
(2008) 12 MAD CK 0285

In the Madras High Court

Case No : Writ Petition (MD) No. 4152 of 2008 and M.P. (MD) No. 1 of 2008

S. Prakasam Kuchurayar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 176
Explosive Substances Act, 1908 — Section 3
Penal Code, 1860 (IPC) — Section 109, 147, 148, 149, 294
Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3(1)

Citation : (2008) 12 MAD CK 0285

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : A. John Vincent, for the Appellant; T. Raja, A.A.G. assisted by D. Sasikumar, Government Advocate (Writs), for the Respondent

Judgement

G. Rajasuria, J.—This petition has been filed by the father of the deceased Mithun Chakravarthy alleged to have been killed in an police encounter, with the prayer to obtain compensation in a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) from the respondents 1 and 4 and to prosecute the delinquent police officials concerned on the basis of a fair and impartial investigation after registering FIR, by issuing a Writ of Mandamus.

2. The facts giving rise to the filing of this petition as stood exposted from the affidavit accompanying the writ petition as well as from the typed set of papers and from the arguments of the learned Counsel for the petitioner, could tersely and briefly, succinctly and pithily be set out thus:

According to the petitioner, his son, the deceased Mithun Chakravarthy, was murdered in a fake encounter by the police; the Revenue Divisional Officer's report is far from satisfactory and accordingly, he prays for the following reliefs:

(i) to direct the respondents 1 to 4 to pay to the petitioner compensation of a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only);

(ii) to prosecute the delinquent police officials on the basis of a fair and impartial investigation by filing FIR against the police personnel involved in the encounter.

3. Detailing and delineating, the relevant facts and circumstances relating to the death of Mithun Chakravarthy and by drawing the attention of this Court to various decisions of the Honourable Apex Court as well as the directions issued by the Government and the National Human Rights Commission, in this regard, the learned Counsel for the petitioner reiterating and stressing the grounds as found set out in the affidavit accompanying the writ petition.

4. Whereas the learned Additional Advocate General placing reliance on the counter affidavit filed by the third respondent and also the additional typed set of papers filed on the side of the respondents, has argued as under.

5. The dead man was not a good man, who brutally murdered several persons for money; even in matrimonial matters, he interfered and poured acid on the lady concerned and he had been absconding for a pretty long time and proved himself a fugitive in the eye of law. The following eleven cases are pending as against him:

1) Nachiyarkoil P.S. Cr. No. 301/03 u/s 294(b), 323, 342, 324, 326, 307 & 506(ii) IPC

2) Kumbakonam West P.S. Cr. No. 4181/03 u/s 341, 307

3) Kumbakonam West P.S. Cr. No. 498/04 u/s 341, 294(b) 323, 326, 324 and 506(ii) IPC

4) Kumbakonam West P.S. Cr. No. 300/05 u/s 294(b), 324, 506(ii), 307 IPC

5) Kumbakonam West P.S. Cr. No. 674/03 u/s 341, 324, 326 and 307 IPC

6) Kumbakonam West P.S. Cr. No. 634/06 u/s 399 IPC

7) Kumbakonam West P.S. Cr. No. 200/07 u/s 3147, 148, 302, 149 and 109 IPC

8) Kumbakonam Taluk P.S. Cr. No. 8/07 u/s 341, 326, 307 and 109 IPC

9) Patteeswaram P.S. Cr. No. 5/08 u/s 147, 148, 341, 323, 324, 302 IPC

10) Nachiyarkoil P.S. Cr. No. 61/08 u/s 147, 148, 341, 307, 302 IPC r/w3(1) of PPD L Act.

11) Mannarkudi P.S (Thiruvarur Dist) Cr. No. 136/08 u/s 307 @ 302 IPC

6. While so, the Police Department formed a team of officers and they were sincerely taking steps to arrest the deceased and bring him to justice. However, in that process, when he proved himself a scourge to the lives of the very police personnel, who attempted to arrest him, by throwing two country made bombs

and also wielding a long knife so to say, a billhook as against the police officers, by way of private defence only, the Inspector of Police, namely Ganesamoorthy had to use his revolver which accidentally resulted in the death of the deceased Mithun Chakravarthy. The Revenue Divisional Officer has clearly in an unbiased manner looked into all the aspects of the matter and submitted his report to the effect that it was a genuine case of encounter death and not a fake encounter one as contended by the petitioner. Accordingly, the learned Additional Advocate General prayed for the dismissal of this writ petition.

7. The point for consideration is as to whether any further probe in the matter is required or not?

The Point:

8. The learned Additional Advocate General in a sealed cover presented to this Court the report of the Revenue Divisional Officer along with the relevant photocopies of the records, a few hearings ago. I had the opportunity of going through them in detail. A bare perusal of the records including the report of the Revenue Divisional Officer, would indicate and demonstrate that his report, is far from satisfactory and the Revenue Divisional Officer should not have in such a perfunctory manner simply furnished his report. I am fully aware of the fact that this Court while exercising its power under Article 226 of the Constitution of India cannot give any finding on facts. However, one instance which I could cite in support of the view that the Revenue Divisional Officer's report is far from satisfactory, is that, the complaint dated 02.04.2008 given by the mother of the deceased to the Collector and the endorsement at the Collectorate is as under:

P.A(G)

Forward copy to S.P and R.D.O...for na and report.

has not been considered at all by the Revenue Divisional Officer.

9. The Revenue Divisional Officer has not even chosen to examine either the said P.A. to the Collector or the Superintendent to whom the said letter was forwarded. It is a very crucial and cardinal aspect which the Revenue Divisional Officer should have considered before arriving at his conclusion. If really, the deceased had been taken into custody by the police anterior to the giving of such representation by the mother of the deceased, certainly that would cut at the very root of the narration in the F.I.R lodged by the said Ganesamoorthy, the Inspector of Police. The person had already been under the custody of the police, could not have come on the motorcycle and thrown country made bombs at the police. The probe should have been focused by collecting the evidence relating to the alleged fact of the deceased having been taken into custody by the police long before the alleged encounter, but that was not done so. This vital point has not been taken into consideration at all by the Revenue Divisional Officer and there is no reference at all in his report.

10. It is obvious and axiomatic that a bad man may have a good case. The police

would try to project the deceased as a braggadocian chess man type of personality apart from he being a rowdy, yahoo, rascal, scallawag and mercenary who indulged in dastardly, heinous, macabre, gruesome murders. While this Court considering this writ petition under Article 226 of the Constitution of India, is not expected to go deep into the past conduct of the deceased and no more elaboration in this regard is required.

11. Here, this Court has to see as to whether with the enquiry of the Revenue Divisional Officer, the matter could be closed as such. The risk of repetition without being tautologous, I would spotlight and highlight that the Revenue Divisional Officer apart from not considering the aspects pointed by me supra, has not also considered whether the police officials who were present at the spot so to say, at the time of encounter, had the opportunity of overpowering the deceased without using revolver.

12. I fully agree with the learned Additional Advocate General that in a dangerous situation, appropriately and exactly, the correct quantum of right of private defence cannot be exercised by anyone after weighing the circumstances and situation in a golden scale. However, in this case, the Revenue Divisional Officer should have asked certain relevant questions to the police officers concerned in the encounter about the steps taken by them to overpower the deceased without going to the extent of doing away with the life of the deceased. Here, the injury sustained by the deceased as found detailed in the post-mortem report is extracted hereunder:

External injuries:

5. An obliquely placed shot (Bullet) entry wound noted over the front of left side of chest situated 8 cm medial and 3 cm below the level of left nipple. On Examination - the wound measured 0.7 cm X 0.5 cm with an abrasion collar measuring 0.5 cm at the upper and medial aspect and 0.2 cm over the lower and outer aspect-obliquely placed. No Burning effect. No smudging. No tattooing Effects noted in and around this wound. Margins were found to be inverted.

6. An obliquely placed Gun shot (Bullet) Exit wound measuring 1.5 cm X 1 cm noted over the back of left side of chest at the level of 9th rib situated 6 cm away from the midline and 30 cm above the gluteal fold. The margins of the wound were irregular and everted with protrusion of the subcutaneous tissues out side noted. On further dissection - fracture of the 9th rib with surrounding contusion noted. Fresh bleeding from this wound present.

7. The fresh abrasions - reddish brown in colour each measuring 4 cm X 1 cm and 2cm X 1 cm noted over the back of upper third of Right forearms.

8. Reddish Brown colour fresh abrasion measuring 2 cm X 1 cm noted over the back of lower third of Right upper arm.

Internal Injuries:

Examination of the course of the Bullet Tracks:

9. On opening the front of chest and Abdomen - The bullet is found to have entered into the left side Thoracic cavity by making a through and through defect measuring 0.6 cm X 0.3 cm involving the 8th rib on the left side situated 1.5 cm away from the midline with surrounding contusion - on examination of the defect - Tiny fragments of bone were seen around. Bluish black colour contusion over an area of 8 cm X 6 cm noted over the back of left side of lower part of sternum.

10. Further it has made a Tear measuring 2 cm X 1 cm over the anterior aspect of pericardium of Heart, near its lower border. Pericardial cavity contained 500 ml of fluid blood and 1000 gms of thick blood clots.

11. Further it has made a through and through entry wound measuring 1.5 cm X 1 cm in the anterior wall of Right Ventricle and entered into the cavity of Right Ventricle and further it has made its way out by making a through and through Exit wound measuring 3 cm X 2 cm over the posterior wall of Right Ventricle.

12. Then, it has found its way out the pericardial cavity by making a rent measuring 1 cm X 1 cm over the posterior aspect of Pericardium and further has made a through and through rent over the left dome of diaphragm after making a through and through wound over the lower lobe of left lung near its lower border - Entry wound measured 3 cm X 2 cm and the exit wound 2.5 cm X 2 cm with surrounding contusion. Thoracic cavity contained 1500 ml of fluid blood.

13. Further it has entered into the abdominal cavity and further made a laceration measuring 2 cm X 1 cm X 1/2 cm over the upper border of left lobe of liver and further it has made its way out of the body through the above mentioned Exit wound - External injury No. 6 Abdominal cavity contained 2 litres of fluid blood.

14. No bullet or part of the bullet or any other foreign body seen in the course of the wound or on the body. Diffuse bluish black colour contusion noted over and around the whole of Bullet Track.

Opinion:

16.A) All the above wounds noted externally and internally are Antemortem in nature.

B) Taking into consideration - the absence of blackening, Tattooing, Burne Effects. Smudging over the clothes and also near the Entry wound, we are of the opinion that the range of firing is a Distant Range.

C) Considering the course of the wound, width of the abrasion collar. Position of the Entry wound and Exit wound- we are of the opinion the direction of the bullet is Laterally. back wards and down wards.

13. It is clear that in the right chest of the deceased the bullet penetrated and found its way through. There is nothing in the report as to what necessitated the

said Ganesamoorthy at the first instance itself to shoot on the chest of the deceased and not on his leg or on his hands. There were admittedly three police officials at the time of occurrence apart from the police driver and the deceased was alleged to have used already two country made bombs, but no police personnel sustained injuries due to bomb explosion and at the actual time of shooting by the police, the deceased was having only a long knife. The Revenue Divisional Officer could have probed as to why those three police officials had not overpowered the deceased without causing fatal injury to him. There is no indication as to whether the police officials had any lathi, belt, etc, while approaching the deceased. If they had no such thing, the pertinent question arises as to why none of those officials had any such non-lethal weapons with them and that too, when they were on their duty to arrest such a disparate character. There is also no indication that the deceased was warned by the police officials by shooting at the sky with the revolver. Here, admittedly, the police official shot the deceased on his chest at the first instance itself.

14. At this juncture, I am of the view that it is just and necessary to look into the very narration of the occurrence without giving any finding on that. According to the narration in the F.I.R and in the other relevant records, the deceased was proceeding along the road on his motorcycle being chased by one other Inspector of Police, namely Tamilselvan. Meanwhile, the Special Team comprised of the police officials Ganesamoorthy, Bharanidaran and Sivabaskaran on seeing the deceased coming on the motorcycle, they showed signs to stop him, but he tried to avoid them and in that process alone, the encounter resulted.

15. Here, only the evidence of the said four persons namely, Ganesamoorthy, Bharanidharan, Sivabaskaran and Karan are available. In such a case, the law enjoins the Revenue Divisional Officer virtually to cull out the facts from those police officials concerned in a deep manner, but the perusal of his report would exemplify that he simply recorded the statements of those police officials. Absolutely, such a procedure adopted by the Revenue Divisional Officer is not contemplated under the Criminal Procedure Code. The Executive Magistrate who probes into the encounter incident, is legally expected to delve deep into the matter, though not he is expected to play the role of an advocate in cross-examining a witness. He ought to have put relevant questions to those police officials to get necessary explanations in this regard, but he had not done so.

16. The learned Additional Advocate General drew my attention to the report submitted by the Superintendent of Police, Thanjavur District to the Director General of Police dated 12.05.2008 and developed his argument that point by point, the Superintendent of Police explained as to how the police complied with the requirements and that there was no necessity for C.B.C.I.D enquiry. An excerpt from it, would run thus:

ACTION: The information of the death in encounter of Mithun Chakravarthy was entered into the General Diary (the appropriate register as per Tamil Nadu Police Standing Order 706) by the Officer -in-charge of the Thanjavur east PS(the

jurisdiction PS). Further as per TN PSO 150(3) express reports were sent to the RDO and District Collector.

NHRC GUIDELINE-B: Where the police officers belonging to the same police station are members of the encounter part, whose action resulted in deaths, it is desirable that such cases are made over for investigation to some other independent investigation agency, such as CBICD.

ACTION: This does not arise as no member of the party involved in the encounter belonged to the same Police Station.

NHRC GUIDELINE-C: Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate Sections of the IPC. Such case shall invariably be investigated by state CBCID.

ACTION: In the instant case the incident occurred at 04.00 hrs on 03-04-08. On the complaint of Inspector Ganeshamoorthy, an FIR in Thanjavur East PS Cr. No. 376/08 u/s 332,307 IPC r/w 25(1)(b) of Indian Explosive Act 1945 and 3 of Indian Explosive Substances Act 1908 @ 176 Cr.P.C r/w 150 PSO was registered at 06.40 hrs. Since the same represented a death caused by the police using a firearm, the same was forwarded to the RDO Thanjavur for enquiry and a report was also sent in this regard to the District Collector as per PSO 150(3). On receipt of this report, the District Collector ordered a RDO enquiry into the incident vide his proceedings in 24/2008/A3 dated 03-04-2008. Subsequently, the father of Mithun Chakravarthy Tr. Prakasam s/o Sundararaj, Maruthanallur, Nachiyarkoil, Thanjavur preferred a complaint containing an allegation against the police before the Inspector of Police, Thanjavur East PS, Tr. Venkatesan at 17.10 hrs. It was received and a receipt in CSR No. 204/2008 dt.03.04.2008 was issued to his representative D. Kumar s/o Dhanabal. The same was forwarded to the RDO for enquiry as per the order in PSO 151(2)(b) to fix responsibility, if any, on the police office and to see whether there is a prima facie case for launching a criminal prosecution or other proceedings against any one concerned.

17. The learned Additional Advocate General would submit that the police officials present at the time of encounter did not belong to the police station where the F.I.Rs as against the deceased, were pending and that therefore, no C.B.C.I.D probe is required. In my opinion, such an explanation is neither here nor there. Here, the Police Department formed a Special Team for the purpose of arresting the deceased. In that view of the matter, the defence that the officials involved in the encounter were not belonging to the interested police stations, is not correct. The object of having specified so, is that if the police officials involved in the encounter belong to the interested police station wherein the F.I.R is pending, they may, at times, out of overenthusiasm or by way of overreaching themselves, might indulge in fake encounters and hence, C.B.C.I.D probe is made mandatory. Here, a team was constituted purely for the purpose of

arresting the deceased and in that view those police officials are interested in the case and to arrest the deceased. In such a case, it is clear that C.B.C.I.D enquiry in such sort of circumstance also is warranted. Even de hors, such factors, in view of the lacunas in the Revenue Divisional Officer's report, the probe by the C.B.C.I.D is absolutely necessary. This Court's power under Article 226 of the Constitution of India to order for further probe based on justifiable reasons cannot be circumscribed by any directions from any authority.

18. The learned Additional Advocate General also invited the attention of this Court to the accident registers relating to the police officials concerned and developed his arguments that they also sustained injuries before the said Ganesamoorthy resorted to shoot the deceased. The relevant portion in the accident register relating to Ganesamoorthy, is extracted hereunder:

No external injuries.

It is palpably and pellucidly clear that the said Ganesamoorthy did not sustain any external injury at all.

19. The relevant portion in the accident register relating to Bharanidharan, is extracted hereunder:

(1) Cut injury of 8 X 4 X 3 cm over the posterior aspect of left forearm near elbow - exposing underlying muscle. 2) Cut injury over the right little finger dorsal aspect of 2 X 2 X cm.

While giving opinion relating to the Bharanidharan, the Doctor opined as though Bharanidharan sustained grievous injury even though he did not sustain any fracture or any grievous injury as contemplated u/s 320 of I.P.C.

20. The relevant portion in the accident register relating to Siva.Baskaran, is extracted hereunder:

1) Cut injury of 8 X 4 X 3 cm over the right forearm ventral aspect from the cubital fesses extending vertically downward.

It is obvious that he sustained simple injury.

21. The injuries in my opinion, sustained by Siva. Baskaran and Bharanidharan were not on any vulnerable part of their body.

22. In fact, Ganesamoorthy, who released the bullet, did not sustain any injury at all before he resorted to such extreme measure of shooting at the first instance itself right at the chest of the deceased.

23. The Executive Magistrate/Revenue Divisional Officer, without au fait with law and au curante with facts simply based on pococurante and insouciant statements by him, finished his report which is found fraught with inconsistencies and sophistry and consistory.

24. Considering, pro et contra, I am of the opinion that necessarily, further probe

is required. Meanwhile, I cannot agree with the submission of the learned Counsel for the petitioner that a separate F.I.R has to be registered u/s 302 I.P.C. Already, the F.I.R in Cr. No. 376 of 2008 at the instance of the said Ganesamoorthy is available and the C.B.C.I.D is expected to take up further investigation and find out whether there is any material to alter the Section in the F.I.R and if so, they are bound to incorporate the penal Section concerned and proceed further in accordance with law.

25. Hence, in this factual matrix, the following direction is issued:

The State Government and all other authorities concerned, shall do well to see that further investigation relating to death of the deceased Mithun Chakravarthy, is entrusted to C.B.C.I.D, whereupon the C.B.C.I.D is expected to probe into the matter thoroughly and arrive at a conclusion in an unbiased manner, untrammelled and uninfluenced by any of the observations made by this Court in this order.

26. At this juncture, I do not incline to decide on the claim for damages as the main matter has to be probed into by the C.B.C.I.D and only thereafter, if there is any favourable ground in favour of the petitioner, it is open for the petitioner to approach this Court again.

27. With the above direction, this petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.