



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.O.P. (MD) No.3732 of 2015

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K.Senthil Vinayagam

: Petitioner

Vs.

State rep. by

1.The Inspector of Police,
Crime Branch C.I.D,
Office of the CBCID,
Tirunelveli.

2.The Superintendent of Police,
CBCID, Tirunelveli.

3.The Superintendent of Police,
Office of the CBI,
No.26, Haddows road,
Nungambakkam,
Chennai - 600 006.

4.The Inspector of Police,
Office of the CBI,
No.26, Haddows Road,
Nungambakkam,
Chennai - 600 006.

: Respondents

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure to issue a direction to transfer the investigation in Crime No.458 of 2011 from the file of the first respondent to the fourth respondent, the Inspector of Police, CBI and the same is monitored by the third respondent, the Superintendent of Police, CBI.

For Petitioner:Mr.S.Ravi

For R-1 & R-2 :Mr.K.Chellapandian,

Additional Advocate General

Assisted by

Mr.C.Mayil Vahana Rajendran,

Additional Public Prosecutor

For R3 & R4 : Mr.S.Jeyakumar,

Special Public Prosecutor for CBI

ORDER

This is a case of gruesome double murder for gain. The occurrence in this case took place on 29.09.2011. The case was registered by the Inspector of Police, Perumalpuram Police Station on 29.09.2011. Since the said Inspector of Police could not make any progress in the investigation, the Director General of Police, vide order dated 13.10.2011, referred the case to C.B.C.I.D for investigation. Accordingly, one Mr.L.Shivakumar, the Inspector of Police, C.B.C.I.D, Tirunelveli, took up the case for investigation. But, he also could not



make any desirable progress. Now according to him, he has filed a report to the learned Magistrate concerned, stating that the culprits could not be detected. In other words, the case has been closed as 'undetectable' on 03.11.2014.

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2. At this stage, the petitioner, who is the son of the deceased, has come up with this petition seeking transfer of investigation to the C.B.I for further investigation.

3. When this petition came up for hearing on 21.04.2015, Mr.L.Shivakumar, the Inspector of Police, C.B.C.I.D, Tirunelveli, was present and he has also produced the case diary for inspection of this Court. After having heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the State, this Court *inter alia* passed the following order:

"2. This is not the first case, where this Court has come across such closure reports. The CBCID, which is considered to be a Premier Investigating Agency of the State, has closed many cases as 'undetectable', even though the offences are heinous in nature. To cite one illustration, this Court in a similar case of double murder for gain, in CRL.OP.(MD)No.995 of 2014, when the CBCID had closed the case as 'undetectable', after ten long years, had to call the Superintendent of Police, CBCID, South Zone. The Superintendent of Police had assured to take up the investigation to himself and therefore, the case was ordered to be re-opened and the matter was entrusted to him for further investigation, vide order dated 08.04.2015.

3. In yet another case in Villupuram District, in a case of murder for gain, 17 officers of the CBCID conducted investigation for about 14 years, but could not detect. So, this Court transferred the investigation to CBI (vide order in Crl.O.P.No.15838 of 2011, dated 16.12.2014).

4. In yet another case, where six precious lives have been snatched away in a gruesome manner, this Court, in Crl.RC[MD]. No.167 of 2015, by order dated 17.04.2015, had to issue a direction for re-opening the case for further investigation and the matter was entrusted to the Superintendent of Police, Ramanathapuram District.

5. This is the fourth case in quick succession that this Court has come across. In this case also, when the Inspector of Police, CBCID, Tirunelveli, is not able to detect the culprits, I am of the view that there will no purpose served in keeping the case in the hands of the present officer. But, at the same time, this Court has to find a suitable officer to do further investigation. This Court is not informed of the difficulties, which are faced by the CBCID in the State, which eventually results in failure of investigation. This Court was informed that, 13 such cases have been closed by the CBCID as 'undetectable' in the recent times.



6. A Constitution Bench of the Hon'ble Supreme Court in *State of W.B.Vs. Committee for Protection of Democratic Rights* (reported in (2010) 3 SCC 571) has held that being the protectors of civil liberties of the citizens, the Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution of India in particular, zealously and vigilantly.

7. Therefore, it will be a failure on the part of this Court in the discharge of its fundamental obligation, if this Court is not able to find a provision for proper investigation in this case so as to unearth the truth and bring to book the real culprits. Therefore, this Court is constrained to direct the Inspector General of Police, CBCID, to appear before this Court on 24.04.2015.

8. Accordingly, a direction is issued to the Inspector General of Police, CBCID, to appear before this Court on 24.04.2015. He is required to place on record the following details;

(i) The number of cases of murder and murder for gain, which are pending investigation with the CBCID;

(ii) The number of cases in which the investigations have been pending for more than two years;

(iii) The number of cases pending investigation for more than five years; and

(iv) the number of cases closed as 'undetectable' during the past five years by the CBCID.

9. Registry is directed to list the matter on 24.04.2015, immediately after admission, as a first case. The learned Additional Advocate General has assured to communicate this order to the Inspector General of Police and ensure his appearance."

4. Today, Mr. Mahesh Kumar Aggarwal, the Inspector General of Police, C.B.C.I.D., is present. After having gone through the records, he would submit that he would pass an order nominating one Mr. S. Marirajan, Additional Superintendent of Police, Special Investigation Division, C.B.C.I.D., Madurai, to re-open the investigation and to take up the same forward. He would further submit that he himself would monitor the investigation. The said statement made by him is appreciated.

5. As it has been observed by this Court herein above, fair trial includes fair investigation. Fair trial is not a concept traceable only to the accused. Similarly, fair investigation is not a concept traceable only to the accused. Per contra, the victims and the society at large need to be afforded fair trial as a result of fair investigation. Fair investigation has been recognized as a part of fundamental right to life guaranteed under Article 21 of the Constitution of India. The Honourable Supreme Court in *State of West Bengal vs. Committee for Protection of Democratic Rights* (reported in (2010) 3 SCC 571), has held



that this Court has not only the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by Part III in general and under Article 21 of the Constitution of India in particular, zealously and vigilantly.

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6. Therefore, it has become necessary for this Court to see that fair investigation is done in this case and real culprits, who are responsible for the gruesome double murder for gain, are detected and brought to book.

7. In view of the said position, I am inclined to issue a direction to the Inspector General of Police, C.B.C.I.D to nominate Mr.S.Marirajan, the Additional Superintendent of Police, Special Investigation Division, C.B.C.I.D, Madurai, as undertaken before this Court, to re-open the investigation and file appropriate report before the Court concerned. The Inspector General of Police himself shall monitor the investigation. For re-opening the case, Mr.S.Marirajan, need not approach the jurisdictional Magistrate for formal permission. This order shall be construed as permission granted to Mr.S.Marirajan to re-open the case and do further investigation.

8. With the above direction, this Criminal Original Petition is disposed of. It is made clear that the petitioner will be at liberty to approach this Court if no desirable progress is made in this matter, after the end of June, 2015.

Sd/-

Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Inspector of Police,Crime Branch C.I.D,
Office of the CBCID,Tirunelveli.
 - 2.The Superintendent of Police,CBCID, Tirunelveli.
 - 3.The Superintendent of Police,
Office of the CBI,No.26, Haddows road,
Nungambakkam,Chennai - 600 006.
 - 4.The Inspector of Police,
Office of the CBI,No.26, Haddows Road,
Nungambakkam,Chennai - 600 006.
 - 5.The Inspector General of Police,
C.B.C.I.D.Madurai.
 6. The Additional Superintendent of Police,
Special Investigation Division, C.B.C.I.D, Madurai
 - 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
- +1cc to Mr.V.S.Senthil Kumar, Advocate, SR.No.21772

ORDER MADE IN

CRL.O.P. (MD) .No.3732 of 2015

24.04.2015