



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP (MD) No.2492 of 2016

and

Cr1.M.P. (MD) No.1228 of 2016

Ezhil Rosaline

... Petitioner

Vs

1. The Commissioner of Police,
Greater Chennai Region,
No.132, Commissioner Office Building,
Vepery, Chennai-07.

2. The Inspector of Police,
T3, Koratoor Police Station,
Thiruvallur District,
In Cr.No.1187 of 2014.

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to order further investigation in Cr.No.1187 of 2014, dated 02.09.2014 on the file of the second respondent by any other competent and potential investigating agency in accordance with law.

For Petitioner :Mr.M.Gururaj

For Respondents :Mrs.S.Prabha

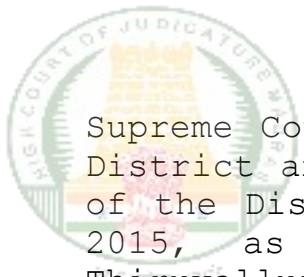
Government Advocate (Cr1.Side)
for R.1 and R.2

O R D E R

This petition has been filed to order further investigation in Cr.No.1187 of 2014, dated 02.09.2014 on the file of the second respondent by any other competent and potential investigating agency in accordance with law.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Cr1.Side) appearing for the State.

3. It is seen that a case in Cr.No.1187 of 2014 on the file of the T-3 Koratoor Police Station, Chennai for offences under Section 302 I.P.C. was registered against three persons and after completing the investigation, the second respondent police filed final report for the said offences against (1) Sri Kalpana, (2) Anandhan and (3) Karthick before the jurisdictional Magistrate. On the orders of the Honourable



Supreme Court, the case was transferred from the file of the District and Sessions Judge, Thiruvallur District to the file of the District and Sessions Judge, Madurai in S.C.No.348 of 2015, as the deceased was an Advocate practicing in Thiruvallur District and hence, no Advocate was willing to appear for the accused.

4. At this juncture, the wife of the deceased has come with this application for further investigation on the ground that the investigation is perfunctory.

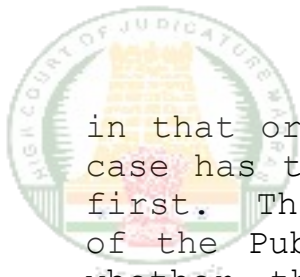
5. This Court gave its anxious consideration on the submissions made by the learned Counsel for the petitioner.

6. At the outset, this petition deserves to be dismissed on the very short ground that the persons who have been shown as accused in the final report and who are now facing trial in S.C.NO.348 of 2015 have not been impleaded as respondents in this petition. However, this Court perused the final report and accompanying documents. It is seen that this is a case based on circumstantial evidence. The deceased is said to have gone to the apartment owned by the first accused, where he said to have been murdered. The police have examined one Prasath (L.W.6), Manikandan (L.W.7), Sanjeevi Rao (L.W.8) and Sekar (L.W.9), who have spoken about the incident that took place on 28.08.2014 in the said flat. That apart, the police have examined one Arun Sampathkumar who had taken the deceased to the nearby hospital. These are the circumstances which will definitely be taken into consideration during trial.

7. The learned Counsel for the petitioner further submitted that several persons have been let out by the respondent police in the final report and therefore, the investigation deserves to be re-done.

8. This Court is not inclined to accept the submissions of the learned Counsel for the petitioner, inasmuch as if during the course of evidence, the involvement of other persons surfaces, it is always open to the trial Court to invoke the provision under Section 319 Cr.P.C. and include them as accused as per the decision laid down by the Honourable Supreme Court in **Hardeep Singh Vs. State of Panjab** reported in **2014(1) SCALE 241**.

9. The learned Counsel for the petitioner submitted that the petitioner has been arrayed as L.W.14 and she should be examined as L.W.1. Though in the final report, the police have given certain list of witnesses in the memo of evidence, it is not necessary that the witnesses should be examined only



in that order. The Public Prosecutor who is dealing with the case has the power to decide which witness should be examined first. Therefore, this Court leaves it to the best discretion of the Public Prosecutor who deals with the case, to decide whether the petitioner should be examined first or later. This Court cannot issue any direction under Section 482 Cr.P.C. to the trial Court Public Prosecutor as to the order of examination of witnesses. In fact he has the discretion even to give up the examination of a witness for sound reasons. (See **Banti @ Guddu Vs. State of M.P.** reported in **2003 AIR SCW 5979**)

10. In view of the above facts and circumstances, this Court is of the view that this is not a fit case to order further investigation as prayed for by the petitioner. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Greater Chennai Region,
No.132, Commissioner Office Building,
Vepery, Chennai-07.
2. The Inspector of Police,
T3, Koratoor Police Station,
Thiruvallur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CN/MPA/29.2.2016/4c-2p/

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