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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.01.2025

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)Nos.20267 to 20273 of 2021 and 19405 of 2021

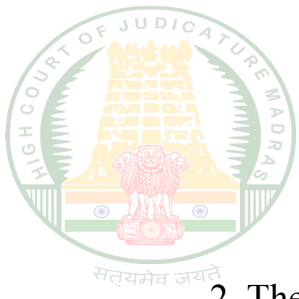
and

W.M.P.(MD)Nos.16926 to 16939 of 2021, 16135 and 16138 of 2021

- | | |
|-------------------|--|
| 1. Raja | ... Petitioner in W.P.(MD)No.
20267 of 2021 |
| 2. Chinna Athiyan | ... Petitioner in W.P.(MD)No.
20268 of 2021 |
| 3. Vayakattu Samy | ... Petitioner in W.P.(MD)No.
20269 of 2021 |
| 4. Ramesh | ... Petitioner in W.P.(MD)No.
20270 of 2021 |
| 5. Murugan | ... Petitioner in W.P.(MD)No.
20271 of 2021 |
| 6. Arulselvakumar | ... Petitioner in W.P.(MD)No.
20272 of 2021 |
| 7. Sudha | ... Petitioner in W.P.(MD)No.
20273 of 2021 |
| 8. Surender | ... Petitioner in W.P.(MD)No.
19405 of 2021 |

versus

1. The Principal Secretary (Law and Order),
Tamil Nadu Government,
Secretariat,
Chennai.



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2. The District Collector,
Madurai.

3. The Superintendent of Police,
Madurai.

... Respondents in all
W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings in Government Order No.325 of the 1st respondent dated 09.07.2020 and quash the same.

For Petitioner
in all W.Ps. : Mr.J.Lawrance

For Respondents : Mr.K.Balasubramani,
in all W.Ps. Special Government Pleader

COMMON ORDER

The petitioners are police officers, part of a special team. They nabbed an accused, by name, China Vellaiah near Natham Kottampatti Road at about 2:15 p.m. on 04.01.2019 in connection with a case in Crime No.4 of 2019 for the offence under Sections 8(c) r/w 20(b) (1)(B) of NDPS Act. The accused China Vellaiah died in a suspicious circumstances in the Hospital. Since the accused died while he was under



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the police custody, an enquiry under Section 176(1-A) of Cr.P.C. was ordered by the learned Chief Judicial Magistrate on the request of the Deputy Superintendent of Police. The learned Judicial Magistrate has conducted the inquest at the Government Rajaji Hospital, Madurai, in the presence of the relative of the deceased and examined the witnesses and submitted a report that the deceased died due to the police excess. The postmortem report reveals that the deceased had sustained multiple injuries all over his body, including on his head and the deceased died due to the head injury.

2. During the inquiry, some of the officers have projected as if there was a clash between the deceased accused and another. But the same was not corroborated by other officers of the special team. However, the person, who said to have excessed, was also not identified by the special team. Therefore, the learned Judicial Magistrate, by his report dated 29.07.2019, concluded that the deceased had sustained multiple injuries all over his body including the head injury, which caused the death, only at the hands of the members of the special team and they are alone responsible for the death of the accused. Based on the



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report of the learned Judicial Magistrate under Section 176(1-A) Cr.P.C, the Government, vide G.O.(Ms.)No.325, dated 09.07.2020, sanctioned a sum of Rs. 5 lakh to the victim and directed to proceed with the criminal prosecution and also departmentally as against the petitioners / the officers of the special team. As against the said G.O., these writ petitions have been filed on the ground that the learned Judicial Magistrate is not supposed to hand over the report to the District Collector and the Government directly and no opportunity was provided to them.

3. To substantiate the case of the petitioners, the learned counsel appearing for the petitioners has relied on Chapter-XIII of Criminal Rules of Practice 2019 on the inquiry into custodial death/disappearance/rape and the same is extracted as under:

“94. Death or disappearance or rape while in custody -

(1) Any information relating to the death or disappearance of any person or rape of a woman while in custody of the police or in any other custody authorised by a Magistrate or Court, shall be registered as a case under Section 154 of the Code.

(2) On receipt of information of an occurrence



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referred to in sub-section (1-A) of Section 176 of the Code, the Judicial Magistrate/Metropolitan Magistrate, in whose jurisdiction the occurrence has taken place, shall hold an enquiry.

(3) During such inquiry under sub-section (1-A) of section 176 of the Code, the Judicial Magistrate/Metropolitan Magistrate shall have the power to record evidence on oath.

(4) On completing the inquiry, the Judicial Magistrate/Metropolitan Magistrate shall draw a report and keep the statements of the witnesses, documents collected and the report drawn by him as part of case records.

(5) The Judicial Magistrate/Metropolitan Magistrate shall furnish copies of the statements of the witnesses recorded during inquiry under sub-section (1-A) of section 176 of the Code, the documents collected and the report drawn by him to the investigating police officer without delay.

(6) The investigating police officer shall, without being hindered by the inquiry by the Judicial Magistrate/Metropolitan Magistrate, conduct investigation under Chapter XII of the Code thoroughly and submit a final report to the jurisdictional Magistrate/Court under Section 173 of the Code.



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(7) The Judicial Magistrate/Metropolitan Magistrate shall not forward the original records of the inquiry under sub-section (1-A) of section 176 of the Code either to the District Collector or to the Government.”

Rule 94(7) of Criminal Rules of Practice 2019 mandates that the Judicial Magistrate, who conducted an inquiry under Section 176(1-A) Cr.P.C., is not expected to forward his report to the District Collector or to the Government.

4. The learned counsel for the petitioners has also relied on a Judgment of this Court in ***R.Kasthuri vs. State by the District Collector, Cuddalore District and others***, reported in ***(2015) 1 MLJ (Crl) 455***, wherein, this Court has held as follows:

40. In the result, the criminal original petition is allowed in the following terms:

(i) The Letter of the Secretary to Government, Public (Law & Order) Department, Secretariat, Chennai, in Letter No.4341/L&O.E/2011-1, dated 13.10.2011 is hereby set aside;

(ii) The Director General of Police, Tamil Nadu, is directed to nominate a police officer from CB CID, not



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below the rank of Deputy Superintendent of Police and hand over the investigation of the case in Crime No.351 of 2010 on the file of the Inspector of Police, Kadampuliyur Police Station, Cuddalore District, for a thorough investigation.

(iii) The inquiry report of the Judicial Magistrate-II, Panruti, submitted to the District Collector and forwarded to the Government shall be returned to the learned Judicial Magistrate No.II, Panruti forthwith.

(iv) The learned Judicial Magistrate-II, Panruti, shall furnish copies of his proceeding under sub-section (1A) of Section 176 of Cr.P.C. to the investigating police officer as indicated above.”

5. The learned Special Government Pleader submits that the learned Judicial Magistrate has submitted his report as per the Criminal Rules of Practice only before the Investigating Officer. The Investigating Officer has also concluded his investigation and filed the final report as against the petitioners and the case is now pending against the petitioners.



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6. The learned Special Government Pleader further submits that a representation was submitted to the District Collector, which has been forwarded to the Government. The Government has taken cognizance in the impugned Government Order and recommended for providing compensation to the victim and for initiating disciplinary proceedings against the erring officials.

7. In view of the submissions of the learned Special Government Pleader that the impugned Government Order has been passed only for providing compensation to the victim and also for initiating disciplinary proceedings against the petitioners, this Court is not inclined to interfere with the impugned Government Order.

8. Since the learned Judicial Magistrate has submitted his report to the Investigating Agency as per Criminal Rules of Practice and the Investigating Agency has also filed the final report against the petitioners, the petitioners shall workout their remedy in the criminal case and also in the departmental proceedings, which are pending against them.



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9. Accordingly, the writ petitions are dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

30.01.2025

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NCC : Yes / No.

Index : Yes / No.

Internet: Yes / No.

To

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Secretariat,
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B.PUGALENDHI, J.

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