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W.P.No.33675 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2024

DELIVERED ON : 26.03.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

**W.P.No.33675 of 2019
and W.M.P.No.34315 of 2019**

Thiru S.Velladurai,
The Assistant Commissioner of Police,
Anna Nagar (L & O) Range,
Madurai City.

...Petitioner

vs.

1.Muniandi

2.The Registrar,
The Honourable State Human Rights
Commission of Tamil Nadu,
Thiruvaramangam,
No.143, P.S.K.Kumarasamy Raja Salai,
Greenways Road,
Chennai – 600 028.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the second respondent in SHRC No.9941, 10032 & 10155 of 2011 and 138 of 2012 by order dated 04.06.2019 and to quash the same.

For Petitioner : Mr.S.Sivakumar



For Respondents : R1 & R2 – No appearance

ORDER

N.SENTHILKUMAR, J.

The Writ Petition is filed by the petitioner challenging the order passed by the second respondent dated 04.06.2019 with a prayer to quash the same.

2. The brief facts of the case are as follows:

2(i). While the writ petitioner was serving as Assistant Commissioner of Police, Anna Nagar (L & O), Madurai City, the first respondent herein preferred a complaint with the second respondent/Commission against the Writ Petitioner and two other persons.

2(ii). The first respondent herein is the father of the deceased Suresh. The first respondent was working as a Sweeper in the Virudhunagar Municipality and he belongs to Arunthathiyar Community. The first respondent had preferred a complaint with the second respondent on 15.12.2011 stating that he is residing at Virudhunagar along with his wife Lakshmi 44 years and 3 sons viz., Velmurugan aged 26 years, Suresh aged 22 years and Prabhu aged 15 years and 2 daughters viz., Mariyammal aged 24 years and Chitra aged 21 years. The substance



in the complaint submitted with the second respondent is that on 02.12.2011 at about 6.30 a.m, his son Suresh was sleeping at home and the first respondent had left for his job and until 7 pm on 03.12.2011, his son Suresh did not return back home. Therefore, the first respondent and his family members went in search of the deceased Suresh and could not find him anywhere. However, the first respondent felt that Suresh could have gone out of station.

2(iii). That being the situation, on 13.12.2011 at about 11.30 a.m., one of his relatives by name Muniyandi aged about 37 years received a call from Virudhunagar West Police Station informing that the first respondent and his wife were in search of their son and therefore his brother in law Muniyandi took them to Virudhunagar West Police Station. The Police attached to Madurai Division informed the first respondent and his family that his son Suresh had died and his body has been kept in Madurai Rajaji Government Hospital and they compelled them to take the body.

2(iv). According to the first respondent, when they saw the body of the deceased Suresh, there were injuries on the left leg and there was



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bandage on it. The Police had informed them that on 05.12.2011, the deceased Suresh along with his friend David was arrested at the time of stealing a two wheeler and caught red handed by the public who had beaten them. A criminal case was registered in Crime No.2326 of 2011 for offence under Sections 379 and 511 I.P.C. by Karimedu Police Station as against the deceased Suresh and the said David. Thereby the deceased Suresh and his friend David sustained injuries. Thereafter, they were taken to the Government Rajaji Hospital on 05.12.2011 and despite treatment, the deceased Suresh succumbed to death on 13.12.2011.

3. An advocate who met David, the co-accused of deceased Suresh when he was kept in Central Prison, Madurai had informed him that the Police had foisted a case and detained the said David and the deceased Suresh on 02.12.2011 at about 10.00 p.m. On 02.12.2011, though the Police suspected that the said David and the deceased Suresh could have attempted to steal the vehicle, during enquiry, both Suresh and David had made it clear to the Police that they did not commit such offence. However, the public had suspicion over their attitude and only due to wrong understanding, the public felt that they had come to steal the vehicle and handed over them to the local Police.

4. On 02.12.2011 between 10.30 p.m. and 11.00 p.m. nearly 15 Police officers have come to Karimedu Police Station and for 30 minutes



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all of them have severely beaten up the said David and the deceased Suresh. Due to torture, the deceased Suresh sustained injuries on the ribs, penis and on the chest side. The Police assaulted the deceased with lathi, backside of the gun and because of such assault, the deceased Suresh sustained injuries. The deceased had informed the Police that he belonged to Arunthathiyar Community and after coming to know that the deceased Suresh belonged to Arunthathiyar Community, the Police abused him by calling his caste name. This information was passed to the complainant through the Advocate who met David in the Central Prison where he was lodged.

5. On 03.12.2011, due to injuries sustained by the deceased Suresh in the hands of the Police, he was unable to pass urine and hence, he was taken to a nearby hospital for treatment and again he was kept in the lock-up attached to Karimedu Police Station. On 05.12.2011, the health of the deceased deteriorated and he was admitted in the Government Rajaji Hospital, Madurai in a hurried manner. The complainant/the first respondent further stated that the deceased Suresh died because of the severe torture and indiscriminate assault on his body. These entire physical torture has taken place in the presence of a Superior Officer. The complainant/the first respondent had contended that a criminal case



should be registered against all the officials along with the Superior Officer who has overseen the entire custodial torture, under Section 302 of IPC read with 3(1)(10), 3(2) (5) and 3(2) (7) of the SC & ST Act, 1989.

6. Based on the complaint filed by the first respondent herein, the State Human Rights Commission registered a case in SHRC.No.10032 of 2011.

7. A common counter affidavit was filed on behalf of the respondents before the State Human Rights Commission. In the counter, the respondents before the Commission denied all the allegations levelled against them in the complaint and have specifically stated that one Seeni was the Sub Inspector of Police (Crime branch), Karimedu Police Station and the second respondent Vivekanandan was working as Inspector of Police (Crime branch, Thilagar Thidal Police Station and he was made incharge of Karimedu police station due to absence of Pushparaj, Inspector of Police, Karimedu Police Station and the third respondent/writ petitioner was working as Assistant Commissioner of Police (L & O), Anna Nagar Division, Madurai.

8. The specific case of the respondents before the SHRC was that there was no eye witness for custodial torture alleged by the



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complainant/the first respondent. On 05.02.2011 at about 8.30 a.m, a TVS 50 XL Super vehicle bearing Registration No.TN59-AT-5702 was attempted to be stolen by the said deceased Suresh along with David and both of them were caught red handed by the public and severely beaten up by the public. At that point of time, one Kannarajan who was working as a Night Watchman was also there and the general public handed over the said Suresh and David to the local Police viz., Karimedu Police.

9. When the public handed over both the accused to the Police, the said David and the deceased Suresh had injuries and they were taken to a local hospital for treatment at about 10.30 a.m. on 05.12.2011 and thereafter a case was registered in Crime No.2326 of 2011 for offence under Sections 379 and 511 I.P.C. The Police personnel viz., the Special Sub Inspector, Balamurugan and the Head Constable 1222 Paul Prabhu had taken the accused persons to the Government Rajaji Hospital, Madurai and admitted them as they had injuries. One Dr.Sumathy of the Government Rajaji Hospital, Madurai had examined the accused persons and made entries about the injuries in the Accident Register. They did not inform Dr.Sumathy that they sustained injuries on account of the beatings from the public. The deceased Suresh and David had not stated anything about being beaten up by the Police when they were in the



police custody and there is no whisper about custodial torture to Dr.Sumathy or about the illegal detention by Karimedu Police for three days. Karimedu Police remanded the deceased Suresh and David and David and they were lodged in the Central Prison at Madurai.

10. It was further contended that the theory of advocate coming and informing the complainant that David and the deceased Suresh were detained illegally in Karimedu Police Station for three days and they were subjected to physical torture is only a false story or a concocted story.

11. It was further contended that after filing a complaint before State Human Rights Commission, a Writ Petition was filed before Madurai High Court in W.P.(MD)No.11530 of 2013 by the first respondent herein, in which in Paragraph No.4 it is stated that from 02.12.2011 his deceased son Suresh was missing. The complaint filed by the first respondent is motivated and utter falsehood. The common counter also reflects the antecedents of the deceased Suresh and the said David.

12. On 05.12.2011, a case was registered in Crime No.2326 of 2011. The deceased Suresh and David were remanded by the learned Judicial Magistrate in the Government Rajaji Hospital, Madurai.



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13. The deceased Suresh and David had deposed before the learned Magistrate that they sustained injury when they tried to escape from the clutches of the public at the time of making an attempt to steal two wheeler. The deceased Suresh was admitted as inpatient from 05.12.2011 to 13.12.2011 and after continuous treatment, the deceased Suresh succumbed to death.

14. On 13.12.2011, when the deceased Suresh had died and proceedings was initiated by the learned Judicial Magistrate II in Crime No.12 of 2011 under Section 176 Cr.P.C, the learned Judicial Magistrate had conducted the “**inquest**” on the body of the deceased Suresh and examined the witnesses and had submitted a report. It was further contended that the first respondent and few other witnesses have falsely implicated the Police with ill motive and there is no iota of truth in the allegations made against the Police. It was contended that in the report submitted by the learned Judicial Magistrate II in paragraph No.7, it had been categorically stated that the said Suresh was arrested and information was given to the first respondent and the same was also recorded. The said information was communicated by way of Telegram.



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15. The common counter would only show that the learned Judicial Magistrate found entire allegations was not against the petitioner and only against other two persons, who were the respondents 1 & 2 before the State Human Rights Commission. The learned Judicial Magistrate II has found that the cause of injuries was only at the instance of the second respondent viz., Vivekanandan and beyond that there is no allegation in the report submitted by the learned Judicial Magistrate II. The specific case of all the respondents through their common counter is that the learned Judicial Magistrate has not considered the statement made by the general public as against the deceased Suresh and David and other witnesses and therefore, the second respondent/SHRC ought not to have taken cognizance of the report furnished by the learned Judicial Magistrate II.

16. The State Human Rights Commission has directed its investigative wing to examine the case and investigation was done by the State Human Rights Commission, CB-CID, OCU.

16 (i). The Inspector of Police, CB-CID, OCU enquired Dr.Sumathy who stated that a medical memo was issued by the Police in which it was mentioned that the deceased Suresh and David sustained



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injuries at the hands of the public when they were about to flee while attempting to steal the two wheeler and the same was entered in the Accident Register at the time when they brought to the Government Rajaji Hospital, Madurai.

16 (ii). Dr.Senthil Prabhu has given a statement before the Inspector of Police, CB-CID, OCU stating that when the Magistrate conducted an enquiry, the accused David and the deceased Suresh did not make a mention that they were subjected to torture or custodial violence at the hands of the Writ Petitioner. It is also to be noted that when there was a specific question by the Judicial Magistrate, whether there was there any custodial torture at the hands of the respondents before the SHRC, they did not complain about any of the respondents.

16 (iii). The other statement was recorded from Dr.Natarajan who conducted the post-mortem, who found the following injuries in the body of the deceased Suresh:

Appearance found at the postmortem:

Moderately nourished body of a male aged about 24 years. Finger & toe nails are blue. Rectal temperature is 21 degree C.



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The following Ante mortem injuries are noted on the body:

1. Partly healed lacerations noted over the following areas:

7cm x 3cm x muscle deep noted over the back of left knee.

8cm x 4cm x muscle deep over the outer aspect of left-knee.

2. Partly healed abrasions noted on following areas.

3cm x 2 cm over the outer aspect of right knee.

1cm x 0.5cm over the back of left elbow.

3. Right knee found swollen.

On dissection: Fracture dislocation of patella bone with surrounding bruise noted.

1. Dark colour contusion measuring 5cm x 4cm noted over front of left knee.

2. Dark colour contusion measuring 9cm x 7cm noted over front of right knee.

Note: Multiple superficial incisions made all over the body reveals dark coloured contusions noted over the following areas:

42cm x 13cm over front of upper 1/3rd of right leg.

10cm x 5cm over back of left wrist.

OTHER FINDINGS:

Peritoneal cavity – empty; Pleural cavities – empty; Pericardium – contains 15 ml of straw colour fluid; Heart – right side fluid blood, left side empty; Coronaries – patent; Lungs – both lungs are



adherent with chest wall, and voluminous. Cut section shows multiple cavities of various sizes and shapes filled with fibro caseous pus materials and exudes blood stained discharge; Larynx & trachea – normal; Hyoid bone – intact; Stomach – multiple ulceration noted on the inner surface of lower part of stomach contains 600ml blood with clots, nil specific smell, mucosa – congested; Liver, Spleen & Kidney – cut section congested; Small intestine – contains 20 ml of bile stained fluid, nil specific smell, mucosa – normal; Bladder – empty; Brain – surface vessels & cut section congested, cerebro spinal fluid increased in volume.

16 (iv). Another statement was recorded from Dr.Sivaramasubramanian who conducted the post-mortem along with Dr. Natarajan. After completion of post-mortem, the vital organs viz., viscera was sent for chemical analysis to ascertain the proof of poison if any and after receiving the viscera report, the findings and the cause of death of the deceased Suresh was recorded as follows:

OPINION:

“RESERVED PENDING CHEMICAL EXAMINER'S REPORT” என்றும் தெரிவித்துள்ளேன். பின்னர் T.No.11001/2012, MDU/TOX.H.No:01/2012 dt: 10.01.2012-ன் படி “Poison was not detected” என அறிக்கை கிடைக்கப்பெற்றதை தொடர்ந்து 20.01.2012 “The deceased would appear to have died of bilateral pulmonary tuberculosis with multiple injuries” என இறப்பிற்கான இறுதி அப்பிராய சான்று



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வழங்கினைன் என கூறியிருந்தேன்.

16 (v). The suggestions were made by the Inspector of Police, that the injuries sustained by the deceased Suresh could have happened while the public beaten up them by using sticks, stones and other weapons and because of tuberculosis, only on the above said reason, the deceased could have died.

17. On thorough examination of the complaint as well as the common counter filed before the second respondent, it is evident that there is no allegation of torture or physical assault or materials to state that the injuries sustained by the deceased Suresh was at the hands of the Writ Petitioner. The first respondent even in his complaint has not mentioned allegations of torture by the Writ Petitioner and also the report filed by the Judicial Magistrate II, Madurai pursuant to the enquiry ordered under Section 176 Cr.P.C. did not whisper about the Writ Petitioner.

(a) A perusal of the complaint filed before the second respondent would only show that the complainant was not aware whether the said David and the deceased Suresh were given treatment and were hospitalized only at the instance of the Police and the torture was overseen by a Superior Police Officer, who is the petitioner herein and



thereby causing human rights violation.

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(b) Though it is a common counter filed by all the respondents, there is no whisper about the name of the Writ Petitioner neither his presence nor that he has overseen the physical torture and apart from that, the Writ Petitioner was working as Assistant Commissioner of Police, Crime Branch, Thilagar Thidal. The said Police Station has no jurisdiction with Karimedu Police Station. In the absence of any administrative control over Karimedu Police Station which does not fall either under the administrative capacity or under the Supervising Authority, it is only a false implication of the Writ Petitioner herein.

(c) It is strange to understand that though the first respondent herein has admitted before Madurai High Court that his son was missing from 02.12.2011, he did not take any steps to find out the whereabouts of the deceased Suresh which all creates a doubt in the mind.

(d) The first respondent had not preferred any complaint about his son missing from 02.12.2011 to 13.12.2011. The first respondent came to know about his son's death only when his relative Mr.Muniyandi informed that Virudhunagar West Police was in search of the first respondent. The inordinate delay on the first respondent in maintaining



silence with regard to his missing son for 11 days cannot be ignored. This factor stares against the conduct of the first respondent.

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(e) The first respondent though had categorically informed that his deceased son Suresh was subjected to torture at the hands of the respondents before the SHRC, he failed to examine the said David. The disclosure of torture informed through the Advocate of David, non examination of David and his Advocate and failure to mention the name of the Advocate in the complaint or anywhere in the entire proceedings before the SHRC also creates doubt.

(f) It is pertinent to note that neither in the complaint by the first respondent nor in the entire proceedings, there are materials or whisper about the Writ Petitioner, his presence in the Police Station and the entire alleged torture as against the deceased Suresh was at the behest of the Writ Petitioner.

18. The Statements of Dr.Sumathy, Dr.Senthil Prabhu and Dr.Natarajan would only show that the deceased Suresh or the accused David did not mention about the custodial torture and harassment at the hands of the Writ Petitioner. The statements of these three Doctors would play a major role in determination to the allegations levelled



against the Writ Petitioner by the first respondent herein. This Court has can infer from the statements of all the three Doctors that the allegations are after thought. Further there is no reason to discard the inquest report submitted by the Judicial Magistrate pursuant to the registration of FIR under Section 176 Cr.P.C.

19. Even when there was a specific question by the Judicial Magistrate II to the deceased Suresh and the accused David, they did not make any allegation about custodial torture or illegal detention before the Judicial Magistrate II. As per the post-mortem report, the cause of death for the deceased Suresh was due to bilateral pulmonary tuberculosis with multiple injuries.

20. All these factors would show that the injuries sustained by the deceased Suresh is not in anyway corresponding to the cause of death as found in the post-mortem report. It is also to be taken note that, the complainant/first respondent neither in the complaint nor in the statement before the State Human Rights Commission, has made any allegation against the Writ Petitioner. In the absence of any cogent material or any evidence to prove the allegation against with the Writ Petitioner for violation of human rights, this Court comes to the conclusion that the



Writ Petitioner has been falsely implicated on the basis of lone statements of an accused before the State Human Rights Commission.

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21. The post-mortem report would also suggest the cause of death and the findings in the post-mortem report would only show that the death was due to bilateral pulmonary tuberculosis with multiple injuries. It is found from the common counter filed by the respondents before the SHRC that the two were caught hold of by public and beaten up and they were sent to hospital for treatment.

22. On the above reasons, we could see that there is not even a single allegation against the writ petitioner/third respondent to implicate or to suggest that the writ petitioner was responsible for the cause of death or was responsible for the custodial torture as alleged by the first respondent herein. We have no hesitation to quash the recommendation made by the second respondent herein as against the writ petitioner.

23. In the result, the orders passed by the State Human Rights Commission dated 04.06.2019 is hereby set aside and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.



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(S.S.S.R.,J) (N.S.,J)
26.03.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
pam



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To

The Registrar,
The Honourable State Human Rights
Commission of Tamil Nadu,
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