

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P No.11025 of 2010

V.Jaya

... Petitioner

vs.

State by
Inspector of Police,
Kanagammachatram Police Station,
Thiruvallur District.
(Crime No.72 of 2010)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to Transfer the Investigation in Crime No.72 of 2010 pending on the file of Respondent Police herein more particularly to CBCID, Thiruvallur, Thiruvallur District or any other independent Agency.

For Petitioner : Mr.R.Ramesh

For Respondent : Mrs.Sabana
Government Advocate (Criminal Side)

JUDGMENT

The grievance of the petitioner in this case is that the First Information Report in Cr.No.72 of 2010 on the file of the Respondent is not properly investigated; hence it should be transferred to the file of the CBCID Trivalluvar District or any other independent agency.

2.The case of the petitioner in aforesaid First Information Report would be that her husband namely Vijayan had illegal intimacy with one Vishala of the same village. However, the said Vishala had also illegal affairs with some others and the same was objected by the husband of the Petitioner. Hence, the said Vishala and the husband of the petitioner had difference of opinion and thereby, the said Vishala along with her brothers conspired to kill her husband. Accordingly, on 29.10.2001, the Petitioner and her family members left to Kancheepuram to participate in a family function; using this opportunity the aforesaid Vishala took the husband of the Petitioner when he was working in the agricultural field to repair electricity lights in her residence. Subsequently, the husband of the Petitioner power-off the electricity transformer and put the transformer key at the residence of the said Visala and thereafter proceeded

to repair the electricity line. When he repaired the electricity line of the residence of the said Visala in the electric post, the transformer key was taken away and by using the same the transformer was switched on. Immediately the husband of the Petitioner was electrocuted and died. As the Petitioner was mental shock, the body of her husband was buried. At the same time the said Visala was absconded and the Petitioner lodged a complaint before the police. However, as her complaint was not registered she filed a direction petition before this Court in Crl.O.P.No.5621 of 2010 and thereafter instant case was registered under section 174 of Criminal Procedure Code in Crime No.72 of 2010.

3.It is the further case of the Petitioner is that earlier on 30.01.2010 the Petitioner and his family members were arrested based on the complaint given by the aforesaid Visala and were released on bail only on 09.02.2010 by the order of the Learned Judicial Magistrate, Thiruthani in Crl.M.P.No. 798 of 2010. However, in pursuance of the registration of the case in Crime No.72 of 2010, the body of the Petitioner was exhumed and postmortem was also conducted, but no person was arrested. Further, it is the specific allegation of the Petitioner that on 02.04.2010 at about 09.00 P.M., when the Petitioner was in her residence she was threatened that she shall not pursue the case in respect of the death of the Petitioner. So, on 03.04.2010 the Petitioner lodged a complaint before the Respondent, but C.S.R.No.91 of 2010 alone was given.

4.Subsequently, on 05.04.2010 the Petitioner sent a detailed representation to the District Collector and other officials by narrating the facts and also made allegations against the then Inspector of Police and Sub-Inspector of Police attached to the Respondent police station. Though the representations were received, no legal action was taken. However, it is stated that on 30.01.2010 the said Visala admitted the occurrence by lodging a complaint, but no proof is given in this regard. So, it is the duty of the Respondent to investigate and ascertain the truth behind the death of the Petitioner's husband under mysterious circumstances. Moreover, the further allegation is that till the date of filing of the instant petition, the copy of the First Information Report had not been sent to the concerned Magistrate Court. Therefore, according to the Petitioner that the Respondent has colluded with accused and thereby helping them to escape from the clutches of law. So, she filed the instant petition in order to transfer the investigation as prayed for.

5.Per contra, the learned Additional Public Prosecutor (Criminal Side) would submit that at the instance of the complaint lodged by the Petitioner, the case was registered and was duly investigated by conducting postmortem by way of exhuming the body of the deceased. Further, no malafide or sluggishness is alleged. So, there is no fault on the part of the Respondent and the transfer application is liable to be dismissed.

6.I heard Mr.R.Ramesh, learned counsel appearing for the petitioner and Mrs.Sabana, learned Government Advocate (Criminal Side) appearing for the respondent and the materials available on records are perused.

7.It is the specific allegation of the Petitioner that the accused, who are named in her complaint are responsible for the death of her husband. Further, in her complaint also she made specific allegations by mentioning the names of the persons responsible for the death of her husband. However, the Respondent has not taken any efforts to file any alteration report in respect of the offence of the case. It must be the duty of the Respondent to register the complaint given by the Petitioner with serious allegations that too in the case of death. However, it is not able to justify the act of the Respondent who registered the First Information Report and there is no material available on record in respect of the postmortem conducted on the dead body of the Petitioner. It shows there are lapses on the investigation conducted by the Respondent. In my considered opinion, as far as the case of death in suspicious circumstances is concerned, it is the duty of the investigation officer to go through all the allegations made in the complaint and to act accordingly. In the instant case the Petitioner made allegations as against some persons but they have not been arrayed as accused.

8.Under these circumstances, in my considered opinion that this is the fit case to invoke the inherent power of this Court is to be exercised by giving the appropriate directions.

9.In the result:

(a) the Superintendent of Police, Thiruvallur District is hereby directed to receive the case diary in connection with Crime No.72 of 2010 on the file of

the Respondent and to peruse the same thoroughly and thereafter appoint a competent investigation officer immediately;

(b) the said exercise is to be completed within a period of two weeks from the date of receipt of copy of this order;

(c) thereafter, the investigation officer appointed by the Superintendent of Police has to commence his investigation and to file a final report at the earliest within a period of two months and to submit report to the Superintendent of Police periodically, with the above observations this petition is allowed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Superintendent of Police
Thiruvallur District

2.The Inspector of Police,
Kanagammachatram Police Station,
Thiruvallur District.

3.The Public Prosecutor
High Court Madras

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