

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.3733 of 2015 and 13742 of 2016 &
M.P.No.1 of 2015 and Crl.M.P.No.7026 of 2016

Durairajj ... Petitioner in both Crl.O.Ps.

Vs

1.The Deputy Superintendent of Police
CBCID, Salem Town.

2.The Joint Director
Central Bureau of Investigation
Nungambakkam, Chennai.

3.Raja

4.Elangovan

5.Kasthuri. ... Respondents in Crl.O.P.3733/2015

1.The Deputy Superintendent of Police
CBCID, OCU, Salem City

2.Raja

3.Kasthuri ... Respondents in Crl.O.P.13742/2016

Criminal Original Petition No.3733 of 2015 filed under Section 482 Cr.P.C. seeking a direction to transfer investigation of the case in Cr.No.232 of 2011 on the file of the Kannangurichi Police Station, Salem and investigated by the first respondent to the 2nd respondent for its investigation by 2nd respondent.

Criminal Original Petition No.13742 of 2016 filed under Section 407(1) Cr.P.C., to pass an order withdrawing the case bearing S.C.No.6 of 2015 on the file of the Mahila Court, Salem to this Court and transfer it to some other Court outside Salem District for its disposal in accordance with law.

IN CRL.O.P.No.3733 of 2015:

For petitioner : Mr.A.Sirajudeen
Senior Counsel
for Mr.R.Rajamani
For R1 and R2 : Mr.C.Emalias
Additional Public Prosecutor
For R3 to R5 : Mr.Abudu Kumar Rajaratnam

IN CRL.O.P.No.13742 of 2016:

For petitioner : Mr.A.Sirajudeen
Senior Counsel
for Mr.R.Rajamani
For R1 : Mr.C.Emalias
Additional Public Prosecutor
For R2 and R3 : Mr.Karthik Raja

C O M M O N O R D E R

While Crl.O.P.No.3733 of 2015 has been filed seeking a direction to transfer investigation of the case in Cr.No.232 of 2011 on the file of the Kannangurichi Police Station, Salem by the first respondent to the 2nd respondent for its investigation, Crl.O.P.No.13742 of 2016 has been filed to pass an order withdrawing the case bearing S.C.No.6 of 2015 on the file of the Mahila Court, Salem to this Court and transfer it to some other Court outside Salem District for its disposal in accordance with law.

2. For the sake of convenience, the parties are referred to by their name.

3. Raja married Vijayareka on 13.12.2007 and the couple were living in a separate household in Salem, where Raja was practising in the District Court. They have one child through the wedlock. Vijayareka died on 29.03.2011 under suspicious circumstances and therefore, on the complaint lodged by her father Durairaj, who is also an Advocate practising in Perambalur, the respondent police registered a case in B8 Kannangurichi Police Station Cr.No.232 of 2011 on 29.03.2011 for an offence u/s 304-B IPC against one Raja [A1], Elangovan [A2] and Kasthuri [A3]. Durairaj was not satisfied with the manner in which the investigation was in progress and therefore, he filed Crl.O.P.Nos.29371 and 29784 of 2011 for a direction to the police to have the inquest conducted by the Executive Magistrate and also for transfer of investigation. This Court, by order dated 18.07.2012, allowed both the petitions and transferred the

investigation of the case in Cr.No.232 of 2011 from the file of B8 Kannangurichi Police Station to the file of the Deputy Superintendent of Police, CB CID, Salem for investigation. Similarly, this Court has also directed the inquest to be drawn by the Executive Magistrate. Thereafter, the Deputy Superintendent of Police, Salem, took over the investigation of the case and filed a Final Report in PRC No.21 of 2014 against Raja, Elangovan and Kasthuri for offences u/s 498-A IPC, Section 4 of Dowry Prohibition Act and 304-B IPC before the Judicial Magistrate-IV, Salem. The case has now been committed to the court of Sessions and is pending in S.C.No.6 of 2015 before the Mahila Court, Salem. While so, Durairaj has filed CrI.O.P.No.3733 of 2015 for re-investigation by the CBI and has also filed CrI.O.P.No.13742 of 2016 for transfer of S.C.No.6 of 2015 from out of Salem District.

4. Heard Mr.A.Sirajudeen, learned Senior Counsel for the petitioner, learned Additional Public Prosecutor for the State and Mr.Abudu Kumar Rajaratnam, learned counsel for the accused.

5. Learned Senior Counsel for the petitioner contended four flaws in the investigation, namely,

- That the call records of the deceased Vijayareka for 29.03.2011 was not recovered by the police;
- That in the 161 Cr.P.C. Statement of Durairaj, he had mentioned the name of a maid working in the house of the deceased and Manikam, a friend of the deceased who were in the know of things;
- The post-mortem video and the inquest video have not been made part of the case records;
- That the accused had taken the deceased to a private doctor nearby and that doctor has not been examined by the police.

6. In the considered opinion of this Court, these are not very germane issues that would shake the substratum of the prosecution case warranting a re-investigation by the CBI. In a prosecution for an offence u/s 304-B IPC, there is a reverse burden cast upon the accused u/s 113-B of the Evidence Act which is sufficient to take care of the interest of the de facto complainant. Hence, CrI.O.P.No.3733 of 2015 is dismissed.

7. As regards CrI.O.P.13742 of 2016, it is seen that the accused Raja is a practising member of the Salem Bar and if trial is conducted in Salem, it may be very prejudicial to the interest of the de facto complainant. It is trite that the accused and the victim require a fair trial and fairness of procedure inheres in the right of both parties. Both the accused and the victim are entitled to fair trial and justice should not only be done, it should be seen to be done.

8. Learned counsel for the accused contented that the accused has no objection in the trial being shifted from out of Salem. In the conspectus of the facts obtaining in this case, this Court is of the view that it will be in the interest of justice, if the case in S.C.No.6 of 2016 is transferred from the file of the Mahila Court, Salem to the file of the Mahila Court, Namakkal. Accordingly, CrI.O.P.No.13742 of 2016 is allowed and the learned Judge, Mahila Court, Salem is directed to send the entire case records in S.C.No.6 of 2015 to the Court of Mahila Judge, Namakkal within two weeks from the date of receipt of a copy of this order. The accused may be bound over by the learned Judge, Mahila Court, Salem for their appearance on a particular date before the Mahila Court, Namakkal, so that no fresh summons need be issued to them from the Transferred Court. With the above direction, CrI.O.P.No.13742 of 2016 is ordered.

9. Learned counsel for the accused submitted that Elangovan/A2 has died and that the third accused Kasthuri is an aged person and that her presence may be dispensed with. Kasthuri is directed to be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. It is open to Kasthuri to file an appropriate application before the Mahila Court, Namakkal undertaking that she will not dispute her identity and that her counsel will cross examine the witnesses in her absence and that she will not adopt any dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the accused. The trial Court shall ensure that the accused cross examines the witnesses on the day they are examined-in-chief as directed by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]. If the accused adopts any dilatory tactics, it is open to

the trial Court to remand them to custody in terms of the law laid down by the Supreme Court in State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Deputy Superintendent of Police
CBCID, Salem Town.

2.The Joint Director
Central Bureau of Investigation
Nungambakkam, Chennai.

3.The Mahila Court,
Salem.

4.The Public Prosecutor,
High Court, Chennai.

5.The Judicial Magistrate No. IV,
Salem.

6.The Station Home Officer,
Kannangurichi Police Station,
Salem.

7.The Mahila Court,
Namakkal.

+1cc to M/S.S.Ashok Kumar, Advocate sr.41830

+1cc to M/S.R.Rajamani, Advocate sr.41581

CrI.OP Nos.3733 of 2015
and 13742 of 2016

rsk[co]
srg 10/08/2016