

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.28149 of 2015

Chitra

Petitioner

vs.

- 1 The Director General of Police
Office of the Director General
Mylapore
Chennai 600 004
- 2 The Secretary to Government of Tamil Nadu
Home Department
Fort St. George
Chennai 600 009
- 3 The Additional Superintendent of Police
Crime Branch
Criminal Investigation Department
(CBCID) Namakkal
Namakkal District
- 4 The Special Crime Branch
Central Bureau of Investigation (CBI)
Besant Nagar
Chennai 600 090

Respondents

Criminal Original Petition filed under Section 482 CrI.P.C. to transfer the investigation of the FIR in Crime No.289 of 2015 under Section 363 IPC altered into 363 of Indian Penal Code read with 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, now, pending on the file of the Additional Superintendent of Police, CBCID, Namakkal, i.e., the 3rd respondent herein and to transfer the same to the file of the Special Crime Branch, Central Bureau of Investigation (CBI), Besant Nagar, Chennai 600 090 for investigation and further direct the 4th respondent to file the final report as per Section 170(1) of the Code of Criminal Procedure.

For petitioner Mr. K. Balakrishnan - No appearance

For respondent Mr. C. Emalias

Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to transfer the investigation of the FIR in Crime No.289 of 2015 under Section 363 IPC altered into 363 of Indian Penal Code read with 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for brevity "the Act") now, pending on the file of the Additional Superintendent of Police, CBCID, Namakkal, i.e., the third respondent herein and to transfer the same to the file of the Special Crime Branch, Central Bureau of Investigation (CBI), Besant Nagar, Chennai 600 090 for investigation and to further direct the fourth respondent to file the final report as per Section 170(1) of the Code of Criminal Procedure.

2 Today, the matter is specifically posted for orders. On account of boycott of Courts, there is no representation on the side of the petitioner. However, in Harish Uppal [Ex.Capt.] Vs Union of India reported in [2003] 2 SCC 45, the Hon'ble Supreme Court has held that boycott of Courts is illegal and therefore, this Court heard the learned Additional Public Prosecutor, went through the records and passed the following order:

3 It is the case of the petitioner that her son Gokul Raj was brutally murdered by one Yuvaraj and other henchmen on 23.06.2015. The petitioner's son went missing pursuant to which, a case in Thiruchengode P.S. Crime No.289 of 2015 was initially registered on 24.06.2015 for an offence under Section 363 IPC. Thereafter, the dead body was found between Erode and Aanangoor, in which, a case in Crime No.90 of 2015 was registered by the Erode Railway Police under Section 174, Cr.P.C.. Thereafter, one Parthiban filed H.C.P. No.1541 of 2015 before this Court, in which, certain directions were issued by this Court with regard to postmortem of the body of the deceased. The case in Crime No.289 of 2015 was altered to an offence under Section 3(2)(v) of the Act and Sections 362 and 302 IPC on 01.07.2015 and the Deputy Superintendent of Police, Thiruchengode Sub Division, Namakkal District, has taken up the investigation. On the orders of the Director General of Police, on 19.09.2015, the case was transferred to the CB-CID, Namakkal, and the investigation was conducted by the Additional Superintendent of Police, CB-CID, Coimbatore.

4 While so, the petitioner has filed the present application for transferring the investigation from the file of the CB-CID to the Central Bureau of Investigation on the ground that the accused Yuvaraj was threatening Vishnu Priya, Deputy Superintendent of Police, who, later, is said to have committed suicide. It is further alleged that the said Yuvaraj

is influential in the locality and is scuttling the investigation. It is the further grievance of the petitioner that the respondent police did not even conduct test identification parade. Under such circumstances, this Court called for the case diaries and perused the same.

5 It is seen that the test identification parade was conducted on 05.11.2015 for the purpose of identification of the accused Kumar alias Sivakumar by witnesses in the presence of the Judicial Magistrate No.II, Namakkal. Similarly, test identification parade was conducted to identify Yuvaraj by witness Swathi, on 20.11.2015 at the Central Prison, Vellore, by the Judicial Magistrate No.II, Namakkal. The Judicial Magistrate No.II, Namakkal has also recorded the Section 164 statements of several crucial witnesses. Thereafter, the Additional Superintendent of Police, CB-CID, has completed the investigation and has filed a final report on 07.01.2016 before the Chief Judicial Magistrate, Namakkal in PRC No.1 of 2016, which was taken on file on 03.02.2016 for offences under Sections 120-B, 364, 34 r/w Section 109 IPC, Sections 384, 465, 468 IPC, Section 471 r/w Sections 468 and 465 IPC, Sections 302, 201, 212 and 216 IPC and Section 3(2)(v) of the Act against 17 accused of which Yogesh has been arrayed as the first accused.

6 This Court carefully perused the final report and the accompanying documents, including the case diary and found that there is no serious infirmity in the investigation. It is seen that the main witness is Swathi and her statement under Section 164, Cr.P.C. has also been recorded by the Judicial Magistrate No.II, Namakkal.

7 Under such circumstances, this Court does not find any serious infirmity in the investigation warranting transfer of the case from the file of the CB-CID to the file of the Central Bureau of Investigation, as prayed for by the petitioner.

8 The Supreme Court, in State of West Bengal vs. the Committee for Protection of Democratic Rights, [2010 (2) Scale 467], has held that the High Court should be slow in transferring cases to the Central Bureau of Investigation and in Sudipta Lenka vs. State of Odisha and others, [(2014) 11 SCC 527], has laid down the parameters for transfer of a case to the Central Bureau of Investigation.

9 As narrated above, this Court finds that the CB-CID has proceeded with the investigation in the right lines and

therefore, there is no necessity to transfer the case to the Central Bureau of Investigation.

With the above observation, this Criminal Original Petition stands closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cad

To

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- 3 The Additional Superintendent of Police
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- 4 The Special Crime Branch
Central Bureau of Investigation (CBI)
Besant Nagar
Chennai 600 090
- 5 The Public Prosecutor
High Court of Madras
Chennai 600 104

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