

(2009) 07 MAD CK 0276

In the Madras High Court

Case No : Criminal O.P. No. 18403 of 2003

Thavamalar

APPELLANT

Vs

Inspector of Police

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 176
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 07 MAD CK 0276

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; R. Muniappa Raj, Government Advocate, for the Respondent

Judgement

C.S. Karnan, J.—The above Criminal Original Petition has been filed by the petitioner to direct the respondent police to register a case u/s 302 IPC in Crime No. 438 of 2003 on the file of the Inspector of Police, Shastri Nagar, Chennai.

2. It is alleged that the petitioner had filed an affidavit stating that her cousin brother, Soori @ Sooriisekaran, son of Mayilvaganam, aged about 43 years, was illegally taken into the custody by Directorate intelligence officer, N.C.B, Chennai on 08.06.2003 at 5.30 a.m, where the petitioner's cousin brother was systematically tortured. Due to unbearable torture, the detainee died. The respondent police registered a case u/s 176 Cr.P.C, as if there was a suicide in police lock up. As alleged by the petitioner, the case is attracted only u/s 302 IPC i.e., murder. The respondent showing misplaced sympathy to the NCB, registered the case as suicide.

3. The petitioner sent a telegram on 10.06.2003, to the higher officials namely, the Honourable Chief Justice of High Court, Chairman of State Human Rights Commissions, Chennai, Commissioner of Police, Director of NCB, Adyar, Chennai and Inspector of Police/respondent herein, and requested them to conduct postmortem of the dead body of the petitioner's cousin brother.

4. Even after sending telegraphic complaint, no postmortem was conducted and no further action has been taken by the respondent police. Hence, the petitioner has approached this Court for direction to the respondent to register a case u/s 302 IPC.

5. The petitioner cited the below mentioned citations in support of her case.

(1) Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,

(2) Ram Parkash Makkar Vs. State of Haryana and others,

(3) 1996 (4) Crimes 233 (SC), (D.K. Basu v. State of West Bengal)

6. The respondent has filed counter stating that one Thiru. Karuppaiah working as Havildar in Narcotics Control Bureau, Besant Nagar, Chennai-90, preferred a complaint stating that on 09.06.2003, at 2.00 hrs at the office of NCB, Besant Nagar, a Srilankan Tamil, Suresh @ Soori (41) S/o. Murugesan Karthikeshan, who was in the custody in connection with a case of seizure of 4 kg of heroin, was found hanging at the door of the lock up room. The medical officer who examined him at 3.15 hrs pronounced that Suresh @ Soori was brought dead to the hospital. It is submitted that a case was registered by Rajkumar, Inspector of Police, Law and Order, Adyar, who was incharge of J5, Shastri Nagar Police Station, as Crime No. 438 of 2003, for the offence u/s 176 Cr.P.C. It is alleged that on 09.06.2003, after the said complaint given by Karuppaiah, the respondent had taken up investigation.

7. The respondent had further submitted that during the course of investigation, he examined the following witnesses and recorded their statements.

1) Tr. Karuppaiah, Havildar in NCB, Chennai-90.

2) G. Manikkam, Besant Nagar, Chennai-90.

3) Shanthanakumar, Chennai-20.

8. It is stated that the P.A. to Collector, Chennai -cum - Additional District Magistrate, has conducted preliminary enquiry and inquest at the Government Royapettah Hospital, Chennai and requested the medical officer to conduct postmortem to ascertain the cause of death of deceased Suresh @ Soori. The postmortem was conducted and the body was handed over to Mahalingam, a close relative of Suresh, for cremation. It was also videographed as per the direction of the preliminary enquiry officer.

9. It is submitted that the interim direction was given to conduct postmortem (vide Cr.M.P. Nos. 5085 and 5088 of 2003 in CrI.O.P. No. 18403 of 2003) was received by the Inspector of Police, J5, Shastri Nagar Police Station, on 12.06.2003 to conduct re-postmortem and re-postmortem was conducted at Government Hospital, Chennai. On 13.06.2003, as per orders of the Madras High Court, the Inspector of Police, J5, Shastri Nagar Police Station, requested the Superintendent, VHS Hospital, Taramani, Chennai and requested the Dean,

Government Hospital to conduct re-postmortem. On 13.06.2003, a two member team of medical officers conducted re-postmortem at MMC Hospital, Chennai and it was videographed as per norms laid down by NHRC, New Delhi. The body of the deceased, Suresh @ Soori was handed over to his relative, Thavamalar, the petitioner herein, W/o. Vijikaran, on 13.06.2006.

10. It is submitted that the opinion of the first postmortem certificate revealed that "Reserved, pending chemical analysis report", while opinion on the re-postmortem certificate clearly revealed that Suresh @ Sri "died of hanging".

11. It is submitted that Thiru. V. Kannusamy, I.A.S, District Judge and District Collector, Chennai-600 001, after conducting enquiry over the death of Srilankan Tamil, Suresh @ Soori, sent a detailed letter to the Government Secretary, General (Law and Order), Chennai -600 009 on 05.12.2003, suggested for the departmental action by recommending the Government to initiate action against those responsible NCB Officials, viz., K. Sivakumar, intelligence officer, M.Karupppaiah, Havildar, attached to NCB, Rajaji Bhavan, Chennai, for their negligent duty and were alleged to be responsible for the death of Suresh @ Soori.

12. It is submitted that the findings report of the enquiry officer had not reached the concerned NCB office to take appropriate action against those two NCB officials for their negligence while on duty, which resulted in the death of Suresh @ Soori. However, the postmortem and re-postmortem clearly revealed that the Srilankan Tamil, Suresh @ Soori died of hanging.

13. The respondent therefore prays that the findings report of the enquiry officer may please be forwarded to the concerned NCB officials for further action at their end, since the copies of the findings of the enquiry report is lying at the Collectorate, Chennai, and prays the Court to dismiss the petition filed by the petitioner as devoid of merits and thus render justice.

14. Considering the facts and circumstances of the case, and the petition and counter statement of the respondent, especially paragraph No. 7 of the statement of the respondent, wherein it was submitted that, Thiru. V. Kannusamy, I.A.S, District Judge -cum- District Collector, Chennai-1, had conducted enquiry over the death of Suresh @ Soori, sent a detailed letter to the Government Secretary, General (Law and Order), Chennai-600 009 on 05.12.2003, suggested for the departmental action by recommending the Government to initiate action against those responsible NCB officials, viz., K. Sivakumar, Intelligence Officer, M. Karupppaiah, Havildar attached to the NCB, Rajaji Bhavan, Chennai, for their negligent duty and were alleged to be responsible for the death of Suresh @ Soori, this Court directs the Government Secretary, General (Law and Order), Chennai-600 009, to act, in accordance with law, on the letter sent by Thiru. V. Kannusamy, I.A.S, District Judge -cum- District Collector, Chennai-1, on 05.12.2003 within a period of two months from the date of receipt of a copy of this order.

15. Accordingly, the above Criminal Original Petition is disposed of.