

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.17666 of 2015

Reserved on 07.12.2015

A.Vijayan

... Petitioner

Vs

1. State represented by  
Addl.Director General of Police,  
CBCID, Chennai-08.

2. The Superintendent of Police,  
Tiruvallur District.

3. The Inspector of Police,  
All Women Police Station,  
Tiruvallur District.

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to transfer the investigation in crime No.5 of 2014 pending on the file of the third respondent to the first respondent or any other investigation agency.

For Petitioner : Mr.R.Rajiv Gandhi

For Respondents : Mr.C.Emalias

Additional Public Prosecutor

O R D E R

The present criminal original petition has been filed seeking a direction to transfer the investigation in crime No.5 of 2014 pending on the file of the third respondent to the first respondent or any other investigation agency.

2. According to the petitioner, he runs an orphanage through social welfare department and a government recognized Trust in the name of "Pengal Samooga Nala Trust" as well as said orphanage, called "Poovanam". He provides food, shelter, clothes and other basic necessities to the children and submitting the audit reports regularly to the authorities concerned. At present, he is looking after 57 children in the orphanage, who are studying in Middle School at Aranvoil Kuppam, Thiruvallur. In the said orphanage, there is a girl, namely

Mercy, studying 8<sup>th</sup> standard. On suspecting her behaviour, when she was searched, the petitioner found a love letter and certain gifts therein. On enquiry, the said girl cried bitterly and revealed that one Karunakaran, who is her Science teacher had given her love letter and gift items. Thereafter, over phone, the petitioner brought this to the knowledge of Headmistress of the school where Mercy was studying, who in turn, assured that she would take appropriation action and report to the police officials and also suggested the petitioner inform to the police directly as it would depreciate the goodwill of the school. Subsequently, the petitioner informed to one Mary, who is the mother of Mercy. Later, on 11.12.2014, mother of the girl came to the orphanage and took away Mercy along with her belongings. In order to save the school's reputation and Karunakaran from legal proceedings, the Headmistress of the school, Karunakaran and mother of the girl, have joined together and intrigued to falsely impose allegation on the petitioner. While so, on 12.12.2014, the petitioner was called from Sevapet Police for enquiry, relating to activities of the trust. When the petitioner left to the police station, the police officials visited the petitioner's house and informed his wife that as if the petitioner came to the police station to lodge a complaint against Karunakaran and thereby, they asked the wife of the petitioner to handover Love letter and gift articles said to have given by Karunakaran and believing their words, the wife of the petitioner handed over the relevant documents to them. Thereafter, the petitioner was kept in police station for full night without any enquiry and he came to know through the Magistrate before whom he was produced, that a case was registered against him on the allegation that he raped Mercy and while he was in judicial custody, Mercy gave 164 Cr.P.C. statement before the Magistrate against the petitioner. Therefore, the grievance of the petitioner is that in order to save the reputation of the school and its teacher Karunakaran, a false case has been foisted against the petitioner and unless, the investigation is transferred to CBCID, the real facts and culprits would not come to light. Therefore, the petitioner has come forward with the present petition.

3. A counter affidavit filed on behalf of the third respondent, wherein, it is stated that one Tmt.Mary, defacto complainant, who is the mother of the victim girl Mercy, has preferred a oral complaint before the third respondent alleging that on 12.12.2014, the defacto complainant took the victim girl to her home and on enquiry, she came to know that the petitioner has been continuously harassing and giving sexual assault to the victim girl Mercy and due to sexual torture, the victim girl had left the orphanage. Based on the said complaint, a case in Crime No.5 of 2014 under Sections 376 IPC and Sections 6 and 8 of Protection of Children from Sexual Offences Act, 2012 was registered. The respondent police examined the victim girl, her

mother and school teachers, etc. and recorded their statements, wherein, they have clearly stated that the victim girl was sexually assaulted. The investigation reveals that due to sexual harassment made by the petitioner, three girls were missing from the said orphanage and the petitioner is the habitual offender to commit this type of offences against the girls staying in his home. After completion of the investigation, a charge sheet was laid before the Mahila Court, Tiruvallur and the same was taken on file by the said Court vide S.C.No.14 of 2015. Thus, the third respondent stated that in order to drag on the proceedings, the petitioner has come forward with the present petition, which deserves to be dismissed.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and perused the entire materials placed on record.

5. In the present case, it is not in dispute that after completion of the investigation, the respondents/police have filed the charge sheet before the learned Mahila Court, Tiruvallur and it was also taken cognizance vide S.C.No.14 of 2015. At this stage, the petitioner has come forward with the present petition, seeking to transfer the investigation to CBCID, alleging that the original offender is one Karunakaran, who is the teacher of the victim girl and in order to protect the reputation of the school, the school headmistress, Karunakaran and the mother of the victim girl joined together and foisted him in the present case. But on a perusal of the record, it is revealed that based on the complaint preferred by the mother of the victim girl, the third respondent police registered the case and conducted the investigation by examining various witnesses and by collecting medical evidence. After completion of the investigation, the third respondent police also laid the charge sheet. It is no doubt true that this Court in exercise of its jurisdiction under Section 482 Cr.P.C., is vested with the power of transferring the investigation from one agency to another, however, provided the ends of justice so demand such action. It is settled principle that this power has to be exercised very sparingly and with great circumspection and unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters. In the present case, the petitioner made certain allegations against the headmistress, Karunakaran and the mother of the victim girl stating that in order to protect the reputation of the school, they joined together and foisted him in the present case, which, in my opinion, are baseless and the respondent police have registered the case after examining the victim girl and recording her statement under Section 164 Cr.P.C. Therefore, this Court is unable to come to the conclusion that the

investigation conducted by the respondents/police is biased, unfair and requires fresh investigation by other investigating agency. Therefore, I am of the view that there is no need to transfer the investigation to CBCID or any other agency at this stage. Hence, the prayer sought for by the petitioner cannot be granted.

Accordingly, the Criminal Original Petition is dismissed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Director General of Police,  
CBCID,  
Chennai-8.
- 2.The Superintendent of Police,  
Tiruvallur District.
- 3.The Inspector Of Police,  
All Women Police Station,  
Tiruvallur District.
- 4.The Public Prosecutor,  
High Court,  
Madras.

Pre delivery order in  
Crl.O.P.No.17666 of 2015

ev(CO)  
srg(20/01/2016)

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