
(2014) 11 MAD CK 0490
In the Madras High Court

Case No : Writ Petition No. 27597 of 2014 and MP. Nos. 1 and 2 of 2014

Mohamed Aliyar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 11 MAD CK 0490

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the above writ petition seeking the issue of a Writ of Mandamus to direct the first respondent namely the State of Tamilnadu to consider his representation and to register a case against the second respondent herein and also to transfer the investigation to the Superintendent of Police, CBCID, Ramanathapuram.

2. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.S. Shanmugavelayutham, learned Public Prosecutor assisted by Mr.R. Vijayakumar, learned Additional Government Pleader appearing for the respondents 1 and 3.

3. One Mr.Syed Mohamed - a driver by avocation, was allegedly taken into custody by the Sub-Inspector of Police attached to the S.P.Pattinam Police Station, Ramanathapuram District. The Sub-Inspector of Police is impleaded by name as the second respondent to this writ petition.

4. According to the petitioner, the said Syed Mohamed is the son of the writ petitioner's cousin sister by name Syed Ali Fathima. The case of the petitioner is that Syed Mohamed was taken into custody on 14.10.2014, tortured and later killed by the second respondent, while in custody. Therefore, claiming that it was a case of custodial murder, the petitioner submitted a representation dated 15.10.2014 seeking the registration of a criminal complaint under Section 302 of the Indian Penal Code against the second respondent herein and to transfer the

investigation to the CBCID, Ramanathapuram. After giving the representation, the petitioner has come up with the above writ petition.

5. On 16.10.2014, the writ petition came up for admission and the learned Additional Government Pleader took notice. The case was posted to 17.10.2014.

6. On 17.10.2014, I was informed that the father-in-law of the deceased had himself approached the Madurai Bench of this Court in CrI.O.P.(MD)No. 19158 of 2014 under Section 482 of the Criminal Procedure Code for the transfer of the investigation in Cr.No. 91 of 2014 relating to the custodial death of his son-in-law from the local police to the CBCID. Therefore, I passed an order on 17.10.2014 to the following effect :

"Post on 20.10.2014. In the meantime, it is open to the parties to seek either the transfer of the Criminal O.P. pending on the file of the Madurai Bench to be tagged along with this writ petition or seeking transfer of the writ petition to be tagged along with the Criminal O.P."

7. On the next date of hearing namely 20.10.2014, the learned Public Prosecutor filed a counter affidavit along with a set of documents including an order passed by the Madurai Bench of this Court. The learned Public Prosecutor also informed me that the petition in CrI.O.P.(MD).19158 of 2014 filed on the file of the Madurai Bench of this Court, by one S.Sakubar Ali - the father-in-law of deceased Syed Mohamed seeking an identical relief, was already disposed of by a learned Judge on 16.10.2014 itself. He also produced the copies of the petition as well as the final orders passed in the said criminal petition by N.Kirubakaran, J. sitting at the Madurai Bench. The operative portion of the order found in paragraphs 10, 11 & 12 are reproduced below :

10. Taking into consideration the unrest in the area, consequent law and order problem and all the formalities as per law has been complied with by the prosecution, it is appropriate to direct the respondents police to give the body to the relatives for cremation.

11. This court also takes note of the fact that almost all the reliefs sought for by the petitioner have been complied with (i) by referring the case to the CBCID (ii) giving a sum of Rs. 5 lakhs as interim relief to the family as compensation (iii) the area has been cordoned off and sealed (iv) Inquest was conducted by the learned judicial magistrate (iv) All the collected materials would be sent to the Assistant Director of Forensic Sciences only through the learned judicial magistrate as per the procedure and there cannot be any role by the police officials in this regard and (v) the Ballistic expert will analyse those particles and give his report. If necessity arises, this court would direct the ballistic expert visit the scene of occurrence to give its opinion later.

12. In view of the unrest in the area, proper police protection has directed to be given during the burial. This court hopes that law and order problem will be taken care of by the respondent police. Further, this court is able to understand

the feelings of the family members of the victim and at the same time they are expected to co-operate with the authorities for proper burial. Taking into consideration the loss of the victims father 40 days ago and the loss of the elder son (victim) in this incident and one of the sibling, of the victim is physically handicapped this court hopes that the state government shall consider for more compensation and also for a job to anyone of the family members of the victim. Since the investigation has been transferred to the CBCID today morning, the CBCID is directed to expedite the investigation in the matter. The observations made by this court in this order only for the purpose of disposal of this criminal original petition.

8. The learned Public Prosecutor also brought to my notice the fact, that pursuant to the above order passed by the Madurai Bench, the Director General of Police, on the very same day, had issued proceedings directing the case file to be handed over to the Additional Director General of Police Crime Branch CID. The Government has also ordered an enquiry by a Judicial Magistrate, apart from sanctioning a compensation of Rs.5 lakhs to the family of deceased Syed Mohamed from out of the Chief Minister's General Relief Fund. The second respondent - Sub-Inspector of Police is now placed under Suspension by the Superintendent of Police, Ramanathapuram in public interest. Therefore, I do not think that a parallel proceeding could now be maintained especially in the light of the above developments.

9. However, Mr.Sankarasubbu, learned counsel for the petitioner submitted that the post-mortem conducted by the doctors does not inspire confidence and that the manner in which a post-mortem should be conducted in the case of encounter deaths came to be considered by the Supreme Court in People's Union for Civil Liberties & Another Vs State of Maharashtra & Others [Criminal Appeal No. 1258 of 1999 and batch cases dated 23.9.2014]. He also placed reliance upon several judgments of the Supreme Court and contended that the power of this court is wide enough to grant further reliefs in the matter including ordering of a second post-mortem by an expert body.

10. But, I do not think this writ petition can be entertained especially when an identical relief was sought for by another close relative of the deceased Syed Mohamed though in a petition filed under Section 482 of the Criminal Procedure Code. The petitioner before the Madurai Bench was the father-in-law of the deceased. But, the petitioner herein is related to the deceased, by being the cousin brother of the mother of the deceased. Therefore, the relationship of the petitioner before the Madurai Bench was closer than the relationship of the petitioner herein, to the deceased. Moreover, the learned Judge, who heard the matter at the Madurai Bench, had given reasons for the disposal of the matter and expressed that he will direct the ballistic expert to inspect the scene of crime, if necessary. He has also given liberty to the petitioner therein to approach the Court for further directions. Therefore, I cannot entertain this petition.

11. The learned counsel for the petitioner contended that the police ought to have registered a complaint under Section 302 of the Indian Penal Code against the second respondent herein and that their failure to do so, entitles the petitioner to seek a relief and maintain this writ petition.

12. Though technically, the learned counsel for the petitioner may be right, I do not think that in respect of one subject matter, parties cannot be allowed to agitate before two different forums. Here, different persons, claiming to be the relatives of the deceased, have approached different forums and the same cannot be permitted. Even otherwise, since the criminal original petition had already been disposed of giving directions to the respondents, this court cannot give any further directions and it is always open to the parties to approach the same court to seek appropriate reliefs.

13. In view of the above, the writ petition deserves to be dismissed and accordingly, it is dismissed. Consequently, the connected MPs are also dismissed. No costs.