

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

Thursday, the Second day of July, 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 30.06.2020, this Court passes the following order:

2 Heard Mr. K. Chellapandian, learned Additional Advocate General for the State.

3 Mr. Anil Kumar, the Investigating Officer, appeared via video conferencing. He submitted that pursuant to our order dated 30.06.2020, he took over the investigation of the case and re-registered the two cases in East Kovilpatti P.S. Cr. Nos.649 and 650 of 2020 as CB-CID Cr. Nos.1 of 2020 (in respect of Bennicks) and 2 of 2020 (in respect of Jayaraj), both under Section 176(1)(1-A) Cr.P.C.; he examined 15 witnesses, based on which, he altered the cases to one under Sections 342,302 and 201 I.P.C.; 5 persons have been named as accused in the case and that he arrested Raghuganesan at 19.50 hrs. on 01.07.2020 at Tuticorin; he produced him before the Chief Judicial Magistrate, Tuticorin, for judicial custody; thereafter, he has arrested some more persons and that they are being interrogated. He further stated that the Director General of Police, Chennai, has provided him the required infrastructure, police personnel and logistics for the conduct of the investigation.

4 We are informed that the Chief Judicial Magistrate, Tuticorin, had nominated the Judicial Magistrate No.I, Kovilpatti, for CB-CID Cases in the district. Since the Judicial Magistrate No.I, Kovilpatti is conducting enquiry under Section 176(1)(1-A) Cr.P.C. in this case and bearing in mind the fact that a case of this gravity has to be dealt with by a judicial officer of the rank of a Subordinate Judge, we are of the view that the Chief Judicial Magistrate, Tuticorin, should exercise the powers of the Judicial Magistrate No.I, Kovilpatti, in this case.

5 Under the Code of Criminal Procedure, the Chief Judicial Magistrate is the head of the Magistracy in the district and there is absolutely no bar for him to exercise the powers of a Judicial Magistrate functioning within his jurisdiction. In fact, under Section 410 Cr.P.C., the Chief Judicial Magistrate can withdraw any case from any Magistrate subordinate to him and may enquire into or try such case himself. Instead of directing the Chief Judicial Magistrate, Tuticorin, to exercise her powers under Section 410 Cr.P.C., in order to save time, as well in the interests of justice, we are exercising our powers under Section 407 Cr.P.C. and directing the transfer of the cases in East Kovilpatti P.S. Cr. Nos.649 and

650 of 2020 (currently CB-CID Cr. Nos.1 of 2020 & 2 of 2020) from the file of the Judicial Magistrate No.I, Kovilpatti, to the file of the Chief Judicial Magistrate, Tuticorin. The Judicial Magistrate No.I, Kovilpatti, shall complete the enquiry under Section 176(1)(1-A) Cr.P.C. and in partial modification of the directions given by us in paragraph no.4(ii) of the order dated 29.06.2020, we direct him to send the original enquiry report with all the connected records to the Chief Judicial Magistrate, Tuticorin, who, in turn, shall furnish copies of the same to the Investigating Officer.

6 In order to provide legal guidance to the Investigating Officer, we direct the Deputy Director of Prosecution, Tirunelveli Range, in whose jurisdiction Tuticorin District also falls, to make his services available to guide the investigating team in matters relating to law. He shall appear for the CB-CID in the enquiries before the Chief Judicial Magistrate, Tuticorin and also in the proceedings before the Court of Session, Tuticorin, like bail applications, anticipatory bail applications, etc.

7 In paragraph no.5 of our order dated 29.06.2020, we have directed the Assistant Director of Mobile Forensic Sciences Laboratory, Tuticorin and also a team of forensic science experts from the Regional Forensic Sciences Laboratory, Tirunelveli, to proceed to the Sathankulam Police Station to collect the clue materials and assist the Judicial Magistrate No.1, Kovilpatti. Normally, the Investigating Officer will collect the clue materials with the help of the forensic science experts under panchanama and produce the same before the Magistrate with a requisition to the Magistrate to send the clue materials to the Forensic Sciences Laboratory for various examinations. In the peculiar facts of this case, since the investigation was in limbo and the policemen of Sathankulam Police Station were causing disappearance of the evidence, we stepped in and issued the directions by order dated 29.06.2020 referred to above. Now, Mr. Anil Kumar has taken over the investigation of the case and he is permitted to examine the clue materials collected by the experts and give necessary requisition to the experts directly as to what are all scientific tests that he would want them to perform on the clue materials so collected. On such requisition, the forensic science experts shall conduct the necessary scientific examinations and send the reports along with the unexpended portion of the clue materials to the Chief Judicial Magistrate, Tuticorin, who shall make necessary entries in the Property Register and keep the properties in safe custody. The forensic science experts shall furnish a copy of their report(s) to the Investigating Officer. In the reports, the forensic science experts may state in the preamble portion, the circumstances under which they went to various places and collected the clue materials by referring to the order dated 29.06.2020 passed by this Court.

8 The Chief Judicial Magistrate, Tuticorin, has nominated the Judicial Magistrate No.III, Tuticorin, for recording the

statements under Section 164 Cr.P.C. In view of the same, it is open to the Investigating Officer to approach the Judicial Magistrate No.III, Tuticorin, directly instead of routing the requisition once again through the Chief Judicial Magistrate, Tuticorin, whenever he wants to have the statement of any person recorded under Section 164 Cr.P.C.

9 During the course of proceedings, we called Revathy, Head Constable attached to Sathankulam Police Station by phone with speaker mode on, so that everyone could hear her. When we enquired her of her safety, she stated that the District Collector, Tuticorin, has provided her and her family members, sufficient security and that she feels safe in her native village with her relatives around her. We informed her that if and when she feels a threat to her security, she may inform the Chief Judicial Magistrate, Tuticorin, or the Judicial Magistrate No.I, Kovilpatti, who, in turn, would bring the matter to the notice of this Court. The learned Additional Advocate General also confirmed that sufficient security has been provided for Revathy and her family.

10 In paragraph no.11 of our dated 26.06.2020, we had directed the Chief Judicial Magistrate, Tuticorin, to conduct an enquiry with regard to the injuries sustained by one Raja Singh, S/o Soosai, an inmate of the Sub Jail, Kovilpatti. After completing the enquiry, if the Chief Judicial Magistrate, Tuticorin, is of the opinion that a full-fledged police investigation is required into the matter, she may exercise powers under Section 156(3) Cr.P.C. and direct the Station House Officer of the police station under whose jurisdiction the incident had taken place, to conduct the investigation. On such directions, the Station House Officer of the jurisdictional police station shall register an F.I.R. Immediately thereafter, the Superintendent of Police, Tuticorin, shall transfer the investigation of the case to the Deputy Superintendent of Police, Tuticorin.

11 In paragraph no.6 of our order dated 29.06.2020, we had called upon the learned Additional Advocate General to ascertain as to the status of the Police Wellbeing Programme that was launched by the Government of Tamil Nadu in collaboration with NIMHANS, Bengaluru, vide G.O. Ms. No.516, Home (Pol. IX) Department dated 11.06.2018 for which, he stated that Mr.Thamarai Kannan, A.D.G.P. (Welfare), Dr. Sekar, Registrar, NIMHANS, Bengaluru and Dr.C.Ramasubramaniam, Nodal Officer are available on the screen to explain to us about the functioning of the programme. We heard all the three of them individually. They explained that the State Government and NIMHANS had entered into an agreement on 20.09.2018 for a period of three years and on the same day, the Hon'ble Chief Minister of Tamil Nadu inaugurated the Police Wellbeing Programme; under the said Programme, 462 persons (254 policemen of the rank of Inspectors and Sub Inspectors and 208 trained counsellors) were

selected and sent in batches of 40 to NIMHANS, Bengaluru, for undergoing a 5-day Programme. They also placed before us the contents of the Programme; after undergoing the training, the 462 Master Trainers began counselling sessions at various centres throughout the State in the weekends for police officers from the rank of D.S.P. to Constable and to their families. They also shared with us a few success stories where they were able to help some policemen and their families to come out of stressful situations and further submitted that they had even succeeded in arresting suicidal tendencies amongst the policemen and had brought about rapprochement amongst policemen estranged from their families.

12 We were informed that for the officers of the rank of D.G.P. to Superintendent of Police, a team of trained personnel from National Institute of Mental Health and Neurosciences (NIMHANS), Bengaluru, are conducting programmes for their well-being. We were told that the State Government has allocated a sum of Rs.10 crores for this Programme. We are further informed that 80% of the Master Trainers, who had undergone the wellbeing programme in NIMHANS, Bengaluru, are women of the rank of Inspectors and Sub Inspectors and that they are enthusiastically conducting the weekend sessions throughout the State. Dr.Sekar, Registrar, NIMHANS, specifically told us that a panel of three experts not connected with NIMHANS, Bengaluru, was constituted to evaluate the success of the Programme and he produced the report given by them which showed that the Programme has worked well. However, all the three submitted that on account of COVID-19 pandemic, the activities under the Programme stand impaired and they were of the unanimous opinion that post-COVID-19, there will be a spike in cases of mental illness throughout the society. We pondered over the presentation of the three experts and on one side, we were glad that the State of Tamil Nadu was pioneer in conceiving the idea, entering into an MoU with NIMHANS, Bengaluru, and allocating a sum of Rs.10 crores for the Programme. What troubles us is the grim picture painted by them about the mental health of people that obtains now and will obtain post-COVID -19 pandemic. They stated that a Programme that has well begun will bear fruition only if it is worked continuously for a period of five years and if the Programme is abandoned midway, whatever time, money and energy invested in it, will go down the drain.

13 The learned Additional Advocate General submitted that the State Government has no idea of abandoning the Police Wellbeing Programme. We are conscious of the fact that on account of the situation due to COVID-19, the State Government is cash-strapped. But, having walked this far, we are of the view that the State Government should not abandon the Programme midway, because, public security can be ensured only if the police force is physically, mentally and morally strong. A few bad apples here and there, should not be a reason to condemn the entire force of around 1.25

lakhs police personnel in the State, who are already in the forefront, battling the COVID-19 pandemic. Any form of violence is a product of a sick mind. On the one hand, those responsible for the death of Bennicks and Jayaraj should not go scot-free and on the other hand, we cannot afford to lose any more Bennickss and Jayarajs to violence. Only through such Wellbeing Programmes can violent propensities in individuals be stymied. Therefore, we direct the State Government to continue with the Police Wellbeing Programme conceived under G.O.Ms.No.516, Home (Pol. IX) Department dated 11.06.2018 in collaboration with NIMHANS, Bengaluru, whose reputation in the field of mental health, needs no certification and with Dr. C. Ramasubramanian as the Nodal Officer, for a period of five years by allocating necessary funds for it.

For further proceedings, adjourned to 09.07.2020 (Thursday).

Sd
ASSISTANT REGISTRAR (A.S.)

TRUE COPY

SUB ASSISTANT REGISTRAR (CS - II)

cad

Note to Office: Issue order copy expeditiously

Copy to:

1. The Principal District Judge
Tuticorin
2. The Chief Judicial Magistrate
Tuticorin
3. The Judicial Magistrate No.1
Kovilpatti, Tuticorin District
4. The Judicial Magistrate
Sathankulam, Tuticorin District
5. The Judicial Magistrate No.III
Tuticorin
6. The Central Bureau of Investigation
Madurai
7. The Chief Secretary
Government of Tamil Nadu
Secretariat, Fort St. George, Chennai 600 009

8. The District Collector
Tuticorin
9. The Director General of Police
Chennai 600 004
10. The Inspector General of Police
South Zone, Madurai
11. Mr. Anil Kumar
Deputy Superintendent of Police
CB-CID, Tirunelveli
12. The Deputy Superintendent of Police, Tuticorin.
13. The Superintendent of Police
Tuticorin District
14. The Superintendent
Kovilpatti, Sub Jail
Kovilpatti, Tuticorin District
15. The Deputy Superintendent of Police
Kovilpatti Range
16. The Deputy Director of Prosecution
Tirunelveli Range
17. The Director
Tamil Nadu Forensic Sciences Laboratory
Kamaraj Salai, Chennai 600 004
18. The Deputy Director
Regional Forensic Sciences Laboratory
Near Tirunelveli District Court Campus
Tirunelveli
19. The Assistant Director of Mobile
Forensic Sciences Laboratory
District Police Office Complex
Tuticorin
20. The Dean
Medical College Hospital, High Ground
Palayamkottai, Tirunelveli District
21. The Inspector of Police
Sathankulam Police Station
Tuticorin District

22. The Inspector of Police
Kovilpatti East Police Station
Kovilpatti
23. The Registrar (Judicial)
Madurai Bench of Madras High Court
Madurai
24. The Additional Advocate General
Madurai Bench of Madras High Court
Madurai
25. The Registrar
National Institute of Mental Health and Neurosciences (NIMHANS)
Near Bangalore Milk Dairy
Lakkasandra
Laljinagar, Wilson Garden
Bengaluru, Karnataka 560 029
26. Dr. C. Ramasubramanian
Consultant Psychiatrist
No.11, Subburaman Street
Gandhi Nagar, Madurai - 20
27. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- Copy to: The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.

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

02.07.2020

सत्यमेव जयते

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