



W.P(MD)No.13319 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13319 of 2015

Suberiya Banu

... Petitioner

Vs.

- 1.The Home Secretary,
Government of Tamil Nadu,
Tamil Nadu.
- 2.The Director General of Police,
Tamil Nadu,
Chennai.
- 3.The District Collector,
Kanyakumari District,
Nagercoil.
- 4.The Superintendent of Police,
Nagercoil,
Kanyakumari District.
- 5.The Inspector of Police,
Assaripallam Police Station,
Kanyakumari District.
- 6.The Inspector of Police (Crime)
Nesamani Police Station,
Kanyakumari District.



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7.Rajesh
Inspector of Police,
Assaripallam Police Station,
Kanyakumari District.

8.Guna @ Gunasekaran,
Sub Inspector of Police,
Nesamani Police Station,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the second respondent to initiate proceedings against the respondents 7 & 8 on the basis of the complaint dated 18.02.2015 & 10.03.2015 and consequently, direct the first respondent to pay a sum of Rs.25,00,000/- by way of compensation to the petitioner.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader for R1 to R6
: R7 & R8 (appear in person)

ORDER

Heard the learned counsel on either side.

2. The petitioner alleges that her husband was taken away from the house on 16.02.2015 at around 06.00 p.m by the 8th respondent and his team. He was brutally attacked and his leg bones were broken. Thereafter, he was falsely implicated in Crime No.52 of 2015 for the offences under Sections 294(b), 307 & 506(ii) of IPC. He was



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produced before the Judicial Magistrate on the next day at around 09.00 p.m. The petitioner's husband complained to the magistrate that he was attacked by the 8th respondent and others. Treatment was also directed to be given. Treatment was given till 03.03.2015. The petitioner's husband came out on bail and thereafter, got admitted in Sushrushah Hospital on 07.03.2015. Surgery was done on the next day. He was discharged on 14.03.2015. Contending that her husband was tortured and brutally treated, the writ petition was filed claiming a sum of Rs.25,00,000/- towards compensation.

3. The 7th respondent Thiru.Rajesh has filed counter affidavit and he has denied the petitioner's allegation. The stand of the 7th respondent is that following complaint from one Sekar, Crime No.52 of 2015 was registered and when the police went to arrest the petitioner's husband, he attempted to escape. In the process, he fell down and suffered injury. There was nothing to suspect that the accused had suffered any fracture. Since direction was given by the learned magistrate, the accused was taken to the Tirunelveli Government Hospital for examination. After treatment was given to the accused, he was lodged in the Central Prison, Palayamkottai.



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According to the 7th respondent, nothing as alleged by the petitioner ever happened. He pressed for dismissal of the writ petition.

4. The learned Additional Government Pleader took me through the contents of the counter affidavit and pressed for dismissal of the writ petition.

5. Thiru.Guna @ Gunasekaran was directed to be present in person. Though he sought time to file counter affidavit, I questioned him closely in the open court. Guna categorically stated that the petitioner's husband was well known to him. The petitioner's husband had a chequered history. He was involved in two murder cases and he had also attained some notoriety in the locality. Therefore, as a member of the special team, he used to periodically visit the petitioner's house. However, as regards the occurrence in question, he categorically denied that he had anything to do with it. According to him, since the petitioner's husband had a sort of strained relationship, he had chosen to name him before the learned magistrate when he was produced for remand. Since I have already recorded the stand of the 8th respondent, I dispensed with the requirement of filing counter affidavit by him.



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6. I carefully considered the rival contentions and went through the materials on record. The name of the 8th respondent is not figuring anywhere in the record. But except the allegations made by the petitioner's husband, at the time of remand, there is no other material against him. On the strength of the said averment, it would be most unsafe to fasten liability on the 8th respondent. The 8th respondent is therefore exonerated. The 7th respondent admitted that he only arrested the petitioner's husband. But he did not cause any injury as alleged in the writ petition. The petitioner's husband has not implicated the 7th respondent. Therefore, for the occurrence in question, the 7th respondent also cannot be fastened with any personal liability. However, the fact remains that the petitioner had to undergo surgery in his right leg. The petitioner's husband had been consistently stating that he was assaulted and injury was caused to his leg. This allegation has been consistently made. Before the learned magistrate as well as before the duty Doctor, the same statement was made. I therefore cannot entirely brush aside the said allegation. The gravity of the injury may of-course vary. The accused ought to have been admitted in the Tirunelveli Medical College Hospital itself on



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18th morning. He ought not to have been lodged in Central Prison.

The condition of the accused may not have been that serious. But because sufficient treatment was not given in time, the position probably got aggravated. I will not disregard the certificate issued by the Sushrushah Hospital, Kalliancaud Junction, Nagercoil. The discharge summary reads as follows:-

Discharge Summary

Name	Mr.Kaboor
Sex: Male	Age: 37 Years
Date of Admission:	07.03.2015
Date of Surgery:	08.03.2015
Date of discharge:	14.03.2015
Diagnosis	Comminuted fracture tibia right leg following a assault having had initial treatment elsewhere
Treatment	Under GA closed interlocking nailing under image intensifier control for fracture right tibia. Post operative period unevenful, wound healed, patient mobilized with walker support
Advise	Non weight bearing exercise Review after one week.

7. The petitioner would have definitely incurred some expenditure.



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for taking treatment in the said hospital. However, the medical bills however have not been produced. Since proper treatment was not given to the accused at the appropriate time, the State has to be necessarily fastened with the consequential liability. Admittedly, Kaboor came under the custody of the police on 17.02.2015. Since proper treatment was not given to him during the period of his custody, I therefore direct the first respondent to pay a sum of Rs.1,50,000/- to the petitioner's husband. This shall be done within a period of twelve weeks from the date of receipt of a copy of this order. The Writ Petition is allowed on these terms. No costs.

19.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Home Secretary,
Government of Tamil Nadu,
Tamil Nadu.
- 2.The Director General of Police,
Tamil Nadu,
Chennai.



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G.R.SWAMINATHAN, J.

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