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W.P.(MD)NO.13299 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13299 of 2015

L.Flomi Eskani

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Home Department, Fort St. George,
Chennai – 600 009.
2. The Director General of Police,
Police Head Quarters, Chennai.
3. The Deputy Inspector General of Police,
South Zone, Tirunelveli.
4. The Superintendent of Police,
Nagercoil, Kanyakumari District.
5. The Inspector of Police,
Pudukkadaï police station,
Pudukkadaï Post, Kanyakumari District.
6. Velkani,
Inspector of Police,
Pudukkadaï police station (Incharge),
Pudukkadaï Post, Kanyakumari District.
7. Mohanan,
Sub-Inspector of Police,
Pudukkadaï police station,
At present Rajakkamangalam police station.



8. Chelladurai,
Special Sub-Inspector of Police,
Pudukkadam police station,
Pudukkadam Post, Kanyakumari District.

9. Vijayakumar,
Head Constable,
Pudukkadam police station (incharge),
Pudukkadam Post,
Kanyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to pay compensation of Rs.10,00,000/- for the degrading, shameful and very wicked act against the women community (petitioner) and the murderous attack committed by the respondents 5 to 9 against the petitioner at Pudukkadam Police Station, Kanyakumari District and punish based on the petitioner's representation dated 02.02.2015 within the period stipulated by this Court.

For Petitioner : Mr.Ananth C.Rajesh

For R-1 to R-5 : Mr.N.Satheesh Kumar,
Additional Government Pleader.

For R-6 to R-9 : No appearance.

* * *

ORDER

Heard the learned counsel on either side.



2. The writ petitioner herein alleges that she was attacked by the named police officials on 26.06.2014 and that she had taken treatment in the hospital for over 20 days. She seeks payment of compensation for the acts committed by the named police officials. She had already given representation dated 02.02.2015 in this regard before the District Collector. Since it did not elicit proper response, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to direct the respondents to pay compensation as prayed for.

4. The fifth respondent had filed counter affidavit and the learned Additional Government Pleader took me through its contents. He pressed for dismissal of the writ petition.

5. The allegations made by the petitioner have been controverted in the said counter affidavit.



6. I carefully considered the rival contentions and went through the materials on record.

7. The stand of the petitioner is that her family had civil dispute with one Dennis and that a complaint was lodged by her before the local police in April 2014. Since it was not taken on record, the petitioner moved the Superintendent of Police, Nagercoil. According to the petitioner, angered by her act, the named police officials trespassed into her house on 26.06.2014 and committed the offences on her person.

8. I wanted to know from the learned counsel appearing for the petitioner, if there is any proof that the complaint was lodged by the petitioner prior to 26.06.2014 either before the fifth respondent or before the fifth respondent. In the typed set of papers filed by the petitioner herein, no such material has been enclosed.

9. It is true that the petitioner made a statement before the learned Judicial Magistrate No.II, Kuzhithurai, setting out the allegations now made in this writ petition and the same



was also duly recorded. But the said statement came to be made when the petitioner was produced for remand. It is not in dispute that on 26.06.2014, Crime No.273 of 2014 was registered against the petitioner and Vasantha Mary for the offences under Sections 294(b), 324 and 506(2) IPC and Section 3(1) of TNPPDL Act. The specific allegation made in the FIR is that the petitioner attacked Dennis with iron rod.

10. I wanted to know, if the allegations made in the FIR can be substantiated with reference to wound certificate. The learned Additional Government Pleader drew my attention of the statement recorded by the duty doctor under Section 161 of Cr.P.C. The said duty doctor had stated that Dennis was admitted as an inpatient and that he had stated that he was attacked by a known person with iron rod and he also suffered injury. But the said injury was certified as simple injury later. It was in connection with the said FIR, the petitioner was arrested and she was granted bail later. Investigation was conducted and final report was also filed. The case has been taken on file in P.R.C.No.3 of 2015 on the file of the Judicial Magistrate No.II, Kuzhithurai. It has been committed to the



file of the Sessions Court, Kuzhithurai in S.C.No.143 of 2015 and it is still pending as on date.

11. According to the respondents, apart from this case two other cases (C.C.Nos.37 and 38 of 2015 on the file of the Judicial Magistrate No.II, Kuzhithurai) are pending against the petitioner.

12. A complaint lodged by the petitioner against the named officials was registered as Crime No.41 of 2015 on the file of Pudhukadai police station. It was investigated by the jurisdictional Deputy Superintendent of Police and report was filed closing the case as mistake of fact on 06.05.2015. RCS notice was served on the petitioner. Since the petitioner did not file any protest petition, it was recorded as RCS No.6 of 2015 on the file of the Judicial Magistrate No.II, Kuzhithurai.

13. Disputed facts are involved. The petitioner ought to have filed a protest petition. If the facts are unimpeachable or beyond dispute, this Court would award compensation in the writ proceedings against the State. But where the facts are



not borne out, Court cannot intervene. Except the own statement of the petitioner herein, I do not find any credible material. It is true that the petitioner had taken treatment when she was in custody. But the wound certificate is not adverse to the police. In these circumstances, the petitioner will have to work out her remedies elsewhere. It is not possible for this Court to grant relief in this writ petition. I make it clear that if the petitioner avails any other remedy, she will not be non-suited on the ground of limitation. This is for more than one reason. The occurrence had taken place on 26.06.2014 and on the same day when she was produced as remand prisoner before the jurisdictional Magistrate, she had made a complaint. This writ petition has been pending on the file of this Court for eight years. Therefore, if the petitioner avails any other remedy, limitation will not be put against the petitioner. Leaving open all the other rights and remedies, this writ petition stands dismissed. No costs.

10.07.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU



WEB COPY

To:

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Chennai – 600 009.
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WEB COPY



9

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G.R.SWAMINATHAN,J.

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