

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.20165

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.15954 of 2015

S.Sivanantham ... Petitioner

Vs.

- 1.The State rep. by
The Superintendent of Police,
Villuppuram District.
- 2.The State rep. by
The Deputy Superintendent of Police,
CB CID Detachment,
CB CID Police,
Villuppuram District.
- 3.The State rep. by
The Inspector of Police,
Marakkanam Police Station,
Villuppuram District. ... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., praying to entrust the case to the 2nd respondent for the purpose of reinvestigation in P.R.C.No.2 / 2015 in C.C.No.284 of 2014, which is pending on the file of the learned Judicial Magistrate No.2, Tindivanam in Crime No.464 of 2014, which is on the file of the third respondent.

For Petitioners : Mr.R.Thirumoorthy

For Respondents : Mr.C.Emalias, APP

ORDER

This petition has been filed by the petitioner praying to order for reinvestigation of the case in Crime No.284 of 2014 on the file of the 3rd respondent-police, which has culminated into C.C.No.284 of 2014 (P.R.C.No.2 of 2015) on the file of the learned Judicial Magistrate No.II, Tindivanam, by entrusting the reinvestigation to the 2nd respondent-Police.

2.In the affidavit filed in support of this petition, it has been averred by the petitioner as follows:-

The petitioner's son Sivaraj was murdered by one Ezhumalai at the instigation of 1)Purushothaman, 2)Loganathan @ Rasu, 3)Thangarasu, 4)Poomi, 5)Viji, 6)Bharathi, 7) Manokaran, 8)Ramu & 9)Sivaraman. On 11.09.2014 at about 2.00 am, the said Ezhumalai was standing in front of the petitioner's house and shouting in abusive language. On hearing the noise, when the petitioner came out from the house, he saw that his son was being assaulted by the said Ezhumalai with iron pipe. Immediately, the petitioner raised alarm; then, the neighbours came and caught hold the said accused Ezhumalai. Thereafter, the petitioner's son was taken to hospital, but, he died due to the grievous injury on his head. Thereafter, the petitioner lodged a complaint, on the basis of which, a case in Crime No.464 of 2014 was registered against ten persons for the alleged offences under Sections 147, 148, 443, 294(b), 324, 302 IPC r/w 109, 34 IPC. It is the case of the petitioner that after registration of the case, the 3rd respondent-Police did not investigate the case properly and did not record the statement of the petitioner. The petitioner made several representations to the 2nd respondent-Police and other higher authorities. While so, chargesheet was filed by the 3rd respondent-Police only as against one accused Ezhumalai and the names of the other accused persons were deleted. Hence, the petitioner filed a protect petition before the Court below to reject the chargesheet. But, the said protest petition was dismissed by the Court below. Hence, the petitioner has come forward with the present petition before this Court.

3.The learned counsel for the petitioner made his submissions reiterating the averments made in the affidavit filed in support of this petition.

4.The learned Additional Public Prosecutor contended that on completion of investigation, chargesheet has been filed before the learned Magistrate and committal procedures were also over and now, the case is pending in S.C.No.255 of 2015 for trial. It is further contended by the learned Additional Public Prosecutor that only if the investigation exfacie 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 reinvestigation, if the investigation exfacie 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,

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 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 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. Further, in the present case, on completion of investigation, the chargesheet was filed and thereafter, committal proceedings are over and now, the case is pending for trial. At this stage, the prayer of the petitioner for reinvestigation cannot be entertained. Under such circumstances, 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(CO)

//True Copy//

Sub Assistant Registrar

ssv

To,

1.The Judicial Magistrate No.II, Tindivanam.

2.Do-Thro The Chief Judicial Magistrate,
Villupuram District.

3.The Superintendent of Police,
Villuppuram District.

4.The Deputy Superintendent of Police,
CB CID Detachment,
CB CID Police,
Villuppuram District.

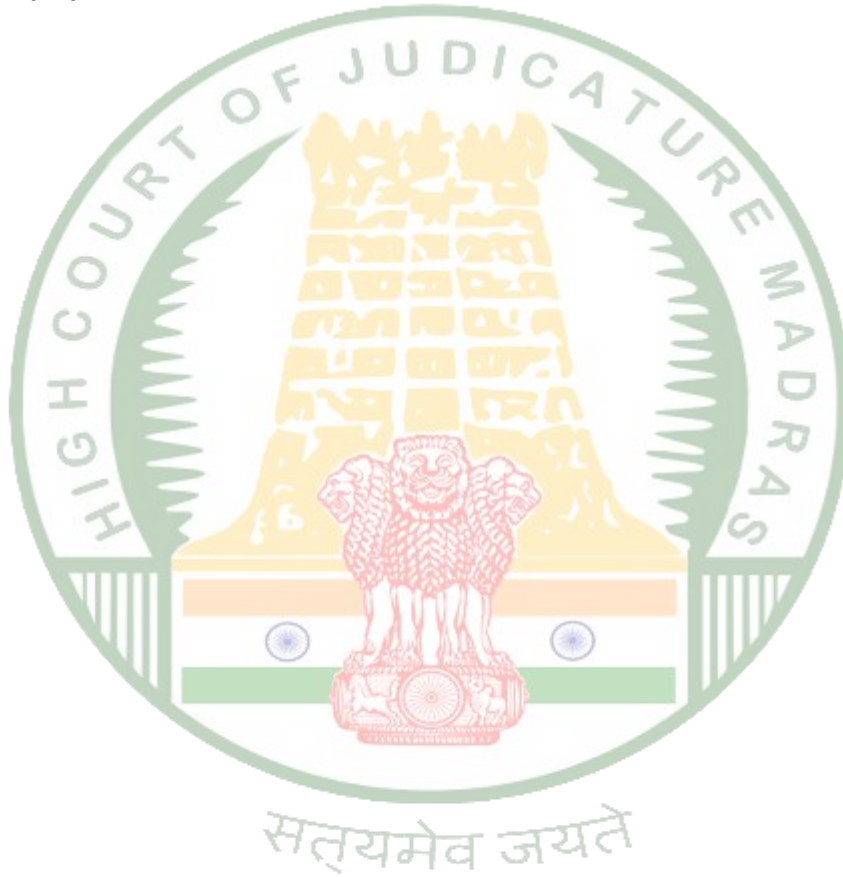
5.The Inspector of Police,
Marakkanam Police Station,
Villuppuram District.

6.The Public Prosecutor,
Madras High Court, Madras

+1 cc to Mr.R.Thirumoorthy, Advocate, sr.4661

Crl.O.P.No.15954 of 2015

ug co
kra 15.02.2016



WEB COPY