

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 1.7.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.No.133 of 2016
and
C.M.P.No.1770 of 2016

M.Ravi

Appellant

Versus

1. The State of Tamil Nadu,
rep. by its Chief Secretary to
Government,
Fort St. George,
Chennai 600 009.
2. The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
3. The Director General of Police,
Chennai 600 004.
4. The Investigating Officer,
CBCID, South Zone,
Erode.
5. The Central Bureau of Investigation,
rep. by its Additional Director,
3rd Floor, EVK Sampath Building,
Chennai-6.

Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 1.12.2015 passed in W.P.No.31447 of 2015 on the file of this court.

WP.No.31447/2015 is filed praying to time a Writ of Mandamus to Direct the Respondents 1 and 2 to transfer the investigation in Crime No.431 of 2015 pending on the file of the 4th Respondent to the 5th Respondent - Central Bureau of Investigation and to complete the same and file a final report within a period as may be prescribed.

For appellant : Mr.P.Wilson, Senior Counsel

For Respondents: AL.Somayaji, Advocate General
assisted by
Mr.S.Shanmugavelayutham,
Public Prosecutor

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

The writ appeal is filed against the order dated 1.12.2015 passed by the learned Single Judge in W.P.No.31447 of 2015, rejecting the claim put forth by the petitioner for transfer of investigation of the case of suspicious death of her daughter Vishnupriya, to Central Bureau of Investigation.

2. Heard the learned Senior Counsel appearing for the appellant and the learned Public Prosecutor appearing for the respondents.

3. The factual matrix of the case is as follows:-

One Vishnupriya, was serving as the Deputy Superintendent of Police at Tiruchengode, Namakkal District and during the course of her service, she was entrusted with the case of murder of an Engineering Student by name Gokul Raj and while the investigation was in progress, the family members of the said Vishnupriya were informed that she had committed suicide by hanging in a closed room. It is the case of the appellant/petitioner that his daughter used to get threatening calls and messages when she was investigating the murder case of Gokul Raj. It is the further case of the appellant/petitioner that his daughter visited their house in Cuddalore for Vinayagar Chathurthi celebrations on 16.09.2015 and after celebration, she left to Tiruchengode on 17.09.2015 late evening and reached on 18.09.2015 early morning and before she left his house, his daughter informed him that the Superintendent of Police, Namakkal, namely, Senthil Kumar and Salem Range Deputy Inspector General of Police Mrs.Vidhya Kulkarni are pressurizing her to implicate innocent persons who were remade by her under Goonda Act, but she was resisting to do so. Thereafter, the appellant's wife received phone message on 18.09.2015 at about 5.23 p.m. from the Superintendent of Police, informing them to come to Tiruchengode, stating that her daughter is suffering from serious illness and while his wife was enquiring about the health of her daughter, at about 6.20 pm on the said day, the Superintendent of Police, Tiruchengode informed the appellant/petitioner that his daughter committed suicide by hanging in a closed room and urged him to come there to open the door in front of the appellant/petitioner. Thereafter, the

appellant and his family members went to Tiruchengode and while they were on the way, he received several calls from police officials urging us to come quickly so as to enable them to open the door. Thereafter, they asked them to come to Salem Medical College Hospital where the body of the appellant's daughter was kept in the postmortem room. When the appellant/petitioner enquired about the opening of the closed door without his presence when it was insisted earlier, he was informed that the closed room was already opened in the presence of Revenue Divisional Officer and Tahsildar due to urgency. The appellant and his family members reached Kumaramangalam Government Hospital, Salem where, they were allowed to see the body around 3.30 a.m. and the body was not kept in freezer and the postmortem was conducted on the same day and though the appellant/petitioner objected to such postmortem and requested to do the same in the presence of his lawyer and family doctor and to take videograph of the entire post mortem, they refused his claim. It is also the case of the appellant/petitioner that his daughter used to wear gold articles, viz., gold chain with two dollars, wieghing about 3 soverigns, two gold rings weighing about 2 soverigns and gold ear rings weighing about 1 soverign and the same were not handed over to him at the time of postmortem and after completing the post mortem, though the Government Ambulance was provided, but the body was thrust by hospital staff into a van sent by Namakkal Superintendent of Police forcibly and the appellant/petitioner was not allowed to accompany the body and the van left in a jet speed and he could not follow the van and it reached the house at Cuddalore before the appellant could reach. It is the further case of the appellant/petitioner that Namakkal Superintendent of Police, Senthil Kumar has entered his daughter's camp house and took all her belongings including diary, two mobile phones, laptop and camera, which the appellant questioned and demanded him to return the same as he would tamper the evidence. The police had shown the appellant/petitioner a suicide note alleged to have been recovered from his daughter's camp house and on seeing the same, the appellant suspected foul play and he appealed the Government to transfer the investigation to the Central Bureau of Investigation (CBI). The appellant/petitioner came to know that the Director General of Police has transferred the investigation to CBCID. It is also the case of the appellant/petitioner that his daughter had spoken to one Ms.Uma Maheswari, her close friend at about 2.48 p.m. on the same day and Ms.Uma Maheswari herself has stated that the deceased had spoken to her on 18.09.2015 at about 2.48 p.m. and that while she was talking to her, the deceased had said that she was receiving a call from Namakkal Superintendent of Police and that she would call her again. Between 2.48 p.m. and 5.30 p.m., by no stretch of imagination, the deceased could have taken a drastic decision to commit suicide. Even otherwise, the Superintendent of Police has sent a message around 5.23 p.m. to

the appellant stating that the deceased was not well. Therefore, according to the appellant, the theory of suicide is implanted by the police. Since the appellant suspected conspiracy involving higher level police officials to eliminate his daughter, who was the Investigating Officer in Gokul Raj murder case, no amount of justice would be rendered if the investigation is done by the state police themselves. According to the appellant/petitioner, since state police officials themselves were involved, the investigation to be done by CBCID would be one sided and biased and be made to shield and protect the high level police officers and the Namakkal Superintendent and Salem Range DIG were influencing the investigation and therefore, there was no free and fair investigation. Hence, the appellant had filed the writ petition.

4. The learned Single Judge, while disposing of the writ petition in para 10 has observed that there is no need to entrust the same to any other investigating agency, muchless CBI and the allegations made by the petitioner, who is none other than the father of the deceased, are without any prima facie material to believe reasonably that they are influencing the investigation and it is only his apprehension and based upon such apprehension, the court cannot direct the investigation to be carried out by the CBI and also this court in CrI.O.P.No.24809 of 2015 filed for transfer of the investigation to the CBI, by order dated 9.10.2015, dismissed the petition, by observing that there was no infirmity in the police investigation warranting transfer of the investigation to the CBI and noting that the CBCID, which is an elite police organisation in the State of Tamil Nadu, is seized of the matter and the police investigation cannot be suspected without adequate grounds thereof. Approving the said act, the case of the writ petitioner came to be dismissed as against which this writ appeal is filed.

5. It appears that in the murder case of Gokul Raj, the deceased was the investigating officer and her investigation was closely watched by one Senthilkumar, the Superintendent of Police and it is alleged that the said Senthilkumar had tried to interfere with the investigation of the deceased Vishnupriya in the murder case of Gokul Raj. Therefore, suspecting that no fair investigation could be conducted in the case of suspected death of his daughter, by the State Police, the appellant had moved the writ petition seeking transfer of the case from State Agency/CBCID to CBI which came to be rejected as noted above. As such, this writ appeal has been filed.

6. In this writ appeal, counter is filed by respondents 1 and 2 and so also by the third and fourth respondents.

7. Even from the counter filed by the fourth respondent, who is none other than the investigating officer in the case of suspected suicide of the DSP Vishnupriya, it transpires that he

is the Deputy Superintendent of Police, said to have been nominated by the third respondent Director General of Police to investigate the matter.

8. Leanred Senior Counsel appearing for the appellant, relying upon The Police Act, 1861 and also explaining various provisions with regard to hierarchy in the Police Department, especially, referring to section 2 of the Act, would contend that the entire police under the State Government shall be deemed to be one police force and shall be formally enrolled on record, and hence, when once police establishment is there which is dealing with the matter, the investigation cannot be expected to be conducted in a fair manner in a case of suspicious death of a police officer at the cadre of Deputy Superintendent of Police, especially when there are allegations with regard to involvement and active participation and close watching of the higher official in the State Police and tampering of phone calls in investigation of the murder case of Gokul Raj, which was investigated by the deceased Vishnupriya and hence, sought to contend that the matter may be referred to CBI. The learned Senior Counsel appearing for the appellant further submitted that another lady police officer of Deputy Superintendent of Police rank, who was also a batch mate of the deceased, was called upon by the deceased Vishnupriya, over phone, prior to her suspicious death and informed about the influence of the higher officials in the matter of investigation. Therefore, it appears that all is not well with the investigation of the mysterious death of the Vishnupriya.

9. The learned Public Prosecutor and also the Advocate General tried to defend the case of the respondents by contending that there is no illegality or infirmity in the investigation being conducted and when the investigation is almost at the stage of conclusion, the father of the deceased is before this court. He relied upon the decision in STATE OF W.B. v. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS ((2010) 3 SCC 571) to contend that the extraordinary power of the court to direct the CBI to investigate a cognizable offence in a State without consent of the State Government must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights, on being satisfied that the material discloses a prima facie case calling for investigation by CBI.

10. Though, invariably, the police establishment of the State Government may conduct investigation of all the cases in all fairness, suspicion will always be there in the minds of either the family members of the deceased or at the minds of the public at large. While observing the principles of natural

justice, it is not only the question of following the principles of natural justice and doing fair investigation but, it should be seen that it is done in all fairness and to rule out Departmental bias.

11. In that view of the matter, to over come all possibilities of suspicion either in the minds of the family members of the deceased or in the minds of the public at large with regard to the investigation of the mysterious death of a responsible lady police officer at the rank of Deputy Superintendent of Police, who was investigating a serious murder case, it could be transferred to the Central Bureau of Investigation for conducting the investigation from the threshold and for filing a final report in accordance with law within three months from the date of receipt of copy of this order. All the relevant materials collected till now shall be handed over by the State Police to the CBI forthwith.

12. Accordingly, the writ appeal is allowed setting aside the order passed by the learned Single Judge. No costs. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

ssk.

To:

- 1.The Chief Secretary to Government
Fort St. George, Chennai 600 009.
2. The Principal Secretary to Government,
Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
3. The Director General of Police,
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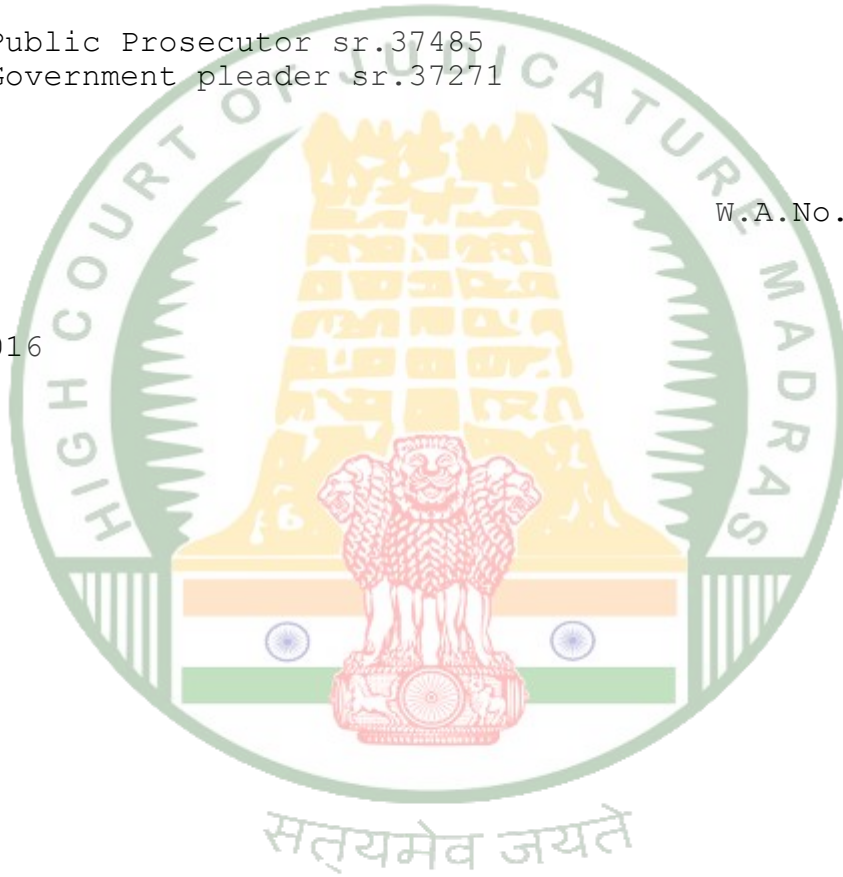
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+1 cc to Public Prosecutor sr.37485
+1 cc to Government pleader sr.37271

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