

**IN THE HIGH COURT OF JUDICATURE MADRAS AT
MADURAI BENCH
(Special Original Jurisdiction)**

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

-IN-

W.P.(MD).No. 12608 of 2020

Santhosh(26/2023)

S/o. Kanniyappan

Anaikaraipatti

Vandarai Post

Peraiyur Taluk

Madurai District

....

Petitioner

-Vs-

1. The District Collector
Madurai District,
Madurai – 625 020
2. The Revenue Divisional Officer
Revenue Divisional Office,
Usilampatti
Madurai District.
3. The Tashildar
Taluk Officer,
Peraiyur Taluk
Madurai District
4. The Superintendent of Police
District Police Office
Moonrumavadi
Madurai District
5. The Deputy Superintendent of Police
Peraiyur Sub-Division
Madurai District
6. The Inspector of Police
Peraiyur Police Station
Madurai District
7. The Sub-Inspector of Police
Saptur Police Station
Madurai District

8. The Chief Medical Officer
Government Hospital
Usilampatti
Madurai District
9. The Dean
Government Rajaji Hospital
Madurai
Madurai District
10. The Deputy Superintendent of Police,
District Crime Branch, Madurai.
(R10 suo motu impleaded vide Court order
dated 06.10.2020)
11. The State of Tamil Nadu,
Rep.by the Secretary to Government,
Home (Police) Department,
Fort St.George, Chennai-09. ... Respondents
(R11 suo motu impleaded vide Court Order
dated 16.10.2020) **Respondents**

AFFIDAVIT OF THE PETITIONER

I, Santhosh, son of Kanniyappan, aged about 26 years old, residing at Anaikkaraipatti, Vandarai Post, Peraiyur Taluk, Madurai District do hereby solemnly affirm and sincerely state as under:

1. I am the Writ Petitioner herein in W.P. (MD).No. 12608 of 2020 before this Hon'ble Court. After hearing the writ petition, this Hon'ble Court had passed an order on 02.12.2020. This Hon'ble Court had granted reliefs and issued certain specific directions for conducting postmortems in matters relating to deaths taking place in custody. Following the guidelines and directions, the victims' families are given right to access the body of deceased and it has gradually led to transparency in jurisprudence relating to custodial justice.

2. I state that this Hon'ble Court while issuing various directions mentioned as follows in **Para No.10 (vi)** *The autopsy report should be prepared expeditiously and handed over to the investigating officer in the case so that the filing of the final report is not delayed. **A copy of the autopsy report as well as video should be simultaneously given to the legal heir or representatives of the family of the deceased.** This alone will enable them to take recourse to legal remedies immediately. If after receipt of the autopsy report, the legal heir/representatives of the deceased family give in writing that they intend to move the High Court, the body shall be preserved in the mortuary for atleast 48 hours. If the body is disposed of either by cremation or otherwise in the meanwhile, the very purpose of holding a second postmortem will be rendered infructuous. All of us know that hasty cremation in the tragic Hathras gang rape case led to controversy. It is in the interest of the police to take the family of the deceased into confidence and avoid rushing things through. They are stakeholders in the process and the police have to treat them accordingly. “*
3. I state that after conducting of the postmortem, the copy of the autopsy report as well as video report must be given to the legal heir or representatives of the family of the deceased. But there has been a lack of clarity in the order, which is expressed by senior police officers who have read this judgment meticulously only with the intention of adhering to the same, on the aspect of who exactly has to provide the copy of the autopsy report as well as video report to the legal heir or representatives of the family of the deceased. I state therefore that as a result of the alleged lack of clarity on this aspect the hospital authorities (Medical College Hospitals) and police department are not providing the postmortem reports to the family of the deceased as desired in this direction of this Hon'ble Court. It is therefore necessary to make it clear, in the interest of

justice alone and the intention behind this specific direction of this Hon'ble Court that after the successful completion of the conduct of a postmortem in cases of custodial deaths, the hospital authority, namely the Dean of the said Hospital shall be specifically named and directed to provide a copy of the autopsy report as well as video report to the legal heir or representatives of the family of the deceased.

4. I respectfully am also responsibly instructed to state that while such a lack of clarity is being sought by me, there are some cases where the autopsy report as well as video report to the legal heir or representatives of the family of the deceased is being provided strictly adhering to the judgment of this Hon'ble Court on the very same day. For example, in the case of the death of Rajkiran (as per orders of the Hon'ble High Court in WMP (MD) No 17085 of 2021 in WP (MD) No 20440 of 2021 pertaining to Crime No 310 of 2021 of Kottaiappattinam PS, Pudukottai District) the postmortem was conducted at the Government Medical College Hospital, Pudukottai on 18.11.2021 and handed over to the family members the very same day.
5. I respectfully submit that there are also other examples where this confusion continues to exist.
 - (i) The case of Vignesh who allegedly died in police custody on 19.04.2022 and a case in Crime No 128 of 2022 of Secretariat Colony PS in Chennai was registered on the same u/s 176 (1) (A) Cr.P.C. and then transferred to the CB(CID), Chennai in Crime No 3 of 2022; where the post mortem was actually conducted in P.M. No 954 on 20.04.2022 and the same was made available to the family members by the Dean, Kilpauk Medical College Hospital, only on 04.05.2022

despite efforts in between to access the same made by and on behalf of the family members.

- (ii) The case of Rajesh who is also alleged to have died in police custody on 12.06.2022 and a case in Crime No 503 of 2022 of Kodungaiyur PS in Chennai was registered u/s 176 (1) (A) Cr.P.C. and later transferred as CBCID Metro Chennai Crime No 02/2022; where the post mortem was actually conducted in P.M. No 1077 / 2022 on 13.06.2022 and the same was not made available to the family members by the Dean, Government Stanley Medical College Hospital, stating that the same had been handed over to the Judicial Magistrate of the Xth Metropolitan Magistrate Court , Egmore, Chennai on 13.06.2022. on 14th June 2022 the Hon'ble Chairperson of the SHRC provided an interim recommendation referring to the directions of this Hon'ble Court in W.P. (MS) No 12608 of 2020 in its order I SHRC Case No 7492/13/2022 – PCD/HCP. The family had also to approach the Xth Metropolitan Magistrate Court , Egmore, Chennai for issuing an order for the copy of the Post mortem report and video recording of the same.
- (iii) In the most recent case of the custodial death of a juvenile, minor Gokulshree, in the Observation Home / Shelter Home in Chingleput where the inquiry by the Judicial Magistrate u/s 176(1)(A) Cr.P.C. was underway in Crime No 599 of 2022 dated 31.12.2022 in the Chengalpattu Town PS , where the mother of the minor was allowed to see the body in the mortuary prior to the postmortem and even where six accused have now also been arrested and where the Hon'ble Chief Minister has also been gracious to direct the payment of Rs 10,00,000 as compensation and a house for the family of the deceased, the mother is still to have been formally provided a copy of the postmortem certificate from the Dean

of the Chingleput Medical College Hospital. Hence the seeking of clarity in the order on the subject.

For the reasons stated above, it is most respectfully prayed that this Honorable Court may be pleased to issue a very small clarification in the order passed in W.P.(MD). No. 12608 of 2020 dated 02.12.2020 to the effect that **it is the responsibility of the Deans of the Medical College Hospitals where such Post Mortems of Custodial deaths are actually conducted, to provide a copy of the autopsy report as well as video report of the Post mortem to the legal heir or representatives of the family of the deceased expeditiously after the post mortems are conducted** and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Madurai on this 10th day of February, 2023 and having understood the contents which were read and explained in Tamil the deponent signed his name in my presence.

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11. The State of Tamil Nadu,
Rep.by the Secretary to Government,
Home (Police) Department,
Fort St.George, Chennai-09. ... Respondents
(R11 suo motu impleaded vide Court Order
dated 16.10.2020)

Respondents

PETITION FOR CLARIFICATION

That the address for service on the Petitioners is as stated above and that of his counsel M/s. Henri Tiphagne, R. Karunanidhi, and and G.Perumal, having their office Plot No-12A/59, Muthu Vinayaga Nagar, Ulaganeri, Uthangudi Post, Madurai - 625 107. The address for service of all notice and process of this Hon'ble Court on the Respondents is stated as above.

For the reasons stated that the accompanying of the affidavit, it is most respectfully prayed that this Honorable Court may be pleased to issue a very small clarification in the order passed in W.P.(MD). No. 12608 of 2020 dated 02.12.2020 to the effect that **it is the responsibility of the Deans of the Medical College Hospitals where such Post Mortems of Custodial deaths are actually conducted, to provide a copy of the autopsy report as well as video report of the Post mortem to the legal**

heir or representatives of the family of the deceased expeditiously after the post mortems are conducted and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice

Dated at Madurai on this the 10th day the of February ,2023

Counsel for the Petitioner

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-Vs-

1. The District Collector

Madurai District,

Madurai – 625 020 and 10 Others

Respondents

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2.	---	Affidavit of the petitioner	
	---	TYPED SET OF PAPERS	---
3.	02.12.2020	Order passed by this Hon'ble High Court in WP (MD)No.12608 of 2020	
4.	31.12.2022	Copy of FIR in Crime No.599 of 20222 on the file of Chengalpattu Town Police Station	
5.	22.04.2022	Representation sent by Adv.Ajeetha and others to the Professor & Head of the Department ,Department of Forensic Science through the Dean of Government Kilpauk Medical College & Hospital,Chennai	

6.	27.04.2022		
7.	12.01.2023	Communication letter sent by the Deputy Superintendent of Police, (Chengalpattu Sub -Division) to the Learned Judicial Magistrate No.1, Chengalpattu. with Clean Copy	
8.	25.01.2023	Representation given by one Mrs.Priya to the Dean of the Government Medical College ,Chengalpattu with Clean Copy	
9.	27.04.2022	Representation given by one Mr.Vinoth to the Dean of Government Kilpauk Medical College & Hospital, Chennai with Clean Copy	
10.	22.04.2022	Representation sent by Henri Tiphagne to the Concerned Official through email	
11.	20.04.2022	Copy of Post Mortem Report of deceased Vinoth Kumar with Clean copy	
12.	12.06.2022	Copy of FIR in Crime No.503 of 20222 on the file of Pulianthope Police Station	
13.	15.06.2022	Communication letter sent by Resident Medical Office, Government Staleny Hospital ,Chennai to one Usharani	
14.	14.06.2022	Interim Recommendation passed by the State Human Rights Commission – Tamil Nadu in SHRC Case No.7492/22/13/2022-PCD/HCP	
15.	16.06.2022	Copy Petition filed by one usharani before the learned Judicial Magistrate No.10 Metropolitan City,Chennai	
16.	Photographs	

17.	...	Vakalath	
18.	---	Batta	

Dated at Madurai on this 04th day of July, 2022

Counsel for the Petitioner

