

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.18615 of 2015

A.Selvaraj ... Petitioner/Defacto Complainant

Vs.

1.The State

Represented by its
The Inspector of Police,
C-6, Mylam Police Station,
Tindivanam Taluk,
Villupuram District.

2.The Superintendent of Police,
Villupuram District.

... Respondents

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to issue a direction to conduct a fresh investigation by the C.B.I or any other agency in P.R.C.No.86 of 2013 pending on the file of the Hon'ble Judicial Magistrate Court No.II, Tindivanam.

For Petitioner : Mr.P.G.Perumal Pandian

For Respondents: Mr.C.Emalias

Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition seeking a direction to conduct fresh investigation by the C.B.I or any other agency in P.R.C.No.86 of 2013 pending on the file of the Judicial Magistrate Court No.II, Tindivanam.

2.Heard the submissions made by the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor.

3.The learned counsel appearing for the petitioner would submit that the investigation done by the first respondent is not in a correct direction, one of the witness Manikandan was not examined. In the final report, it was stated that on the

basis of the confession the alleged murder has occurred on 25.12.2012 at 3.30 a.m., whereas, the Doctor in the post-mortem has stated that the death could have occurred prior to 22 to 24 hours. So the time has been varied and that factum was not considered by the Investigation Officer during investigation and nothing has been recovered from the accused. Hence, he prayed for fresh investigation by C.B.I. or any other agency.

4. Resisting the same, the learned Additional Public Prosecutor would submit that as soon as the case has been registered, investigation has been done in a proper direction. He would further submit that the petitioner is a petition monger. He filed Crl.O.P.No.6571 of 2013 for transfer of investigation and that has been dismissed. Hence, he is not entitled to do so. He further submitted that he filed another Crl.O.P.No.3919 of 2014 praying to direct further investigation of the case in an impartial manner and for honest, fair and proper investigation and that petition was also dismissed and now in the third round of litigation, the petitioner has filed this petition and prayed for dismissal.

5. Considering the rival submissions made by both sides and on perusal of typed set, it is known that as soon as the occurrence has taken place, the deceased has been abducted by the proposed accused on 24.12.2012, case has been registered for the offence punishable under Sections 147, 148, 364 and 506(ii) of IPC on 24.12.2012 at 22.30 hours. The abduction has been done at 19.45 hours and during investigation, they came to know that on 25.12.2012, the Village Administrative Officer of the Bhoothamangalam village R.Natraj has given a complaint stating that his Village Assistant has informed him that a body of an un-identified male has been found. Hence, a case in Crime No.435 of 2012 has been registered for the offence punishable under Section 302 IPC. Then the Investigation Officer has taken over the matter and followed the procedure.

6. The case is based on circumstantial evidence. On that basis only the charge sheet has been filed. The main grievance of the petitioner is that the cell phone of the deceased has not been seized or recovered. Merely because of true investigation, they arrested the accused, the motive for commission of offence has been elucidated in the final report. Cell phone is not a weapon used for commission of offence, so non-recovery of the cell phone is not fatal to the case of investigation.

7. Further the learned counsel would submit that the medical report and time of murder deposed by the accused is different, but that cannot be cured by way of further investigation. Further, it is argued that the brother of the deceased, Thirumal has given financial assistance to one Manikandan and his associates for murdering the first accused, but here non-

examination of Manikandan is not fatal because, here Thirumal is one of the list of witnesses.

8. In such circumstances, I am of the view that in the case of circumstantial evidence, the Investigation Agency has investigated the matter in a proper direction and filed charge sheet for the offence and arrested the accused and confession has been recorded. Recovery under Section 27 of the Indian Evidence Act has been made. Identification parade has been conducted and investigation has been done in proper direction and final report has been filed for correct provision of law under Sections 147, 148, 120B, 341, 364, 302, 201 read with 149 of IPC. So I do not find any infirmity or illegality in the investigation done by the respondents. So it will not necessitate for further investigation. Hence, this Court is of the view that this petition is to be dismissed. Accordingly, this Criminal Original Petition is dismissed as devoid of merits.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No. II,
Tindivanam.
2. -Do- Thro the Chief Judicial Magistrate,
villupuram.
3. The Superintendent of Police,
Villupuram District.
4. The Inspector of Police,
C-6, Mylam Police Station,
Tindivanam Taluk,
Villupuram District.
5. The Public Prosecutor
High Court, Madras.

Cr1.O.P.No.18615 of 2015

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srg 09/03/2016