



Crl.O.P.(MD).No.14620/2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.10.2022

DELIVERED ON : 12.04.2023

CORAM

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.O.P.(MD)No.14620 of 2022

Senthil Kumar : Petitioner/Accused-10

Vs.

1.The Director General of Police,
Dr.Rathakrishnan Salai,
Mylapore, Chennai.

2.The Superintendent of Police,
Thoothukudi District.

3.The Deputy Superintendent of Police,
Sathankulam Sub Division,
Thoothukudi District.

4.The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.

: Respondents/Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in PRC.No.4 of 2022 on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi District and direct the Respondents to conduct further investigation of the said case and file a final report afresh.

For Petitioner : Mr.C.Emalias

For Respondents : Mr.T.Senthilkumar



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Additional Public Prosecutor

ORDER

This Petition has been filed to call for the records in PRC.No.4 of 2022 on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi District and direct the Respondents to conduct further investigation of the said case and file a final report afresh.

2. The learned Counsel for the Petitioner submitted that this Criminal Original Petition had been filed by Accused No.10 in Cr.No.126 of 2021 before Sathankulam Police Station.

2.1. As per the Prosecution case, the case was registered under Sections 148, 294(b), 341, 302, 120(b), 114 of IPC and Section 506(ii) of IPC. One Martin, who was residing within the limits of Sathankulam Police Station in Thaika Theru, was murdered on 10.06.2021 by around 7.15 p.m. Prior to the alleged occurrence, there was a previous case in which based on the Complaint given by this Petitioner, the case was registered in Cr.No.241 of 2020 under Sections 294 (b), 506 (ii) of IPC against the said Martin and



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another case was registered in Cr.No.327 of 2020 under Sections 147, 148, 341, 294(b), 324, 506(ii) of IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage & Loss) Act against the deceased Martin. As per the Complaint given by the younger brother of deceased Martin, there has been previous enmity between the Petitioner and Martin and also with the local Jamath regarding the tenancy, as the deceased Martin is residing in the house belonging to local Jamath. As per the Complaint preferred by the younger brother of the deceased Martin, the younger brother of Martin married a girl belonging to Muslim Religion. Therefore, local Jamath was persuading him to convert to Islam. The younger brother of Martin and Martin also refused to convert Islam. Therefore, there was enmity between the local Jamath and Martin's family. Martin was a dominating figure and he was in the business of money lending. In that business also, they had rivals. When he used to walk on the Thaika street which is mostly dominated by people belonging to Muslim religion, the children were playing Cricket, he used to shout at them. On that ground also, enmity arose between a Section of people in that area and Martin. These are all suspicious circumstances mentioned in the complaint, after the murder of Martin. Based on such Complaint, the investigation proceeded.



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2.2.The family of the victim filed Crl.O.P.No.9996 of 2021 before this Court through the younger brother of Martin by name Ponpandi seeking direction from this Court to transfer the investigation in Cr.No.126 of 2021 from the file of the Inspector of Police, Sathankulam Police Station to CBCID or any other agency. This petition was dismissed on 26.04.2022 on the ground that the Respondent Police had completed the investigation and laid the final report before the Court of the learned Judicial Magistrate, Sathankulam which was taken on file by the learned Judicial Magistrate as PRC.No.4 of 2022. This Petitioner also moved Crl.O.P.No.7604 of 2022 seeking transfer of investigation from the file of the Deputy Superintendent of Police, Sathankulam Sub Division, Thoothukudi to the file of the CBCID or any other similar agency, which was dismissed on 25.04.2022. Now, this Criminal Original Petition had been filed seeking further investigation. In support his contention, the learned Counsel for the Petitioner relied on the rulings of the Hon'ble Supreme Court in **MANU/SC/1101/2012:(2013) 5 SCC 762** in the case of **Vinay Tyagi Vs. Irshad Ali @ Deepak** stating that the investigation shall be unbiased, honest, just and in accordance with law and the entire emphasis to bring out the truth of the case before the Court of



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competent jurisdiction.

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3.It is the contention of the learned Counsel for the Petitioner that after the murder, since it was a sensitive murder involving two religious communities, there was immediately, Peace Committee was formed headed by the District Revenue Officer. After the preliminary investigation, the Superintendent of Police, Thoothukudi District, by his proceedings in C.No. 63/Camp/SP-TUT/2021, dated 11.06.2021, had withdrawn the investigation from the file of the Inspector of Police, Sathankulam Police Station to the Deputy Superintendent of Police, Sathankulam with specific direction that the investigation shall be on the right path which is extracted hereunder:

“ORDER:

A case in Sathankulam PS Cr.No.126 of 2021 u/s. 147, 148, 294(b), 341, 302, 506(ii) IPC r/w.120(b) IPC has been registered on 10.06.2021 on the complaint of Tr.C.Ponpandi. It is ordered that Tr.A.Godwin Jagadeesh Kumar, Deputy Superintendent of Police, Sathankulam Sub Division is nominated as Investigation Officer in Sathankulam PS Cr.No.126 of 2021 u/s. 147, 148, 294(b), 341, 302, 506(ii) IPC r/w. 120(b) IPC for taking up the further investigation. He is instructed to conduct fair investigation on the right lines in this case and file final report before the concerned Court.

2. The Inspector of Police, Sathankulam PS is instructed to hand over the CD file pertaining to Sathankulam PS Cr.No.126 of 2021 u/s.147, 148, 294(b), 341, 302, 506(ii) IPC r/w. 120(b) IPC to Dy. Supdt. Of Police, Sathankulam Sub Division immediately.

3. Receipt of this proceedings should be acknowledged at once.”



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4.It is the contention of the learned Counsel for the Petitioner that the Petitioner is arrayed as A-10. The Petitioner having a dispute in which his car was burned and for which he had filed Criminal Complaint with Sathankulam Police Station. On date of occurrence, he is not available in Sathankulam and he is residing in Srirangam at Trichy. The Investigation Officer had visited Srirangam and seized CCTV Footage from his house.

5.Also, it is the contention of the learned Counsel for the Petitioner that the person, who is arrayed as A-1 in this case, is the local Panchayat President and also a businessman of the Sathankulam Town. He had helped the Police by providing 60 CCTV cameras within the Sathankulam Police Station Limit for maintaining Law and Order. The CCTV cameras were gifted and installed on the co-operation of the traders in the Sathankulam Town and A-10 also Office Bearers of the Traders' Association. Therefore, Sathankulam Police/Investigation Officer has all the video clippings for the same. In spite of it, they had not utilised that video footage. If they have considered the video footage, the statement given by the Witnesses in this case could not have been relied and the Petitioner would not have been arrayed as A-10. The learned Counsel for



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the Petitioner invited the attention of this Court to the statement under Section 161(3) of Cr.P.C., by one of the witnesses by name Ponpandi, who is the younger brother of the Complainant, which is extracted hereunder:

“.....நான் கடந்த 13 வருடங்களுக்கு முன்பு எங்கள் தெருவை சேர்ந்த அப்துல் சமது என்பவரின் அண்ணன் பைசர்அலி மகன் சிபானாவினை காதலித்து திருமணம் செய்து கொண்டேன். அதிலிருந்து மேற்படி அப்துல் சமதுவும், பள்ளிவாசல் தலைவரும் எங்கள் மீது விரோதம் கொண்டிருந்தனர். பின்பு என்னை முஸ்லீம் மதத்திற்கு மாற சொல்லி அப்துல் சமதுவும், மகதுமும் வற்புறுத்தி மிரட்டி வந்தனர். எனக்கு ஆதரவாக எனது அண்ணன் மார்ட்டின் மேற்படியாளர்களிடம் அப்படி எல்லாம் செய்ய முடியாது என கோபமாக சொன்னான். இதனால் பள்ளிவாசல் தெருவை சேர்ந்த அப்துல் சமது, புகாரி, சிந்தா, காதர, பிலால, பாரிஸ், ரசுருதீன், மகதும், பாபுசல்தான் ஆகியோர்கள் என மீதும் எனது அண்ணன் மீதும் விரோதம் கொண்டு இருந்தனர். அதே போல மேலசாத்தான்குளத்தினை சேர்ந்த சிவனைந்த பெருமாள் மகன் செந்தில்குமாருக்கும் எனது அண்ணனுக்கும் ஏற்பட்ட பிரச்சனையில் எனது அண்ணன் மார்ட்டின் தரப்பை சார்ந்தவர்கள் செந்திலை அடித்து விட்டார்கள் அதனால் செந்தில் குமாருக்கும் எனது அண்ணனுக்கும் முன்விரோதம் இருந்து வந்தது. மேற்படி செந்திலுக்கு பாபு சுல்தான் டிரைவராக இருந்து வந்த காரணத்தால் பாபு சுல்தான் மூலமாக எங்களை மிரட்டி வந்தான். மேலும் எங்கள் தெருவில் கிரிக்கெட் விளையாடும் முஸ்லீம் இளைஞர்களை எனது அண்ணன் ரோட்டில் ஏன்டா விளையாடுகிறீர்கள் என சத்தம் போடுவார்.

..... அதன் பிறகு 11.06.2021ம் தேதி பகலில் காவல் துறையினர் மற்றும் வருவாய் துறையினர் முன்னிலையில் சமாதான கூட்டம் நடந்தது. அந்த கூட்டத்தில் நாங்கள் சக்திவேல், அபிஸேக் செல்வராஜ், சிவா பிரதிவிராஜ் ஆகியோர்கள் செந்தில் என்ற செந்தில் குமாரின் உறவினர்கள். அதனால் இந்த சம்பவத்துல இவர்களுக்கும் தொடர்பு இருக்கலாம் என நினைச்சி அவங்களையும் கேசல சேர்க்கணம் என்று சொல்லியிருந்தோம். அப்பறம் தான் மேற்படி முன்று பேரும் சம்பந்தப்பட்டாக எங்களுக்கு தெரியல. யாரும் சொல்லவும் இல்ல. இந்த வழக்கு காவல் துணைக்கண்காணிப்பாளராகிய உங்களுக்கு மாற்றம் செய்யப்பட்டதாக தெரிந்தேன். ஆகையால் தங்கள் முன்பு இன்று ஆஜராகி இந்த வாக்குமூலம் கொடுக்கிறேன்.”



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6. Therefore, it is the contention of the learned Counsel for the Petitioner that both the family of the victim and the Accused/A-10 herein are not satisfied with the investigation and therefore, both parties had approached this Court. Earlier Petition in Crl.O.P.No.7604 of 2022 filed by the Petitioner was dismissed on the ground that the investigation had been completed. Now, the Petitioner seeking only further investigation and not transfer of investigation or re-investigation. This Court exercising extraordinary powers under Section 482 of Cr.P.C., has ample power to Order further investigation or re-investigation. He relied on the ruling reported in *MANU/SC/1101/2012* in the case of *Vinay Tyagi Vs. Irshad Ali @ Deepak and Ors* the relevant portion of which is extracted hereunder:

“Firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.”

7. He relied on the decision of the Hon'ble Supreme Court in **2011 SCC 845** in the case of *State of Punjab Vs. CBI* wherein it has been held as under:

“Code of Criminal Procedure, 1973 – Sections 173(8) and 482 – Provisions of Cr.P.C do not limit or affect inherent powers of High Court to make such orders as may be necessary to secure ends of



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justice – Section 173(8) cannot limit or affect inherent powers of High Court to pass order under Section 482 for fresh investigation or re-investigation if High Court is satisfied that such fresh investigation or re-investigation is necessary to secure ends of justice.”

8.The learned Additional Public Prosecutor had vehemently objected the line of the argument of the learned Counsel for the Petitioner stating that the investigation had been completed and what was submitted on behalf of the Prosecution in the earlier proceedings in Crl.O.P.Nos. 9996 of 2021 and 7604 of 2022 holds good for this case also. It is not a fit case for further investigation on the grounds raised in this Petition are disputed facts which can be considered only either during framing of charges or during trial and not before this Court exercising extraordinary powers under Section 482 of Cr.P.C. Therefore, this Petition is to be dismissed.

9.By way of rejoinder, the learned Counsel for the Petitioner submitted that on an earlier occasion, when the Petitioner herein as well as victim approached this Court, the learned Additional Public Prosecutor had reported that the investigation had been completed. Recording the same only change of investigation was declined by this Court. After that only,



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this Petition had been filed.

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10.The learned Additional Public Prosecutor replying to the rejoinder stating that in the Order of dismissal in Crl.O.P.Nos.9996 of 2021 and 7604 of 2022, this Court had not granted liberty to file appropriate Petition or to move appropriate Court.

11.It is the contention of the learned Additional Public Prosecutor that the occurrence was on 10.06.2021 and the alleged conspiracy is on 06.06.2021. Totally, there are 11 Accused in this case. Except the Petitioner, all others are Muslims. There are five motives. As per the Prosecution, the deceased Martin was in finance business. Dispute arose between A-2 and the deceased. A-2 had borrowed money from the deceased Martin. The second motive is that the deceased's brother was married A-11's brother's daughter. They are residing near the Mosque. The people belonging to Muslim religion insisted them to convert. Therefore, there was an another motive. Thirdly, A-9 having house property that was given to the Mosque wherein the family of the deceased is residing and they had not paid rental amount. They changed the electricity service connection in their



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name. Therefore, there was dispute between the Jamath and the family of the deceased. Fourthly, A-1 to A-8 are youngsters and they were playing Cricket on the road that was questioned by the deceased. Lastly, the Informants of Sathankulam “Bennicks' case”, at that time the Petitioner/A-10 was in Sathankulam and stayed in Village. A-10 supported the Sathankulam Police. The deceased supported the Public. The deceased and his people assaulted A-10 and his car was also damaged. Therefore, the Petitioner given the Complaint, based on which, FIR was registered against the deceased and others. After that, A-10 returned to Trichy as it is his permanent address. A-1 was working as driver of A-10. Through him only A-10 is alleged to have conspired.

12.It is the contention of the learned Counsel for the Petitioner that A-1 is not at all the driver of A-10. A-1 has his own business. A-10 is linked through A-1 by Police. Therefore, A-10 seeks further investigation.

13.The learned Counsel for the Petitioner invited the attention of this Court to the statement under Section 161 of Cr.P.C., of Manikandan, Anwar Badhusa, Manikkaraj.



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14. On coming to know that the Police are attempting to link him with the Petitioner, the Petitioner had moved Anticipatory Bail and that was granted. Therefore, the learned Counsel for the Petitioner seeks further investigation in the light of the CCTV footage.

15. On consideration of the rival submissions and on consideration of the Rulings cited by the learned Counsel for the Petitioner in *MANU/SC/1101/2012* in the case of *Vinay Tyagi Vs. Irshad Ali @ Deepak and Ors* and *2011 SCC 845* in the case of *State of Punjab Vs. CBI*, the contention of the learned Counsel for the Petitioner, who is arrayed as A-10, cannot at all be accepted. In the earlier stage when he moved the Court for further investigation or transfer of the investigation in Crl.O.P.No.7604 of 2021 and the Complainant had filed Crl.O.P.No.9996 of 2021, the Court had not granted any relief either to the Complainant or to the Accused No.10 to move appropriate Court. What are all stated by the learned Counsel for the Petitioner, as rightly contended by the learned Additional Public Prosecutor, are disputed facts. It is to be noted that the murder had occurred immediately after the result of the general election. At that time, there was



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a Covid lock down restrictions. Therefore, in the light of the earlier occurrence in Sathankulam Police Station limit, the Police were very anxious about the reputation of the Police. Therefore, the Superintendent of Police had rightly withdrawn the investigation from the Inspector of Police, Sathankulam Town Police Station and handed over the same to the Deputy Superintendent of Police, Sathankulam as Investigation Officer with specific instruction that the investigation shall be on right path, impartial and fair. At that time, A-10/Petitioner herein moved Crl.O.P.No.7604 of 2021 seeking change of investigation agency which was dismissed on 25.04.2022 on the ground that the investigation was completed. The Complainant filed Crl.O.P.No.9996 of 2021 which was also dismissed on 26.04.2022. Therefore, considering the victim and the Accused belongs to different religions/groups and considering the sensibility involved, the Police had completed the investigation within the shortest period.

16.The contention of the learned Counsel for the Petitioner that he was available in Srirangam at his house and the CCTV footage will help his case, will not help the Police to close the case against the Petitioner



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herein/A-10. Already doubts were raised by the Complainant against the Petitioner herein. Even though the Complainant has specifically stated that there are no further information to him regarding the involvement of the Petitioner, those facts are to be considered only during trial and not at this stage. As per the records of Sathankulam Police, there had been attack by the deceased against the Petitioner/A-10 where A-10 had given complaint based on which FIR had been registered against the deceased. Therefore, there is ground for the Investigation Officer or the Complainant or any one approaching the case to have a reasonable doubt regarding the involvement of the Petitioner. Regarding conspiracy, the involvement of the person in a crime based on his presence in the place of occurrence. Conspiracy can be hatched anywhere. Based on the CCTV footage the conspiracy cannot be proved before any Court. Those facts are to be proved only during trial. Therefore, the circumstances regarding involvement or non-involvement of the Petitioner cannot be considered by this Court by Ordering re-investigation or further investigation under Section 173(8) of Cr.P.C.,

17.As rightly pointed out by the learned Additional Public Prosecutor, what had been raised by the learned Counsel for the Petitioner are all



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disputed facts. When the sensibility of the case had been considered by the higher Officials of the Police Department forcing the Superintendent of Police, Thoothukudi to withdraw the case from the file of the Inspector of Police and handed over to the Deputy Superintendent of Police, Sathankulam, with specific instructions that it should be a fair investigation and on “right path”, the Deputy Superintendent of Police as Investigation Officer having completed the investigation within the reasonable time and laid the final report, there cannot be any further investigation. What are all raised by the learned Counsel for the Petitioner shall be raised before the trial Court in his favour and this Court is not inclined to pass Orders just because the Petitioner raised certain circumstances in his favour. It is for the trial Court to pass appropriate orders. It is the case on conspiracy and also reasonable doubt in the mind of the Complainant that there was a dispute between the Petitioner/A-10 in this case and the deceased resulting in Petitioner giving Complaint based on which FIR was registered against the deceased. Those facts shall be considered only during trial. The theory of conspiracy cannot be considered from the angle of the Petitioner, by this Court exercising power under Section 482 of Cr.P.C., Section 173 (8) Cr.P.C., meeting of the minds is to be proved by the Prosecution only during



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trial. That cannot be gone into by this Court exercising extraordinary power under Section 482 of Cr.P.C. Therefore, the arguments of the learned Counsel for the Petitioner is rejected.

In the light of the above discussion, this ***Criminal Original Petition is dismissed.***

The learned Judicial Magistrate, Sathankulam, Thoothukudi District, is directed to proceed with the committal proceedings. If the Accused are not co-operating with the Court, the learned Judicial Magistrate, Sathankulam, Thoothukudi District, may cause/issue Warrant. The learned Principal District and Sessions Judge, Thoothukudi, is directed to proceed with the trial and see to it that the case is disposed off when the case is committed to the Court of Sessions. Either the learned Principal District and Sessions Judge on his/her own or it shall be transferred to the learned Additional Sessions Court for early disposal. Also, the learned Sessions Judge concerned shall see to it that the case is disposed off. If any of the Accused fail to cooperate, either the learned Trial Judge or the learned Judicial Magistrate shall follow the reported ruling of the Hon'ble Supreme



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Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*** as the case may be, either the learned Sessions Judge who is seized off the trial or the committal Magistrate during the committal proceedings.

The Superintendent of Police, Thoothukudi, is directed to consider the case for early disposal before the trial Court and through the Deputy Superintendent of Police, Sathankulam, who is the Investigation Officer, shall see that the case is disposed off early. If any of the Accused fail to co-operate the Investigation Officer shall approach the Court concerned either the Sessions Court or the committal Court in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*** as though bail was granted by the Court concerned – either the Sessions Court or the Committal Court and shall cancel the bail granted to the Accused concerned.

If the Accused is produced on warrant, the Judge concerned shall remand the Accused to Prison till the disposal of the case. After committal of the case to the Court of the learned Sessions Judge, the learned Sessions Judge – either the learned Principal District Judge or any other Judge to



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whom it is made over, shall dispose off the case early. The Prosecution is directed to produce the witnesses without delay.

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Speaking Order/Non-speaking Order

To

- 1.The Director General of Police,
Dr.Rathakrishnan Salai,
Mylapore, Chennai.
- 2.The Superintendent of Police,
Thoothukudi District.
- 3.The Deputy Superintendent of Police,
Sathankulam Sub Division,
Thoothukudi District.
- 4.The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.
5. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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