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Writ Petition (MD)No.8631 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.09.2023

Delivered On : 12.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition (MD)No.8631 of 2013

and

M.P.(MD)No.1 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.Padmanaban

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1 to 5 respondents as jointly or separately to pay a sum of Rs.25 Lakhs being the compensation for the barbaric and inhuman torture meted out on petitioner's husband on 08.05.2013 by the 6th respondent inside the 5th respondent police station and consequently to direct the respondents to initiate departmental proceedings and penal action against the 6th respondent on the basis of the petitioner representation dated 13.05.2013.

For Petitioner : Mr.P.M.Vishnuvarthanam

For Respondents 1 to 5 : Mr.R.M.Anbunithi

Additional Public Prosecutor

For 6th Respondent : Mr.T.Antony Arul Raj

ORDER

The petitioner has filed this writ petition in a nature of Writ of Mandamus, directing the respondents 1 to 5 as jointly or separately to pay a sum of Rs.25 Lakhs being the compensation for the barbaric and inhuman torture meted out on petitioner's husband on 08.05.2013 by the 6th respondent inside the 5th respondent police station and consequently to direct the respondents to initiate departmental proceedings and penal action against the 6th respondent on the basis of the petitioner representation dated 13.05.2013.



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2. The petitioner's contention is that her husband who was a goat skin merchant, on 08.05.2013, purchased goat skins from the village and had a tea near the Srivaikundam Police Station, at that time somebody had stolen the goat skins with bicycle. Immediately he went to Srivaikundam Police Station and complained about the missing of goat skins, but the police have scolded and then assaulted him, thereby he sustained injuries and then he was admitted in the hospital, then he was taken to Tirunelveli Medical College for further treatment, but on 06.06.2013, he died in the hospital. In the mean time, the petitioner who is the wife of the deceased on 13.05.2013, sent a representation to higher officials of the Police Department and no action was taken, hence she filed this writ petition for compensation.

3. The respondent's contention is that the deceased on the date of occurrence came to police station with intoxication and not in a condition to speak well and the same was not allowed by the sentry of the police station, after some time he climbed into the electric pole situated near to the police station and the public who gathered there shouted at the deceased, but he fell down from the electric pole and sustained injuries. Thereafter, an auto driver had taken him to the Srivaikundam Hospital and then he was referred



to Medical College Hospital, Tirunelveli and after one month, he died in the hospital. So there is no nexus between the death of deceased and the police.

In the mean time the wife of the deceased filed writ petition and this Court ordered to record the statement of deceased and the learned Magistrate also recorded the statement of deceased while he was taking treatment in the hospital. Thereafter, the investigation was completed by the police and the case was closed.

4.The learned counsel appearing for the petitioner would contend that the petitioner's husband Kombiah who is 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. Already this petitioner filed a writ petition in W.P.(MD).No.20783 of 2013 to transfer the investigation to some other agency and the same is pending. This petition is filed for the compensation for the custodial torture of the police. The deceased was brutally attacked by the police and then he was admitted in the hospital, while taking treatment he died. Hence, the respondents are liable to pay compensation to the petitioner.

5. The learned counsel appearing for the petitioner relied upon the following judgments:-

i). The Saheli A Women's Resources Centre and others v. Commissioner of Police and others reported in (1990) 1 Supreme Court Cases 422.

ii). Sangaiyya v. State of Tamil Nadu and Ors., reported in (2011) 1



MLJ 280.

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6. 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 the public 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.

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

8. According to the petitioner, the deceased was tortured by the respondent police and he was brutally attacked and he sustained injuries and then died in the hospital. According to the respondents the deceased in a drunken mood climbed on the electric pole and fell down and then admitted in the hospital. However, as per the order of this Court, the learned Magistrate has recorded the statement of deceased while he was taking treatment in the hospital. The respondents have denied the involvement of the respondent police regarding the occurrence. Thereby, this case requires elaborate trial and both side have to adduce evidence and to file documents and this Court is not in a position to test the veracity of the documents and to adduced evidence. Thereby, it is appropriate to the petitioner to approach the Civil Court for appropriate remedy. However, the case is pending for more than 10 years before this Court and already this Court has dismissed the petition filed to the transfer the investigation. There are prima facie materials available, as per statement given by the deceased before the learned Magistrate.



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9. At this juncture the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of Saheli A Women's Resources Centre and others Vs. Commissioner of Police and others reported in (1990) 1 Supreme Court Cases 422, wherein the Hon'ble Supreme Court in para nos.11 and 15 held as follows:-

“11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by the S.H.O., Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. The respondent No. 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the S.H.O. of Anand Parbat Police Station, Shri Lal Singh.

15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration,



respondent No. 2 to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs.75,000 within a period of four weeks from the date of this judgment. The Delhi Administration may take appropriate steps for recovery of the amounts paid as compensation or part thereof from the officers who will be found responsible, if they are so advised. As the Police officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh. The writ petitions are disposed of accordingly.”

10.The learned counsel appearing for the petitioner further relied upon the judgment of this Court in the case of Sangaiyya v. State of Tamil Nadu and Ors. In (2011) 1 MLJ 280, wherein this Court in para nos.39 and 45 held as follows:-

“39.Though there is no specific method in arriving at the quantum of compensation, in these type of matters, where vicarious liability is fixed on the State Government, for tortious acts committed by the officers of the Government and where there is a prima facie finding of their involvement for the cause of death or custodial violence, or case of rape, torture, physical assault, etc., this



Court is inclined to apply the method followed, while computing the compensation, arising out of the Motor Vehicles Claims cases, where, the victim has to be awarded "just compensation".

45.Though the father of the deceased is the only claimant in this writ petition, in the interest of justice and to mitigate the hardship faced by the widow who is now saddled with the responsibility to raise three children without any assistance from her husband, this Court, deems it fit to award compensation of Rs.5,00,000/- (Rupees five lakhs only) to be paid by the State Government to the legal heirs of the victim and that the said amount is further directed to be recovered from the salary of the police personnel, who were prima facie found by the government to be responsible for the death and against whom, the Government have ordered prosecution and departmental action."

On careful reading of the said judgments it is clear that an action for bodily harm, which includes battery, assault, false imprisonment, physical injuries, death and vicarious liability can be fixed on the Government for the tortious acts committal by the Officers of the Government. In the case on hand the respondent police disputed the death of deceased and totally denied the custody of the deceased. However the statement recorded by the learned



Magistrate reveals the prima facie material and thereby, in order to meet ends of justice, it is appropriate to award interim compensation of Rs. 5,00,000/- to the petitioner. Therefore, the first respondent is directed to pay a compensation of Rs.5,00,000/- to the petitioner within a period of one month from the date of receipt of copy of this order. The petitioner is at liberty to approach civil Court for seeking compensation.

11. With the above observation, the writ petition is disposed of. Consequently, connected miscellaneous petition is closed.

.09.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes/No
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.
4. The Superintendent of Police,



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Thoothukudi District,
Thoothukudi.

5.The Inspector of Police,
Sri Vaikundam Police Station,
Sri Vaikundam Taluk,
Thoothukudi District.

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

P.DHANABAL,J.

Mrn

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