

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. No.8640 of 2016

R. Subash

Petitioner

Vs.

1 The Superintendent of Police (SP - Rural)
Coimbatore
Coimbatore District

2 The Inspector of Police
Komangalam Police Station
Coimbatore
Coimbatore District

Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to direct the first respondent to re-investigate and file final report in Crime No.323 of 2013, pending on the file of the second respondent.

For petitioner Mr. R. Lakshmi Narasimhan

For respondents Mr.C.Emalias, A.P.P.

ORDER

This Criminal Original Petition is filed for a direction to the first respondent to re-investigate and file final report in Crime No.323 of 2013, pending on the file of the second respondent.

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

3.1 On the complaint lodged by one Subash, the respondent police registered a case in Crime No.323/2013 on 22.12.2013 for offences under Section 279, 337, 304 (A) IPC. The allegation in the FIR is that the said Subash and his friend Vinod were coming down in a Maruthi car bearing Regn. No.TN 38 BH 1285 around 11.45 p.m. on 21.12.2013 and that a lorry was parked in the road, which was not visible to Vinod, as another vehicle which came in the opposite direction, did not dip the head light. Vinod appears to have rammed on to the lorry, on account of which Vinod succumbed to injuries.

Subash was injured and was admitted to hospital. On information, police went to the hospital and recorded the statement of Subash, based on which the aforesaid FIR was registered against unknown accused.

3.2 When the police came to the place of occurrence and were conducting investigation, one Parthasarathy came in Toyota Etios car bearing Registration No. TN 57 AT 4093 and hit the Sub-Inspector of Police, Devendran and Jagadeesh Kumar for which a separate case in Crime No.324/2013 was registered and Parthasarathy is facing trial before the Judicial Magistrate No.II, Pollachi in respect of the said incident.

3.3 Subash filed Crl.O.P. No.21055/2015 before this Court for a direction to the police to investigate Crime No.323/2013 and file Final Report. The respondent police filed a status report dated 07.09.2015 in Crl.O.P. No.21055 of 2015, contending that the investigation in Crime No.323/2013 was completed and the case has been closed as "undetected" and Final Report has been filed before the Judicial Magistrate No.II, Pollachi. Therefore, by order dated 18.09.2015 in Crl.O.P. No.21055 of 2015, this Court gave liberty to Subash to approach the Judicial Magistrate No.II, Pollachi and file a protest application.

3.4 Subash appears to have made a copy application before the Judicial Magistrate No.II, Pollachi, for a copy of the closure report and the same was returned on the ground that closure report has not been filed. Therefore, Subash has approached this Court by filing this petition seeking a direction for re-investigation of the case.

4 The learned counsel for Subash submitted that the police ought not to have closed the case as "undetected", because, they were aware of the lorry which was involved in the accident. In support of this contention, Subash has filed certain colour photographs, in which, there are four vehicles, including a lorry. On the strength of these colour photographs, it is contended by the learned counsel for Subash that the police are aware of the lorry and they failed to prosecute the lorry driver.

5 Admittedly, the incident had taken place in December 2013 and Crl.O.P. No.21005 of 2015 was filed in September 2015. Even in the typed set of papers filed in Crl.O.P. No.21005 of 2015, these colour photographs were not enclosed. When this was pointed out to the learned counsel for Subash, he submitted that at that time, the party did not give him the colour photographs. This Court is unable to digest this submission of the learned counsel for Subash, because, had these colour photographs been made available in the year 2013, there was no reason for the party to have handed it over to

the counsel in the year 2015, when CrI.O.P. No.21005 of 2015 was filed. That apart, the photographs do not show the place of occurrence. The photographs merely show the presence of three cars and one lorry, somewhere in an open ground and not on the Pollachi Main Road. The F.I.R. in this case was lodged by Subash and even in the FIR, he being the eye witness, has stated that Vinod had hit a stationary lorry.

6 The learned Additional Public Prosecutor submitted that in view of the above infirmities, this is not a fit case to order re-investigation of the case. However, he submitted that the closure report has been filed and RCS notice has been sent to Subash by the Judicial Magistrate No.II, Pollachi, who has posted the case to 04.07.2016.

7 A photocopy of the RCS notice is furnished to the learned counsel for Subash across the Bar. Liberty is given to Subash to file protest application and appear before the Judicial Magistrate on 04.07.2016 and on filing the same, the Judicial Magistrate No.II, Pollachi, is directed to pass orders in accordance with the law laid down in Vinay Tyagi vs. Irshad Ali, (2013) 5 SCC 762.

This criminal original petition stands disposed of in the above terms.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cad
To

1 The Superintendent of Police (SP - Rural)
Coimbatore Coimbatore District

2 The Inspector of Police
Komangalam Police Station
Coimbatore
Coimbatore District

3 The Public Prosecutor
High Court of Madras, Chennai 600 104

1 CC to M/s.R.LakshmiNarasimhan, Advocate, sr.31427

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