



WP.(MD)No.27211 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 06/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

WP (MD) No.27211 of 2023

Vinothini : Petitioner

Vs.

- 1.The State rep. by its
The Superintendent of Police,
Theni District.
Theni.
- 2.The State rep. by its,
Inspector of Police,
Kumuli Police Station,
Theni District.
- 3.Thirumurugan,
Forest Officer,
Cudaloor Forest,
Lower Camp,
Theni District.
- 4.Pitchai,
Forest Officer,
Cudaloor Forest,
Lower Camp,
Theni District.
- 5.Muralidharan,
Forest Officer,
Cudaloor Forest,
Lower Camp,
Theni District.
- 6.George @ Pennikutti,
Kappuvamadai Beat,
Conservator of Forest,
Cudaloor Forest,
Lower Camp,
Theni District.



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7. Prabhu,
Amaravathi Beat,
Conservator of Forest,
Cudaloor Forest,
Lower Camp,
Theni District.

8. Suman,
Anti-Poaching Guard,
Cudaloor Forest,
Lower Camp,
Theni District.

9. Eswaran,
Anti-Poaching Guard,
Cudaloor Forest,
Lower Camp,
Theni District.

10. Karthick,
Anti-Poaching Guard,
Cudaloor Forest,
Lower Camp,
Theni District.

11. Santhanakumar,
Anti-Poaching Guard,
Cudaloor Forest,
Lower Camp,
Theni District.

: Respondents

PRAYER:-Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the 2nd respondent police herein to take necessary action against the respondents 3 to 11 based on the petitioner's complaint, dated 30/10/2023 and pass any other appropriate relief.

For Petitioner : Mr.D.Selvam
for Mr.M.Maharaja

For R1 and R2 : Mr.Veerakathiravan
Additional Advocate General
for Mr.M.Sakthi Kumar
Government Advocate
(Criminal Side)



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3.From the above incident, the petitioners father stopped talking with the forest officers (R3 to 11), but Thirumurugan and others continually started to trouble the father of the petitioner and demanded to fulfil their daily needs. But he denied it and did not co-operate with the officials. Further more, day after day, all the above mentioned forest officials R3 to R11, got agitated and conspired against the petitioners father and give life threat to him.

4.Based on this previous enmity, on 28.10.2023 at about 9:45 PM, while deceased Eshwaran was watering at OR garden, the forest officer, namely Thirumurugan along with Pichchai, Muralidharan, George @ Ponnikutty, Prabhu, Suman, Eshwaran, Karthik, Santhanakumar forcefully dragged Eshwaran to reserved forest area and shot him to death. So, the petitioner made a written complaint before the respondent police, but neither enquiry was conducted nor FIR was registered till date.

5.The petitioner further submits that FIR in crime number 89 of 2023 dated 29.10.2023 was registered against her deceased father under sections 294(b), 353, 307 of IPC, u/s 25(1)(a) of Arms act, and section 176(1A)(i) of Cr.P.C. On reading the said FIR, it came to know that a



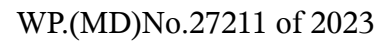
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baseless allegation as against her father is stated in the said FIR. The contents of that FIR is that on secret information received by forest officer as some unknown persons were indulged in hunting some wild animals in forest area, R3-Thirumurugan, along with other Forest officers organized a special team to prevent the unknown persons from hunting the wild animals. On reaching the occurrence place, R3-Thirumurugan and R6-George @ Pennikutti found electric wire which was running through the grass. On seeing the same, R3-Thirumurugan travelled to the starting point of the electric wire and caught hold/arrested the petitioner's father who was present at that place. On enquiry the officers came to know about the petitioner's father and asked him to identify the other persons. On a quarrel between the respondents (Forest Officers) and the petitioner's father (deceased), the forest officer, R3-Thirumurugan pulled out his official gun and shot the petitioners father on his chest and it was found that he was spot dead. And thereafter the above said FIR was registered against the petitioner's father.

6.The petitioner submits that the facts mentioned in the above said FIR is purely an after thought. Such murder or fake encounter was committed by R3-Thirumurugan



7. She further submits that once the accused is caught or arrested will fall within the definition of custody. Therefore, it is the duty of the officer who has arrested the accused person to produce him before the authority of law. If the said officer has failed to do so and indulged himself in committing an encounter then the burden is always on the officer to explain why and what made him to fire at a person.

9.It is killing the father of the petitioner by the Forest Officials claiming right of private defence.



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10.It is not denied by the respondents herein as well as the prosecution that Eswaran was done to death by the Forest Officials (R3 to R11) by using gun. But the FIR was registered on the basis of the narration of facts alleged to have been told to the de-facto complainant by one Thirumurugan, who was working as Divisional Forest Officer in that Range. Thirumuguan ought to have lodged the complaint directly. But he chose to narrate the events to the de-facto complainant namely Muralidharan, who is the Forest Officer. The reason for the Forest Officer, to lodge the complaint on the basis of the narration of facts by the person directly involved is not known. This is the first lapse on the side of the Forest Officers as well as the Investigating Officer or registering officer of FIR.

11.Reading of the narration of FIR, as mentioned above, R3-Thirumurugan and others are claiming right of private defence. It is also admitted in the complaint itself that the deceased was secured by the Forest Officials and the incident occurred when the deceased was taken to a nearby area for further collection of facts. So, naturally FIR ought to have been registered for the offence under section 302 IPC. But registering the FIR against the deceased for the offences under sections



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294(b), 353, 307 IPC and section 25(1)(a) of Arms Act and 176(1)(i) of Cr.P.C. per se illegal and in violation of the guidelines issued by the Hon'ble Supreme Court in the case of ***People's Union for Civil Liberties and another Vs. State of Maharashtra and others (Criminal Appeal 1255 of 1999, dated 23th September 2014)***. This is the contention on the side of the petitioner.

12.Per contra, the learned Additional Advocate General appearing for the respondents 1 and 2 would submit that the investigation is properly undertaken in an unbiased manner and they are not going to spare any one involved in the occurrence. They are very cautious enough to submit that till the conclusion of the inquiry by the Judicial Magistrate under section 176(1-A) Cr.P.C, no concrete finding can be arrived by the Investigating Officer.

13.Apart from that, he would submit that ballistic report is also awaited to verify whether the gun shot was made from the gun provided to the Forest Officers. So according to him, this is a too premature stage to make any conclusion in this regard.



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14.Per contra, in reply to the above said argument, it is submitted by the learned counsel appearing for the petitioner that it is a clear case of murder committed by the Forest Officials, in the course of investigation and during the course of the custody of the deceased. So, as stated above, the very registration of the FIR is faulty.

15.In the light of the above said rival submission, this court called for the entire statement recorded by the Judicial Magistrate, Uthamapalayam, during the course of inquiry under section 176 (1-A) Cr.P.C. CD file is also produced on the side of the prosecution.

16.Before going to the rival arguments, it is the duty of the Court to record an observation. Perusal of the CD file indicates that the investigation is undertaken in an unbiased manner. Even though the registration of the original FIR is faulty, but the question, which arises for consideration is whether it is too premature stage to come to the conclusion or finding to say that it is a case of murder.

17.No doubt that pre-matured cannot be made. But at the same time, the process of investigation must be set aright, it is also the duty of this court in the light of



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party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under [Section 157](#) of the Code without any delay. While forwarding the report under [Section 157](#) of the Code, the procedure prescribed under [Section 158](#) of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth,



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hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved.



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Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under [Section 176](#) of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under [Section 190](#) of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.

However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.



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(8)After full investigation into the incident, the report should be sent to the competent court under [section 173](#) of the Code. The trial, pursuant to the charge sheet submitted by the Investigating Officer, must be concluded expeditiously.

(9)In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10)Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15 th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:

(i) Date and place of occurrence.

(ii) Police Station, District.

(iii) Circumstances leading to deaths:

(a) Self defence in encounter.

(b) In the course of dispersal of unlawful assembly.



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(c) *In the course of affecting arrest.*

(iv) *Brief facts of the incident.*

(v) *Criminal Case No.*

(vi) *Investigating Agency.*

(vii) *Findings of the Magisterial Inquiry/Inquiry by Senior Officers:*

(a) *disclosing, in particular, names and designation of police officials, if found responsible for the death; and*

(b) *whether use of force was justified and action taken was lawful.*

(11) *If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the [IPC](#), disciplinary action against such officer must be promptly initiated and he be placed under suspension.*

(12) *As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under [Section 357-A](#) of the Code must be applied.*



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(13)The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under [Article 20](#) of the Constitution.

(14)An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.

(15)No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16)If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complainant and address the grievances raised therein. Such complaint being made, the concerned Sessions Judge shall look into



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the merits of the complaint and address the grievances raised therein.

32.The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible."

19.No doubt that prompt action was taken not only by the Investigating Officer, but also by the Judicial Magistrate in conducting inquiry. But the contention on the part of the prosecution is that no parallel inquiry can be made. It is not acceptable for the simple reason that the scope of inquiry under section 176(1-A) Cr.P.C is totally different from the investigation undertaken by the police under section 157 Cr.P.C. The inquiry by the Judicial Magistrate under section 176(1-A) Cr.P.C is only supplementary and aiding to the Investigation and it is not a substitute. So, the contention on the part of the State cannot be accepted.

20.For better appreciation, we can extract section 176(1A) Cr.P.C.

"(1-A)Where, -

(a)any person dies or disappears,

or

(b)rape is alleged to have been committed on any woman,



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while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the court, under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed."

21. So the phrase used in section '***in addition to the inquiry or investigation held by the police***' makes the position very clear. In case of the custody death, as mentioned above, the inquiry by the Judicial Magistrate is only supplementary and not a substitute. So the contention of the State that no parallel investigation can be taken by the Investigating Officer before conclusion of the inquiry by the Judicial Magistrate is completely out of place and cannot be accepted. So, the investigation must be taken to its logical conclusion in a proper manner.

22. The next contention on the part of the State is that since already FIR has been registered, second FIR on the basis of the statement of either of the petitioner or on the basis of the statement of the brother of the



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deceased namely Sekar, who stated to have accompanied the deceased just before the occurrence, cannot also be accepted.

23.Coming back to the contention on the part of the State that 2nd FIR is not at all maintainable, as stated above, guidelines issued by the Hon'ble Supreme Court in *People's Union for Civil Liberties's* case in para 2 is not complied. Necessarily the 2nd respondent has to comply the above said direction and register the FIR to that effect, independent of the complaint given by the Forest Officials. Failure on the part of the 2nd respondent in registering separate FIR is faulty.

24.Going further, it may also useful to refer the judgment of the Hon'ble Supreme Court in *M/s.Andhra Pradesh Police Officers Association rep. by its General Secretary Vs. A.P. Civil Liberties Committee (APCLC) rep. by its President and others* (Civil Appeal No.5646 of 2019, dated 18th July 2019), which throws much light upon the controversy. The appeal was preferred by the Andhra Pradesh Police Officers Association over the judgment of the Andhra Pradesh High Court comprising five judges, series of directions were issued by the Hon'ble Full Bench. That was put to challenge. Let me extract the



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complete judgment:-

"A five-Judge Bench of the Andhra Pradesh High Court while considering the procedure to be followed in investigating police encounters had thought it appropriate to issue the following directions:-

"(A) On Issue No.1: That where a police officer causes death of a person, acting or purporting to act in discharge of official duties or in self-defense as the case may be; whether an alleged perpetrator is CA 5646/2019 named or not) shall be recorded and registered as FIR, enumerating the relevant provisions of Law (u/Sec.154(1) [Cr.P.C.](#)) and shall be investigated (u/Sec.156/157 [Cr.P.C.](#))

(B) On issue No.2: That the existence of circumstances bringing a case within any of the Exceptions in [the Indian Penal Code](#) including the exercise of the right of private defense (a General Exception in Chapter IV [IPC](#)), cannot be conclusively determined during investigation.

The opinion recorded by the Investigating Officer in the final report forwarded to the Magistrate (u/Sec.173 [Cr.P.C.](#)) is only an opinion.



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Such opinion shall be considered by the Magistrate in the context of the record of investigation together with the material and evidence collected during the course of investigation. The Magistrate (notwithstanding an opinion of the Investigating officer, that no cognizable offence appears to have been committed; that one or more or all of the accused are not culpable; or that the investigation discloses that the death of civilian(s) in a police encounter is not culpable in view of legitimate exercise by the police of the right of private defense), shall critically examine the entirety of the evidence collected during investigation to ascertain whether the opinion of the Investigating Officer is borne out by the record of investigation. The Magistrate has the discretion to disregard the opinion and take CA 5646/2019 cognizance of the offence u/Sec.190 Cr.P.C.

(C)On Issue No.3: That a magisterial enquiry (inquest) (u/Sec. 174 to 176 [Cr.P.C.](#)) is neither a substitute nor an alternative to the obligation to record the information as FIR and to conduct investigation into the facts and circumstances of the case and if necessary to take measures for the



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discovery and arrest of the offender(s) (u/Sec.154(1), 156 and 157 Cr.P.C.) and (D) On issue No.4: In view of the conclusions on issues Nos.1 to 3 and in view of our declaration [that the information conveyed to the officer in charge of a Police Station (u/Sec. 154(1) Cr.P.C.) or a complaint made to the Magistrate (u/Chpt.XV Sec. 200 Cr.P.C.), need not mention the name of the Police Officer(s) who the complainant believes is the perpetrator of the offence complained of], it is not necessary to pronounce on whether the State, the Police Establishment or a Police Officer has immunity from the obligation to disclose the identity (of a police officer who had committed an act causing the death of a person), to a person aggrieved by such death to effectively seek justice. Whether the investigating officer is required to disclose the names of the police officers who are involved in an operation resulting in civilian casualty when a request for such information is lodged by an individual, is an issue not CA 5646/2019 within the spectrum of the issues falling for our determination herein. This aspect is left open. The obligation to disclose to the Investigating Officer the identity of the police officer(s) so



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involved, is however absolute and there is no immunity whatsoever from this obligation. Withholding of any information or material that impedes effective or expeditious investigation violates several provisions of the Indian Penal Code and the Criminal Procedure Code (pointed out in our analyses on this issue).” Aggrieved, three sets of appeals have been filed before us, wherein very broadly it is the first direction i.e. direction (A) that has been seriously disputed.

We have heard learned counsels for the parties and we have been taken through the contentions advanced before the High Court and the reasoning of the High Court which led to the issuance of directions mentioned above.

A subsequent decision of this Court in *People’s Union for Civil Liberties and Another vs. State of Maharashtra and Others* (2014) 10 SCC 635, has been laid before us. We have perused the same. The said decision also deals with the procedure to be followed while investigating the cases of police encounters resulting in deaths of civilians. CA 5646/2019 After an exhaustive consideration of all the relevant aspects of the matter, this Court by its judgment in *People’s Union for Civil Liberties* (para 31) laid down



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a detailed and exhaustive procedure to be followed in such cases. We find that not only the direction (A) on which contentions have been advanced before us, but even the other directions i.e. (B), (C) and (D) to be fully covered by what has been laid down by this Court in People's Union for Civil Liberties. The directions of this Court in People's Union for Civil Liberties have been ordered to be treated as law under [Article 141](#) of the Constitution. Therefore, it is the judgment of this Court in People's Union for Civil Liberties that will hold the field in the matter of investigating police encounters. We order accordingly and dispose of the appeals in the aforesaid terms."

25.By answering the above said issue, the Hon'ble Supreme Court thought it fit to follow the guidelines issued in ***People's Union for Civil Liberties and another Vs. State of Maharashtra and Others (2014)10 SCC 635*** as noted above. The main challenge put before the Hon'ble Supreme Court is the directions issued to the Investigating Officer to register FIR under section 302 IPC against the police officials involved in the encounter killing. That was answered as noted above.



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26.Here, interpreting the above said judgment, it is usually contended by the Police Officers that what is contemplated is only registration of the FIR. No indication is made by the Hon'ble Supreme Court to the effect that straightaway FIR must be registered against the police officers or officials involved in the encounter matter under section 302 IPC, what is actually argued by the State.

27.Per contra, as usual the victims used to contend that registration of the FIR under section 302 IPC is mandatory against the police officials involved in the encounter killing. Now, it has been resolved by the Hon'ble Supreme Court in the light of the above said decision.

28.Now even if we take that the registration of FIR against the deceased is faulty, but as mentioned above, perusal of the CD file does indicate the commission of the cognizable offence by the Forest Officials. *Prima facie* materials are collected. There is no bar for the Investigating Officer to file proper alternation report mentioning the proper penal provisions also. What are the penal provisions attracted, now is a matter for consideration exclusively within the power of the



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Investigation Officer. It may not be proper on the part of this court to make any indication.

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29.So, there shall be a direction to the 2nd respondent herein to follow the guidelines issued by the Hon'ble Supreme Court in ***People's Union for Civil Liberties's*** case, strictly in accordance with law. Let the investigation be undertaken by the 2nd respondent in the light of the above said guidelines issued by the Hon'ble Supreme Court under the direct supervision of the 1st respondent, considering the seriousness and gravity of the allegations.

30.With the above said direction, this writ petition stands **disposed of**. No costs.

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To,

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- 1.The Superintendent of Police,
Theni District.
Theni.
- 2.The Inspector of Police,
Kumuli Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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