

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Tuesday, the Thirtieth day of June, Two Thousand and Twenty

PRESENT:

THE HON'BLE MR.JUSTICE P.N. PRAKASH
and
THE HON'BLE MR.JUSTICE B. PUGALENDHI

Suo Motu W.P. (MD) No.7042 of 2020

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

... Petitioner

vs.

1 The State of Tamil Nadu
represented through its
Superintendent of Police,
Thoothukudi District,
Thoothukudi.

2 The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.

3 The Superintendent,
Kovilpatti Sub Jail,
Kovilpatti,
Thoothukudi District.

4 The Dean,
Medical College Hospital,
High Ground,
Palayamkottai,
Tirunelveli District.

5 Raghuganesan

6 Murugan

... Respondents

Petition praying that in the circumstances stated therein and
in the affidavit filed therewith, the High Court will be pleased to
issue a writ of mandamus directing the first respondent to submit a

report on the death of Bennicks and Jayaraj, accused in Sathankulam P.S. Cr. No.312 of 2020 and/or pass any other order/direction, as this Hon'ble Court may deem fit and proper, in the circumstances of the case and thus render justice.

ORDER: This petition coming on for orders and hearing the submissions of Mr.K.Chellapandian, Additional Advocate General assisted by Mr.R.Anandharaj, Additional Public Prosecutor on behalf of the respondents 1 to 4, the Court made the following order:

(Order of the Court was made by P.N. PRAKASH, J.)

In continuation of the order dated 29.06.2020, this Court passes the following order:

2 Originally, this case was posted today, but, on the special mentioning made by the learned Additional Advocate General that the Government is proposing to hand over the investigation of the case to the C.B.I., the matter was taken up for hearing yesterday and a slew of directions was issued.

3 During the course of the hearing, we received the preliminary post-mortem reports from the Dean, Tirunelveli Medical College, in a sealed cover. After the hearing was over, we received a report from the learned Judicial Magistrate No.I, Kovilpatti, who is conducting the enquiry under Section 176(1)(1-A) Cr.P.C. and the report was indubitably disconcerting.

4 In the said report, the learned Judicial Magistrate No.I, Kovilpatti, has stated that he has recorded the statement of Revathy, Head Constable, attached to Sathankulam Police Station, who, spilled the beans. The report also disclosed the concerted efforts of the Sathankulam policemen, including D. Kumar, Addl. Superintendent of Police, Tuticorin, C. Prathapan, Deputy Superintendent of Police, Sathankulam Sub Division and Maharajan, (PC 1744) attached to Sathankulam Police Station, to scuttle the enquiry. Therefore, we registered a *suo motu* criminal contempt proceedings being Contempt Petition (MD) No.528 of 2020 against them yesterday itself and summoned them to be present in person before us today. We have passed separate orders in the said *suo motu* criminal contempt proceedings.

5 On our directions, Mr. Praveen Kumar Abinapu, I.P.S., D.I.G., Tirunelveli Range and Mr. Arun Balagopalan, I.P.S., Superintendent of Police, Tuticorin, are present before us in person.

6 We are aware that the State Government has issued a notification in G.O. (2D) No.150, Home (Police.VIII) Department

dated 29.06.2020 giving consent for the C.B.I. to take up the investigation of the case. Even in our order dated 29.06.2020, we have, in passing, stated that delay will occasion inevitably before the C.B.I. actually gets into business on account of procedural formalities and hence, we had issued the following directions:

"i. The Registrar (Judicial), Madurai Bench of Madras High Court, shall take a photocopy of the preliminary post-mortem certificates and certify them and keep them in safe custody and send the original post-mortem certificates in a sealed cover to the learned Chief Judicial Magistrate, Tuticorin, who, in turn, shall hand over the same to the Investigating Officer of the C.B.I. The post-mortem doctors are awaiting the Chemical Analysis, Histopathological examination and Microbiological examination reports. Only upon receipt of those reports, can the final opinion be given. Therefore, the Dean, Tirunelveli Medical College, shall send the final opinion, to the learned Chief Judicial Magistrate, Tuticorin, who, in turn, shall hand over the same to the Investigating Officer of the C.B.I. A copy of the final opinion shall also be sent to this Court in a sealed cover. The Director, Tamil Nadu Forensic Sciences Laboratory, Chennai, is directed to give top priority to the examination of the materials sent by the post-mortem doctors, so that they can give their final opinion at the earliest.

ii. The learned Judicial Magistrate No.I, Kovilpatti, shall send a copy of his report to this Court in a sealed cover and keep the original report with him in safe custody and hand over the same to the Investigating Officer of the C.B.I.

iii. The Deputy Superintendent of Police, Kovilpatti Range, shall hand over the Case Diaries in Kovilpatti East P.S. Cr. Nos.649 and 650 of 2020, to the learned Chief Judicial Magistrate, Tuticorin, for safe custody, who, in turn, shall hand over the same to the Investigating Officer of the C.B.I.

iv. Though the accused in Sathankulam P.S.Cr. No.312 of 2020, viz., Jayaraj and Bennicks, are no more, the Superintendent of Police, Tuticorin District, shall hand over the Case Diary and other related records in Sathankulam P.S. Cr. No.312 of 2020 to the learned Chief Judicial Magistrate, Tuticorin, who, in turn, shall hand over the same to the Investigating Officer of the C.B.I., as those records will aid the C.B.I. Investigation.

5 Further, the learned Principal District Judge, Tuticorin, who is closely monitoring the case, informed us that the police personnel in the Sathankulam Police Station are not co-operating with the learned Judicial Magistrate No.I, Kovilpatti, in conducting the enquiry under Section 176(1) (1-A), Cr.P.C., for collecting clue materials. Therefore, we direct the District Collector, Tuticorin, to depute Revenue Officers to the Sathankulam Police Station, for the purpose of preserving the clue materials. In this regard, we also direct the Assistant Director of Mobile Forensic Science Laboratory, Tuticorin, to immediately go the Sathankulam Police Station, to collect the clue materials and assist the learned Judicial Magistrate No.I, Kovilpatti. If necessary, a team of forensic science experts from the Regional Forensic Science Laboratory, Tirunelveli, may also be requisitioned."

7 From the report of the learned Judicial Magistrate No.I, Kovilpatti, we are able to discern that the Sathankulam police are taking advantage of the fact that the investigation of the case is in limbo and are attempting to cause disappearance of evidence. In fact, they were emboldened enough to even intimidate the judicial officer to put spokes in the wheel of his enquiry.

8 In a case of physical violence, alacrity in investigation is the need of the hour. We are aware of the legal position that in the name of monitoring the case, we have no authority to direct the manner in which the investigation should be carried on. However, on account of the stalemate that has occasioned in the investigation due to the request made by the State Government for C.B.I. investigation, we are constrained to step in and fill up the vacuum in order to ensure that precious evidence does not get dissipated.

9 If we do not act now, it will become too late, for, the consent of the State Government should be accepted by the Central Government and only thereafter, can the C.B.I take up the case on its file. The C.B.I. does not have an office in Tuticorin or Tirunelveli but only at Madurai. The C.B.I. is essentially an organisation equipped to deal effectively with corruption and white-collar offences. In the present lock down situation owing to COVID-19 pandemic, it is not known how many C.B.I. personnel will be drafted from other wings and made available to assist the Investigating Officer. The Investigating Officer should get acclimatised with the local terrain. On the flip side, the C.B.I. does not even have a Special Public Prosecutor in the Madurai Bench to appear in bail and anticipatory bail applications that may soon follow suit. All this will enure to the advantage of the actual perpetrators of the offence.

10 When we were inclined to appoint Mr. Praveen Kumar Abinapu, I.P.S., as the Investigating Officer of the case and expressed our mind, he submitted that he is in charge of three districts and that he is required to maintain law and order, especially during the present trying times. We found sufficient justification in his submission. When we wanted to know the names of the officers manning the CB-CID, Tirunelveli, Mr. Arun Balagopalan, I.P.S. informed us that one Mr. Anil Kumar, is presently the Deputy Superintendent of Police, CB-CID, Tirunelveli, who was previously in the Special Branch, C.I.D. Considering the track record of Mr. Anil Kumar, we appoint him as the Investigating Officer of the case. In this regard, we are fortified by the judgment of the Supreme Court in **State of Tamil Nadu and others vs. Elephant G. Rajendran and others**¹.

11 Mr. Anil Kumar, D.S.P. shall forthwith take charge of the investigation in Kovilpatti East P.S. Cr. Nos.649 and 650 of 2020 and proceed further without waiting for any formal order from the Director General of Police, Chennai. The Superintendent of Police, CB-CID, Tirunelveli, shall monitor the investigation.

12 That apart, in view of the sordid turn of events, viz., the report of the learned Judicial Magistrate No.1, Kovilpatti and the preliminary post-mortem reports, we are constrained to modify the directions issued by us yesterday (extracted supra) as under:

- (a) The learned Chief Judicial Magistrate, Tuticorin or the Deputy Superintendent of Police, Kovilpatti, as the case may be, shall hand over the Case Diaries in Kovilpatti East P.S. Cr. Nos.649 and 650 of 2020 to Mr. Anil Kumar, D.S.P., immediately.
- (b) The learned Chief Judicial Magistrate, Tuticorin or the Superintendent of Police, Tuticorin, as the case may be, shall hand over the Case Diary in Sathankulam P.S. Cr. No.312 of 2020 to Mr. Anil Kumar, D.S.P., immediately.
- (c) The learned Judicial Magistrate No.1, Kovilpatti, on completion of his enquiry, shall furnish the original report to Mr. Anil Kumar, D.S.P., and forward a copy of it in a sealed cover to this Court.

13 Today, we handed over to Mr. Praveen Kumar Abinapu, I.P.S., a copy of the report dated 29.06.2020 of the learned Judicial Magistrate No.1, Kovilpatti and the preliminary post-mortem reports of Jayaraj and Bennicks that were received by us yesterday, in partial modification of paragraph no.4(i) of our order dated

29.06.2020 and he is directed to hand over the same to Mr. Anil Kumar, D.S.P. We also direct the learned Judicial Magistrate No.I, Kovilpatti, to hand over the original statement of Revathy, Head Constable, Sathankulam Police Station, to Mr. Anil Kumar, D.S.P. after retaining a copy of it on his file.

14 In our opinion, the ante-mortem injuries found on the bodies of the deceased, coupled with the averments in the report of the learned Judicial Magistrate No.1, Kovilpatti, especially the statement of Revathy, Head Constable, would be *prima facie* enough to alter the case to one under Section 302 IPC against the Sathankulam policemen who were actively involved in the investigation of the case in Cr.No.312 of 2020. In this regard, it would be in the interests of justice to have the statement of Revathy, Head Constable, recorded under Section 164 Cr.P.C. by a Judicial Magistrate, other than the Judicial Magistrate No.1, Kovilpatti and Judicial Magistrate, Sathankulam. Meanwhile, the District Collector, Tuticorin, shall immediately ensure the safety of Revathy and her family members. She may even be granted leave from duty as we fear that there will be attempt to intimidate her and make her resile from her version given to the learned Judicial Magistrate No.I, Kovilpatti.

15 One may wonder as to why it took this long for this Court to make the above observations. Public indignation cannot be the barometer for judicial orders. Public memory is short, but, judicial orders, especially those of the High Court, which is a Court of record, live for ever. Pontius Pilate, the Roman Governor committed the blunder of condemning Jesus Christ to death based on public outcry in a sham trial that was held before dawn and thereafter, washed his hands off with water. We cannot afford to emulate him. Hitherto, in the absence of credible materials, we were handicapped and now that, we have at hand some *prima facie* incriminatory materials, we decided to fill the gap via our above observations.

16 We fervently hope that Mr. Anil Kumar, D.S.P., will have before his mind's eye, the river of tears flowing from the eyes of the family of the two deceased and take up the investigation of the case in all earnestness for wiping their tears. He should also bear in mind that we are closely monitoring the case.

17 It is always open to the State Government to revisit the idea of entrusting the matter to the C.B.I., if it is satisfied that Mr. Anil Kumar, D.S.P. is proceeding on the right lines.

18 We place on record our appreciation to the District
<http://www.judis.nic.in>

Collector, Tuticorin, for deploying senior Revenue officers in the Sathankulam Police Station in compliance with our yesterday's order.

Post on 02.07.2020 (Thursday).

sd/-
30/06/2020

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/ /2020

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRINCIPAL DISTRICT JUDGE, TUTICORIN.
- 2 THE JUDICIAL MAGISTRATE No.1, KOVILPATTI.
- 3 THE JUDICIAL MAGISTRATE,
SATHANKULAM, TUTICORIN DISTRICT.
- 4 THE CHIEF JUDICIAL MAGISTRATE,
TUTICORIN.
- 5 THE CENTRAL BUREAU OF INVESTIGATION, MADURAI.
- 6 THE CHIEF SECRETARY,
GOVERNMENT OF TAMIL NADU,
SECRETARIAT, FORT ST. GEORGE,
CHENNAI 600 009.
- 7 THE DISTRICT COLLECTOR, TUTICORIN.
- 8 THE DIRECTOR GENERAL OF POLICE,
CHENNAI 600 004.
- 9 THE INSPECTOR GENERAL OF POLICE,
SOUTH ZONE, MADURAI.
- 10 Mr.PRAVEEN KUMAR ABINAPU, I.P.S.,
D.I.G., TIRUNELVELI RANGE.
- 11 Mr.ANIL KUMAR,
DEPUTY SUPERINTEDENT OF POLCIE,
CB-CID, TIRUNELVELI.
- 12 THE SUPERINTENDENT OF POLICE,
THOOTHUKUDI DISTRICT,
THOOTHUKUDI.

- 13 THE SUPERINTENDENT,
KOVILPATTI SUB JAIL,
KOVILPATTI,
THOOTHUKUDI DISTRICT.
- 14 THE DEPUTY SUPERINTEDENT OF POLICE,
KOVILPATTI RANGE.
- 15 THE DIRECTOR,
TAMIL NADU FORENSIC SCIENCES LABORATORY,
KAMARAJ SALAI, CHENNAI 600 004
- 16 THE ASSISTANT DIRECTOR OF
MOBILE FORENSIC SCIENCE LABORATORY,
DISTRICT POLICE OFFICE COMPLEX, TUTICORIN.
- 17 THE DEPUTY DIRECTOR,
REGIONAL FORENSIC SCIENCE LABORATORY,
NEAR TIRUNELVELI DISTRICT COURT CAMPUS,
TIRUNELVELI.
- 18 THE DEAN
MEDICAL COLLEGE HOSPITAL,
HIGH GROUND, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.
- 19 THE INSPECTOR OF POLICE,
SATHANKULAM POLICE STATION,
THOOTHUKUDI DISTRICT.
- 20 THE INSPECTOR OF POLICE,
KOVILPATTI EAST POLICE STATION,
KOVILPATTI.

COPY TO:

- 1 THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (3 COPIES)
- 2 THE ADDITIONAL ADVOCATE GENERAL
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

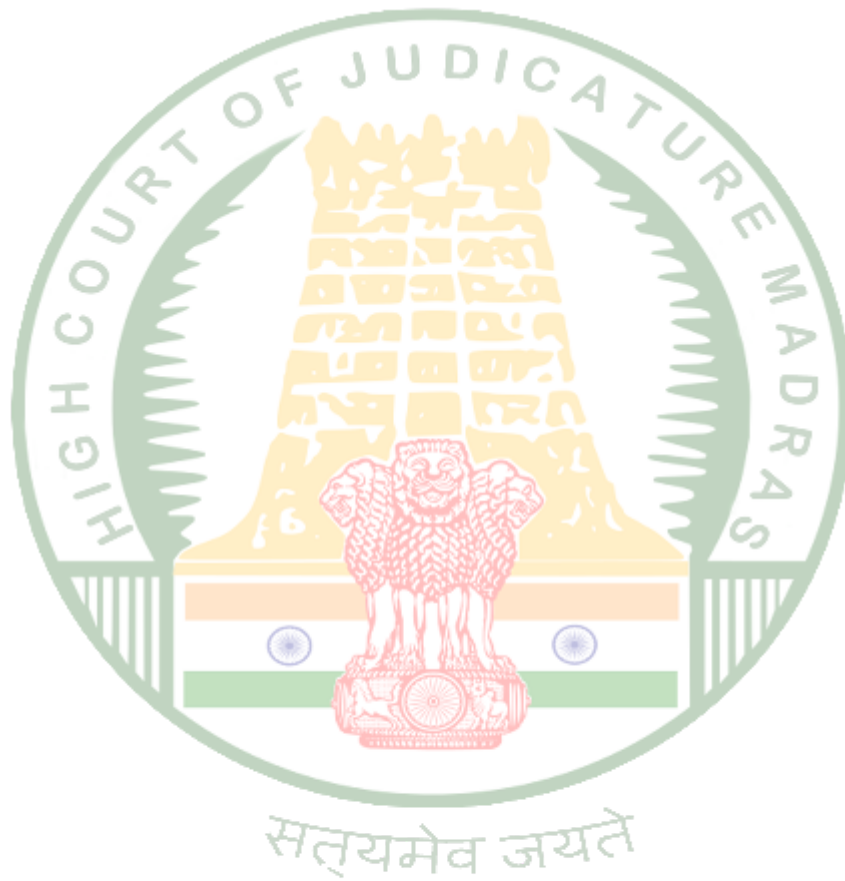
ORDER
IN

Suo Motu W.P. (MD) No.7042 of 2020
Date :30/06/2020

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TE/JC/SAR-III : 30/06/2020 : 8P/26C

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