearing Nos. 119 and 120 of 2020. The High Court has not considered the relevant aspects narrated hereinabove and therefore interference of this Court is warranted.”

18.On careful reading of the aforesaid judgments, it is clear that the endeavor of the Court should be to have the fair investigation and fair trial only. In the case on hand, already investigation was completed and now after 10 years there cannot be any fruitful result in ordering for transfer of investigation. Therefore as discussed supra this Court is of the opinion that this petition is liable to be dismissed.

19.In the result, this writ petition is dismissed. Consequently connected miscellaneous petition is closed.



Writ Petition (MD)No.20783 of 20

.09.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes/No
Mrn

P.DHANABAL,J.

Mrn

To

- 1.The Secretary to Government,
Home Department,
George Fort,
Chennai.
- 2.The Inspector General of Police,
South Zone,
Madurai.
- 3.The District Collector,
Thoothukudi District,
Thoothukudi.



Writ Petition (MD)No.20783 of 2013

4. The Superintendent of Police,
Thoothukudi District,
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5. The Inspector of Police,
Sri Vaikundam Police Station,
Sri Vaikundam Taluk,
Thoothukudi District.
6. The Inspector of Police, CBCID, Tirunelveli.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Writ Petition (MD).No.20783 of 2013

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