
(2014) 12 MAD CK 0103

In the Madras High Court

Case No : Crl. O.P. No. 24041 of 2013 and M.P. No. 1 of 2013

P. Pugalenthir

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 174, 176, 176(1)

Citation : (2015) 1 MLJ(Cri) 424

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : M. Radhakrishnan, Advocates for the Appellant; A.L. Somaiyaji, Advocate General, Asst. by S. Shanmuga Velayutham, Public Prosecutor and M. Maharaja, Additional Public Prosecutor, Advocates for the Respondent

Judgement

S. Nagamuthu, J.—The petitioner is an Advocate practicing before this Court and he is also the Director of an Association known as "Prisoners Rights Forum", Chennai, which is registered as a "Public Trust" under Registration No. 4319/2008. According to him, in the month of May 2013, he came across a report dated 09.06.2007 prepared by one Mr. V. Karupannan, the then Deputy Jailor, Central Prison, Salem regarding the death of one Mr. Sukumar, S/o. Mariappan, a member of AIADMK party, inside the Central Prison, Salem on 09.06.2007. Further, according to him, in the said report, Mr. V. Karupannan, had alleged that the said Mr. Sukumar, remand prisoner No. 73688 who was lodged in 9th Block of Central Prison, Salem, early in the morning, on 09.06.2007, developed chest pain. Mr. V. Karupannan received intimation regarding the same at about 4.15 am. Then, he made arrangements for an Ambulance for the purpose of rushing Mr. Sukumar to the Government Mohan Kumaramangalam Hospital, Salem for treatment. In the report, he has further stated that when Mr. Sukumar was being taken to the Ambulance by the prison wardens, they were prevented by the other prisoners from discharging their duty. He has also mentioned the names of seven political persons who were also lodged in the same prison who prevented the officials from shifting Mr. Sukumar

to the hospital. Thus, according to the petitioner, the prison authorities were virtually prevented from shifting Mr. Sukumar to the hospital. However, the jail authorities managed to take him to the Ambulance which was kept ready for shifting him to the hospital. But, on the way to hospital, in the Ambulance, Mr. Sukumar died. In this regard, a case in Crime No. 259/2007 was registered on the file of the Asthampatti Police station, Salem City under Section 174 Cr.P.C. Since, it was a death while in custody, the F.I.R. was forwarded to the Executive Magistrate/Revenue Divisional Officer, Salem. A team of doctors, who conducted post-mortem on the body of the deceased, have opined that the deceased would have died due to atherosclerotic (ATHEROSCLEROTIC) heart disease.

2. Based on the same, the Revenue Divisional Officer, Salem submitted a report by his proceedings in Ci.Pa. 39/2007 A2 dated 20.11.2007, wherein he has concluded that the death of the deceased was due to natural cause, namely, heart disease. But, he had recommended for departmental action against the Superintendent of Central Prison, Salem, for dereliction of duty. The said report was, in turn, submitted by the District Collector under Letter No. Na.Ka.33284/2007 (C3) dated 23.02.2008 to the Government. Having considered the same, the Government issued G.O.Ms. No. 507 Public (Law and order) Department dated 10.06.2010, accepting the report of the Revenue Divisional Officer. Thus, no further investigation was done in to the matter. In those circumstances, the petitioner has now come up with this petition seeking a direction to the respondents to register a case and to investigate the same.

3. I have heard Mr. M. Radhakrishnan, learned counsel for the petitioner; Mr. A.L. Somaiyaji, learned Advocate General appearing for the respondents and assisted by Mr. S. Shanmuga Velayutham, learned Public Prosecutor and Mr. M. Maharaja, Additional Public Prosecutor. I have also perused the records carefully.

4. Indisputably, in this case, Mr. Sukumar died while he was in the custody of the Jail Authority on a judicial remand order passed by the Jurisdictional Magistrate. The alleged occurrence was on 09.06.2007. Thus, this occurrence is governed by Section 176 of the Code of Criminal Procedure. Sub-Section (1) of Section 176 Cr.P.C., was amended by Amendment Act 25 of 2005 which came into force with effect from 23.06.2006. Prior to the said amendment, under Sub-Section (1) of Section 176 Cr.P.C., when any person dies while in the custody of the police, the Executive Magistrate concerned may hold inquiry into the cause of death. This inquiry by Executive Magistrate is either instead of or in addition to the investigation by the police. By Amendment Act, 25/2005, Sub-Section 1 of Section 176 Cr.P.C., was amended, by which, the power of the Executive Magistrate to hold enquiry into the death of a person while in custody of the police has been done away with. Thus, on or after 23.06.2006, in respect of a death while in police custody, the Executive Magistrate has no power at all to hold inquiry.

5. By the same Amendment, Sub-Section (1A) was introduced to Section 176 Cr.P.C. As per this provision, inquiry by the Jurisdictional Judicial Magistrate has

been made mandatory in respect of certain cases. One such case is relating to death while in custody of police or any other custody authorised by a Magistrate. The noticeable difference between an enquiry by an Executive Magistrate under Sub-Section (1) of Section 176 Cr.P.C., and an enquiry by a Judicial Magistrate under Sub-Section (1A) of Section 176 Cr.P.C., is that an inquiry under Sub-Section (1A) of Section 176 Cr.P.C., is mandatory whereas, an inquiry under Sub-Section (1) of Section 176 Cr.P.C., is not mandatory. Secondly, the unamended Sub-Section (1) of Section 176 Cr.P.C., provided for inquiry by Executive Magistrate relates to deaths while in police custody, whereas, the inquiry under Sub-Section (1A) of Section 176 Cr.P.C., covers a larger area namely, death in any other custody authorised by a Magistrate and also, disappearance or rape while in such custody. Thirdly, the inquiry under Sub-Section (1) of Section 176 Cr.P.C., may be either instead of or in addition to the police investigation, whereas, an inquiry under Sub-Section (1A) of Section 176 Cr.P.C., shall be "in addition" to the police investigation and lastly, the inquiry Sub-Section (1) of Section 176 Cr.P.C., is confined only to the cause of death whereas, an inquiry under Sub-Section (1A) of Section 176 Cr.P.C., is wider and not confined only to the cause of death.

6. The scope of such inquiry under Sub-Section (1A) of Section 176 Cr.P.C., and the scope of police investigation have been dealt with by this Court in various cases. One such case is *Crl. O.P. No. 20008 of 2013 Tmt. R. Kasthuri v. State* wherein, by order dated 19.12.2014, this Court has held as follows:

"40. To sum up, the conclusions are as follows:

- (1) Any information relating to the death or disappearance of any person or rape of a woman while such person or woman was in the custody of the police or in any other custody authorized by a Magistrate or Court, shall be registered as a case under Section 154 of the Code.
- (2) Soon after the registration of the case, the Station House Officer shall forward the FIR to the jurisdictional Judicial Magistrate/Metropolitan Magistrate.
- (3) The jurisdictional Magistrate shall thereafter hold an inquiry under Section 176(1A) of the Code.
- (4) During such inquiry under Section 176(1A) of the Code the Judicial Magistrate/Metropolitan Magistrate shall have power to record evidence on oath.
- (5) 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.
- (6) The Judicial Magistrate/Metropolitan Magistrate shall furnish copies of the statements of the witnesses recorded during inquiry under Section 176(1A) of the Code, the documents collected and the report drawn by him to the investigating police officer without delay.

(7) 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.

(8) If the case relates to police encounter, as directed by the Hon"ble Supreme Court in People's Union for Civil Liberties Vs. State of Maharashtra, , the investigation shall be entrusted to either CB CID or a police team of another police station under the supervision of a senior police officer (at least a level above the head of the police party engaged in the encounter).

(9) The Judicial Magistrate/Metropolitan Magistrate shall not forward the original records of the inquiry under Section 176(1A) of the Code either to the District Collector or to the Government.

41. 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;

5(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."

7. As per the said law, in the instant case, inquiry should have been conducted by the Judicial Magistrate but, that was not done. But, strangely, in this case, the Revenue Divisional Officer who had no authority or power to hold inquiry has conducted inquiry assuming to himself power under Section 176(1) Cr.P.C. Of course, as we have already noticed, prior to 23.06.2006, he had such power to inquire, but, not thereafter. Therefore, the inquiry held by the Revenue Divisional Officer, in this case, is wholly without jurisdiction. Apart from that, surprisingly, there was no investigation at all done by the police in this case, probably, under the mistaken impression that the inquiry held by the Revenue Divisional Officer was a bar for the police to hold investigation. Of course, under Section 176(1) Cr.P.C., an inquiry by an Executive Magistrate is either instead of or in addition to the investigation. But, such inquiry under Section 176(1) Cr.P.C., is confined only to the cause of death and the scope of such inquiry cannot be widened any more so as to equate the same to the police investigation.

8. At any rate, in this case, as I have already concluded, the inquiry held by the Revenue Divisional Officer is wholly without jurisdiction. In these circumstances, the only course now available for the Court is to issue a direction to the police to investigate the matter. As has been held by the Hon"ble Supreme Court in People's Union for Civil Liberties Vs. State of Maharashtra, : (2014) 10 SCC 635 , such investigation should be done by a police officer who is above the rank of the officer in whose custody, the deceased had died. In this case, the deceased died while he was in the custody of the Superintendent, Central Prison,

Salem. When this was pointed out, the learned Advocate General submitted that the investigation may be entrusted to one Mr. M. Ramakrishnan, Assistant Commissioner of Police, C.C.B., Salem City. The said statement is recorded. In addition, as mandated by Sub-Section (1A) of Section 176 Cr.P.C., the jurisdictional Judicial Magistrate shall also hold inquiry in the light of the guidelines issued by this Court in Crl. O.P. No. 20008 of 2013.

9. In view of the same, I hold that the report submitted by the Revenue Divisional Officer, Salem and the consequential order passed by the Government are without jurisdiction and hence, the same are liable to be set aside and the case should be entrusted to Mr. M. Ramakrishnan, Assistant Commissioner, C.C.B., Salem City to investigate the same and to submit an appropriate final report to the Court. While doing investigation, Mr. M. Ramakrishnan shall have regard to the guidelines issued by this Court in Crl. O.P. No. 20008 of 2013 dated 19.12.2014. In the result, this Criminal Original Petition is allowed in the following terms:

(i) The report of the Revenue Divisional Officer, Salem in Ci.Pa.39/2007 A2 dated 20.11.2007 is hereby set aside;

(ii) The consequential order of the Government in G.O.Ms. No. 507 Public (Law & Order) Department dated 10.06.2010 is also set aside;

(ii) The investigation of the case in Crime No. 259/2007 on the file of the Asthampatti Police Station, Salem City is hereby re-opened and the same is entrusted to Mr. M. Ramakrishnan, the Assistant Commissioner of Police, C.C.B., Salem City.

(iii) Mr. M. Ramakrishnan, the Assistant Commissioner of Police, C.C.B., Salem City is directed to conduct a thorough investigation in this matter and submit a final report to the jurisdictional Judicial Magistrate.

(iv) The Commissioner of Police, Salem City shall issue a consequential order entrusting the investigation of the case in Crime No. 259/2007 to Mr. M. Ramakrishnan to enable him to conduct investigation.

(v) Mr. M. Ramakrishnan, the Assistant Commissioner of Police, C.C.B., Salem City is further directed to collect the report from Mr. V. Karuppannan, the then Deputy Jailor, Central Prison, Salem in respect of the circumstances leading to the death of Mr. Sukumar as part of investigation.

(vi) In addition to the police investigation, the jurisdictional Judicial Magistrate shall also hold an inquiry under Sub-Section (1A) of Section 176 Cr.P.C., having regard to the guidelines issued by this Court in Crl. O.P. No. 20008 of 2013.