

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.07.2017

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Cr1.O.P.No.4570 of 2013

Amirthalingam

... Petitioner

vs.

1.The Director General of Police,
Kamarajar Salai, Chennai.

2.The Deputy Inspector General of Police,
Villupuram District, Villupuram.

3.The Superintendent of Police,
Cuddalore Division, Cuddalore.

4.The Inspector of Police,
Kammapuram Police Station,
Cuddalore District.

5.The Joint Director,
CBI, Shastri Bhavan,
Chennai.

...Respondents

(Impleaded the 5th respondent as
per the order dated 09.10.2013 in
M.P.No.1 of 2013.)

Criminal Original Petition filed under Section 482 of Cr.P.C
to withdraw the case in Crime No.156 of 2012 from the 3rd
respondent file and to transfer the same to the Central Bureau
of Investigation (CBI) Shastri Bhavan, Chennai for conducting
the case in a proper and fair manner.

For Petitioner : Mr.S.Saravanakumar

For Respondents : Mr.R.Ravichandran,

Government Advocate- R1 to R4

: Mr.K.Srinivasan,

Spl. Public Prosecutor, (CBI) -R5

O R D E R

The petitioner has filed this CrI.OP.No.4570 of 2013 to withdraw the case in Crime No.156 of 2012 from the 3rd respondent file and to transfer the same to the Central Bureau of Investigation (CBI) Shastri Bhavan, Chennai for conducting the case in a proper and fair manner.

2. The Learned counsel for the petitioner would submit that the 3rd respondent initially registered a case against the accused under Sections 294(b), 324, and 506(ii) IPC and thereafter altered the charges under Section 302 of IPC in Crime No.156 of 2012, on 16.09.2012, but till date he did not taken any efforts to summon the accused, enquire them and to deal with them in accordance with law. Further, he would submit that the 3rd respondent had simply registered the case and set on the F.I.R. without any progress on the cold blooded murder case. The petitioner approached the 3rd respondent time and again for proper investigation, but he did not come forward even to arrest the accused, collected the materials, some evidence, recording of witnesses, and filing of charge sheet etc., was not done so far by him, on the other hand, the 3rd respondent colluded with the accused and has not conducted any investigation.

3. The 3rd respondent had failed to discharge statutory obligations by investigating the case in a fair manner due to hand in glove with the accused for obvious reasons. It is the duty of the higher officials viz., the 1st and 2nd respondents to change the investigation and can monitor the investigation, to ensure that the investigation is done properly without any bias or involvement of any alien parties but, unfortunately both the higher officials had not shown any interest either to change the investigation officer from the 3rd respondent or give suitable direction to investigate the case in a proper and fair manner and taking advantage on the part of the higher officials interaction the 3rd respondent and the accused unleashed threats to the petitioner to withdraw the complaint.

4. Further, he would submit that the 3rd respondent aiding the accused and threatening the petitioner and other respondents also did not come forward to the rescue of the petitioner to do justice to the deceased, who was murdered by the accused and they had failed to discharge their statutory obligations by investigating the case in a fair and proper manner. In the meanwhile, the petitioner apprehends that as the 3rd respondent had already active collusion with the accused, who had not done the investigation in a fair and proper manner. Thereafter, he came to know that the petitioner moved the present petition for a change of investigation to CBI, and so

the 3rd respondent in a fit of rage, is having every possibility to close the case in favour of the accused. Therefore, the case in Crime No.156 of 2012 on the file of the 3rd respondent is liable to be transferred to some other agent.

5. The learned counsel for the respondent would submit that after completion of elaborate and detailed investigation, the then Inspector of Police could not find out the cause of death of the accused. Hence, on 31.08.2014 itself, then Inspector of Police closed in the case in Crime No.156 of 2012 as "un-detectable" and the same was communicated to the defacto complainant vide R.C.S.No.14 of 2014, but she refused to receive the same. The Inspector of Police pasted the above R.C.S.No.14 of 2014 at the complainant's door in the presence of witnesses. Then the Inspector of Police filed the Final Report along with the served R.C.S. notice before the Judicial Magistrate Court No.II, Virudhachalam.

6. He would further submit that the petitioner filed this present petition to direct the respondent police to withdraw the case in Crime No.156 of 2012 from the 3rd respondent file and to transfer the same to the CBI for conducting the case. At this stage, there is no necessity to transfer the case in Crime No.156 of 2012 on the file of the respondent police to CBI and is liable to be dismissed.

7. Heard, both sides and perused the records.

8. According to the petitioner, the 3rd respondent-Superintendent of Police has colluded with the accused and he failed to conduct the investigation in a proper manner and he has not arrested the accused, that too in a murder case and investigate the matter properly. Therefore, he has filed this application before this court to transfer the investigation from the 3rd respondent to CBI. According to the third respondent, he has already completed the investigation and he could not deduct the cause of the death and therefore, he filed a charge sheet and the same was communicated to the Inspector of Police and closed the Crime No.156 of 2012 as "un-detectable" on 31.08.2014 the same was communicated to the complainant also vide R.C.S.No.14 of 2014, but she refused to receive the same.

9. The subsequent allegation against the 3rd respondent is that he colluded with the deceased and he is not conducting fair enquiry, but goes hand in glove with the accused and helped the accused to escape and filed a false report. On perusal of the counter filed by the prosecution, it shows that the case was handled by the then Inspector of Police, who could not find the cause of death and closed the Crime No.156 of 2012 as "un-detectable" and it shows that the respondents have not fair manner as apprehended by the petitioner and closed the case. It

shows the apprehension of the petitioner is justifiable.

10. Considering the facts and circumstances of the case, once this petition filed by the petitioner pending before this court, on 31.08.2014, the investigation was completed and filed a charge sheet in Crime No.156 of 2012 as "un-detectable". It requires change of investigation. Therefore, the reasons stated above by the petitioner is justifiable and therefore under above such circumstances, the order dated 31.08.2014 passed in Crime No.156 of 2012 on the file of 4th respondent is set aside and transferred the case from the file of the 4th respondent and the same is transferred to CBCID.

11. Since the CID is fed up with so many cases and since the allegations are only against the respondents 1 to 3, this Court is inclined to transfer the case to CBCID. Accordingly, the 4th respondent is directed to handover the case in Crime No.156 of 2012 to CBCID.

12. In the result, the Criminal Original Petition is allowed to that extent with the above direction.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sji/rm

To

- 1.The Director General of Police,
Kamarajar Salai, Chennai.
- 2.The Deputy Inspector General of Police,
Villupuram District,
Villupuram.
- 3.The Superintendent of Police,
Cuddalore Division, Cuddalore.
- 4.The Inspector of Police,
Kammapuram Police Station,
Cuddalore District.

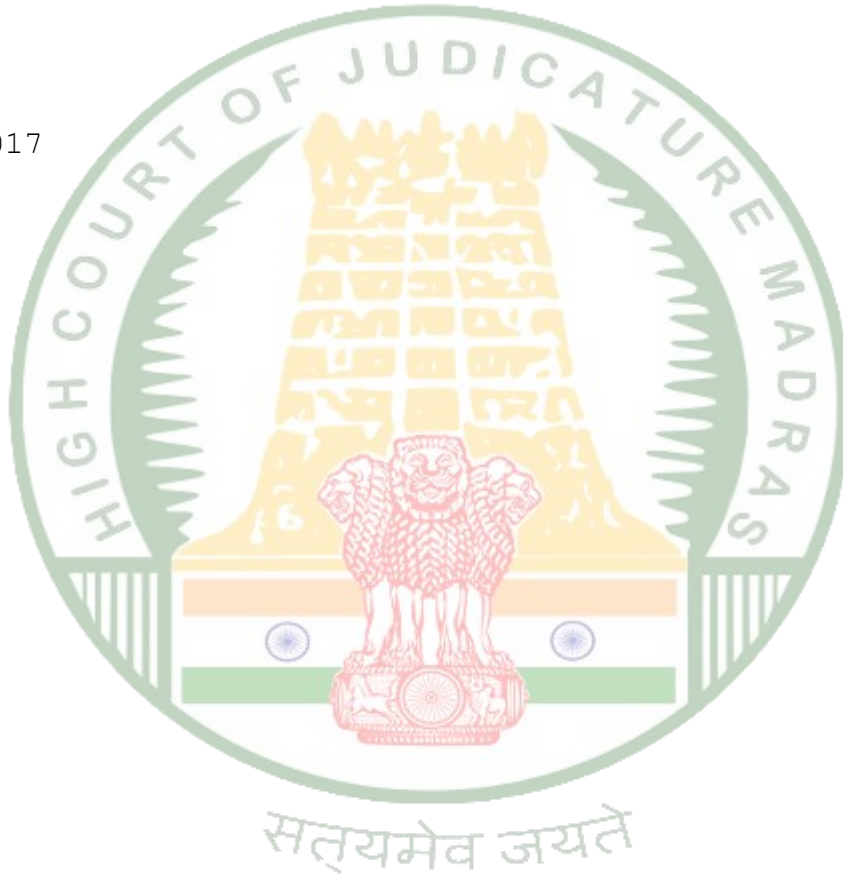
5.The Joint Director,
CBI, Shastri Bhavan,
Chennai.

6. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.Srinivasan Advocate sr 46667

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