



W.P.(MD)No.23672 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.23672 of 2024
and
W.M.P.(MD)No.20348 of 2024

Salini

... Petitioner

Vs.

- 1.The District Collector,
Tiruchirappalli.
- 2.The Superintendent of Police,
Tiruchirappalli District,
Tiruchirappalli.
- 3.The Superintendent,
Central Prison,
Tiruchirappalli.
- 4.The Inspector of Police,
Jeeyapuram Police Station,
Srirangam Taluk,
Trichy District.
- 5.The Sub Inspector of Police,
Jeeyapuram Police Station,
Srirangam Taluk,
Trichy District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the respondents to conduct re-postmortem of the body of the petitioner's husband namely Thiravidamani under the supervision of the first respondent to find out the real cause of death.

For Petitioner : Mr.S.Muthukrishnan

For Respondents : Mr.M.Muthumanikkam
Government Advocate
for R.1

: Mr.R.Baskaran
Additional Advocate General
assisted by
Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R.1 and R.2

:

ORDER

The above petition has been filed seeking direction to the respondents to conduct re-postmortem of the body of the petitioner's husband – Thiravidamani under the supervision of the first respondent to find out the cause of death.



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2. The petitioner is the wife of the deceased – Thiravidamani. The case of the petitioner is that her husband aged about 40 years is engaged in agricultural work, particularly he was plucking coconuts from the coconut trees in agricultural lands and private houses, that on 26.09.2024 at about 05.30p.m., when her husband was returning to his house on his motorcycle, he was prevented and arrested by the fifth respondent police and was taken to the Jeeyapuram Police Station in an auto rickshaw, that the fifth respondent registered a false case against her husband in Cr.No. 261 of 2024 for the offences under Sections 4(1)(a) and 4(1-A) of the Tamil Nadu Prohibition Act, as if her husband was in possession of 63 bottles of liquor in the bag, that her husband was detained in the police station in the night and he was taken to the Judicial Magistrate No.III, Tiruchirappalli on 27.09.2024 afternoon and was remanded to judicial custody, that her husband was taken to Central Prison on the evening of 27.09.2024 and thereafter, he was taken to jail hospital and was referred to the Government Hospital, Tiruchirappalli, that the Doctor on examining him, informed that he died on the way to the hospital, that the fifth respondent police by falsely registering the case, had severely



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beaten in the police station, that the respondents did not communicate the arrest of her husband and his death, that the postmortem was done by the respondents without any intimation to the petitioner, that the respondents have done all the above only to protect the real accused and that therefore, re-postmortem has to be conducted to find out the real cause for the death of her husband.

3. The fourth respondent has filed a status report wherein it has been stated that the petitioner's husband – Thiravidamani was involved in a case in Cr.No.232/2012, on the file of the fifth respondent under Section 307 I.P.C., r/w 25(1) of Arms Act and in that case, he was recently acquitted in S.C.No.21 of 2020 on 14.08.2024 by the Chief Judicial Magistrate, Tiruchirappalli, that after the acquittal, the said Thiravidamani has not turned up to his normal life, but engaged in trafficking the illegal transportation of the liquor along with his friend Sudhakar, that the fifth respondent, on receipt of the authenticated information, arrested the said Thiravidamani at 19.30 hours on 26.09.2024, who was in illegal possession of 63 bottles along with his vehicle Bajaj bearing Registration No.TN-45-K-4956, that the said



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Thiravidamani was taken to remand before the Judicial Magistrate No.III, Tiruchirappalli at about 21.30 hours, but the learned Judicial Magistrate, on perusing the records, directed them to file proper FIR in terms of the amendment and that after amendment, they have taken the said accused before the Court on 27.09.2024 at about 01.45p.m., that the accused relative one Sathya, w/o Ranjith Kumar was very much available in the police station noticing everything, that after remanding him to judicial custody, the accused was taken to the Central Prison, Trichirappalli at about 21.50 hours on 27.09.2024, that the respondent police came to know that on 28.09.2024, the accused had taken morning breakfast and midday meals without any adverse remarks, that subsequently since he reported some inconvenience in his health, he was hospitalized in the Central Prison, Trichirappalli and the duty doctors recommended him to the Trichy Mahathma Memorial Government Hospital and that the accused was admitted in an unconscious state and was found to be declared as dead by the duty doctor.

4. It is the further case of the prosecution that the above matter was conveyed to the Jurisdictional Magistrate, the District Collector, the fifth



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respondent and the Dean of the K.A.P.,Viswanathan Government Medical College, Trichy and a case was registered in Cr.No.400 of 2024, under Section 196 BNSS at 00.30 hours on 29.09.2024, that the Judicial Magistrate No.VI, Trichy conducted inquest at Government Hospital, Trichy, that the postmortem was done by the team of doctors which came to be videographed at 12.00hours on 29.09.2024 and after the completion of the enquiry, the Magistrate visited the Central Prison and after enquiry, she also visited the Jeeyapuram Police Station and verified the CCTV footage for more than one hour on that day, that after postmortem when the body was handed over to the petitioner, she refused to receive and made some kind of protest levelling allegations against the police officials, that without any basis, they have now sought for re-postmortem and there is absolutely no need or necessity to go for the second postmortem and that the petition is absolutely devoid of merit and the same is liable to be dismissed.

5. When the matter was taken up yesterday (03.10.2024), considering the submissions of the learned Counsel for the petitioner that the postmortem certificate was not issued, the learned Additional



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Advocate General submitted that they have not received the postmortem certificate and on receiving the same, they would produce before this Court, tomorrow (04.10.2024).

6. When the matter is taken today, Mr.Henri Patrick Tiphange, learned Counsel would submit that one Thiagarajan @ Thiagu has filed an impleading petition in WMP(MD)No.20348 of 2024, who is a member of the Joint Action Against Custodial Torture – Tamil Nadu and Puducherry, to enlighten the Court with regard to the mandatory procedures to be complied in the case of custodial deaths and the proposed party may be impleaded as one of the respondents. The learned Counsel would rely on the decision of this Court in ***Santhosh VS. the District Collector, Madurai***, passed in W.P.(MD)No.12608 of 2020 and another decision in the case of ***Anju Vs. the Home Secretary, Government of Tamil Nadu*** passed in W.P.No.13141 of 2024 and argued that the respondents have not complied with the mandatory requirements as contemplated by this Court.



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7. I have heard the learned Counsel for the petitioner and the learned Additional Advocate General assisted by the learned Additional Public Prosecutor at length. Since the learned Counsel for the petitioner would advance the arguments by relying on the decision referred by the learned Counsel for the proposed party and taking note of the fact that the order has to be passed immediately as body is being kept in the Government Hospital from 29.09.2024, this Court is not inclined to implead the proposed party, as his presence is not at all necessary to decide the above petition.

8. The prosecution has produced the copy of the postmortem report. I have also perused the CD file and other records. I have seen the CD containing the CCTV footages of the jail premises.

9. The learned Counsel for the petitioner would mainly contend that the petitioner was admittedly arrested on 26.09.2024 and he was produced before the Judicial Magistrate only on 27.09.2024 afternoon and in the meanwhile, he was beaten and subjected to torture for the whole day, that the petitioner and others, who had seen the body of the



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deceased before autopsy noticed several injuries, but the same does not find place anywhere. He would further submit that even the doctors who conducted postmortem had noticed two external injuries, but the same was not noticed by the medical officer who examined before the remand and by the Magistrate, who remanded the deceased and the jail doctor who had examined him before admitting him in the prison. The learned Counsel would further contend that as per the guidelines issued by this Court, the relatives of the deceased must be given permission to see the body of the deceased before autopsy and permitted to take video and photos, but in the case on hand, the learned Magistrate has refused permission. The learned Counsel would further contend that the Dean of the Medical College Hospital, where the postmortem was conducted, is duty bound to give the copy of the postmortem and the video containing the conduct of postmortem, but in the case on hand, the same was not complied with.

10. It is evident from the records that the petitioner was arrested at 18.00 hours on 26.09.2024 and that the factum of arrest was intimated to the deceased neighbour Sathya, w/o Ranjith Kumar, that the said accused



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was taken to the Government Primary Health Centre on 26.09.2024 and the Junior Assistant Surgeon, attached to the Primary Health Centre has given a report stating that he was fit for remand.

11. The learned Additional Advocate General would submit that after the medical examination, he was produced before the Judicial Magistrate and the learned Judicial Magistrate has refused to remand and directed the police to make alterations in terms of the amendment and that on 27.09.2024, they had altered the offences from 4(1)(a) r/w 4(1-A) TNP Act and Transportation Act to 4(1)(C) r.w 4(1-A) TNP Act and Transportation Act. According to the prosecution, before taking him to remand, they have again taken the accused to the Government Primary Health Centre and again subjected him to medical examination and the Junior Assistant Surgeon attached to the said Hospital, after examining the accused has certified that the accused was fit for remand.

12. It is evident from the records that the learned Judicial Magistrate No.III has passed remand order at 04.30 hours at 27.09.2024 wherein it has been stated that there were no visible signs of injuries on



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the body of the accused and the medical report does not contain any external injuries and there was no complaint of police harrasment reported by the accused and after satisfying the prima facie case, has passed the order remanding the accused to judicial custody.

13. The learned Additional Advocate General would submit that after remand, he was taken to the Central Prison, Trichy at about 08.50p.m., on 27.09.2024.

14. I have examined the CCTV footage provided by the prosecution on CD, which clearly shows the accused being escorted to the main gate at 20:47 hours on 27.09.2024. He was dressed in a lungi and shirt and had a yellow cloth bag in his hand. Following a check-up in the jail's front area at 09:01 hours, he was seen walking some distance and entering a room. Later, he was seen exiting that room with the other accused, proceeding towards the Central Jail's inner area at 15:10 hours (3:10 p.m.), still wearing the same clothes and carrying the same yellow bag. As rightly contended by the learned Additional Advocate General,



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on viewing the CCTV footage, there is no indication from his movement that he had any other health issues at that time.

15. The learned Additional Advocate General would submit that though the respondent police has attempted to serve the copy of the postmortem certificate along with the video regarding the postmortem, the petitioner has refused to receive the same and they have produced a statement given by the Village Administrative Officer to the effect that the petitioner has refused to receive the report.

16. No doubt, as rightly contended by the learned Counsel for the petitioner, the Dean of the Medical College Hospital has not furnished the copy of the postmortem along with the video recordings. But according to the prosecution, the entire postmortem came to be videographed and that too in the presence of the Judicial Magistrate. He would further submit that the learned Judicial Magistrate has permitted the petitioner and some of his relatives to see the body of the deceased before autopsy, but they have not sought for any permission for taking photographs or video of the body of the deceased.



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17. The learned Counsel for the petitioner has not specifically disputed the factum of the petitioner's refusal to receive the copy of the postmortem certificate and the video recording, when the same was offered by the respondent police yesterday. But now they are ready to receive the same and accordingly, the learned Additional Public Prosecutor has handed over the copy of the postmortem certificate along with the video recordings before the Court.

18. The petitioner's Counsel would submit that the case be scheduled after the vacation or before the Vacation Court, allowing the petitioner to consult a Forensic expert and obtain an opinion on the post-mortem examination and certificate. However, the learned Additional Advocate General would strongly object, pointing out that the deceased's body has been in the hospital's custody since September 29, 2024, and it is becoming increasingly difficult to store it for another 7 to 10 days due to concerns about law and order.



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19. As rightly pointed out by the learned Additional Advocate General in the postmortem certificate, the doctors had noticed two external injuries

(1) A abrasion with brownish black scab of size 0.2x0.2cm on the back of lower part of forearm.

(2) A healed wound of size 6x0.5cm on the front and inner aspect of the lower part of left leg – underlying bone intact and further stated no other external and internal ante mortem injuries present anywhere on the body.

20. As rightly pointed out by the learned Additional Advocate General, the doctors have opined that the injuries they noticed were ante-mortem injuries. The first injury, they estimated, occurred 4 to 7 days prior to death, while the second injury occurred two weeks prior to death. Both injuries were determined to be accidental in nature. Moreover, the post-mortem examination was conducted by two doctors from the Forensic Department attached to K.A.P.V. Government Medical College Hospital, Trichy. As rightly contended by the learned Additional Advocate General, although the learned Counsel for the petitioner



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submits that the learned Magistrate and the Medical Officers who examined the accused before remand did not notice the said injuries, it is clear that both injuries noticed by the post-mortem doctors were old injuries.

21. No doubt, in case of custodial deaths, the police as well as the respondents are duty bound to follow the guidelines issued by the learned Judge of this Court in *Santhosh Vs the District Collector and others* above referred, wherein the guidelines of the Division Bench were referred. But in the case on hand, the infraction alleged by the petitioner's side cannot be said to be material enough to vitiate the postmortem proceedings.

22. As rightly contended by the learned Additional Advocate General, the petitioner has failed to demonstrate any valid reason or ground to suggest that the post-mortem examination already conducted was improper or not in accordance with the law, thereby warranting a re-postmortem. Upon reviewing the materials on record and the CCTV footage of the jail premises, this Court is of the clear opinion that there is



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no basis whatsoever for ordering a re-postmortem. Therefore, this Court concludes that the Writ Petition is devoid of merits and is liable to be dismissed.

23. In the result, the Writ Petition is dismissed. The Miscellaneous Petition in W.M.P.(MD)No.20348 of 2024 is dismissed. The petitioner is at liberty to take appropriate proceedings in the manner known to law. There shall be no order as to costs.

04.10.2024

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

SSL

To

- 1.The District Collector,
Tiruchirappalli.
- 2.The Superintendent of Police,
Tiruchirappalli District,
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K.MURALI SHANKAR,J.

SSL

ORDER MADE IN

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