



W.P(MD)No.8612 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.04.2024

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.8612 of 2024

and

W.M.P.(MD)No.7889 of 2024

Vijaya. G

... Petitioner

Vs.

- 1.The Home Secretary Home Department,
Government of Tamil Nadu,
Secretariat, Chennai-09
- 2.The Director General of Police,
Office of the DGP,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-05
3. The Director General of Police,
O/o. the Director General of Police(DGP),
Crime Branch Crime Investigation Department (CBCID),
No. 220, Pantheon Road, Egmore, Chennai-8
4. The Superintendent of Police
Pudukkottai District, Pudukkottai
5. The Inspector of Police
Manamelkudi Police Station,
Pudukkottai District
6. The District Collector
Pudukkottai District,
Pudukkottai.



W.P(MD)No.8612 of 2024

7. The Chief Medical Officer
Government Hospital,
Pudukkottai, Pudukkottai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents 1 to 4 to entrust the investigation of pending case in Crime No. 70 of 2024 dated 27.03.2024 on the file of the 5th respondent Police Station to the 3rd respondent officer for a fair and impartial investigation and to direct the 3rd respondent to file periodic report to this Court on the progress made in the investigation and to direct the 6th respondent to grant Rupees One Crore as a compensation to the petitioner within the time limit that may be stipulated by this Court.

For Petitioner : Mr.A.D.Ganeshamoorthi

For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

The petitioner has filed this petition for a Writ of Mandamus directing the respondents 1 to 4 to entrust the investigation of pending case in Crime No. 70 of 2024 dated 27.03.2024 on the file of the 5th respondent Police Station to the 3rd respondent officer for a fair and impartial investigation and to direct the 3rd respondent to file periodic



W.P(MD)No.8612 of 2024

report to this Court on the progress made in the investigation and to direct the 6th respondent to grant compensation to the petitioner.

2. The petitioner is the mother of the deceased. The petitioner's son, viz., Vignesh died on 27.03.2024. The petitioner having a grievance as against the investigation agency that the investigation has not been conducted in a proper manner, has filed this Writ Petition seeking a relief for conducting re-post mortem

3. The learned counsel for the petitioner in support of his contention has relied on the judgment of the Hon'ble Supreme Court in the case of *People's Union for Civil Liberties V. State of Maharashtra* reported in **2014-10-SCC-635** and another judgment of this Court in **W.P. (MD)No.8160 of 2020 (Palammal V. The Home Secretary, Home Department, Secretariat, Chennai), dated 30.07.2020** and submits that the post mortem ought to have been conducted by two Doctors. However, in this case, post mortem is conducted by a single Doctor and prayed re-post mortem to be conducted by two Doctors.



W.P(MD)No.8612 of 2024

WEB COPY

4. The learned Additional Public Prosecutor submits that the deceased is an accused involved in Crime No.221 of 2021, under Sections 109 and 328 I.P.C and Sections 21(a) and 27(a) of N.D.P.S Act, in Crime No.89 of 2022 under Sections 328 and 109 I.P.C, on the file of the Pudukkottai Police Station and in Crime No.124 of 2023 under Sections 8(c), 20(b)(ii) (B), 25 of N.D.P.S Act, on the file of the Thirukogarnam Police Station. The deceased is having several enemies. The occurrence has taken place on 26.03.2024 at about 11.30 pm. near his house and the body of the deceased found from the lake, which is adjacent to his house. There is no eye witness for the occurrence. The uncle of the deceased has stated about the incident that took place at about 10.30 pm. The body was recovered only on 27.03.2024. Thereafter, inquest was conducted on 29.03.2024 at about 12.00 p.m., to 1.45 p.m., at Government Medical College and Hospital, Pudukkottai. The complaint was lodged by the petitioner on 27.03.2024 at about 09.00 pm. Based on her complaint only, the dead body was recovered and an inquest was conducted and thereafter, this body was also referred for post mortem to the Government Medical College and Hospital, Pudukkottai, at about 03.00 pm, the post mortem was conducted by Dr.S.Karthiga Devi, M.D., (Forensic) and the entire post mortem was also



W.P(MD)No.8612 of 2024

videographed. The petitioner even after completion of the post mortem, has refused to receive the body from the Hospital and insisting for a re-post mortem and therefore, the investigation agency could not proceed further investigation.

5. This Court considered the rival submissions made.

6. The complaint itself has been lodged by this petitioner on 27.03.2024 at about 9.00 p.m., at the instance of the petitioner. The learned Additional Public Prosecutor submits that they have intending to hand over this video graph to the petitioner and the post mortem report, however, the petitioner is insisting for re-post mortem and also seeking compensation as if it is a case of communal violence. As on date there is no material to substantiate that this is a case of communal violence. The petitioner refused to take the dead body and therefore, the entire police force is spending the time in protecting the dead body. It is not a routine a fair that a post mortem in all the cases has to be conducted by two Doctors. As on date, the case is registered under Section 174 Cr.P.C and the offence has not been altered. There is no eye witness for the occurrence and the petitioner has also not made out any case, as it is a



W.P(MD)No.8612 of 2024

case of communal violence and it can be identified only during the course of investigation. The judgment of the Hon'ble Apex Court referred by the learned counsel for the petitioner is a police encounter case, wherein two Doctors were directed to conduct the post mortem that ratio cannot be applied in this case. In the absence of any statutory provisions, this Court is not inclined to entertain this Petition.

7. The learned Additional Public Prosecutor has also stated that the petitioner by filing this application, is not taking the dead body, in such circumstances, the Division Bench this Court has passed as order in ***W.P. (MD)No.9292 of 2021 and 8670 of 2021 (Pavanasam V. Chief Secretary, Government of Tamil Nadu, Secretariat, Chennai), dated 30.06.2021***. The relevant portion of the order reads as follows:-

“5. From the happenings, which have taken place on various dates of hearing and what we have recorded in our earlier orders and on a cursory perusal of the reports of the police officials with regard to the activities of the petitioner and others, this Court finds it appropriate to order disposal of the body of the deceased and it cannot be allowed to lie in the mortuary.

6. According to the learned Senior Counsel for the State Government the relevant statute applicable for disposal



W.P(MD)No.8612 of 2024

WEB COPY

of the body is Tamil Nadu Anatomy Act, 1951 and Tamil Nadu Anatomy Rules, 1951 and in particular; Section 4 of the Act and Rule 4(1) of the Rules. Furthermore, it is submitted that continuance of the body of the deceased to remain in hospital is deemed to be a nuisance in terms of the definition under Section 2(25) of the Tamil Nadu Public Health Act, 1939 and in terms of Section 45 of the Act, the local authority has power to abate the nuisance.”

8. In view of the above, this **Writ Petition is disposed** of with the following direction:

(i) The respondent police is directed to hand over the post mortem certificate and a copy of the videograph taken during the post mortem to this petitioner forthwith.

(ii) If the petitioner is not taking the dead body, it is left with the respondent police to proceed with the funeral as directed by this Court in W.P.(MD)No.9292 of 2021 cited supra;

(iii) The petitioner is expected to co-operate for investigation by producing material, if any, with the petitioner;

(iv) the respondent police shall conduct an investigation in a fair manner and find out the real truth;



W.P(MD)No.8612 of 2024

(v) In any event, if the petitioner is having any grievance as against the respondent police that the respondent police is not conducting a fair investigation, it is always open to the petitioner to file necessary application with reasons for transferring the investigation.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.04.2024

Index : Yes/No
Internet: Yes/No
LS

To

- 1.The Home Secretary Home Department,
Government of Tamil Nadu,
Secretariat, Chennai-09
- 2.The Director General of Police,
Office of the DGP,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-05
3. The Director General of Police,
O/o. the Director General of Police(DGP),
Crime Branch Crime Investigation Department (CBCID),
No. 220, Pantheon Road, Egmore, Chennai-8
4. The Superintendent of Police
Pudukkottai District, Pudukkottai



W.P(MD)No.8612 of 2024

5. The Inspector of Police
Manamelkudi Police Station,
Pudukkottai District.
6. The District Collector
Pudukkottai District,
Pudukkottai.
7. The Chief Medical Officer
Government Hospital,
Pudukkottai, Pudukkottai District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



W.P(MD)No.8612 of 2024

B.PUGALENDHI, J

LS

Order made in
W.P.(MD) No.8612 of 2024

05.04.2024