

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Cr1.O.P.No.29898 of 2015

and

M.P.No.1 of 2015

R.Suresh Kumar
Inspector of Police
Paramathi Police Station
Namakkal District and residing at
No.9/61, West Colony, Komarapalayam
Namakkal District Petitioner/Accused

Vs.

The Sub-Divisional Executive Magistrate cum
Revenue Divisional Officer
Office of the Revenue Divisional Officer
The Collectorate, Salem
Salem District ... Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482
of Cr.P.C., to call for the records pertaining to the
proceedings to the Private Complaint in S.C.No.173 of 2015
pending on the file of the I Additional Sessions Court, Salem
and quash the same.

For Petitioner : Mr.Arun Anbumani
for Mr.N.Raja Senthoo Pandian

For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

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O R D E R

The petitioner who is an accused in S.C.No.173 of 2015
pending on the file of the I Additional Sessions Court, Salem
for the offences punishable under Sections 34, 148, 343 and 304
(ii) IPC has come forward with the present Criminal Original
Petition to quash the said proceedings.

2. The learned counsel appearing for the petitioner would
submit that the petitioner was appointed as Sub Inspector of

Police on 01.03.1996 and he was promoted as Inspector of Police on 20.10.2005. While so, on 02.10.2008, the petitioner was transferred to Thammampatti Police Station and after taking charge, he proceeded with the investigation in Crime No.148 of 2008 for the offences punishable under Sections 302, 394 and 396 IPC against four accused viz., Mani, Ooty Arumugam, Murugan and Vignesh. During the course of the investigation, the petitioner came to know that while one Arjunan of Seeriyapatti of Malliakarai limit was sleeping along with his daughter at 11.30 P.M on 01.10.2008, the accused Murugan attacked the said Arjunan on his head with a wooden log and looted 7½ sovereigns of gold chain. On 01.11.2008, the said Arjunan died due to the injuries caused by the accused.

3. While so, the accused Murugan was arrested on 30.11.2008 and he gave voluntary confession statement. Thereafter, he was produced before the Magistrate on 01.12.2008 and remanded to judicial custody. During the course of the interrogation, the petitioner also came to know that the accused Murugan was involved in so many cases. When that being so, on 10.04.2009, the petitioner came to know that the accused Murugan died at Government Mohan Kumaramangalam Medical College Hospital, Salem. Pursuant to the same, a case in Crime No.4 of 2009 under Section 174 Cr.P.C came to be registered and the District Collector has ordered for enquiry under the provisions of the Police Standing Order. Accordingly, the respondent herein conducted the enquiry and submitted a report stating that the accused Murugan died due to the police excess. Pursuant to the same, the State Government had issued a G.O imposing departmental action as well as criminal action against the petitioner.

4. Thereafter, Criminal proceeding was initiated and the complaint preferred by the Revenue Divisional Officer was taken as P.R.No.1 of 2015 on the file of the learned Judicial Magistrate No.II, Attur and it was committed to the file of the I Additional Sessions Court, Salem and taken on file as S.C.No.173/2015.

5. Challenging the said proceeding, the learned counsel appearing for the petitioner would submit that since the deceased Murugan had died in the hospital while he was in judicial custody, as per Section 176 Cr.P.C, only the Judicial Magistrate is the competent person to conduct an enquiry and file a report, pursuant to which the Investigating Officer has to investigate the matter and file a final report. The learned counsel would further submit that though a case in Crime No.4/2009 was registered immediately on the death of the accused Murugan, no investigation has been done so far. But only the report submitted by the respondent herein was forwarded to the

Government by the District Collector and based on the same, the Government had issued a G.O., pursuant to which the private complaint has been preferred. So, the learned counsel for the petitioner would submit that the entire proceeding has to be vitiated. To substantiate the said contention, the learned counsel for the petitioner relied upon the decisions reported in

1. (2015) 1 MLJ (Cr1) 455, R.Kasthuri v. State
 2. (2015) 1 MLJ (Cr1) 424, P.Pugalenthil v. State
 3. 2016-1-L.W. (Cr1.) 170, Esakkiammal v. State
- and prayed for an order.

6. Resisting the same, the learned Additional Public Prosecutor appearing for the respondent would submit that before the amendment of Section 176 Cr.P.C, if any custodial death occurs, the Revenue Divisional Officer was the competent person to conduct an enquiry and the report of the Revenue Divisional Officer will be forwarded to the Government by the District Collector and after receipt of necessary Government Order, on the basis of the report submitted by the Revenue Divisional Officer, the investigation will be done by the Investigating Officer. In the instant case, the same procedure has been adopted and that is why the Investigating Officer has not proceeded with the investigation. Further, it is pertinent to note that the Government has passed a G.O dated 23.11.2011, nearly after two years from the date of occurrence and on the basis of the said Government Order, the private complaint has been preferred.

7. The learned Additional Public Prosecutor would further submit that the judgment reported in (2015) 1 MLJ (Cr1) 455, R.Kasthuri v. State will not be applicable to the facts of the present case because the above decision came to be rendered, after the Government had refused to accord sanction for prosecution. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Original Petition.

8. Considered the rival submissions made by both sides and perused the typed set of papers.

9. The admitted facts are that the accused Murugan is an accused [A-3] in Crime No.148 of 2008 for the offences punishable under Sections 302, 394 and 396 IPC. During the course of the investigation in the said case, the petitioner came to know that the accused Murugan was involved in another offence viz., while one Arjunan of Seeriyapatti of Malliakarai limit was sleeping along with his daughter at 11.30 P.M on 01.10.2008, the accused Murugan attacked the said Arjunan on his head with a wooden log and looted 7½ sovereigns of gold chain and on 01.11.2008, the said Arjunan died due to the injuries

caused by the accused. Furthermore, the accused Murugan was also involved in so many other offences. After interrogation, the accused was produced before the learned Judicial Magistrate and remanded to judicial custody. However, the accused Murugan died on 10.04.2009 at Government Mohan Kumaramangalam Medical College Hospital, Salem. So, a case has been registered under Section 174 Cr.P.C in Crime No.4 of 2009.

10. When that being the admitted facts, this Court is not inclined to go into the fact whether the death of the accused Murugan is due to the excess of the petitioner? But this Court is inclined only to consider the argument put forth by the learned counsel for the petitioner that once the deceased had died while he is taking treatment in judicial custody, as per Section 176(1)(a) Cr.P.C, only the Judicial Magistrate is the competent person to enquire into the matter and give a fact finding report. Admittedly, the Judicial Magistrate of the territorial jurisdiction had not made any enquiry till date. Only the respondent herein had conducted the enquiry and submitted the report to the Government and on the basis of the said report, G.O had been passed. At this juncture, it would be appropriate to incorporate Section 176(1-A) Cr.P.C.

"176. Inquiry by Magistrate into cause of death.-

(1-A) Where, -

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorized by the Magistrate or the Court, under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed."

11. Now the only point to be decided is whether the non conducting of the enquiry by the Judicial Magistrate as mandated under Section 176(1-A) Cr.P.C will vitiate the entire criminal proceeding in S.C.173 of 2015?

As per section 176(1-A) Cr.P.C, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed. Furthermore, no investigation has been conducted in Crime No.4 of 2009 and it has been kept in abeyance. Before adverting into the facts of the case, it would be appropriate to consider the decisions relied on by the learned counsel appearing for the petitioner.

12.1. In the decision reported in (2015) 1 MLJ (Cr1) 455, R.Kasthuri v. State, the executive magistrate has conducted the inquest and the Judicial Magistrate had also conducted the enquiry as per Section 176(1-A) Cr.P.C and recorded the statement of all the persons and submitted the report to the District Collector, who in turn forwarded the same to the Government. On the basis of the enquiry the Government had dropped the action because in the fact finding report it was stated that the cause of the death is due to heart attack with multiple injuries sustained in unexpected fall from height. Further, in the said case, the wife of the deceased has filed the application to initiate action against the police stating that her husband had died because of police excess. In paragraphs 39 and 40 of the said decision, the learned Single Judge of this Court has held that the letter of the Secretary to Government, Public (Law and Order) Department, Secretariat, Chennai is set aside and also directed the Director General of Police, Tamil Nadu to nominate a police officer from CB CID, not below the rank of Deputy Superintendent of Police and hand over the investigation of the case.

Considering the facts of the present case in the light of the above decision, I am of the view that the above decision will not be applicable because in the instant case though a case has been registered under Section 174 Cr.P.C, only the Revenue Divisional Officer has conducted the enquiry and the Judicial Magistrate of the territorial jurisdiction has not conducted any enquiry as contemplated under Section 176(1-A) Cr.P.C

12.2 In the decision reported in (2015) 1 MLJ (Cr1) 424, P.Pugalenthil v. State it was held that enquiry should have been conducted by the Judicial Magistrate but it was not done. Further, there was no investigation at all done by the police under the mistaken impression the enquiry held by the Revenue Divisional Officer was a bar for the police to hold investigation. In paragraph 9 of the judgment it was held that at any rate, in this case, as already concluded, the enquiry held by the Revenue Divisional Officer is wholly without jurisdiction. It would be appropriate to incorporate paragraphs 8, 9 and 10 of the said decision:

"8.As per the said law, in the instant case, inquiry should have been conducted by the Judicial Magistrate but, that was not done. But, strangely, in this case, the Revenue Divisional Officer who had no authority or power to hold inquiry has conducted inquiry assuming to himself power under Section 176(1) Cr.P.C. Of course, as we have already noticed, prior to 23.06.2006, he had such power to inquire, but, not

thereafter. Therefore, the inquiry held by the Revenue Divisional Officer, in this case, is wholly without jurisdiction. Apart from that, surprisingly, there was no investigation at all done by the police in this case, probably, under the mistaken impression that the inquiry held by the Revenue Divisional Officer was a bar for the police to hold investigation. Of course, under Section 176(1) Cr.P.C., an inquiry by an Executive Magistrate is either instead of or in addition to the investigation. But, such inquiry under Section 176(1) Cr.P.C., is confined only to the cause of death and the scope of such inquiry cannot be widened any more so as to equate the same to the police investigation.

9. At any rate, in this case, as I have already concluded, the inquiry held by the Revenue Divisional Officer is wholly without jurisdiction. In these circumstances, the only course now available for the Court is to issue a direction to the police to investigate the matter. As has been held by the Hon'ble Supreme Court in *People's Union for Civil Liberties and another v. State of Maharashtra and others*, 2014 (11) Scale 119, such investigation should be done by a police officer who is above the rank of the officer in whose custody, the deceased had died. In this case, the deceased died while he was in the custody of the Superintendent, Central Prison, Salem. When this was pointed out, the learned Advocate General submitted that the investigation may be entrusted to one Mr. M. Ramakrishnan, Assistant Commissioner of Police, C.C.B., Salem City. The said statement is recorded. In addition, as mandated by Sub-Section (1A) of Section 176 Cr.P.C., the jurisdictional Judicial Magistrate shall also hold inquiry in the light of the guidelines issued by this Court in CrI.O.P.No.20008 of 2013.

10. In view of the same, I hold that the report submitted by the Revenue Divisional Officer, Salem and the consequential order passed by the Government are without jurisdiction and hence, the same are liable to be set aside and the case should be entrusted to Mr. M. Ramakrishnan, Assistant Commissioner, C.C.B., Salem City to investigate the same and to submit an appropriate final report to the Court. While doing investigation, Mr. M. Ramakrishnan shall have regard to the guidelines issued by this Court in CrI.O.P.No.20008 of 2013 dated 19.12.2014."

The above decision is squarely applicable to the facts of the present case because in the instant case even though the death has happened in the judicial custody, only the respondent alone has conducted the enquiry while the Judicial Magistrate has not conducted the enquiry as mandated under Section 176(1-A) Cr.P.C.

13. Considering the facts of the case in the light of the decision reported in (2015) 1 MLJ (Cr1) 424, P.Pugalthi v. State, I am of the view that the report submitted by the respondent is without jurisdiction and hence, it is non-est in the eye of law. So, the report submitted by the respondent herein is hereby set aside and consequently, the Government Order according sanction to prosecute the petitioner on the basis of the said report submitted by the respondent is also hereby set aside. Hence, the entire proceeding in S.C.No.173 of 2015 pending on the file of the I Additional Sessions Court, Salem is hereby quashed.

14. The Judicial Magistrate having the territorial jurisdiction is directed to conduct enquiry into the matter and submit a report to the Investigating Officer as per Section 176 (1-A) Cr.P.C and the Investigating Officer in turn is directed to investigate the matter and file a final report in accordance with law. The respondent herein is directed to send the papers pertaining to this matter to the investigating officer.

15. In fine,

(a) the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

(b) the report submitted by the respondent herein is hereby set aside.

(c) the Government Order according sanction to prosecute the petitioner on the basis of the said report submitted by the respondent is also hereby set aside.

(d) the entire proceeding in S.C.No.173 of 2015 pending on the file of the I Additional Sessions Court, Salem is hereby quashed.

(e) the Judicial Magistrate having the territorial jurisdiction is directed to conduct enquiry into the matter and submit a report to the Investigating Officer as per Section 176 (1-A) Cr.P.C.

(f) the jurisdictional Commissioner of Police is directed to appoint an Investigating Officer, not below the rank of Assistant Commissioner and investigate the matter in Crime No.4 of 2009 and file a final report.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The The Sub-Divisional Executive Magistrate cum
Revenue Divisional Officer
Office of the Revenue Divisional Officer
The Collectorate, Salem
Salem District.
2. The I Additional Sessions Judge,
Salem.
3. The Judicial Magistrate No.II,
Attur.
4. Do- Through The Chief Judicial Magistrate,
Salem.
5. The Commissioner of Police,
Salem.
6. The Sub Inspector of Police,
Government Hospital Police Station,
Salem.
7. The Public Prosecutor
High Court of Madras.

+1cc to Mr.N.Raja Senthoo Pandian, Advocate, S.R.No.25181

CrI.O.P.No.29898 of 2015

PVS (CO)
CA(30/05/2016)