
(2014) 09 MAD CK 0417
In the Madras High Court
Case No : H.C.P. No. 1454/2014

Pensiliya

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 34
Penal Code, 1860 (IPC) — Section 176, 177, 198, 199, 201
Prevention of Corruption Act, 1988 — Section 2(c)

Citation : (2014) 2 LW(Cri) 628

Hon'ble Judges : S. Rajeswaran, J; P.N. Prakash, J

Bench : Division Bench

Judgement

P.N. Prakash, J.—Missing persons and unclaimed bodies are posing real challenge to traditional policing in the State. Immanuel, a boy of 18 year old was in love with a 16 year old girl residing with her parents in Cuddalore. This affair was not to the liking of the petitioner, who is Immanuel's father, as he felt that both of them were, too young and immature to take on life's responsibilities and they were also not of marriageable age. On 09.06.2013, Immanuel told his father that he is going to Cuddalore to meet his love and left the house. On 10.06.2013, Immanuel spoke to his father over mobile and said that he will return home in the evening. Thereafter, there was no news of Immanuel. The petitioner approached the fourth respondent police, who advised him to go to Cuddalore and lodge a complaint with the third respondent police. After being tossed between these two police stations, ultimately the fourth respondent police received the complaint of the petitioner and registered CSR No. 108/2013 on 20.06.2013 without registering a formal FIR. Since there was no progress in the investigation, the petitioner approached this Court for issuance of a writ of Habeas Corpus to the Cuddalore Police and Taramani Police, to cause production of his son Immanuel.

2. We ordered notice to the respondents and it was represented by the State that

the Cuddalore Police have registered a case in Cuddalore Harbour Police Station Cr. No. 57/2013 under the caption "man missing" on 25.08.2013, based on the complaint sent by the petitioner through post. Therefore, by order dated 24.07.2014, we transferred the case in CSR No. 108/2013 from J13 Taramani Police Station to Cuddalore O.T. Police Station and directed proper investigation by them. The Inspector of Police, Cuddalore O.T. Police Station filed Status Report dated 02.09.2014, in which he stated that during the course of his investigation it came to light that an unclaimed body was washed ashore into Marina Beach in respect of which a case in D5 Marina Police Station Cr. No. 734/2013 u/s. 174 Cr.P.C. was registered on 10.06.2013. The body was photographed and sent to the Government Hospital, Royapettah, Chennai, where it was kept in the mortuary for two days. Thereafter, post-mortem was conducted on 12.06.2013 and the viscera was sent to the Forensic Sciences Department, Chennai for examination. The Post-mortem Certificate issued by the Doctor shows that the deceased appeared to have died of asphyxia due to drowning. The Inspector of Police, Cuddalore O.T. Police Station collected this information and with the help of the photograph of Immanuel supplied by the petitioner, he came to a prima facie conclusion that, the body that was disposed of by D5 Marina Police was that of the petitioner's son, Immanuel. Thereafter, the petitioner was taken to D5 Marina Police Station on 26.05.2014 and he was asked to identify the apparel that was on the body and also the photograph. The petitioner was satisfied that his son had died of drowning in the sea and on our directions, the police furnished him with the copies of Enquiry Report and helped him to obtain Death Certificate from Corporation Authorities. We would have closed this matter with this but for our observation that there is a steady increase in similar petitions before us where the police are able to match the missing person with unclaimed body only after a Habeas Corpus Petition is filed. We pondered over the plight of hundreds of innocent and poor citizens whose kith and kin would have gone missing but may not have had the wherewithal to invoke the Habeas Corpus jurisdiction. Therefore, we felt that a machinery must be put in place whereby even without approaching this Court, the aggrieved should get redressal.

3. An alarming news report was published on September 11, 2014 issue of the Times of India, which stated that six people die on railway tracks in Tamil Nadu every day and when we called for information from the Railway Police, we were informed that within the jurisdiction of the Chennai Railway Police, in the year 2013, there were totally 1868 cases of unnatural deaths, of which 603 cases related to unidentified bodies. The Dean of the Rajiv Gandhi Government General Hospital, Chennai informed us that in the year 2013, there were 2717 unclaimed dead bodies kept in the mortuary. In this very case, Immanuel went missing since 10.06.2013 and J-13 Taramani Police received his complaint and gave CSR No. 108/2013 only on 20.06.2013. In the meantime, the dead body was washed ashore on 10.06.2013 and after post-mortem, the body was buried on 08.08.2013. The Cuddalore Police registered a case in Cr. No. 57/2013 only on

25.08.2013. If these Police Officers had shown little amount of alacrity and registered a FIR on the complaint given by the petitioner for "man missing", the petitioner would have got the body of his son even before it was buried, because, only if a regular FIR for "man missing" is registered, will information be transmitted by the Station House Officer to the Crime Record Bureau, Egmore, Chennai and not when a mere CSR is recorded. The plight of the kith and kin of missing persons was taken note of by the Supreme Court in W.P. (crl.) No. 610/1996 on 14.11.2002 [Horilal v. Commissioner of Police, Delhi] and the following instructions were issued to the police:

"(1) Publish photographs of the missing persons in the Newspaper, telecast them on Television promptly, and in case not later than one week of the Receipt of the complaint. Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city/town/village concerned that is at the Railway Stations, Inter state bus Stands, airport, regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case of a minor/major girl such photographs shall not be published without the written consent of the parents/guardians.

(2) Make inquiries in the neighborhood, the place of work/study of the missing girl from friends colleagues, acquaintance, relatives etc. immediately. Equally all the clues from the papers and belongings of the missing person should be promptly investigated.

(3) To contact the Principal, Class teacher and Students at the missing persons most recent school/educational institutions. If the missing girl or woman is employed somewhere, then to contact the most recent employer and her colleagues at the place of employment.

(4) Conduct an inquiry into the whereabouts from the extended family of relatives, neighbours, school teachers including school friends of the missing girl or woman.

(5) Make necessary inquiries whether there have been past incidents or reports of violence in the family. There after the investigation officer/agency shall:

(a) Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.

(b) Hospitals and Mortuaries to be searched immediately after receiving the complaint.

(c) The reward for furnishing clues about missing person should be announced within a month of her disappearance.

(d) Equally Hue and Cry notices shall be given within a month.

(e) The Investigation should be made through women police officers as far as possible.

(f) The concerned police commissioner or the DIG/IG of the State Police would find out the feasibility of establishing a multitask force for locating girl children women.

(g) Further, in the Metropolitan cities such as Delhi, Mumbai, Kolkata and Chennai the Investigating Officer should immediately verify the red light areas and try to find out the minor girls. If any minor girl (may or may not be recently brought there) is found her permission be taken and she may be taken to the children s home (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000, and the I.O. to take appropriate steps that all medical/other facilities are provided to her."

4. The Police Standing Orders provides guidelines as to how these cases should be dealt with.

PSO 452. Copy of inquest report to be sent to Railway Officials

In cases of death (whether by railway accident or otherwise) within railway limits, in which an investigation is held under section 174 of the Criminal Procedure Code, an extract of the investigation report in Form No. 66 shall be forwarded to the Divisional Engineer in all cases and the Divisional Operating Superintendent also, in cases occurring within the limits of a railway station, in the event of the investigation having been held by the District Police, a copy of the report shall be obtained from them.

PSO 453. Disposal of bodies

The railway police shall take steps to hand over the body of any person who has been killed or died within railway limit to the relatives or failing them to any friend of the deceased, or, if for any reason that is not possible to them member of any society or institution, willing to perform the last rites for such person and if none of these agencies undertake the task then the Railway Police shall be responsible for the burial or cremation in a proper manner and in accordance with the nationality and religion of the deceased, the cost being defrayed in the Madras City by the Commissioner of Police and elsewhere as follows: (G.O. 63, Public (Police) 31 an 1931)

(1) Those dying within cantonment limits Cantonment authority

(2) Those dying within municipal limits Municipality

(3) Those dying in panchayat areas :Executive Magistrate concerned."

5. This issue had cropped up earlier also before this Court in HCP No. 658/2003 and this Court had passed an order on 05.08.2003, directing the police to put in place a procedure for tracking down missing persons,, pursuant to which the Office of the Director General of Police, Tamil Nadu, issued the following Circular Memorandum:

"C. No. 016781/Cr.3(1)2005 Office of the

Director General of Police Tamil Nadu,
Chennai-600 004.

Dated: 31.1.2005.

CIRCULAR MEMORANDUM

Sub: Missing Persons -Certain instructions-Issued

Ref: 1) Chief Office Memo in Rc. No. 2110/128992/ Cr.II(I)/2003, Dt 27.06.2003

2) Order of the High Court, Madras, HCP No. 658 of 2003 Dt 05.08.2003

3) Chief Office Memo in C. No. 84/CI/MOB/2003 Dated 13.08.2003.

4) Chief Office Memo in R.C. No. 84/MOB/SCRB/2003 dated 19.01.2005.

.....

In several cases, Hon'ble High Court of Madras has observed that the investigations relating to Missing Persons are perfunctory. It is therefore necessary to streamline the investigation relating to Missing Persons.

2) It is seen that, during investigations, cases of missing persons, kidnapped, deserters, wanted criminals, escaped criminals, unidentified dead bodies etc., the computerised "Talash" software is not being availed of by the field officers. In order to streamline the process of monitoring and supervision, the following instructions are hereby issued:--

(i) Police Computer Wing (SCRB) will circulate the seven forms (i.e. for Missing, Kidnapped, Deserter, Wanted, Escaped, Unidentified Person, Unidentified Dead body) to District Superintendents of Police and Commission of Police.

(ii) Sufficient forms will be supplied by COPs/SPs to PS.

(iii) Immediately after registering the case, (Missing, Kidnapped, Deserter, Wanted, Escaped, Unidentified Person, Unidentified Dead Body), wireless messages should be sent to DSPs, Police Computer Wing, DCRB and Modus Operandi Bureau by the Investigating Officer.

(iv) The SHOs will prepare "Talash" Forms for all cases reported in 2005 and send them to DSPs, Police Computer Wing, DCRB and Modus Operandi Bureau, if not already sent.

(v) The IOs will collect Photos of Missing/Unidentified Dead bodies and send it to DSPs Police Computer Wing, DCRB and Modus Operandi Bureau.

(vi) Police Computer Wing will develop a software to match all the seven categories on different parameters, Photographs should also be included. The Dy. Superintendent of Police, Police Computer Wing will submit a project report on this within two months.

(vii) Manual verification should be done in Police Computer Wing forming a Special Team consisting of one Inspector of Police and three Police Constables.

(viii) The circular vide reference third cited is being sent again "to all District Superintendents of Police and Commissioners of Police to reiterate the procedure that should be followed strictly.

(ix) Investigating Officer should be Inspector of Police.

(x) Instructions given in the reference third cited above should be followed strictly for reviewing the progress of the cases.

(xi) Special Cell consisting of one SI, two HCs and two PCs should be formed in the Districts to collect relevant details in all the seven categories.

(xii) Monthly meeting by SP should be conducted with IOs and DSPs to monitor the progress of the case.

(xiii) In all the cases of Missing, Kidnapped, Deserter, Wanted, Escaped, Unidentified Person, Unidentified Dead body and, when traced, message should be flashed to DSPs, Police Computer Wing, DCRB and Modus Operandi Bureau.

3) The standardised proforma has been designed to be used in all the cases, is enclosed.

4) The consolidated database should be maintained at Police Computer Wing and a search should be done immediately after receiving messages from Districts.

5) The system should be followed with immediate effect. A compliance report should be sent to Addl. Director General of Police, Law and Order on or before 05.02.2005.

6) The receipt of this memorandum should be acknowledged.

Sd/-Director General of Police Tamil Nadu, Chennai-4."

6. In Tamil Nadu, there are at present 40 Police Districts including 7 Commissionerates, 2 Railway Districts and 31 Districts. Each Police District has a District Crime Record Bureau [for brevity "DCRB"] functioning under the control of a separate Deputy Superintendent of Police in the Office of the Superintendent of Police of the District. The Apex body in the State is the State Crime Record Bureau [for brevity "SCRB"], which is under the control of an Officer of the rank of Additional Director General of Police. Whenever a FIR is registered under the caption "man missing", the photograph of the missing person and other details are required to be sent by the Station House Officer of the concerned Police Station to the DCRB, which in turn would send the details to the SCRB. The SCRB will host the entire details in the Tamil Nadu Police Website, which can be accessed by any member of the public by logging into www.tnpolice.gov.in and can view the details of the missing person. Similarly, when an unidentified body is found, the police will register a FIR u/s. 174 Cr.P.C., take photographs, conduct inquest and will despatch the body for post-mortem to the Government Hospital.

The concerned Station House Officer will pass on these details to the DCRB, which in turn will transmit it to the SCRB and these details along with the photograph of the unidentified body will be hosted in the Tamil Nadu police website. In the SCRB, there is a special team of Officers who analyse the cases relating to missing persons and try to match it up with the cases relating to unidentified bodies. This Team has done commendable work and has been able to solve number of cases of man missing. In fact, even in this case, the matching was first done by the SCRB and Cuddalore Police was intimated by them. They have also solved a few murder cases by matching the profile of missing persons with that of unidentified bodies.

7. The Superintendent of Railway Police, Chennai District has issued the following Circular Memorandum, which we are extracting verbatim without making any corrections:

"C. No. 160/Camp/SRP/Rlys/CNI/13 Office of the Dated: 27.11.2013
Superintendent of Police Railways, Chennai-8.

Circular Memorandum

It is came to my notice that, in Avadi Cr. No. 368/2013 u/s. 174 Cr.P.C., the Investigation Officer has not preserved the Viscera and clothing items of the deceased.

2. Inspite of repeated instructions the procedures are not followed by the Investigation Officer DSRP/Central who is holding incharge of the RPS not at all bother his bounden duty. This was happened merely the slack of supervision on the part of DSRP.

3. Hence all the DSsRP are instructed that, personally monitor each cases, while registered u/s. 174 Cr.P.C the following procedures should be followed:

1. The Photograph of the scene along with the deceased was taken with date.
2. Seizure of any travel tickets in the body of the deceased with details.
3. List out the list of articles like purse, suicide note, photograph/I.D card and name and address available in the body of the deceased.
4. The details of wearing apparels seized with brief descriptions viz., tailor mark dhobi mark etc for easy identification of kith and kin of the deceased.
5. Whether the Finger print of the deceased taken with date and by whom and the date in which sent to FPB for verification.
6. Brief description of the dead body such as height, complexion, built, identification marks, any physical deformity etc.
7. List out the lookout message sent to all the districts DCRBs surrounding Local Police stations and to all the Railway Police Stations with date and acknowledged Police Personnel Name and No.

8. Mention the circulated of hand bills/posters along with photograph of the deceased has been made and the places circulated.
9. List out the arrangements made for the publication in the local and major dailies with date along with the date of publication in each daily. The paper cutting should be available in the CD file.
10. Mention whether arrangements made for broadcasting through the T.V. Circuits installed in the railway stations of this State.
11. Mention whether the broad casting through Local Media and the popular channels made with date and the name of the channel.
12. Mention any other efforts taken for giving wide publicity.
13. Whether viscera/femur bone preserved.
14. Date of receipt of Postmortem certificate along with opinion.
15. Date of dispatch of Talash form with photograph, FIR and P.M. Certificate to RCRB and SCRB directly for publication in the CIG.
16. Whether the image of deceased loaded in Tamilnadu Police website with details.

2. To locate the identity of un-identified dead bodies publication in CI will be made as well as the details of deceased and the place of accidents along with the photographs are loaded into the Tamilnadu Police website with id:tnpolice.gov.in on a daily basis to enable the common public to have an access on the website to locate the persons whoever missing from their side. This will be of very useful in identifying the unidentified dead bodies.

3. The details of action taken on the points mentioned in the check list should be kept in the concerned CD file for information and verification by the superior officers. If the check list is not available, departmental action will be initiated against the concerned I.Os.

4. Any deviation in this regard suitable departmental action will be against the erroring Investigation Officers. 5. Acknowledge the receipt of the memo by return.

Sd/- Superintendent of Police Railways, Chennai-8.

To All DSsRP in Chennai Railway Police District.

Copy to The Additional Director General of Police, Railways, Chennai-8. The Deputy Inspector General of Police, Railways, Chennai-8. All IsRP in Chennai Railway Police District."

8. On 31.07.2014, higher Officers of the Railway Police, Officers from the Tamil Nadu Forensic Sciences Department met in the Office of the Dean of the Rajiv Gandhi Government General Hospital, Chennai and resolved to collect bone

samples from unidentified bodies for the purpose of extracting DNA. Pursuant to this meeting, the Superintendent of Police, Railways, Chennai issued the following memorandum on 19.08.2014.

"C. No. 46/Camp/SRP/CNI/14 Dated 19.08.2014

Office of the Superintendent of Police Railways, Chennai-8.

Memorandum

Sub: Chennai RP District -Postmortem of Un-identified dead bodies -instructions issued Reg.

Ref: Minutes of the meeting held at Dean's Chamber, Rajiv Gandhi Govt. Hospital, Chennai on 31.07.2014 at 11.00 a.m. regarding postmortem of unidentified bodies.

As per the reference cited above it was decided that un- identified dead bodies from Railway Police falling in the jurisdiction of Chennai City shall be sent to the mortuary of respective Government Hospital of Chennai. After waiting two days, if the body is still unidentified, a requisition shall be given by the Investigating Officer on the third day to conduct the postmortem on the above body and medical officer will be requested through the Investigation Officer to collect bone sample for DNA profiling to be forwarded to the Forensic Science Laboratory, Chennai for DNA analysis.

2.The Medical Officer is requested to send one femur bone [mid portion] in a paper parcel to the Forensic Sciences Department, Chennai with proper seals. After analysis from the Forensic Science Lab, the sample analyzed will be collected and preserved in the concerned police station.

3. Acknowledge the receipt of the memo.

Sd/- Superintendent of Police, Railways, Chennai 8.

To

All is RP (Concerned)

Copy to

The Inspector General of Police, Railways, Chennai-8.

The Deputy Inspector General of Police, Railways, Chennai-8.

The Dy. Supdts. of Police, Central, Egmore and Coimbatore."

9. The problem comes only when the local police drag their feet for registering an FIR when a case of man missing is reported to them. This issue has come to the notice of the higher echelons in the Police Department and several instructions have been issued by the Office of the Director General of Police to all the Police Units to register an FIR whenever a case of man missing is reported and take up

investigation in a scientific manner, despite which the police at the lower level are indeed very insensitive, as could be seen from the facts of this case also. We also came across cases where relatives of missing persons very seriously disputed and refused to accept the unidentified bodies that were matched by the SCRB. One of the reasons is, during inquest over an unidentified body, the police determine the age arbitrarily and they enter it in the Requisition Form that is sent with the body for post-mortem. They do not make a specific request to the autopsy doctor to determine the age. Therefore, no age determination is done during post-mortem. In the Post-mortem Certificate, the age as noted in the Inquest Report finds place and on account of this discrepancy, relatives of the missing person refuse to accept his death. A similar issue arose in *Sushil Mandal Vs. State*, and this Court gave a finding on the basis of DNA profiling that the unidentified body was that of the deceased Sandesh Mandal and put to rest further controversy. The following illustration given in Modi's Text book of Medical Jurisprudence & Toxicology [18th Edition; N.M. Tripathi Pvt. Ltd.] would show that Inquest Report by the Police cannot always be relied upon.

"3. On the 26th August 1923, a body in a state of advanced decomposition was removed from a well and sent with a report that it was the body of an unknown woman. At the autopsy it was found to be the body of a tall and well-built male."

Therefore, we direct the Police to specifically make a request to the Post-mortem Doctor to determine the age of the unidentified body scientifically. We also direct the Investigating Officer to lift Finger Prints wherever possible from unidentified bodies and send the same to the Tamil Nadu Finger Print Bureau, which is part of the SCRB, where there is a massive data base stored in Fingerprint Analysis and Criminal Tracing System [FACTS BASE]. The Investigating Officer should also collect the Femur Bone and molar tooth of the unidentified body from the Post-mortem Doctor and keep it along with the apparel and other objects found on the dead body at least for a minimum period of three years. Whenever a dispute arises, the DNA from the relatives can be extracted and profiling can be done with the DNA extracted from the Femur Bone and molar tooth by the Tamil Nadu Forensic Sciences Laboratory.

10. Ensconced in the comforts of our Office, we can making scathing criticism of Police inquests, but we don't intend doing it, for, we are conscious of their travails. Sources of unidentified bodies in this country with such a huge population cannot be catalogued. Beggars, orphans and destitutes die on pavements and Government Hospitals in scores everyday. In Railways, there is accidental fall, suicides, deliberately pushed out from moving train, hit by train while crossing track, murdered somewhere and thrown on the track etc etc. Sometimes due to decomposition, the stench will be unbearable and the corpse will be infested with maggots. Parts of the body will be dismembered and strewn around. Inquests are done under such trying circumstances. The common public will show such apathy that no one would come forward to be a witness for the inquest. There are a few good Samaritans, in the Police force as well in the civil

society, who willingly come forward to shoulder the responsibility of disposing unclaimed bodies. We are told that one Mr. N. Annamalai, Sub Inspector of Police of Central Railway Police Station offers his services unsolicited for gathering dismembered bodies, assisting the City Police in Inquests and ultimately burying the unclaimed body. He has been doing this for over a decade. We hereby place on record our commendation in recognition of his altruism. We are informed that whenever a body is found on the Railway Track, the Station Master of the nearby Station has been authorised by the Railway Board to disburse Rs. 1,000/- to the Railway Police to defray the entire expenses upto burial. In today's cost of living this amount is paltry and we hope that the Railway Board enhances the amount to at least Rs. 5,000/- so that the dead can be given a decent burial.

11. Coming to the issue of conducting post-mortem on unidentified bodies, the Government of Tamil Nadu has issued the following notification in G.O. Ms. No. 1676 [Health and Family Welfare Department] dated 22.09.1984, which reads as follows:

"GOVERNMENT OF TAMIL NADU

ABSTRACT

Mortuary -Disposal of dead bodies (unclaimed both Medico-Legal and non medico-legal)Instructions -Issued.

HEALTH AND FAMILY WELFARE DEPARTMENT

G.O. Ms. No. 1676 Dated: 22-9-84

Read:

- i. From the Commissioner of Police, D.O. No. K4/1651/88325/1983, dt. 18-8-83.
- ii. From the Director of Medical Educational letter Ref. No. 28209/M3/83, Dt. 19-8-83.

Order-

Instances have come to notice of Government that there are accumulation of dead bodies including medico-legal cases in the Government Hospital Mortuaries. The dead bodies could not be disposed of as they are unknown and unclaimed of the un-disposed of bodies relate to Medico-legal cases.

2. The Government have examined the ways and means for the expeditious disposal of dead bodies including medico-legal cases deposited in the mortuaries attached to the Government Hospitals. They accordingly issue the following guidelines for the expeditious disposal of the dead bodies deposited in the Mortuaries attached to Government Hospitals in the City as well as in the mufassil.

i. In the case of unclaimed dead bodies found on the road side or in other places outside the hospitals, the concerned Police Station which bring the dead bodies to the hospital should give the requisition for postmortem without any delay.

ii. In the case of dead bodies brought to the causality by the public and if the identity of the person or the area from which the dead bodies were brought is not ascertainable the Out-Post Police Stn. attached to the Hospital should give the requisition for postmortem;

iii. The dead bodies the identity of which are known will be handed over to the relatives after post mortem by the hospital authorities.

iv. Where the identity of the dead bodies are not known the police department shall immediately take finger prints and photographs and publish them in the news papers inviting relatives if any to take over the dead bodies. If no one claims the dead bodies within a period of 30 days from the date of postmortem, the bodies shall be disposed off by the hospital authorities as unclaimed.

v. Any persons brought by police for treatment from outside the city but died on the way to the hospital/died in the hospital, the requisition for postmortem will be given by the Out-Post Police Stn. attached to the Hospital.

2. Government also direct that the following procedure shall be followed in respect of the persons involved in train accidents/dead bodies brought to hospital/person died after they were brought to hospital.

a)The Police who bring these persons/dead bodies to the hospital will give the requisition for postmortem.

b) Where the identity of the dead bodies are known, they shall be handed over to the relatives.

c) Where the identity of the dead body is not known, the Police Station of the area which brings the dead body to the mortuary shall give requisition for postmortem.

3. Deaths in ails and Police Stations.

The Officer who conducts the enquiry will give the requisition for postmortem in respect of the death in ails and Police Stations. After post mortem the dead bodies will be handed over to the relatives.

4. The Director of Medical Services and Family Welfare is requested to send suitable amendments to the Tamil Nadu Medical Code in consultation with the Director of Medical Education.

/By Order of the Governor/

R. Shanmugam

Commissioner & Secretary to Government."

Para 2(iv) of the aforesaid G.O. has been substituted subsequently by an amendment that has been issued by the Government and the amended G.O. is as under:

"Copy of letter received from the Special Secretary to Government addressed to the Director of Medical and Rural Health Services, Madras.

Sub: Mortuary -Disposal of dead bodies (unclaimed both Medico legal and non medico legal)Amendment orders -Issued.

Ref: 1. G.O. Ms. No. 1676 Health dated 22.9.84.

2. Director of Medical and Rural Health Services, Dr. Ref. No. 137481/M3/84 Dt. 14.3.88.

3. Assistant Inspector General of Police, D.O. Lr. Ref. No. 2238/Crime 11(2)/93 Dt. 15.7.93.

4. Director of Medical and Rural Health Services Dr. Ref. No. 57617/M3/93 Dt. 1.9.93.

I am directed to state that the following amendment is issued to the G.O. cited.

Amendment

In the said G.O. for para 2(iv) the following shall be substituted.

"Where the identity of a dead body is not known, the Police Department shall immediately take finger prints and photographs and publish them in the newspapers inviting relatives if any to take over the dead body. If no one claims the dead body, within a period of ten days, wherever cold storage facilities are available and for three days where such facilities are not available from the date of postmortem the body shall be disposed of by the hospital authorities as unclaimed.

Sd/-.....

for Special Secretary to Govt."

12-A. We are told that due to paucity of Post- mortem Doctors in Government Hospitals, post-mortem on unidentified bodies is not done immediately and preference is given only to murder cases, accident cases and in cases where the body is identified. In our opinion, a solution to this problem can be found, if Private Medical College Hospitals in the State of Tamil Nadu are given permission to conduct post-mortem as done in the State of Karnataka. We are extracting the following Government Order issued by the State of Karnataka:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

SUB: Allotments of Medico-legal autopsies to the Department of Forensic Medicine at M.S. Ramaiah Medical College, Bangalore. Read: Letter No. MEP(2)211/89-90 dated 5.5.90 from the Director of Medical Education,

Bangalore.

Preamble:

The Director of Medical Education in his letter dated 5.5.90 cited above has stated that in G.O. No. HFW 317 MME 82 and HFW 360 MMC 82 dated 13.9.82 the Government have permitted the staff of the Department of Forensic Medicine of M.R. Medical College, Gulbarga and M. Medical College, Davanagere and K.M.C. Mangalore to conduct medico-legal post-mortem. Further he has suggested that similar permission may be granted to M.S. Ramaiah Medical College, Bangalore since also load of medico-legal work is heavy at Bangalore Medical College.

Govt. Order No. HFW 44 BRE 90, Bangalore, Dated 31.10.1990.

In the circumstances, Government are pleased to accord permission to the doctor who will be in charge of the Department of Forensic Medicine in M.S. Ramaiah Medical College, to conduct the medico-legal postmortem work at the hospital attached to the Medical College on a nominal fee of Rs. 1/- P.M.

By Order and in the name of the Governor of Karnataka

Sd/-----

Under Secretary to Government Health & F.W. Department"

12. In the State of Tamil Nadu, there are 19 Government Medical Colleges and 26 Private Medical Colleges, of which 11 are Deemed Universities. At present, the students studying in these Private Medical Colleges are sent to the Government Medical College Hospitals for getting training in autopsy. The importance of giving training to students in Medical jurisprudence has been emphasised in "Modi's Text Book of Medical Jurisprudence & Toxicology [18th Edition].

"Medical jurisprudence is a practical subject, and the class lectures should be illustrated with practical examples, as far as possible, while the students ought to get ample opportunities to examine cases of injury and poisoning, and to conduct and witness medico-legal post-mortem examinations.

13. To begin with, on a trial basis, if the Government grants permission to these Private Medical Colleges to perform autopsies on unidentified bodies, it will relieve the congestion in the mortuaries in the Government Hospitals. The orthodox may raise their eyebrows and ask anxiously "Will not these Private Doctors become amenable to influence and issue bogus Post-mortem Certificates?" But the situation seems no better in the Government Hospitals either. On the directions of a learned single Judge of this Court in CrI. O.P.(MD) No. 16199/2014 on 28.08.2014, a body on which autopsy was allegedly conducted in the Government Hospital, Madurai was exhumed, and a team of Doctors have now opined that no post-mortem was ever done on the body

earlier, but whereas the Government Doctor who allegedly performed autopsy gave a Post- mortem Certificate in which he had stated that the deceased had died of "Bilateral Pulmonary Tuberculosis. If videography of all post-mortems, whether done in Government Hospital or Private Institution is made compulsory, such misadventures can be curtailed. An apprehension was voiced that the State will not be able to take any action against a Doctor of a Private Medical College, if the Post- mortem Certificate given by him is found to be bogus. Under the Indian Penal Code there are enough provisions to prosecute the Doctor, some of which are Sections 176, 177, 198, 199, 201 and 203 apart from invoking conspiracy provisions. The legislature can also bring in an amendment to the definition of "public servant" found in Section 21 of IPC and in Section 2(c) of the Prevention of Corruption Act, 1988 by including "The Doctors who perform autopsy at the request of a Police Officer" so that the Doctor can be prosecuted even under the Prevention of Corruption Act.

14. We have laboured to extract all the extant rules and instructions on the subject, in order to facilitate the legal community to properly guide the kith and kin of missing persons when they approach them for help. To sum up:

"a) The Police shall immediately register an FIR whenever a case of "Man missing" is reported and follow the Circular dated 31.01.2005 issued by the Director General of Police.

b) When any unidentified body is found, the Police should register an FIR u/s. 174 Cr.P.C. and follow the Circular Memorandum dated 27.11.2013 and the Memorandum dated 19.08.2014 issued by Superintendent of Police, Railways, Chennai District. We hold that these Circulars will not only apply to unidentified bodies found by Railway Police, but also to other Wings of the Police as well.

c) In addition to what is stated in the Circular Memorandum dated 27.11.2013 and 19.08.2014, we direct the Police make a specific request to the Post-mortem Doctor to determine the age and also collect the Femur Bone and Molar Tooth and hand them over to them for safe custody for DNA profiling.

d) The police should also take the fingerprint of the deceased, if possible.

e) We suggest to the State. Government to explore the feasibility of permitting Private Medical College Hospitals to perform autopsies.

f) We also suggest to the Railway Board to issue directions to the Station Masters to disburse at least a sum of Rs. 5,000/- to the Railway Police for disposal of unclaimed bodies found in Railway tracks."

With the above directions, this Habeas Corpus Petition is closed.