

CRL OP(MD). No. 1896 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 28.08.2024

Delivered on: 27.09.2024

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The Hon`ble Mr. Justice D.BHARATHA CHAKRAVARTHY

CRL OP(MD). No.1896 of 2010

A. Guruvammal

... Petitioner

Vs.

1. The Commissioner of Police
Madurai City.

2. The Inspector of Police
Teppakulam Police Station, Madurai-9.

...

Respondents

PRAYER :- This Petition is filed under Section 482 Cr. P.C, to give a direction to the 2nd respondent to register the First Information Report (FIR) against the police personnel involved in the alleged encounter on 16.02.2010 on the basis of the complaint given by the petitioner to the 2nd respondent on the same day in C.S.R.No.102/2010 and direct the respondents to entrust the investigation to an independent investigation agency like CBI.

For Petitioner: Mr. Henri Tiphagne
for M/s.D.Geetha

For Respondents: Mr.Veera Kathiravan,



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Additional Advocate General, assisted by
Mr.R.M.Anbunithi, Additional Public Prosecutor

ORDER

A.The Petition:

This Criminal Original Petition is filed for a direction to the second respondent, namely, Inspector of Police, Theppakulam Police Station, Madurai, to register the First Information Report against the police personnel involved in the alleged encounter on 16.02.2010 based on the complaint given by the petitioner to the second respondent on the same day in C.S.R.No.102 of 2010 and direct the respondents to entrust the investigation to an independent investigation agency, like CBI and for other orders.

B. The Case of the Petitioner:

2. The case of the petitioner is that in the wee hours, on 14.02.2010, six policemen, in plain clothes, entered her house enquiring about the whereabouts of her son – Murugan @ Kallumandaiyan, aged 26 years. They took her, one Mani, her daughter Dhanalakshmi, her son-in-law Arulanandam @ Selvam, and her grandson Kalaivendan, in a

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police vehicle to the office of the Assistant Commissioner of Police, Crime Branch and they were assaulted and tortured. Later they took all of them to Thimmapuram Village, near Kariapatti and kept them in a van in a place called “Pirakaraikadu” and abused and beat them till 10.00 O' clock in the morning. Upon information, her son Murugan @ Kallumandaiyan surrendered himself before the police party and they took him in their custody. After that, all the others, including the petitioner was dropped at the South Gate Police Station, after getting their signatures in some papers.

2.1 On 16.02.2010, around 12.30 noon, the special police party under the leadership of the Assistant Commissioner, viz., Mr.Velladurai shot and killed her son Kallumandaiyan and another person namely Kaviarasu, near check post in new Ramanathapuram road within the limits of Theppakulam Police Station and the Theppakulam Police filed a First Information Report in Crime No.244 of 2010 for the offences under Sections 332, 324, 307 I.P.C r/w. Section 174 Cr. P.C, concerning the death of the above two persons. Upon hearing that the police killed her son in a fake encounter, the petitioner preferred a complaint before the

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second respondent to file a case under Section 302 I.P.C against the police party, involved in the said crime. However, the complaint was refused to be received. On 17.02.2010 even when post post-mortem was conducted, the petitioner insisted on registration of F.I.R. However, only C.S.R No.102/2010 alone was issued to the petitioner. According to the petitioner, one Mr Velladurai - Assistant Superintendent of Police, Madurai City, Mr Thennarasu, Sub Inspector of Police, and Mr Ganesan, Head Constable, are involved in the fake encounter. She sent several representations, including the representation to the State Human Rights Commission. Since no independent First Information Report was registered and the procedure as laid down by the National Human Resource Commission and the various guidelines as mandated by the Hon'ble Supreme Court in various decisions are not followed, the present petition is filed.

C. The Version of the Officer Concerned:

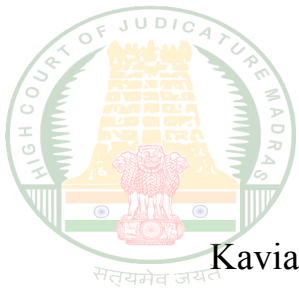
3. The first information report is registered on complaint by the Police Officer concerned. This apart, an additional typed set of papers is also filed, wherein, the counter affidavit filed by the said S.Velladurai, in



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a connected Crl. O.P.(MD)No.2078 of 2010 is also produced. As per the first information report as well as the above counter affidavit, it is the case of the said Mr. Velladurai that on the fateful day, ie.16.02.2010 at about 12.15 hours, he was in the vehicle checkup, in the usual course and at that time, two persons came from East to Madurai in a Hero Honda bike, the Sub Inspector of Police - Mr Thennarasu along with 617- Head Constable – Mr Ganesan intercepted the Hero Honda bike, which came towards Madurai. The rider of the above bike lost his control and slipped down on the spot of the check post. The Sub Inspector of Police – Mr Thennarasu came to know that the slipped persons were the most wanted criminals, namely, Kaviarasu @ Kaviarasan and Murugan @ Kallumandaiyan try to catch hold of the accused persons. The above said two accused persons threatened the police and the said Kaviarasu @ Kaviarasan attacked the Sub Inspector of Police with Aruval. Accordingly, the Sub Inspector of Police fell down with injuries. Mr Velladurai heard the sounds and tried to safeguard the Sub Inspector of Police. The said Kaviarasu @ Kaviarasan, tried to attack him with Aruval. Therefore, to save his own life and that of the Sub Inspector of Police, he was forced to take the gun out and made a warning to the said

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Kaviarasu @ Kaviarasan. But, he never heeded. Therefore, to save himself and the policemen, he opened two rounds of fire against Kaviarasu @ Kaviarasan and the accused fell down.

3.1 By that time, Murugan @ Kallumandaiyan, who also came along with Kaviarasu @ Kaviarasan attacked Head Constable – Ganesan with a knife and caused injuries. Again, Mr.Velladurai made another warning to the said Murugan @ Kallumandaiyan, not to attack the police. Suddenly, he turned against Velladurai and tried to attack him. To save his own life and that of the other policemen, he wielded his gun and warned Murugan @ Kallumandaiyan to stop the attack. But, there was no response. He tried to attack Velladurai with a knife and therefore, to defend himself, Mr.Velladurai opened two rounds of fire against Murugan @ Kallumandaiyan. Immediately after the occurrence, he conveyed the message to the Superior officers and tried to save the life of the police party as well as the said two persons. He could save his life and save the policemen. The above two accused persons could not be saved. Thereafter he lodged a complaint against the said accused before the B3 Theppakulam Police Station, at about 13.30 hours and the case

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was registered in Crime No.244 of 2010 for the offences under Sections 323, 324, 307 I.P.C and 174 Cr.P.C. The details of the various criminal cases against the said two persons are also mentioned in the said counter affidavit.

D. The Counter of the Respondent:

4. The present Criminal Original Petition is resisted by the common counter affidavit on behalf of the Inspector of Police OCU-CBCID, Madurai City. According to her, according to the above said incident, the case in Crime No.244 of 2010 was registered on the complaint of the Assistant Commissioner- Velladurai. On the same day, the petitioner – Guruvammal- mother of the deceased Murugan @ Kallumandaiyan gave a complaint before the Theppakulam Police, Madurai City and C.S.R.No.102/2010 was registered. The CSR was kept pending for the orders of this Court in the present petition. Under the registration of the above Crime No. 244 of 2010, the Revenue Divisional Officer also conducted an inquiry on 12.04.2010. The report of the Revenue Divisional Officer shows that the fire was opened only as self-

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defence to save his life and not as a revenge action to eradicate the rowdies. As per the report of the Revenue Divisional Officer, the District Collector submitted a report to the Government on 08.06.2010. The Government after going through the report of the Collector, raised three queries (i) as to why the said Murugan @ Kallumandaiyan was tortured by the police and the same was not corroborated by other witnesses; (ii) why the Assistant Commissioner – Velladurai choose to fire them on chest, instead of, firing them other parts of the body and catch them alive, since they involved in number of criminal cases; (iii) the injuries and medical documents of the Sub Inspector of Police and Head Constable does not match with the version and therefore, for the above said remarks and in view of the controversial findings, the case was transferred to the CBCID for thorough investigation. The Government of Tamil Nadu passed G.O.(Ms.)No.228, dated 21.03.2017 based on which the Director General of Police, Tamil Nadu, through his letter dated 13.04.2017 passed orders. According to the orders of the Director General of Police, the case was handed over to the CBCID on 07.12.2017 and 09.12.2017, the case was re-registered in Crime No.9 of 2017 and was investigated.



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4.1 The investigating officer during the investigation, examined the injured police personnel and visited the scene of occurrence. An observation mahazar was prepared and the rough sketch was drawn up. All the witnesses including the officers and their men were examined. The family members of the deceased Murugan @ Kallumandaiyan and Kaviarasu @ Kaviarasan were examined. 14 eyewitnesses to this case and medical officers who have given treatment to the injured police officers and the medical officer, who conducted post mortem, were all examined. The stolen vehicle, which was used by the deceased person was recovered. Its owner Manoj was examined and the Inspector of Police, Theppakulam Police Station, was also examined. After a detailed investigation, the investigating officer found that it was not a fake encounter and the Assistant Commissioner – Mr.Velladurai opened fire to save the lives of two police personnel and also in self-defense to save himself from the brutal attack of the deceased persons. The family members of the said deceased persons were not tortured by the police. The allegations made are willful and false. All the guidelines issued by the National Human Resource Commission have been followed in this case. A final report has been filed before the Judicial Magistrate No.IV,

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Madurai, on 28.02.2019.

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4.2 It is further mentioned that the deceased Kaviarasu @ Kaviarasan had 75 cases against him and Murugan @ Kallumandaiyan had 25 cases against him. Both are History Sheetters. The Government has also accepted the CBCID report and decided to drop further action in this case, as per the letter of the Chief Secretary to the Government, Chennai, dated 20.08.2019, in Lr. No.2907/L&O-E/2017-B. In the above circumstances, the petitioner – Guruvammal, had also filed a protest petition before the Judicial Magistrate No.IV, Madurai, in Cr.M.P.No.69 of 2022 and the petition in Cr.M.P.No.69 of 2022 is pending for enquiry. As a matter of fact, in the year 2022, it was posted for judgment, but, however is pending till date.

E. The Arguments:

5. Heard Mr.Henri Tiphagne, learned counsel appearing on behalf of the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General appearing on behalf of the respondents.

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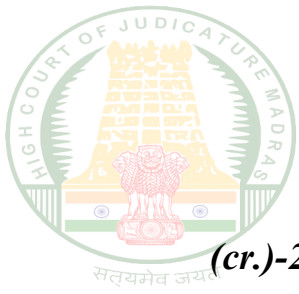
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5.1 Mr Henri Tiphagne, learned counsel appearing on behalf of the petitioner filed a detailed comprehensive typedset of papers containing the subsequent enquiry and the evidence before the State Human Rights Commission, would submit that after a detailed enquiry, which included examination and cross-examination of witnesses, the State Human Rights Commission has given a categorical finding that the version of the police that fire was opened as self-defence is not correct and it has categorically come to the conclusion that the incident is a fake encounter. Compensation ordered by the State Human Rights Commission is also sanctioned and paid by the Government vide G.O.(D.)No.258, Home (Police-HR) Department, dated 06.03.2023.

5.2 He would also submit that whenever an incident of encounter happened as per the directions of the Hon'ble Supreme Court in the case of *People's Union for Civil Liberties V. State of Maharashtra (2014-10-SCC-635)*, an independent F.I.R should be registered and the entire incident has to be thoroughly investigated. This Court, in the case of *R.Kasthuri V. State by the District Collector (2015-1-MWN*

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(cr.)-290), has categorically held that whenever a person is taken to custody and alleged to have been tortured or done to death, the enquiry has to be conducted by the Judicial Magistrate, as per Section 176(1-A) of the Code of Criminal Procedure and the inquiry by the Executive Magistrate is illegal. In this case, the Judicial Magistrate enquiry was not done. When the case was pending, mechanically a report was filed only to safeguard the police personnel. He would rely upon the judgment of the Delhi High Court in the case of *Jaspal Singh Gosain V. CBI* reported in *2018-SCC-Online Del-6988*, whereunder, the entire law relating to fake encounters has been dealt with. He would further rely upon yet another Judgment of the Delhi High Court in *State of NCT of Delhi -Vs – Puran Singh(Crl.M.C. 2183 of 2020 etc.,)* to contend that this Court should direct registration of an independent case against the Police Officers involved in and conduct a thorough investigation.

5.3 Per contra, *Mr. Veera Kathiravan*, learned Additional Advocate General, appearing on behalf of the respondent police would submit that now, 14 years have lapsed, since the incident. The Government has

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ordered only payment of compensation. However, regarding the other findings of the State Human Rights Commission, the matter is pending before this Court in the Writ Petition filed by the independent police officers and the orders stand stayed. The findings of the Human Rights Commission cannot be taken into account by this Court. As far as the occurrence is concerned, an independent First Information Report is lodged and Crime No.244 of 2010 was independently investigated by the CBCID and final report was duly filed. The petitioner, being aggrieved, has already filed a protest petition before the Judicial Magistrate and the same is pending. The petitioner can very well pursue the same.

5.4 The said deceased persons were never in the custody of the police. They accidentally came into the face of the police party during the usual vehicle check and therefore, in the facts and circumstances of the case, 176(1-A) Cr. P.C does not apply and the enquiry of the Judicial Magistrate is not warranted. The enquiry of the Revenue Divisional Officer / Executive Magistrate is duly conducted. The report also categorically states that the fire was opened only in self-defence. It can be seen that the said two persons threatened and attacked the police



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officials. They were dangerous criminals having several criminal cases to their credit. Therefore, there is nothing in this case to be interfered with by this Court.

F. The Discussion & Findings:

6. I have considered the rival submissions made and perused the material records of the case.

6.1 At the outset, the law relating to the encounter death of the victim in the hands of the police officers has been laid down in detail by the Hon'ble Supreme Court of India in the *People's Union for Civil Liberties case* (cited *supra*). The Hon'ble Supreme Court of India first considered that the police in India had to perform a difficult and delicate task, particularly, when many hard-core criminals, like, extremists, terrorists, drug peddlers, and smugglers who have organized gangs, have taken strong roots in the society, but then such criminals must be dealt with by the police efficiently and effectively to bring them to justice by following rule of law. The Hon'ble Supreme Court thereafter considered



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Sections 174 to 176 of the Code of Criminal Procedure and Article 21 of the Constitution of India, the Universal Declaration of Human Rights, the United Nations Code of Conduct for Law Enforcement Officers and Minnesota Protocol and finally in paragraph No.31 detailed directions were issued concerning such incidents and if and when any death happens, the procedure to be followed. From the directions given, it is clear that an individual First Information Report has to be lodged and the case has to be investigated. In this case, it can be seen that an F.I.R. was lodged in Crime No.244 of 2010. It can be seen that the case was registered based on the information of the officer himself, namely, Velladurai. It can be seen that the officer had given the information on 16.02.2010 at about 03.30 pm and on that basis, the First Information Report was registered.

6.2 The petitioner lodged a complaint with reference to the same incident. From the General Diary Entry, it can be seen that the petitioner / Guruvammal lodged a complaint on the same day at about 23.00 hours and the petitioner was directed to participate in the Revenue Divisional Officer enquiry on the next day. Thus, when the Revenue Divisional

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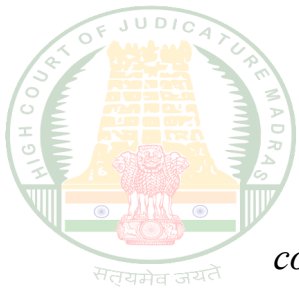


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Officer's enquiry commenced on 07.02.2010, both versions, (i) of the said Velladurai claimed that the deceased by chance came riding a two-wheeler to the vehicle checking spot and that they attempted to attack the police officials and that the fire was opened as a self-defence and; (ii) the version of the petitioner – Guruvammal that the family members of the deceased were taken into illegal custody and the deceased was made to surrender and after taking the deceased into custody, he was simply taken to the spot and killed by the respondent police.

6.3 The petitioner – Guruvammal's complaint is not a second/subsequent information of the same occurrence, but a rival version of the same incident. It is in the nature of a counter case. Recently, after considering the relevant decisions, a full bench of this Court speaking through Hon'ble Justice N. Anand Venkatesh, in ***T. Balaji & another -Vs- The State & another (Crl.O.P. No. 4587 of 2022 etc.)*** had encapsulated in paragraph 14 as to the meaning of a 'case and counter' and it reads as follows :

“14. From the above, it is discernible that a case and



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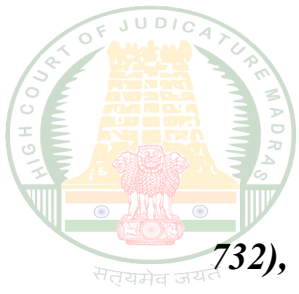
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counter case are (i) rival versions (ii) of the same incident/transaction (iii) one of which must be necessarily false.”

6.4 The full bench considered the issue with reference to impartial investigation and following of PSO 566, also clarified and summarized the procedure to be followed in such cases in paragraph 58 and the relevant portion in paragraph 58A(i) reads as follows :

“I. There is no legal bar in registering two FIR’s in a case and counter case arising out of rival versions of the same incident. Where rival versions are preferred an FIR may be registered for the rival complaints and the investigation officer is required to thoroughly investigate both rival versions keeping in mind PSO 566 which reads as follows...”

6.5 This question was dealt with in detail by the Hon’ble Supreme Court of India in ***Babubhai -Vs- State of Gujarat(2010 12 SCC 254)***, wherein, the Hon’ble Supreme Court had considered the relevant decisions in ***Ramlal Narang -Vs- Om Prakash Narang (AIR1979 SC 1791)***, ***T.T. Antony -Vs- State of Kerala and others (2001 6 SCC 181)***, ***Upkar Singh -Vs- Ved Prakash & Ors (2004 13 SCC 292)***, ***Rameshchandra Nandlal Parikh -Vs- State of Gujarat (2006 1 SCC***



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732), *Nirmal Singh Kahlon -Vs- State of Punjab and Others (2009 1*

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SCC 441) and encapsulated the law on the subject that when second or successive FIRs cannot be lodged on subsequent information, it can be lodged when the subsequent information is a rival version/counter case.

6.6 Even without the registration of the FIR, when both versions were there before the police and when the allegation in the version of the petitioner is that the encounter happened while the deceased was in the custody of the police, then the investigating officer, Inspector of Police, Theppakulam Police Station, ought to have made a due request to the Judicial Magistrate to conduct an enquiry. Because at the relevant point in time, the respondent police could not have and cannot conclude that the version of officer Mr. Velladurai was correct and that the version of the petitioner – Guruvammal was false. In such a situation, the mandate of law under Section 176(1-A) Cr. P.C, is to conduct an enquiry only by the Judicial Magistrate.

6.7 This Court had dealt with the issue in detail in *R.Kasthuri V. State* (cited *supra*), whereunder, this Court speaking through Hon'ble Justice S. Nagamuthu, had taken into consideration, the amending Act 25



of 2005 wherein Section 176(1-A) Cr. P.C was amended and it is essential to extract Paragraph No.34, which reads as follows:

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“34. Then, What next? Often, this question as to what the Magistrate should do on completing the inquiry comes up for debate. The answer is very simple. The Judicial / Metropolitan Magistrate, after completing the inquiry, shall keep the record on his file along with the FIR and the other documents submitted by the police. But, the Magistrate shall furnish copies of the statements and other documents collected by him to the investigating officer as soon as the inquiry is over. The police officer shall not stop the investigation even for a moment after the registration of the FIR and he shall continue to conduct investigation swiftly and thoroughly. On receipt of the copies of the records from the Judicial / Metropolitan Magistrate relating to the inquiry under sub-section (1A) of Section 176 of the Code, the investigating officer shall use the same for his further investigation. This is like a Dying Declaration; Confession recorded under section 164 of the Code; Statements of Witnesses recorded under Section 164 of the Code and report of Test Identification Parade conducted by a Magistrate. Indisputably, the functions of the Magistrate viz., recording dying



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declaration, confession under section 164 of the Code, statements of the witnesses under Section 164 of the Code and conducting test identification parade do not form part of investigation and they do not in any manner impair the investigation. Like, the documents viz., dying declaration, confession and statements under 164 of the Code, report on test identification parade that are kept along with the case records and copies are furnished to the police for taking forward the investigation in the right direction, the record of the proceeding under sub-section (1A) of the Code conducted by a Judicial/Metropolitan Magistrate shall also be kept as part and parcel of the case records. On completing the investigation, when police report is submitted under section 173 of the Code, the learned Judicial/ Metropolitan Magistrate shall act according to Section 190 of the Code. For any reason if the accused is summoned, he shall be entitled for copies of the record of the proceedings under Section 176(1A) of the Code, as provided under Section 207 of the Code. This is irrespective of the fact whether the prosecution relies on such documents or not. As has been held by the Hon'ble Supreme Court in V.K.Sasikala v. State rep. by Superintendent of Police, 2012 (9) SCC 771 furnishing copies of the said record to the accused is in tune with the fair trial to be afforded to the accused under Article 21 of



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the Constitution of India. It is needless to point out that the statements of the witnesses recorded during inquiry under sub-section (1A) of Section 176 of the Code could be used either for corroboration or for contradiction of the makers of the statements during trial.”

6.8 It is also essential to extract the conclusion paragraph No.39, which reads as follows:

“39. 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



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keep the statements of the witnesses, documents collected and the report drawn by him as part of case records.

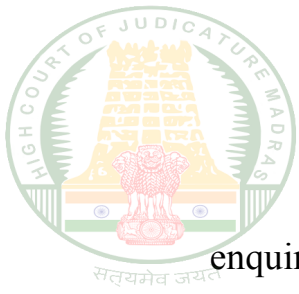
(6) The Judicial Magistrate / Metropolitan Magistrate shall furnish copies of the statements of the witnesses recorded during inquiry under Section 176(1A) of the Code , the documents collected and the report drawn by him to the investigating police officer without delay.

(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 and another v. State of Maharashtra and others, 2014 (11) Scale 119 , 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.”

6.9 Thus, in this case, because the information of the petitioner is treated as the second information and kept as a CSR, the conduct of



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enquiry through the Revenue Divisional Officer cannot be justified and the matter ought to have been reported to the jurisdictional Judicial Magistrate for conduct of an enquiry under Section 176(1-A) Cr.P.C.

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6.10 Further, the investigation was initially conducted by the Inspector of Police, Theppakulam Police Station. The same was not entrusted to an independent agency and very belatedly by G.O. dated 21/03/2017. Thereafter also, the investigation is completed only by an officer in the cadre of Inspector of Police, CBCID. Both officers were lower in rank than that of the officer against whom the investigation is done, namely, Velladurai, who at that time itself was an Assistant Commissioner of Police.

6.11 Therefore, for these inherent and basic flaws, the entire investigation conducted in Crime No.244 of 2010 and thereafter the re-registered Cr. No. 9 of 2017 and the consequential final report filed by the respondent is illegal and as such, has to be set aside. With the counter information given by the petitioner also on file in the said matter also a case has to be registered and an investigation afresh has to be

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commenced. There has to be an inquiry by the Judicial Magistrate and the investigation has to be conducted by an officer of the CBCID, who is above the rank of the said Mr. Velladurai, namely, in the cadre of Superintendent of Police or above.

6.12 An argument is made by the Additional Advocate General that there is a lapse of 14 years and therefore the petitioner should only be relegated to the protest petition pending. The delay or filing of a report and a protest petition cannot be reasons to sweep the above under the carpet and close the matter because:

(i) It can be seen that the delay was not on the part of the petitioner. She had lodged a complaint on the same day of occurrence and this Criminal Original Petition itself is of the year 2010. This was directed to be tagged along with the other connected writ petitions and finally separated and was pending and in the process, the delay had occurred.

(ii) Independently of the findings of the enquiry before the Human Rights Commission, it is argued before this Court that this particular officer alone is involved in ten(10) encounters. Thus, it has to be



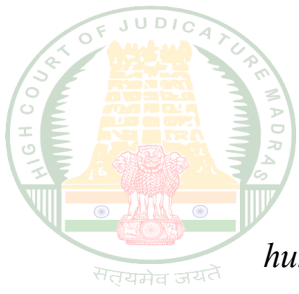
thoroughly investigated as to whether it so happened in respect of the same officer who had to repeatedly indulge in self-defence in this case also as against the accused who attacked the police party or whether he is a trigger-happy officer.

(iii) There is an important purpose for conducting a thorough investigation in such matters, which is the re-establishment of faith in the rule of law and ensuring that the incident is not a simple extra-constitutional killing or eradication of a criminal by shooting. It is relevant to extract paragraphs 16 and 17 of the Judgment of the Hon'ble Supreme Court in Peoples Union for Civil Liberties(Cited supra) which reads as follows:

*“16. Article 21 of the Constitution provides “21. **Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

This Court has stated time and again that Article 21 confers sacred and cherished right under the Constitution which cannot be violated, except according to procedure established by law. Article 21 guarantees personal liberty to every single person in the country which includes the right to live with human dignity.

17. In line with the guarantee provided by Article 21 and other provisions in the Constitution of India, a number of statutory provisions also seek to protect personal liberty, dignity and basic



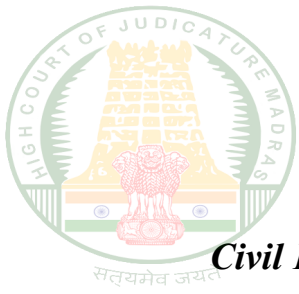
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human rights. In spite of constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, the cases of death in police encounters continue to occur. This Court has been confronted with encounter cases from time to time. In Chaitanya Kalbagh [Chaitanya Kalbaghv.State of U.P., (1989) 2 SCC 314 : 1989 SCC (Cri) 363] , this Court was concerned with a writ petition filed under Article 32 of the Constitution wherein the impartial investigation was sought for the alleged killing of 299 persons in the police encounters. The Court observed that : (R.S. Sodhi case[R.S. Sodhiv.State of U.P., 1994 Supp (1) SCC 143 : 1994 SCC (Cri) 248] , SCC p. 144, para 1)

“1. ... in the facts and circumstances presented before it there was an imperative need of ensuring that the guardians of law and order do in fact observe the code of discipline expected of them and that they function strictly as the protectors of innocent citizens.”

(iv) The directions issued by the Hon'ble Supreme Court of India in the *Peoples Union for Civil Liberties* case have been once again reiterated and expressly directed to be followed as the law of the land as per Article 141 of the Constitution of India, in the Judgment rendered in ***Andhra Pradesh Police Officers Association -Vs- Andhra Pradesh***



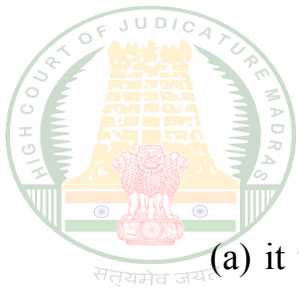
CRL OP(MD). No. 1896 of 2010

Civil Liberties Committee and others (2022 16 SCC 514). The specific

directions that are contained in Paragraph 31.3 for the conduct of investigation by a higher officer of an independent agency and in Paragraph 31.4 to conduct a magisterial inquiry stand violated in this case.

6.13 Before proceeding to the operative portion, it is with anguish, that this Court notices despite the State of Tamil Nadu being one of the better law-enforcing states and the Tamil Nadu Police being one of the better law-enforcing agencies, a disturbing trend of (i) increase in dangerous criminals trying to attack police party and then they are shot dead or injured; and (ii) increase in a strange way of accused trying to escape and falling and fracturing their hands, that is happening. **The immediate society affected by the particular offense committed by the accused starts applauding such killings without realizing that the same is a fundamental wrong and retrograde thinking.** The factual backgrounds that are mentioned in these instances are stereotypical. The same has to be taken seriously note of and thoroughly investigated because;

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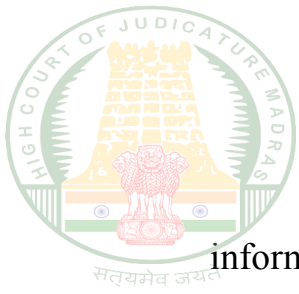
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- (a) it tends to point out the lack of faith of the law enforcing agency in the Rule of Law, Constitutional Rights and Protection, and the Criminal Justice System;
- (b) it reminisces the colonial past of the agency that was constituted by the British under the Indian Police Act, 1861 and is an affront on democracy;
- (c) the means shall be as legal as the end;
- (d) the belief that instant death is an appropriate punishment and it has a deterrent effect are only myths and not the truth.

G. The Result:

7. In view thereof, this Criminal Original Petition stands allowed on the following terms:

- (i) The final report filed by the respondent police in Crime No.244 of 2010 and re-registered in Crime No.19 of 2017 shall stand set aside;
- (ii) The Director General of Police is directed to depute a higher ranking official in the CBCID, who is above the rank of Mr.Velladurai to investigate the case;
- (iii) The investigating officer shall also registered a case on the



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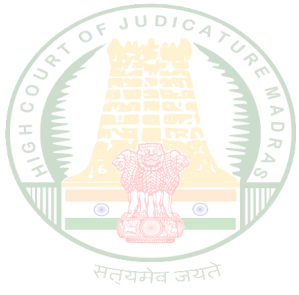
information lodged by the petitioner in C.S.R. No. 102/2010 and take up investigation of both cases together;

(iv) The investigating officer shall file a copy of this order before the jurisdictional Judicial Magistrate, to conduct an enquiry as per Section 176(1-A) of the Code of Criminal Procedure and the same shall be duly conducted as per law;

(iv) Simultaneously, the fresh investigation shall be carried on as expeditiously as possible and shall be completed within six months from the date of receipt of a copy of this order and the final report be filed after a thorough and impartial investigation.

27.09.2024

Internet : Yes
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D.BHARATHA CHAKRAVARTHY,J

LS

To

1. The Commissioner of Police
Madurai City.
2. The Inspector of Police
Teppakulam Police Station,
Madurai-9.
3. The Director General of Police,

Chennai.
4. The Additional Public Prosecutor,

Madurai Bench of Madras High Court,

Madurai.

Pre-Delivery Order Made
in CRL OP(MD). No.1896 of 2010

Date : 27.09.2024

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