



WEB COPY

W.P.No.34985 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.34385 of 2022 and
W.M.P.Nos.33846 & 33847 of 2022

R.Jamuna

... Petitioner

Vs.

- 1.The Commissioner of the Police,
Vepery, Chennai 600 007.
- 2.The Joint Commissioner (Head Quarters)
Central Crime Branch,
Commissioner of Police Buildings,
Vepery, Chennai 600 007.
- 3.The Assistant Deputy Commissioner,
Central Crime Branch,
Commissioner Office Buildings,
Vepery, Chennai 600 007.
- 4.R.Ganagamani

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in Rc.No.COP/Pen.2(1)/072/24074/2022, 22.11.2022 on the file of the first respondent and quash the same as illegal, incompetent without jurisdiction and further direct the respondent to disburse the service benefits of the deceased Rajkumar to the petitioner, his mother as per the registered Will Doc.No.104 of 2021 dated 04.08.2022 within a time stipulated by this Court.



For Petitioner : Mr.Enoch Livingstone.J.A for
Mr.M.Muruganantham

For Respondents : Mr.R.U.Dinesh Rajkumar,
AGP for R1 & R2
Mr.S.Sathiachandran for R4

ORDER

This Writ Petition has been filed for quashment of the proceedings of the first respondent in Rc.No.COP/Pen.2(1)/072/24074/2022, 22.11.2022 and further to direct the respondents to disburse the service benefits of the deceased Rajkumar to the petitioner, his mother as per the registered Will Doc.No.104 of 2021 dated 04.08.2022 within the stipulated time as fixed by this Court.

2. Heard the learned counsel on either side and also perused the materials available on record.

3.The petitioner's son joined the police service and served as Head Constable at Central Crime Branch, Commissioner Office, Vepery till his death. He was married to the 4th respondent. The 4th respondent deserted the son of the petitioner and is living with her parents. Hence, the petitioner's son



filed divorce Petition in H.M.O.P.No.91 of 2020 on the file of the Family Court, Thiruvallur and the same was pending. In the meantime, the petitioner's son suffered from thyroid cancer and he registered a Will as Document No.104 of 2021 dated 04.06.2021 before the Sub Registrar Office, Thiruvallur, bequeathing all the terminal benefits to the petitioner. Thereafter, the petitioner's son died on 04.04.2022. The 4th respondent did not even attend her husband's funeral ceremonies. Since as per the registered Will, the petitioner is entitled for all his terminal benefits. In regard to this, she filed a Writ Petition in W.P.No.14512 of 2022 and this Court by an order dated 13.06.2022, had disposed of the petition at the admission stage itself with a direction to consider the representation of the petitioner after providing opportunity to her. In pursuant to the order passed by this Court, the first respondent passed an order of rejection of the claim of the petitioner. Hence, the petitioner has filed the present petition.

4. The learned counsel for the petitioner submitted that after the order of this Court, the 1st respondent had passed an order directing the petitioner to go before the civil forum for entitlement of the Will executed by his son and thereafter, approach them for the terminal benefits. The 1st respondent has also observed in his order that the 4th respondent is eligible to apply for the



compassionate appointment. He further submitted that the respondents are not justified to disburse the service benefits of the deceased against his intention and Will as the same is illegal in the eye of law.

5. The learned Government Additional Pleader appearing for the respondents 1 to 3 submitted that there is dispute between the mother-in-law and the daughter-in-law and the same cannot be adjudicated by way of a Writ Petition. Hence, the petitioner may file a civil suit in accordance with a law and seek remedy.

6. The learned counsel appearing for the 4th respondent submitted that the claim for terminal benefits based on a Will is unsustainable in law and the same is not *res integra* and in support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of *Jodh Singh Vs. Union of India and another* reported in 1980 4 SCC 306 and the relevant portion of the judgment is extracted hereunder:

“This Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The Court observed:



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“Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased, it could never be the subject matter of testamentary disposition. The Court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.”

7. In view of the submissions made by the learned Additional Government Pleader and in the light of the judgment of the Hon'ble Supreme Court in *Jodh Singh's* case as stated supra, this Court is of the view that the petitioner is at liberty to approach an appropriate forum and avail the remedy in accordance with law. Hence, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

30.08.2024

vkr

Index : Yes / No

Speaking order / Non-speaking order



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VIVEK KUMAR SINGH, J.

vkrr

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