

W.P.(MD)No.20549 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	03.01.2025
Delivered on	07.01.2025

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.20549 of 2023

A.Sudalai Vadivoo

... Petitioner

Vs.

- 1.The Secretary to the Government,
Home Department, Secretariat,
Chennai.
- 2.The Director General of Police, Chennai.
- 3.The Additional Director General of Police,
CBCID, Egmore, Chennai.
4. The Inspector General of Police,
CBCID, Tirunelveli Range,
Tirunelveli.
- 5.The Inspector of Police,
CBCID, Thoothukudi District.
- 6.The Deputy Superintendent of Police,
Srivaikundam Sub Division, Thoothukudi District.



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7.The Inspector of Police,
Seithanganallur Police Station,
Thoothukudi District.

8.The Sub Inspector of Police,
Seithanganallur Police Station,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the 1st respondent to order an enquiry to be undertaken by a high profile, Honest Officer attached with the CBCID Department on the strength of the petitioner's representation dated 09.08.2023 which has been sent as against the custodial violence / torture committed by the respondents 5 to 7 petitioners husband Arjunan and his brother Arumugam and proceed further in accordance with law.

For Petitioner : Mr.R.Anand

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)
for R1 to R8

ORDER

This writ petition has been filed for the issue of a Writ of Mandamus directing the first respondent to order for an enquiry to be undertaken by a high-profile senior police officer of CBCID against



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respondents 6 to 8 in respect of the alleged custodial torture of the husband of the petitioner, who is an accused (A10) in Crime No.118 of 2023.

2. The case of the petitioner is that on 03.08.2023 one Mayandi was done to death and in that connection, an FIR came to be registered in Crime No.118 of 2023. In this FIR, the brother-in-law of the petitioner namely Arumugam was added as A2 and the husband of the petitioner was added as A9. It is alleged that respondents 6 to 8 illegally detained the husband of the petitioner for more than 24 hours and he was beaten black and blue. Apart from that the brother of the petitioner's husband was also beaten and brutally assaulted, as a result of which, both of them sustained grievous injuries.

3. A detailed complaint was given in this regard before the first respondent and others dated 09.08.2023 in order to conduct an enquiry and to take action against the delinquent officers. Since the same did not evoke any response, the present writ petition has been filed before this Court.



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4. A counter-affidavit has been filed by the sixth respondent and the relevant portions are extracted hereunder:

“5) It is humbly submitted that, the accused Arumugam and Arjunan were produced before the Learned Judicial Magistrate No.II, Srivaikundam on 04.08.2023 at 11.30 PM, when produced the accused before the Honourable Judicial Magistrate No.II, Srivaikundam, they did not put forth any complaint before the Magistrate as stated by this petitioner. If they were beaten by the Police, when the duos were in Police Station, they might be pleaded the same to the Judicial Magistrate. Further, when the Judicial Magistrate asked the accused Arjunan about the tenderness found in his left knee, he submitted that when he was tried to ran, fall down from the motorcycle. After that, the Judicial Magistrate has ordered the remand to the accused till 18.08.2023. If both the accused were beaten by this Respondent or by the 7th Respondent or by the 8th Respondent, they could complain to the Judicial Magistrate when they produced before him. But no such allegations were made by them. Further this petitioner has uttered disgusting slurs against the 7th Respondent and the 8th Respondent that they openly told her husband that you get your



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wife submitted to this Respondent for enjoying the lust. This reflects her cruel attitude and childish thinking. There is not even an iota of truth in her statement except that she has exaggerated all the incidents that did not happen in order to justify the murder committed by her husband and relatives. Further we did not ask the accused Arumugam and Arjunan to lick our shoes. Hence the version of this petitioner is to be set aside.

6) It is most respectfully submitted that, the version of this petitioner is totally false and self-thinking one. The complainant Tmt. Thirumalaiselvi has given a statement against the accused Esakkipandi, Arumugam, Arjunan, Masanam, Selvam, Deiva Kannan, Angappan and Devaraj @ Deva when she was undergoing treatment at TVMCH, Palayamkottai on 04.08.2023. On 05.08.2023, after the arrest of the accused Arumugam and Arjunan, the accused Arumugam confessed that they had murdered the slain Tr.Mayandi as per the inducement and conspiracy hatched by the accused Sudalaivadivoo @ Subha, wife of Deiva Kannan was elicited and accordingly as such she is the accused in this case. The accused Pon Esakki and Nari and Venkatesh are accounted in this case on 11.08.2023 as per the confessional statement of the accused Angappan



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and the accused inclusion report was sent to the Learned Judicial Magistrate No.II Court, Srivaikundam on the same day. Further the section of law was altered in to @ 147, 148, 449, 294(b), 302, 307, 115, 120(b), 506(ii), 109 IPC and 4 of TNPHW Act and the alteration report was sent to the court on the same day. The legal practice is to immediately record the statement of the complainant as FIR in a murder case. But this petitioner says that the case was registered without examining the veracity of the statement given by Tmt. Thirumalaiselvi. This claim of this petitioner is strange. Hence the version of this petitioner is null and void and to be set aside.

7) It is humbly submitted that, the accused Arumugam and Arjunan, since husband of this petitioner have been involved in the murder of the slain Tr.Mayandi. Their involvement has been established by the witnesses. Further this petitioner's husband Arjunan and his younger brother Arumugam confessed the crime Arumugami and Arjunan. Investigation was done as per the procedure laid down. The accused Arumugam and Arjunan were arrested on 04.08.2023 at 2 PM and they were produced before the Learned Judicial Magistrate No.II, Srivaikundam on the same day at 11.30 PM. This alone is sufficient to prove that the



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petitioner has mentioned false allegations against the respondents. Further signatures have been obtained from the accused Arumugam and Arjunan in confession statement, arrest intimation, arrest memo as well prisoner search register only. It is mandate. Further, Police did not assault them as narrated by this petitioner. Hence this petitioner's version is null and void.”

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing on behalf of the respondents.

6. The main ground that was urged on the side of the petitioner is that the police personnel do not have the right to brutally attack the husband of the petitioner and his brother, even assuming that they were involved in the crime. Such action on the part of the police officials is in violation of human rights. It was submitted that the complaint was given at the earliest point of time and an enquiry must be conducted in this case to ensure that such acts are not continued in future.



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7. Per contra, the learned Government Advocate submitted that the petitioner's husband was not subjected to any custodial torture and that the petitioner's husband did not make any complaint in this regard when he was produced before the Magistrate after he was arrested. That apart, an attempt has been made on the side of the accused persons to give a false complaint against the police only with the view to escape from the criminal case pending against them. Accordingly, the learned Government Advocate sought for the dismissal of this writ petition.

8. This Court has carefully considered the submission made on either side and the materials available on record.

9. In the instant case, the petitioner's husband and brother-in-law are alleged to have been taken into custody on 03.08.2023. They are said to have been arrested and produced before the Magistrate and were remanded to judicial custody on 05.08.2023 at Central Prison, Palayamkottai. It is true that the petitioner's husband and the brother-in-



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law did not make any complaint before the Magistrate when they were remanded to judicial custody. However, both of them have given complaint when they were inside prison regarding the alleged torture to which they were subjected by the police in the police station. Such complaint given has also been furnished by the jail authority under the Right to Information Act. This complaint explains in detail as to how the petitioner's husband and brother-in-law were subjected to brutality by the police. The treatment that was taken by the petitioner's husband and the brother-in-law has also been furnished under the Right to Information Act. Such treatment has been given from 05.08.2023. In fact, the petitioner's husband was admitted and treated as an inpatient from 05.08.2023 to 10.08.2023 and the medical report shows the serious injuries sustained by the petitioner's husband.

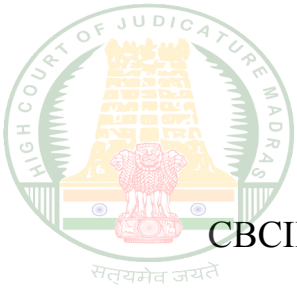
10. It is brought to the notice of this Court that the investigation has been completed and the police report has been filed and the petitioner's husband has been arrayed as A10 and the brother-in-law has been arrayed as A3 and the case is now at the stage of trial before the I Additional District Court, Thoothukudi in S.C.No.71 of 2024.



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11. On a careful consideration of the materials placed before this Court, it can be seen that the petitioner's husband has sustained very serious injuries for which he was treated as an inpatient from 05.08.2023 to 10.08.2023. The complaint has also been given in this regard at the earliest point of time. These documents cannot be disregarded since custodial violation is treated to be the violation of Article 21 of the Constitution of India and it is also treated to be violation of human rights. Just because the person is shown as an accused in a case, that does not mean that the concerned person can be subjected to police brutality. The reason for sustaining such injuries now contains two versions. One version is given by the petitioner and the other version is given by the police. The fact remains that the petitioner's husband has sustained very serious injuries in this case. The complaint has been given at the earliest at the point of time supported by medical records. These materials have been supplied by the jail authorities under the Right to Information Act and therefore, it cannot be presumed that the complaint is a false complaint. Since the complaint has been given against police officials (A6 to A8), it will be more appropriate if an enquiry is conducted by the



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CBCID in order to find out the truth. It goes without saying that this enquiry by CBCID will not having any bearing in the pending case in S.C.No.71 of 2024 before the I Additional District Judge, Thoothukudi. This enquiry will confine itself to finding out the reason for the petitioner's husband and the brother-in-law sustaining such serious injuries immediately after they were taken into custody.

12. This Court while exercising its jurisdiction under article 226 of the Constitution of India, must ensure that there is no violation of fundamental rights guaranteed under Part III of the Constitution of India. Hence, when *prima facie* materials are available, this Court has to necessarily ensure that the complaint alleging police torture is properly enquired in order to find out the truth.

13. In the light of the above discussion, there shall be a direction to the fifth respondent viz., the Inspector of Police, CBCID, Thoothukudi, to conduct an enquiry on the complaint given by the petitioner on 09.08.2023 and submit a report before this Court within a period of four weeks from the date of receipt of a copy of this order. The



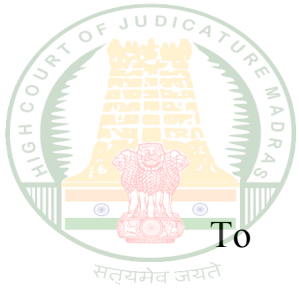
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petitioner is directed to submit a fresh representation to the fifth respondent along with all the relevant documents and also a copy of this order. It is made clear that the proceedings pending in S.C.No.71 of 2024 on the file of the I Additional District Judge, Thoothukudi, cannot be stalled in the guise of pending enquiry and the enquiry order passed by this Court is completely independent to the pending criminal case. This shall be kept on mind by the trial Judge.

14. In the result, this Writ Petition is disposed of with the above directions. Post this case under the caption “for reporting compliance” on 16.02.2025.

07.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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- 1.The I Additional District Judge, Thoothukudi.
2. The Secretary to the Government,
Home Department, Secretariat,
Chennai.
- 3.The Director General of Police, Chennai.
- 4.The Additional Director General of Police,
CBCID, Egmore, Chennai.
5. The Inspector General of Police,
CBCID, Tirunelveli Range,
Tirunelveli.
- 6.The Inspector of Police,
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- 7.The Deputy Superintendent of Police,
Srivaikundam Sub Division, Thoothukudi District.
- 8.The Inspector of Police,
Seithanganallur Police Station,
Thoothukudi District.
- 9.The Sub Inspector of Police,
Seithanganallur Police Station,
Thoothukudi District.
- 10.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

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Dated: 07.01.2025