

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2015

DELIVERED ON : 23.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.32991 of 2014

S.Kayalvizhi

.. Petitioner

vs.

1.The Superintendent of Police (CBCID)
Puducherry.

2.The Sub Inspector of Police
Thirubhuvanai Police Station
Puducherry.

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct further investigation in Cr.No.74 of 2012 which is on the file of the Court of Hon'ble Sub-Divisional Magistrate (South) at Puducherry through some other agency like CBI, who do not have any control by the State/Union territory administrator other than the first respondent herein.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Mr.D.Yesudhas

For Respondents : Mr.T.Murugesan
Public Prosecutor, Puducherry
Assisted by
Mr.A.P.Thangavel, APP (P)

ORDER

A distraught mother is knocking the doors of this Court for the fourth time seeking justice, to unravel the mystery behind her dear daughter's death. Priyadharshini joined the MBBS course in Manakula Vinayagar College at Puducherry in 2008 and was a hostelite, as her mother appears to hail from Tirupathi, Andhra Pradesh.

2. On 17.05.2012 around 8.45 a.m. the petitioner received a phone call from one Nandhini, a friend of Priyadharshini, who informed her that Priyadharshini had died and asked the petitioner to rush to Puducherry. According to the College authorities, Priyadharshini did not open her room for a very long time in the morning on 17.05.2012, and the door of her room was forcibly opened and inside the room they found Priyadharshini hanging down the ceiling fan using her dupatta.

<https://hcservices.ecourts.gov.in/hcservices/>

3. On the complaint lodged by one Tamizharasi, Hostel Warden of the Medical College, the Sub Inspector of Police of

Thirubhuvani Police Station, registered a case in Cr.No.74 of 2012 for an offence under Section 174 Cr.P.C. The police photographer took photographs and the police prepared the Observation Mahazar etc. Inquest was conducted and the body was sent for post-mortem to the General Hospital, Puducherry. The Post-mortem report opines the cause of death as "Asphyxia due to hanging". On 18.05.2000 itself the petitioner went to Puducherry and suspected some foul-play in the death of her daughter and lodged a detailed complaint to the Superintendent of Police, Puducherry, for fair investigation of the case.

4. The Revenue Divisional Officer also conducted an enquiry and he in his Report has stated that, one Pradeep who was in contact with Priyadharshini should have to be interrogated. Finding that the investigation was being done in a very shoddy manner, the petitioner approached this Court in Crl.O.P.No.13983 of 2012 for transferring the investigation of the case from the file of the local police to the file of CB CID. This Court by order dated 08.06.2012, transferred the case from the file of Thirubhuvanai Police Station to the CB CID. The CB CID took up the investigation on 31.07.2012 and was not able to make any headway in the probe. The petitioner sought for certain records relating to the Inquest Report, RDO Report etc., under the Right to Information Act, from the Puducherry authorities, which was stonewalled. Therefore, the petitioner had to approach this Court in W.P.No.3371 of 2013 for a direction to the authorities to furnish the following:

- A copy of the Inquest report
- RDO Report
- Video Coverage of the autopsy
- Photographs taken during autopsy; and
- Chemical and blood analysis report.

This Court allowed W.P.No.3371 of 2013 on 27.03.2013. The CB CID conducted the investigation and filed a Final Report on 12.08.2013 concluding that, Priyadharshini committed suicide and the cause of death was "Asphyxia due to hanging". The petitioner again approached this Court in Crl.O.P.No.22770 of 2013 with a prayer to transfer the investigation from the file of the CB CID to the CBI. This Court disposed of Crl.O.P.No.22770 of 2013 on 04.02.2014 by observing as follows:

"13. Thus, as I have already pointed out, as held by the Hon'ble Supreme Court in Bhagwant Singh case (cited supra), it is the statutory power of the Magistrate to look into the final report vis-a-vis protest petition if any to be filed after issuing notice to the petitioner and to pass appropriate orders on the final report. I would clarify that I do not express any opinion as to whether the investigation has been done in the right direction and whether the materials collected

by the Investigating Officer would support the conclusion arrived at by him. I only say that it is for the learned Magistrate concerned to look into all the above and pass appropriate orders. In view of the said legal position, without expressing any opinion regarding the grounds raised in this petition, I am inclined to dismiss the petition, however, with liberty to the petitioner to file protest petition before the learned Magistrate to whom the final report has been submitted by the respondent police.

14. In the result, this petition is dismissed with liberty as stated above."

5. Undeterred, the petitioner marched to the Court of the Sub Divisional Magistrate [South] at Villiyanur and filed a detailed protest petition pointing out the glaring infirmities in the investigation conducted by the CB CID. The learned Sub Divisional Magistrate, Villiyanur has observed the following infirmities and referred the case to the SP(CB CID) by memorandum dated 19.06.2014 to give clarifications for the queries raised. The learned Magistrate's queries are repeated verbatim.

"01) The then SDM (South) in his inquest has indicated that, "Something was transpired between Priyadharshini and Pradeep in that ill-fated night. Against this backdrop the Sub-Inspector Thirubuvanai PS had been directed to apprehend Pradeep and produce for enquiry so as to find out the extent to which he is responsible for the death of Priyadarshini. However Pradeep has not been produced so far. Further enquiry with Pradeep would reveal more which would help to take this case to a Logical conclusion". But in the Final Report, no such Enquiry was conducted with Pradeep.

02) On perusal of the statement of Thiru Mohamed Fazith, it is stated that on 17.05.2012 at 9.30 hrs Thiru Balaji (Pradeep brother), Pradeep's uncle and his two friends standing at the ICU of the SMV Hospital, Kalitheerthalkuppam, asked him about Priya's health and told that they have come here to see Priyadharshini. Further it reveals that Thiru Fazith in his statement has deposed that Pradeep's uncle Nathan had opened the Laptop and deleted the files in his presence in Pradeep's house. In respect to this no such Enquiry has been conducted with Nathan."

03) On perusal of the Protest Petition, it is alleged that the SHO, Thirubuvanai PS have neither seized the dress material worn by the deceased at the time of her death nor sent the same to the Forensic Expert. Even the thuppatta worn by the deceased was not sent to the expert to check if there was any extension of thuppatta material owing to the suspension of weight of the body in case of suicide. Hence such clarification is necessary in this regard.

04) On perusal of the Protest Petition it is stated that, the consultant in chief Padma Bhusan Prof.Dr.P.Chandrasekaran and Forensic International opinioned that "the authorities of the said Medical College, hospital and hostel who had anticipated the ensuing accusation of foul play in the death of Priyadharshini could have easily and scientifically proved that Priyadharsini's death is due to suicidal hanging and proved their honesty and integrity and put an end to the matter". In this regard the Investigation Officer shall conduct Re-enquiry based on the report of the Prof.D.P.Chandrasekaran.

For the aforesaid reasons this Court is of opinion that the queries raised by this Court have to be clarified and hence I direct the SP (CBCID) to give necessary clarification for the said queries."

6. The petitioner has now again come up by way of this petition for a CBI probe contending that the CB-CID is no better than the local police, inasmuch as they had left out even fundamental aspect of investigation and have merely toed the line of the College management by contending that Priyadharshini committed suicide.

7. This Court heard the learned counsel for the petitioner and the learned Public Prosecutor for Puducherry.

8. The learned Public Prosecutor for Puducherry produced the Report dated 30.07.2014 submitted by the Superintendent of Police, before the Sub Divisional Magistrate, giving replies to the queries raised therein. I do not want to comment anything on the reply, for the reply itself would show the perfunctory nature of the investigation conducted by the CB CID.

"Para-1:

The case was registered at Thirubuvanai PS on 17.05.2012. As per the order of the Hon'ble Madras High Court, the same was transferred for further investigation by SP

(CID) on 31.07.2012. On perusal of the case file it was found that the Hon'ble SDM completed the enquiry and submitted the report to the Hon'ble District Magistrate on 21.06.2012 itself with the remarks mentioned in this Para. Also with a request to direct the concerned Superintendent of Police to investigate further in this case. After strenuous efforts copy of the report of the SDM was furnished to the I.O/Superintendent of Police (CID) on 10.08.2012. Since the Hon'ble SDM already completed the magisterial enquiry and submitted the report also the case was transferred to SP(CID) for further investigation as per the High Court order, Pradeep was not produced before the SDM (South). However, the said Pradeep (21), S/o R.Sankar, No.1/149-A, Krishna Nagar, Sithalampettu, Thirukkanur was brought and enquired by the investigating officer/SP(CID) on 13.12.2012. His interrogation statement was also recorded. Copy of the same is submitted herewith.

Para-2

Thiru Nathan, uncle of Pradeep was not examined so far. The allegation of the petitioner Tmt.Kayalvizhi is that her deceased daughter Priyadarshini was sexually harassed and murdered by the management of the Medical College. Hence, the further investigation was focussed in collecting evidence with respect to the allegation of the petitioner. Neither the petitioner nor the witnesses including close friends of the deceased, adduced any evidence against the said Pradeep

However, the Google India Ltd., was requested to furnish the details of e-mail account of the said Pradeep and the deceased Priyadarshini for analysis. So far no reply was received despite several reminders. After getting the details/data, the same shall be analysed for further information.

Para-3

During the course of initial investigation, on 17.05.2012 at 11.30 hrs at the place of occurrence itself the SHO, Thirubuvanai PS, seized the 'Thuppatta' which was used as ligature to commit suicide by Priyadarshini and submitted the same to this

Hon'ble Court. After the post-mortem examination all the dress materials [4 in nos.], which were worn by the deceased at the time of occurrence were seized on 19.05.2012 at 14.30 hrs at G.H.Mortuary, Puducherry by the SHO and also submitted to this Hon'ble Court. The allegation that the dress materials of the deceased were not seized by the Police is not correct.

The team of Medical Officers, who conducted autopsy on the body of the deceased clearly opined that the cause of death of the deceased Priyadarshini is "ASPHYXIA DUE TO HANGING". Hence the dress materials were not forwarded for Forensic analysis by the then Investigating Officer.

Para-4

All the information collected during the investigation were meticulously investigated. No piece of evidence has erupted to support the allegation of the petitioner Tmt.Kayalvizhi that her deceased daughter Priyadarshini was sexually harassed and murdered by the management of Medical College. Regarding the report of Professor Dr.Chandrasegar, it is submitted that he is not an investigating agency either appointed by the Government or by the Court. He is a private consultant who furnished a report by scrutinizing the inquest and post-mortem reports and on examination of photographs and videographs of the autopsy."

9. It is apparent to this Court that one Pradeep has been having some affair with the deceased and there were overwhelming materials available from the inception of the case about his role, which ought to have been probed at the outset. The local police failed to do it, but the Revenue Divisional Officer in his report has indicted Pradeep, despite which the CB-CID did nothing to interrogate Pradeep.

10. In the Closure Report filed by the CB CID, they have stated that the local police had examined 13 persons and after CB CID took over the investigation, they recorded the statements of 18 persons. Thus both the police have recorded the statements of 31 persons and strangely the list does not contain the name of Pradeep. When this Court confronted this anomaly with the learned Public Prosecutor, the learned Public Prosecutor produced a statement from the Case Diary purported to have been given by Pradeep. This Court carefully perused the statement and was surprised to note that the

police have prepared a questionnaire and they have asked Pradeep to fill up the questionnaire as if he is writing a competitive examination. The statement does not even contain the date on which it was recorded. It also does not contain the Officer who has recorded the statement and lastly, the statement did not go to the Court along with the Closure Report. The questions framed by the police appear to be tailor-made to suit the answer given by Pradeep. The police are not able to give any satisfactory reason as to why despite the disclosure of Md.Fasith that, Pradeep's uncle and relatives had cleverly erased several materials from the laptop of Priyadharshini, no action was taken by them to nab Pradeep and his relatives to discover what they were upto.

11. According to the police, the door was forcibly opened from outside and that, the socket nailed to the frame of the door into which the latch would go in, got detached from the frame with screws and was found inside the room. When this Court asked the learned Public Prosecutor as to when the socket was seized by the police and sent to the Court, he produced the Case Diary, from which it is seen that only after CB CID took over the investigation, the aluminium socket with the screws was seized in Form 95 on 03.08.2012. It must be remembered that the incident took place on 17.05.2012 and it is not known where the aluminium socket was upto 03.08.2012. Had the socket gone to the Court at the earliest, then it would have been an assurance that the door was forcibly opened from outside and there may not have been a foul-ply in the death of Priyadharshini. Even the Form 95 produced by the learned counsel does not bear the date on which the properties had actually gone to the Court. Even according to Form 95, the aluminium socket has been recovered on 03.08.2012 at 13.30 hrs. What surprises this Court is, the incident had taken place on 17.05.2012 and it would be ridiculous to believe that the aluminium socket was available in the alleged scene of occurrence, which is a hostel room, till 03.08.2012 for the CB CID officials to come and pick it. The irony is there are mahazar witnesses for the alleged seizure of the aluminium socket on 03.08.2012 from the hostel room.

12. The next most intriguing aspect is, the dupatta which Priyadharshini is alleged to have used for committing suicide was neither sent by the local police nor by the sleuths of the CB CID for Forensic examination to find out if saliva dripped on to it. When this Court pointed out this lapse, the learned Public Prosecutor submitted that the CB CID would even now send the dupatta for Forensic examination. It is not necessary for the police to satisfy this Court, but they have to satisfy their conscience.

13. The learned Public Prosecutor submitted that the protest petition is under consideration by the learned Sub Divisional Magistrate, who would have all the powers to order further investigation. It is true that Mr.P.Parthiban, IAS, the learned Sub Divisional Magistrate, (South) has thoroughly studied the closure report and the protest application and has raised

intelligent queries for the Superintendent of Police to answer. This Court lauds the proactive manner in which Mr.P.Parthiban, IAS, the Sub-Divisional Magistrate (South) has dealt with the case without succumbing to pressure and showing sensitivity to the tears of the victim's family. Mr.P.Parthiban, IAS, has called the bluff of those who believe that only a judicially trained mind can dispense fair justice. The reply given by the CB CID to the queries raised by the Magistrate is incredible. CB CID is going behind Google somewhere abroad, leaving out Pradeep and his uncle who are locally available. It is true that no orders have been passed by the learned Magistrate on the Report submitted by the CB CID to the queries raised by the Magistrate, but the reply given by the CB CID cuts no ice. This Court cannot expect the Executive Magistrate to transfer the investigation to CBI, for he does not have the power.

14. The learned counsel for the petitioner relied upon the reasoned judgment of the Supreme Court in Rashmi Behl vs. State of Uttar Pradesh and others [2015(2) Scale 452] for the proposition that, this is a fit case to transfer the investigation to the CBI. Judgments of Apex Court ordering and refusing transfer of cases to CB are in legion. Each case has to be dealt on its own merits.

15. To recapitulate, Priyadharshini's death is shrouded with suspicion. The Union of Puducherry has been stonewalling every attempt by the petitioner to have a fair investigation done on her daughter's death. The CB CID's investigation, as stated above, does not inspire confidence. Therefore, this Court is of the view that this is a fit case to transfer the investigation of Cr.No.74 of 2012 pending on the file of the Superintendent of Police, CB CID, Puducherry to the Central Bureau of Investigation. During the course of investigation, if the CBI finds that the local police and CB CID have connived to screen the offenders, the CBI shall take appropriate action against them. CB CID is directed to hand over the Case Diary and all the materials to the CBI for the purpose of investigation. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Superintendent of Police (CBCID)
Puducherry.

2.The Sub Inspector of Police
Thirubhuvanai Police Station
Puducherry.

3. The Sub-Divisional Magistrate (South)
The Sub Divisional Magistrate Court at Puduchery.

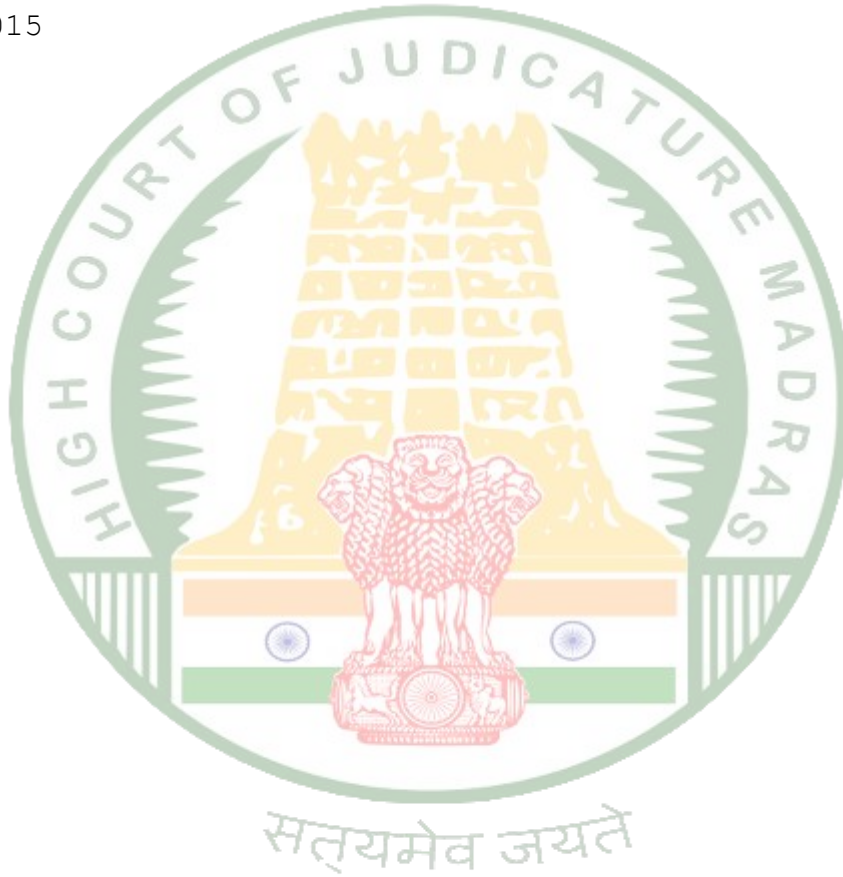
4.The Public Prosecutor for Pondicherry
High Court, Madras.

5. The Central Bureau of Investigation, Pondicherry.

4 cc to Mr.D.Yesudhas ,Advocate, SR.No.22159

Cr1.O.P.No.32991 of 2014

eu(co)
pmk.4.5.2015



WEB COPY