



W.P.No.10249 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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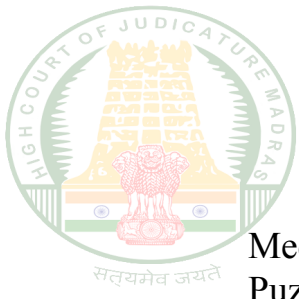
and W.M.P.Nos.12462 of 2020 & 21089 of 2021

S.Pongulali

...Petitioner

-Vs-

1. The State of Tamil Nadu,
rep by the Secretary to Government,
Home Department,
Secretariat, Chennai 600 009.
2. The Director General of Police,
Mylapore, Chennai – 600 004.
3. The Commissioner of Police,
Chennai City,
Egmore, Chennai – 600 008.
4. The Deputy Commissioner of Police,
Mylapore District, Chennai.
5. The Superintendent of Prison,
Central Prison-2,
Puzhal, Chennai – 600 066.
6. Ramalingam,
Inspector of Police (Crime)
K-7, ICF Police Station, Chennai.
7. Kathiravan,



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Medical Officer, Central Prison-2,
Puzhal, Chennai – 66.

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8. The Inspector of Police,
CB-CID, Egmore,
Chennai – 600 008

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent-State of Tamil Nadu to register a case under Section 302 of IPC against the respondent No.6 and all other police personnel responsible for the death of the petitioner's son Nithya @ Nithyaraj and to hand over the investigation of the case in Cr.No.2 of 2017 on the file of the respondent No.8 to the Central Bureau of Investigation and further directing the respondent – State to award appropriate compensation to the petitioner for the death of her son.

For Petitioner : Mr.P.Pugalenthi

For Respondents
for R1 to R6 & R8 : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

The Writ Petition has been filed to direct the respondent-State of Tamil Nadu to register a case under Section 302 of IPC against the respondent No.6 and all other police personnel responsible for the death of the petitioner's son Nithya @ Nithyaraj and to hand over the investigation of the case in Cr.No.2 of 2017 on the file of the respondent



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No.8, to the Central Bureau of Investigation and further directing the respondent – State to award appropriate compensation to the petitioner for the death of her son.

2. The learned counsel appearing for the petitioner submitted that the son of the petitioner was a member of 'Friends of Police' attached to K2, Ayanavaram Police Station, Chennai. While being so, on 11.01.2012 the police personnel of K7 ICF Police Station had taken the petitioner's son (herein after called as “the deceased”) to the police station. Next day i.e., on 12.01.2012, when the petitioner went to the police station and enquired about him but she was not allowed to see her son. The deceased was kept under police custody from 11.01.2012 to 14.01.2012 and he was produced before the learned Magistrate on 14.01.2012, in pursuant to the FIR registered in Crime No.24 of 2012 for the offences under Sections 420 & 392 of IPC.

2.1. When the deceased was produced before the learned Magistrate, the petitioner and her relatives had seen him and he was sustained injuries all over his body. He was also threatened by the sixth respondent herein that not to disclose anybody about the torture given by



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the police personnel in the police station. Unfortunately, the learned Magistrate also without even verifying the injuries sustained by the deceased, ordered to remand him. The memo of arrest shows that the deceased was arrested on 13.01.2012 and he was produced for remand on 14.01.2012. Accordingly, he was remanded by the learned Magistrate till 28.01.2012.

2.2. In fact, immediately the deceased informed that he suffered pain and therefore he was taken to jail hospital and thereafter he was referred to the Government Royapettah Hospital. He was not given proper treatment and again he was sent to prison hospital. Due to bad condition of the deceased, again he was taken to the Government Royapettah Hospital, Chennai on 16.01.2012. Unfortunately, he died on the way to hospital on 16.01.2012 itself. On the death of the deceased, FIR has been registered in Crime No.112 of 2012 under Section 176 of Cr.P.C., on the file of the Inspector of Police, M3 Puzhal Police Station.

2.3. Thereafter, the learned V Metropolitan Magistrate, Chennai, conducted inquest on the dead body and found that the deceased died in suspicious manner. Therefore, the Government of Tamil Nadu passed an



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order transferring the investigation from the file of the Inspector of Police,

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M3 Puzhal Police Station to the eighth respondent herein. Thereafter, the eighth respondent registered a case in Crime No.2 of 2017 under Section 176 of Cr.P.C. Further the eighth respondent also kept the FIR without investigating the same.

2.4. Therefore, the petitioner who is being the mother of the deceased has filed this Writ Petition for direction directing the State of Tamil Nadu to award interim compensation and also sought for alteration of offence into Section 302 of IPC by transferring the investigation to Central Bureau of Investigation. He further submitted that both custodial torture and custodial death are gross violation of one's fundamental rights under Article 21 of the Constitution of India. Therefore, the dependents of the deceased are entitled for compensation. Therefore he prayed for necessary directions from this Court.

3. The learned Government Advocate (Crl. Side) appearing for the respondent police filed status report and submitted one Dinesh lodged complaint that on 12.01.2012, while he was talking with her lover, the deceased came there and threatened them and snatched the cell phone.



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On that complaint, the six respondent registered a case in Crime No.24 of 2012 and searched for the deceased. Further on seeing the witnesses, the deceased ran away and he scaled over a compound wall and jumped and fell down in which he sustained injuries. With those injuries the deceased escaped from the spot and took treatment in a hospital at Ayanavaram and thereafter the complainant and his family members had brought him to K7 ICF Police Station.

3.1. He further submitted that the head injury mentioned in the post mortem certificate could be accidental and it could be caused due to the impact of head over the blunt surface or object during fall or impact of any blunted object over the right part of the head. The deceased was remanded to judicial custody and brought to Central Prison, Puzhal on 14.01.2012. Since, he expressed heavy pain in his shoulders, the prison hospital doctor refused to admit him and referred to Government Royapettah Hospital, Chennai. Thereafter he was suspected nerve injury and referred to take CT scan at Rajiv Gandhi Government General Hospital, Chennai.

3.2. On 15.01.2012, the deceased was admitted in Rajiv Gandhi



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Government Hospital and CT Brain scan was taken. The Neuro Surgeon opinion was obtained and it reveals that no abnormality detected and nil active intervention needed. Therefore, he was discharged from the Rajiv Gandhi Government Hospital and referred to Government Royapettah Hospital, Chennai for further treatment. Again he was referred for taking MRI spine scan on 15.01.2012 at 19.55 hours and thereafter, he was admitted in the prison hospital about 21.10 hours. On 16.01.2012, the deceased had difficulty in breathing and found it was abnormal and therefore he was referred to Government Royapettah Hospital at 13.30 hours. It has been reported from the Government Royapettah Hospital at 2.30 p.m., that he was brought dead.

3.3. The learned Government Advocate further submitted that post mortem was conducted and opined as the injuries in Sl.Nos.1-a to u and 2 to 9 were found over the deceased body and injuries No.2 & 9 could be accidental. Injuries 1-d,e,t,g,i,j,k,m,n,o,p,r,s,t and u , 3 to 8 could be accidental or could have been inflicted by others. The injury No.9 is sufficient to cause death in the ordinary course of nature and all other injuries are not sufficient to cause death in the ordinary course of nature. Hence it revealed that the death caused due to injury No.9.



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WEB COPY 3.4. The team of post mortem Doctors opined that the injury Nos.2 & 9 might have occurred accidentally and opined that the above all injuries were antemortem in nature occurred 3 to 4 days prior to death. Since the head injury could be accidental, request was made to get second opinion from the Director, Directorate of Medical Examination, Kilpauk, Chennai. By the second opinion dated 09.03.2022, it was opined that the death caused due to thin film of red, subdural hemorrhage patchy areas of diffuse subarachnoid hemorrhage over both cerebral and both cerebellar hemispheres of the brain. This could be caused due to impact of head over the blunt surface or any other object during fall or impact of any blunted object over the right part of the head.

3.5. On perusal of all the documents and the enquiry conducted from the doctors and police personnel, the offence has been altered from Section 176 of Cr.P.C., to Sections 342, 343, 348, 324 & 304(ii) of IPC on 15.07.2022. Accordingly, alteration report was filed before the learned Judicial Magistrate-I, Tiruvallur, along with statements and the same is pending. Hence, he prayed for dismissal of this petition.



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4. Heard Mr.P.Pugalenth, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondents 1 to 6 and 8.

5. The petitioner's son was arrested on 13.01.2012 in pursuant to the Crime No.24 of 2012 registered for the offences under Section 420 r/w 392 of IPC. The said case was registered on receipt of the complaint from one Dinesh, alleging that on 13.01.2012, the said Dinesh and his lover were threatened by the deceased by stating that he is the member of “friend of police” and snatched his cell phone. Immediately, within 24 hours, the deceased was produced before the learned Magistrate for his remand.

6. In fact, before the learned Magistrate no complaint was made by the deceased and no injury was found on him. Further in the prison, he informed about his shoulder pain. Therefore, immediately he was taken to jail hospital and make an entry in the prison records. However, the Doctor refused to admit him inside the prison and referred the deceased to the Government Royapettah Hospital for orthopedic opinion. Thereafter he was admitted by the ICF police personal in the Government Royapettah Hospital, Chennai. After examination, the



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Orthopedic Surgeon suspected nerve injury and referred the deceased for CT-brain scan at Rajiv Gandhi Government General Hospital, Chennai.

7. The Neuro Surgeon opined that no abnormality detected, nil active intervention needed. Therefore, the deceased was discharged from the hospital and referred to Government Royapettah Hospital for further treatment. In fact on 15.01.2012, again the deceased was taken to MRI scan on his spine. Thereafter he was again taken to prison and admitted in the prison hospital. On 16.01.2012, he had difficulty in breathing and therefore, again he was referred to the Government Royapettah Hospital, for further treatment. However it was reported that the prisoner was brought dead.

8. Thereafter Post mortem was conducted on 17.01.2012 and the following injuries were found on the deceased body :-

“External injuries:-

1. Brown irregular abrasion:-

a) 4X1.7-0.5 cm on the inner aspect of lower third of right arm

b) 5.7X1.6-0.4 cm on the back of lower third of right arm

c) 14.4X3-1.2 cm, oblique brown abrasion on the front of lower third of right arm and on



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the adjoining inner aspect of right elbow.

d) 1.7X0.4 cm on the inner aspect of upper third of right forearm.

e) 1X.05 cm on the back of lower third of right arm

f) 106 X 1 cm on the back of right elbow

g) 0.5 X0.3 cm and 0.6X0.5 cm on the front of right knee

h) 9 x 3-1.4 cm on the inner aspect of lower third of right leg

i) 0.7 X0.2 cm on the outer aspect of right ankle

j) 0.2X0.2 cm on the outer aspect of right ankle.

k) 2.1X0.2 cm horizontal, brown abrasion on the outer aspect of middle third of left arm.

l) 27.6X3-1 cm oblique, curved brown abrasion on the inner aspect of left elbow, front of left elbow and the adjoining outer aspect of back of lower third of left arm

m) 1.8 X0.2 cm on the front of upper third of left forearm

n) 0.5 X0.1 cm on the front of upper part of left knee



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o) 0.5X0.2 cm on the lower part of outer aspect of left knee.

p) 3.2X1-0.5cm on the front of upper end of left leg

q) 8X3-08 cm on the inner aspect of lower third of left leg

r) 4.3X1-0.4 cm on the outer of lower third of left leg

s) 3.4X0.2-0.1 cm on the outer aspect of middle third of left leg

t) 1.4X05-03 cm on the upper part of left side of the abdomen along the line a left nipple with the surrounding 13.5 X9-3Xskin deep dark red bruise on the upper part of left side of the abdomen.

u)5X0.5-0.2 cm horizontal brown abrasion, on the lower part of left lateral aspect of the chest.

2. Oblique, brown, grazed abrasion over an area of 11.5X8-3 cm on the outer aspect of upper third of left leg

3. Dark red contusion 4X3cmX skin deep on the middle third of back of left forearm

4. Dark red contusion 2 X 1.5 cm X skin



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deep on the back upper third of left forearm

5. Dark red contusion 4X1cmXskin deep on the front of left ankle.

6. Dark red contusion 3X2cmXskin deep on the front of upper third of left leg

7. Dark red contusion 7X2.5-0.5cmX skin deep on the back of right wrist.

8. Dark red contusion 3X1cmXskin deep on the front of lower third of right forearm

9. On reflection of scalp : Dark red contusion 8X6cmXskin deep on the right temporo occipital region of the scalp; on further dissection – underlying bones were intact. On removal of the calvarium thin film a red subdural hemorrhage and patchy areas of diffuse subarachnoid hemorrhage over both cerebral and both cerebellar hemispheres of the brain.”

The post mortem report also revealed that all the injuries are antemortem in nature viz., 3 to 4 days prior to death. Further revealed that the injuries 2 & 9 could be accidental and injuries numbered 1-d,e,g,i,j,k,m,n, o,p,r,s,t and u and injuries numbered 3,4,5,6,7 and 8 could be accidental or could be inflicted by others. The injury No.9 is sufficient to cause death in the ordinary course of nature.



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WEB COPY 9. However, the second opinion was sought from the Professor and Head of the Department, Department of Forensic Medicine and Toxicology, Government Kilpauk Medical College, Chennai, that how could the dark red contusion measuring 8X6Xscalp deep in the right tempero occipital region of the scalp as mentioned in the injury No.9 of the post mortem be caused? The said Professor answered that this could be caused due to the impact of the head over the blunt surface, object, during fall or impact of any object or weapon over that part of the head.

10. Therefore, the eighth respondent enquired the police personnel of K7, ICF Police Station and other witnesses and after enquiry, he found that it is a case of 304(ii) of IPC and altered the offence under Sections 342, 343, 348, 324 & 304(ii) of IPC. The said alteration report also filed before the learned Judicial Magistrate-I, Tiruvallur. Thus, it is clear that the deceased was taken to the police station on 11.01.2012 during the night hours and he was produced before the learned Magistrate only on 14.01.2012. The police personnel at K7 ICF Police Station alone are responsible for the injuries sustained by the deceased. The deceased was brutally beaten by the accused persons and due to



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which he sustained grievous injuries and died.

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11. There is great responsibility on the police authority to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The wrong doer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law.

12. In the case on hand, the deceased was tortured and subjected to third degree treatment due to which he died. The Hon'ble Supreme Court of India repeatedly held that when the death taken place inside the police station, the accused persons should be punished for the offence under Section 302 of IPC. When the eighth respondent found that there are materials to attract the major offence under Section 304(ii) of IPC, what is the reason why the eighth respondent failed to alter the offence under Section 302 of IPC? The injuries sustained by the deceased are very clear and from the Post Mortem report, the cause of death clearly shows that the police personnel had beaten the deceased and had given

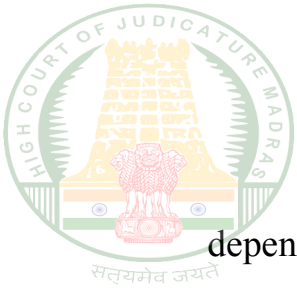


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third degree treatment. Therefore, it cannot be said that the accused persons had no intention to murder the deceased.

13. The Hon'ble Supreme Court of India held in the case ***Rudul Sah Vs. State of Bihar & anr*** reported in ***AIR 1983 SC 1086*** that, one of telling ways in which the violation of that right can reasonable be prevented and due compliance with the mandate of Article 21 secured is to mulct its violators in the payment of monetary compensation. The right of compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others, too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the right of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's right. It may have recourse against those officers.

14. In the case on hand, poor young man aged about 22 years is killed and his mother, young wife and his 8 years old child are the



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dependents of the deceased. Therefore, it is clear case of murder and all the accused persons shall be punished for the offence under Section 302 of IPC. The dependents of the deceased are entitled atleast for interim compensation, since the provision under Section 357 A of Cr.P.C., says about the order to pay compensation which reads as follows :-

“357. Order to pay compensation. (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person



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sentenced for the loss resulting to them from such death; (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

Accordingly, the compensation can be paid only on the conclusion of



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trial. However, the dependents are entitled for interim compensation when the prima facie case made out. Therefore, this Court has no hesitation to award interim compensation payable by the State Government to the dependents of the deceased.

15. Accordingly, this Court is inclined to pass the following orders :-

(i) The eighth respondent is directed to alter the offence into 302 of IPC as against the accused persons and proceed against them in accordance with law and file final report within a period of eight weeks from the date of receipt of a copy of this Order.

(ii) The Government of Tamil Nadu is directed to pay a sum of Rs.5,00,000/- (Rupess five lakhs only) as interim compensation to the dependents of the deceased within a period of four weeks from the date of receipt of a copy of this Order.

(iii) The said compensation shall be recovered from the accused persons in the manner known to law.

16. With the above directions, the Writ Petition stands allowed.



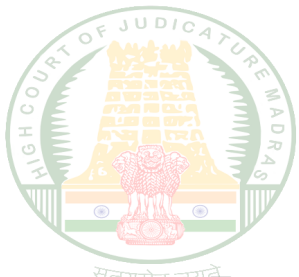
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Consequently, connected miscellaneous petitions are closed. There shall
be no order as to costs.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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To
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1. The Secretary to Government,
State of Tamil Nadu,
Home Department,
Secretariat, Chennai 600 009.
2. The Director General of Police,
Mylapore, Chennai – 600 004.
3. The Commissioner of Police,
Chennai City,
Egmore, Chennai – 600 008.
4. The Deputy Commissioner of Police,
Mylapore District, Chennai.
5. The Superintendent of Prison,
Central Prison-2,
Puzhal, Chennai – 600 066.
6. The Inspector of Police (Crime)
K-7, ICF Police Station, Chennai.
7. The Medical Officer, Central Prison-2,
Puzhal, Chennai – 66.
8. The Inspector of Police,
CB-CID, Egmore,
Chennai – 600 008
9. The Public prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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