

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.1217 of 2016
and
Crl.M.P.No.543 of 2016

Sanne Gowder

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-600 004.

2.The Inspector General of Police,
Coimbatore Range,
Coimbatore,
Coimbatore District.

3.The Superintendent of Police,
Erode District,
Erode-638 001.

4.The Inspector of Police,
Bargur Police Station,
Crime No.14 of 2014,
Erode District.

... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., praying to direct the respondents 1 & 2 to order fresh or reinvestigation in Crime No.14 of 2014 on the file of the 4th respondent by ignoring the final report filed in S.C.No.83 of 2015 pending for trial on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

This petition has been filed by the petitioner praying to direct the respondents 1 & 2 to order fresh or reinvestigation in Crime No.14 of 2014 on the file of the 4th

respondent by ignoring the final report filed in S.C.No.83 of 2015 pending for trial on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

2.In the affidavit filed in support of this petition, it has been stated by the petitioner that he is a resident of Oosimalai, Bargur Village. The petitioner's son Sivalingam was an active supporter of AIADMK party and he was the President of Bargur Primary Agricultural Co-operative Bank. During the election held in the year 2012, one Giriyan (former president of Bargur Village Panchayat) had also contested for the post of President of Bargur PACB, and he requested the petitioner's son to withdraw his nomination. But, the petitioner's son refused to withdraw his nomination and later, he won the election and became the President of the said Society. The said Giriyan and his associates were not in a position to tolerate the development of the petitioner's son in politics. Therefore, they have developed some personal grudge against him and they were in the habit of spreading rumors to tarnish the image of the petitioner's son Sivalingam. While so, on 01.04.2015 at about 10.00 pm, one Manikandan, brother's son of the said Giriyan, and few others called the petitioner's son over phone for a panchayat. Believing their words, the petitioner's son proceeded to Oosimalai in his two wheeler bearing Reg.No.TN 36 AY 7204. The petitioner's son was intercepted by a group of accused person under the leadership of one Murugan and he was brutally attacked by them with wooden log. After giving fatal blows on the head of the petitioner's son, the accused Manikandan and six others covered the body of the petitioner's son with the help of a bedsheet and took the body to the house of the accused Manikandan to project as if he committed suicide by hanging. Whereas, according to the prosecution, the petitioner's son had an illicit affair with one Masi, mother of the accused Manikandan and their physical relationship had been witnessed by the accused Manikandan, who got angry and assaulted him. As per the prosecution case, the petitioner's son was not able to tolerate the humiliation and committed suicide by hanging in the house of the accused Manikandan. In this regard, a complaint dated 02.04.2014 was sent from the Village Administrative Officer of Bargur Village and the 4th respondent-Police registered the case in Crime No.14 of 2014 under Section 174 of Cr.P.c. After completion of investigation, chargesheet was filed before the concerned Magistrate. After committal procedures, the case was taken on file as S.C.No.83 of 2015 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode. Now, according to the petitioner, the 4th respondent has hurriedly investigated the case in a hasty manner and filed final report. Hence, the petitioner has come forward

with the present petition seeking to order for fresh or reinvestigation in this case.

3. When the matter is taken up for consideration, the learned counsel for the petitioner made a detailed argument by reiterating the averments made in the affidavit filed in support of this petition. In support of his contention, the learned counsel for the petitioner has also relied upon the following decisions:-

(i) (2012) 3 SCC 126 [Aziya Begum Vs. State of Maharashtra and others]

(ii) (2012) 3 SCC 129 [Chandrakala Trivedi Vs. State of Rajasthan and others]

(iii) (2012) 9 SCC 532 [Gajoo Vs. State of Uttarakhand]

(iv) (2015) 8 SCC 774 [Chandra Babu Vs. State]

(v) (2014) 11 SCC 527 [Sudipata Lenka Vs. State of Odisha and others]

4. The learned Additional Public Prosecutor vehemently opposed to order for fresh/reinvestigation, stating that in the instant case, absolutely there is no need for fresh/reinvestigation. The learned Additional Public Prosecutor would further contend that only if the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the Court can set aside such an investigation and direct for fresh or reinvestigation. But, in the instant case, no such situation has arisen. Thus, he sought for dismissal of the petition.

5. Keeping the submissions made on either side, I have carefully gone through the materials available on record.

6. No doubt, this Court can order for denovo investigation, if the investigation ex facie is unfair, tainted, mala fide and smacks of foul play. But, as per the dictum laid down in the judgment relied upon the learned counsel for the petitioner, (2013) 5 SCC 762 [Vnay Tyagi Vs. Irshad Ali @ Deepak and others], such power has to be exercised fairly, only in rarest of rare cases and not in all cases. In the instant case, the entire submission made by the learned counsel for the petitioner is not supported by any material evidence. The learned counsel for the petitioner has not produced any material to substantiate his contentions. Further, this Court is of the view that fresh/reinvestigation can not be ordered mechanically, in the absence of any material evidence supporting the submission made by the learned counsel for the petitioner. Further, only when this Court comes to the conclusion that the investigation was not conducted by the respondent-Police in a proper and fair manner and the investigation was conducted in violation of the settled principles of investigative cannons, this Court can

order for fresh/reinvestigation. But, in the instant case, I do not find any such situation. By merely accepting the submission of the learned counsel for the petitioner, this Court cannot order for fresh/reinvestigation. I do not find any merit in the present petition and the same is liable to be dismissed.

In fine, the criminal original petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub-Assistant Registrar

ssv

To,

1. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai-600 004.
2. The Inspector General of Police,
Coimbatore Range,
Coimbatore, Coimbatore District.
3. The Superintendent of Police,
Erode District, Erode-638 001.
4. The Inspector of Police,
Bargur Police Station,
Crime No.14 of 2014, Erode District.
5. The Public Prosecutor,
High Court, Madras.

+1 CC to MR.N.Manokaran Advocate. SR.NO.6814

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and
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CO-RSK
JD 15/02/2016