

W.P.(MD)No.5259 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.08.2023

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THE HON'BLE MR.JUSTICE P.DHANABAL

W.P.(MD)No.5259 of 2021

M.Jeya

... Petitioner

Vs.

- 1.The Principal Secretary
Home Department
Government of Tamil Nadu,
Secretariat,
Chennai-600 009
2. The Principal Secretary
Public Department
Government of Tamil Nadu
Secretariat,
Chennai-600 009
3. The Director General of Police
Director General of Police Office
Mylapore, Dr.Radhakrishnan Salai
Chennai – 600 004.
4. The Additional Director General of Police
Crime Branch Crime Investigation Department(CBCID)
No. 220 Pantheon Road
Egmore, Chennai-600 008.
5. The Commissioner of Police
Commissioner of Police Office
Madurai City
Madurai- 625 002



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6. The Inspector of Police
S.S.Colony Police Station
Madurai City
Madurai- 625 001

7. The District Collector
Collector Officer
Madurai- 625 020.

8. The Tahsildhar
South Taluk Office
Madurai District

9. The Superintendent of Police
South Zone
Crime Branch Crime Investigation Department(CBCID)
No.220, Pantheon Road,
Egmore,Chennai 600 008

10. The Deputy Superintendent of Police
Crime Branch Crime Investigation Department(CBCID)
No.7, Kamarajar First Street
Chinna Chokkikulam
Madurai- 625 002

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to pay a just and reasonable compensation for a sum of Rs. 50,00,000/-(Fifty lakhs Rupees) and to grant a government job to the petitioner's family for the death of deceased Muthu Karthick who died due to police custodial torture.

For Petitioner : Mr.R.Karunanithi

For Respondents : Mr.R.M.Anbunithi,
Additional Public Prosecutor



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ORDER

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This writ petition has been filed to direct the respondents to pay a just and reasonable compensation for a sum of Rs.50,00,000/-(Rupees Fifty lakhs) and to grant a government job to the petitioner's family for the death of deceased Muthu Karthick who died due to police custodial torture.

2.According to the petitioner, she is the mother of the deceased namely Muthu Karthick. At the time of occurrence her son was 17 years old. The said deceased(Muthu Karthick) was working as cleaner in earth mover vehicle. Earlier on 03.01.2019 one Kalyanasundaram gave a complaint alleging that some jewels were stolen from his house. In this connection the police officers attached to the S.S.Colony Police Station have enquired about the theft and thereafter the police came to their area on 01.07.2019 at about 11.30 a.m.,and directed some persons for attending enquiry. Based on the police instructions on 07.01.2019 at about 7.00 pm., the petitioner and her son/Muthu Karthick along with others appeared before the Inspector of Police attached to S.S.Colony Police Station and the Inspector interrogated them. Thereafter on 08.01.2019 at about 07.00 am., the petitioner's son went to Panthalkudi with regard to his work at Ramco Cement Manufacturing factory.



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Thereafter on 13.01.2019 at 01.00 pm., the Inspector of Police attached

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to S.S Colony Police Station, Sub Inspector Satheesh and Police Ravi entered into the house of the petitioner without informing anything and searched for thefted articles in Almirah, suit case and other places at their house. After knowing that the said missing jewels were not in the house they left. Thereafter the petitioner's son cell number was not reached after 13.01.2019 evening onwards. Thereafter the husband of the petitioner rushed towards Panthalkudi area on 15.01.2019 to trace out his son since his cell phone was switched off. In the meantime , on 15.01.2019 at about 10.00 p.m., the petitioner's son called her and he could not speak , therefore the petitioner learnt that her son was under some persons illegal custody. Thereafter on 16.01.2019 at about 3.00 pm., a phone call was received from her son and insisted her to bring Identity cards, School certificates and other proof urgently. Therefore she went to the police Station there the Sub Inspector of Police Satheesh and Inspector of Police have obtained her signature in blank white paper and thereafter the police have taken her Son on the same day at about 6.30 pm., to the Government Rajaji Hospital, Madurai.

3. Thereafter at about 7.30 p.m., he was produced before the learned Judicial Magistrate No.III, Madurai for remand. At that time the learned Magistrate has informed the police to produce her Son on



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18.01.2019 before the Juvenile Justice Board. Thereafter only the

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petitioner came to know that Crime No.24 of 2019 for the offences under Section 387 and 506(ii) of IPC was registered against her son. On the same day at about 9.00 pm., when they reached home along with their son he could not open his mouth and was struggling to speak and even struggling for normal breathing. Immediately they have taken him to Vijayaraj Speciality Hospital for treatment and the doctor advised them to admit in the hospital since he sustained multiple injuries and was having severe fever. At that time her son told that one Inspector of Police, Sub Inspector of Police Satheesh and one Ravi and another one police Ravi had taken him and they assaulted and thereby he sustained injuries. Further her son was under illegal custody from 13.01.2019 to 16.01.2019 and the doctor in the Vijayaraj Speciality Hospital informed her that her son's kidney was damaged, therefore her son was shifted to Government Rajaji Hospital, Madurai for further treatment . Thereafter on 18.01.2019 at about 3.00 pm., she went to the Juvenile Justice Board, Madurai and gave a written complaint and the learned Magistrate has enquired all the incidents. The son of the petitioner was admitted as inpatient in the Government Rajaji Hospital, Madurai from 18.01.2019 to 24.01.2019. Thereafter on 24.01.2019 at about 10.00 am., he died in the hospital.



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4. Thereafter the petitioner filed a Writ Petition before this Court in W.P(MD) No.5143 of 2019 seeking direction to take action based on her complaint and further prayed to entrust the investigation to CBCID. In view of the directions the case has been transferred. Thereafter the CBCID enquired the matter and filed final report against the police officials under Sections 343 and 304(ii) of IPC. Since the son of the petitioner died due to custodial torture and thereby the respondents are liable to pay compensation to the petitioner, hence, she has filed the present petition to award compensation.

5. The second and tenth respondent filed counter alleging that S.S. Colony Police Station have registered a case in Crime No.189 of 2019 for the offence under Section 174 of Cr.P.C for the death of the son of the petitioner and the complaint dated 24.01.2019 was registered in Community Service Register Number 53 of 2019 on 24.01.2019 at about 21.30 hrs. As per the direction of this Court on 26.03.2019 in W.P(MD) No.5143 of 2019 and as per the order of the Director General of Police, Crime Branch Crime Investigation Department, Chennai in RC.No.Crime-1(2)/187/004487/2019 dated 05.04.2019 and 10.04.2019, Tmt.S.Rajeswari, I.P.S the then Superintendent of Police, Special Units, Crime Branch Crime Investigation Department, Chennai-8 was



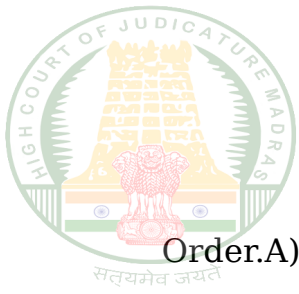
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nominated as an Investigating Officer in this case and on the same day

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she has taken the investigation of this case. Thereafter the said investigation was transferred from Crime Branch to one Thiru. C.Vijayakumar, I.P.S Superintendent of Police, Crime Branch Crime Investigation Department , South Zone, Chennai for continuing with the investigation.

6. On 24.01.2019 the petitioner preferred a complaint stating that there was suspicion on the death of her son and based on that complaint C.S.R. was issued. After completion of investigation by examining 114 witnesses, 117 documents and 12 material objects they filed final report for the offences under Sections 343 and 304(ii) of IPC and now it is pending trial. Since the case is pending before the Court, based on the out come of the trial process, further action could be taken. Further they filed additional counter stating that on 13.09.2021 this Hon'ble Court had directed to send correspondence with the Principal Secretary to Government with regard to the issuance of compensation by the then Additional Public Prosecutor. Accordingly the learned Additional Public Prosecutor, corresponded with the Principal Secretary to Government and the Secretariat to Government reiterated in letter No.1007/L&O-1 /2010-13 dated 13.12.2021 that the legal heir is entitled for compensation of Rs.5,00,000/- as per G.O.Ms.No.359, Public (Law and



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Order.A) Department dated 06.04.2015, financial assistance has been

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sanctioned to the victim. Further this Court had directed the District Collector, Madurai to disburse the compensation amount of Rs.5 lakhs to the petitioner within a period of four weeks. Thereafter the District Collector vide order dated 13.01.2022 had passed order to pay compensation of Rs.5,00,000/- to the petitioner and the petitioner also received the above said amount in a cheque bearing Number 066274 dated 20.01.2022, State Bank of India, CTO Complex Branch, Madurai on 20.01.2022.

7. The learned counsel for the petitioner would contend that the son of the petitioner was tortured by the police officials. They have beaten him, thereby he sustained injuries and he was admitted in the hospital and during treatment he died in the Government Rajaji Hospital, Madurai. Hence she filed a petition seeking compensation of Rs.50,00,000/-. Already First Information Report was registered in Crime No.189 of 2019 for the offence under Section 174 of Cr.P.C and thereafter the investigation was entrusted with the CBCID police and based on their investigation final report has been filed as against the police officials and now the case is pending. The petitioner's son died to the violence committed by the police officials and hence she has filed a petition for transfer of investigation from this agency to some other



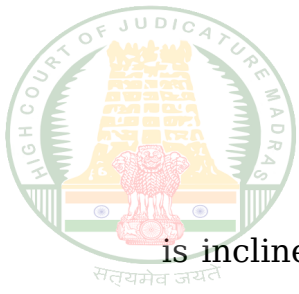
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investigating agency and the same was dismissed by this Court since

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already the investigation was entrusted to CBCID. The CBCID was also investigated the case and filed final report as against the police officials. Therefore, seeking compensation for the custodial torture of the petitioner's son the present petition has been filed. The learned counsel appearing for the petitioner also relied in the judgement of the Hon'ble Apex Court in the case of ***Sanjay Gupta and others .vs. State of Uttar Pradesh Through its Chief Secretary and Others*** reported in ***(2022) 7 SCC 203***.

8. The learned Additional Public Prosecutor appearing for the respondents would contend that already action has been taken against the police officials and criminal case is also pending as against the police officials and further the case was investigated by the CBCID Police and final report has also been filed against the erring officials in S.C.No.289 of 2021 and it is pending on the file of the learned V Additional District and Sessions Judge, Madurai. Further compensation of Rs. 5,00,000/- was awarded as per G.O.Ms.No.359, Public (Law and Order.A) Department dated 06.04.2015. Since compensation was also already paid to the petitioner and the sessions case is pending now it is not appropriate to award any compensation and hence, the petition is liable to be dismissed at this stage. He would further submit that, if this Court

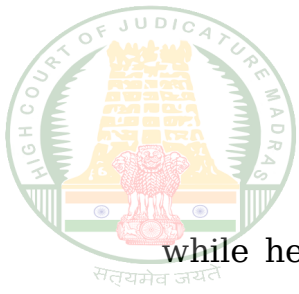


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is inclined to award compensation, the same may be recovered from the erring officials.

9. Heard both sides and perused the materials available in the record.

10. On perusal of the record, it is observed that the deceased is the son of the petitioner. The petitioner's son was taken into the custody by the police against the Crime No.24 of 2019 on the file of the S.S Colony Police Station. Thereafter, he was produced before the learned Judicial Magistrate No.III, Madurai and then as per the direction of the learned Magistrate he was produced before the Juvenile Justice Board and then she saw her son along with police and thereafter, the petitioner came to know that her son was assaulted all over the body by the respondent police and he sustained severe injuries. Immediately the son of the petitioner was admitted in a private hospital and then he was referred to Government Rajaji Hospital, Madurai where he died. Infact treatment was given to him from 18.01.2019 to 24.01.2019 and only on 24.01.2019 he died in the hospital. Thereafter First Information Report was registered under Section 174 of Cr.P.C and the same was enquired by CBCID police and final report was filed as against some of the erring officials. It prima facie establishes the fact that the deceased died only

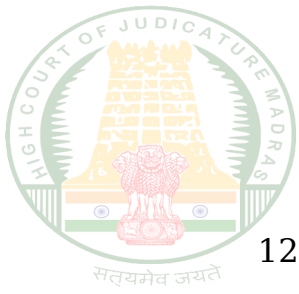


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while he was in custody of the police. Therefore, this Court can very

well invoke the jurisdiction under Article 226 of the Constitution of India to award compensation for the custodial torture by the police. It is pertinent to note here that the recovery of compensation now awarded from the erring officials shall be decided by the Court depending upon the result of the pending Criminal Case.

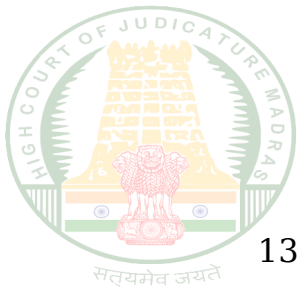
11. Coming to the quantum of compensation, according to the petitioner, her son was working as bockline cleaner and no any document was filed to prove the income of the deceased. However, for deciding the quantum, there is no formula for custodial death. Therefore, this Court safely follows the method adopted in MCOP cases. In this context the learned counsel appearing for the petitioner also relied the judgement in ***Sanjay Gupta and others .vs. State of Uttar Pradesh*** reported in **(2022) 7 SCC 203**, wherein the Hon'ble Supreme Court has held that violation of life and personal liberty, compensation to the victims to be computed in accordance with principles of just compensation as in the case of accident under the Motor Vehicles Act by the Motor Accident Claims Tribunal. It is admitted by both the parties that the son of the petitioner was minor aged about 17 years at the time of occurrence.



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12. According to the petitioner, the deceased was aged about 17 years and no specific earnings was mentioned by the petitioner. However, this Court can take Rs.15,000/- as monthly income of the deceased. According to the case of **Sarala Verma Vs. Delhi Transport Corporation**, the multiplier for the age group of 17 years is '18'. According to the case of **National Insurance Company Limited Vs. Pranay Sethi and others**, reported in **2017(2) TN MAC 609 (SC)**, the future prospects for the deceased can be fixed at 40%. Therefore, the income of the deceased can be calculating as follows:

- Monthly income of the deceased would come as Rs.21,000/- (Rs.15,000/- + Rs.6,000/- = Rs.21,000). Annual income of the deceased would come Rs.2,52,000/- (Rs.21,000/- x 12 = Rs.2,52,000/-).
- Considering the dependency of the deceased, 50% of the income of the deceased has to be deducted towards his personal expenses and thereby, the annual income of the deceased would come Rs.2,52,000/- (Rs.2,52,000/- - Rs.1,26,000/- = Rs.1,26,000/-)
- By applying the multiplier 18 for the age group of 26 years, the amount would come as Rs.1,26,000/- (Rs.1,26,000/- *18 = Rs.22,68,000/-).

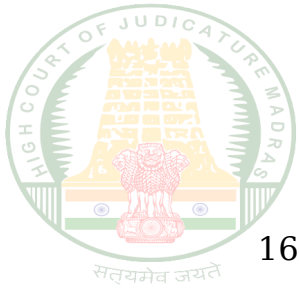


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13. Further, a sum of Rs.15,000/- is awarded for the loss of estate, towards funeral expenses a sum of Rs.15,000/- is awarded and thus a total sum of Rs.22,98,000/- which is rounded off to Rs.25,00,000/- is hereby awarded as compensation.

14. Further the mother and father of the deceased are entitled to get equal share towards compensation. They are also entitled to get interest at the rate of 6% per annum from the date of death of the deceased till the realisation of the amount. The respondents 1 to 6 are directed to pay a sum of Rs.25,00,000/- to the deceased family members, i.e., father and mother of the deceased, after proper identification, within a period of two months from the date of receipt of a copy of this order. The compensation amount already paid to the mother of the deceased by the Government shall be adjusted with her compensation amount. If any difficulties, the official respondents can take assistance of the District Legal Services Authority, Madurai District.

15. So far as recovery of amount from the erring officials is concerned, it is for the Government to decide the same since trial is pending and this Court cannot form any opinion with regard to the compensation to be recovered from the erring officials.



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16. The prayer for providing government job to the petitioner's family for the death of deceased Muthu Karthick is concerned, the petitioner cannot seek the government job as a matter of right and this Court also cannot pass any orders for considering Government job. It is for the first respondent to decide the same on merits.

17. With the above observations and directions, this writ petition is disposed of. No costs.

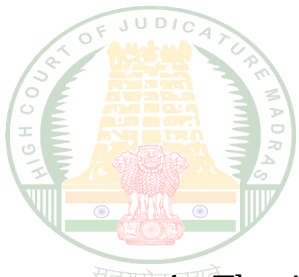
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Index :yes/No
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To

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