

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2015

CORAM:

THE HON'BLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 918 of 2015

and M.P.No.1 of 2015

A.Chinnasamy

.. Petitioner

-Vs-

The State rep. by
Inspector of Police
Town Police Station
Hosur, Krishnagiri District.

.. Respondent

Criminal Revision Case filed under Section 397 read with 401 of the Criminal Procedure Code, against the order passed by the learned Judge, Mahila Court, Krishnagiri, in Cr.M.P.No.267 of 2015 in S.C.No.105 of 2013, dated 06.08.2015.

For Petitioner : Mr.R.Vijayaraghavan

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed by the defacto complainant aggrieved against the dismissal of the petition filed under Section 173 (8) of Cr.P.C in Cr.M.P.No.267 of 2015 in S.C.No.105 of 2013 before the learned Judge, Mahila Court, Krishnagiri, by the order dated 06.08.2015, seeking further investigation to find out the factum of murder. Aggrieved against the same, the present Criminal Revision Case is filed by the defacto complainant.

2. Today, when the matter is taken up, Mr.R.Vijayaraghavan, learned counsel appearing for the petitioner/defacto complainant would submit that the very Post-Mortem Doctor, viz., Dr.T.Kumaravel has not been cited as a witness in the memo of evidence filed along with the final report. He would further contend that unless, the Post-Mortem Doctor is examined, the truth will not come out. He would further add that alleging that the very investigation is not proper, the petitioner has come forward with the petition filed under Section 173 (8) of Cr.P.C before the Mahila Court, seeking further investigation to find out the factum of murder, but, the learned Judge, by the order dated 06.08.2015, has dismissed the said petition and hence, the petitioner has come forward with the Criminal Revision Case.

3. Mr.V.Arul, learned Government Advocate appearing for the Criminal Side would point out that in the memo of evidence filed along with the final report, the prosecution has annexed a page, wherein, it is clearly averred that there are 21 documents available, which include the Statement of Dr.Kumaravel, who is admittedly the Post-Mortem Doctor and his statement has been received and he has been sent with a questionnaire, for which, he has sent a reply. Pointing out to the same, the learned Government Advocate assured before this Court that the said Post-Mortem Doctor will be examined at the time of trial and that the Court alone is vested with the discretionary power to decide on the basis of the evidence available as to whether a case has been made out for further investigation or for the alteration of the offence under Section 216 Cr.P.C. and it is neither for the prosecution nor for the defacto complainant to seek for further investigation and rightly the Trial Court has dismissed the petition.

4. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal at the stage of admission itself.

5. The short point for consideration in this revision is as to whether the defacto complainant can ask for further investigation at this stage. It is needless to point out that there is no question of further investigation at this stage, once the final report was filed, what is required under law under Section 216 Cr.P.C. is that once the evidence is recorded, the Court alone is exclusively vested with the discretionary power, de hors any petition to be filed by the defacto complainant or by the prosecution to seek further investigation, for which they are not even entitled to. If the Court comes to the conclusion can decide on the basis of the evidence available as to whether a case has been made out for further investigation or for the alteration of the offence under Section 216 Cr.P.C. Therefore, if at all, this Court can only observe that after the examination of the Post-Mortem Doctor is over and other witnesses, if still the Court comes to the conclusion that any offence is made out, it can independently take a decision as the Court is exclusively vested with the discretionary power as per Section 216 Cr.P.C., which is enshrined under the Act. Recording the statement of the Government Advocate that Dr.Kumaravel, who is the Post-Mortem Doctor, will be examined, this Criminal Revision Case is disposed of with the above observation. The petitioner is at liberty to raise his contention regarding the shoddy and biased investigation at the time of argument and the same shall be taken into consideration by the Trial Court. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police
Town Police Station
Hosur, Krishnagiri District.

2.The Mahila Court,
Krishnagiri.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.R. Vijayaraghavan, Advocate Sr.51853

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LRS (CO)
Eu 12.10.15



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