

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2017

DELIVERED ON : 27.10.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.31744 of 2012

T.Vinoth Kumar

.. Petitioner

Vs

1. The State
by the Director General of Police
Kamarajar Street
Chennai - 4.

2. The Inspector of Police
Kinathukadavu Police Station
Coimbatore District.

3. The Inspector of Police
CBCID, Coimbatore.

... Respondents

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to direct the first respondent to transfer the case in Crime No.320 of 2012 to the file of the third respondent from the file of the second respondent for further action and filing of final report.

For Petitioner

: Mr.R.Singgaravelan
Senior Counsel
for Ms.M.Srividhya

For Respondents

: Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner to direct the first respondent to transfer the case in Crime No.320 of 2012 to the file of the third respondent from the file of the second respondent for further action and filing of final report.

2. The facts in a nutshell are as under: The petitioner is the son of the deceased Thangaraj and Mariammal, who are stated to have died in a fire accident that occurred due to short circuit of electricity. It is stated that on the basis of a complaint given by one Senthil, a case was registered in Crime No.320 of 2012 and the post-mortem report says that they died of fire caused by electricity shortage. The allegation of the petitioner is that the respondent is attempting to close the case as if it is an accident.

3. It is the specific case of the petitioner that there is no chance for occurrence of a fire accident because at the relevant time there was no electricity supply and fans and lights were functioning because of generator. He pleaded that accident would not have occurred due to electricity shortage and fire and death should have been caused by wanton and wilful fire caused by some enemies of the deceased.

4. He further submitted that the deceased Thangaraj was a popular industrialist and he had gone to Coimbatore to start a new branch at Coimbatore and someone who would be affected by such commencement of branch office by the deceased alone would have caused the death and investigation by the respondent Police has not been done in this line.

5. In this backdrop, alleging that the respondent police are not conducting investigation in the right way, the petitioner has filed this petition seeking transfer of investigation from the second respondent to the third respondent.

6. I heard Mr.R.Singaravelan, learned Senior Counsel for Ms.Srividhya, learned counsel appearing on behalf of the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondents and perused the entire materials available on record.

7. In the case on hand, the death of the parents of the petitioner herein in a fire accident is not in dispute. The case of the petitioner is that the fire accident was a wanton and wilful act of enemies of the deceased Thangaraj, who is stated to be an industrialist. On the other hand, it is the case of the respondent police that the death was on account of short circuit of electricity. However, the main grievance of the petitioner is that the respondent police are attempting to close the case treating it to be an accident. It is the specific case of the petitioner that at the time of occurrence there was no power supply and fans and lights were operating on generator. There is nothing placed on record by the respondent police to negative the said plea.

8. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in mind of the complainant that investigation was not fair and has been carried out with some ulterior motive. The investigating officer has to bring out the real version to know the truth. Every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the Rules of law as required under Articles 19, 20 and 21 of the Constitution of India.

9. It is also a settled proposition of law that the Court is having inherent powers under Section 482 of the Criminal Procedure Code to transfer the investigation at any stage. The provisions of Criminal Procedure Code do not limit or affect the inherent powers of this Court to pass such orders to secure the ends of justice.

10. The Hon'ble Supreme Court in K.V.Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and others, (2013) 12 SCC 480, held as under:

"The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudalure M.J. Cherian & Ors. v. Union of India & Ors., (1992) 1 SCC 397; R.S. Sodhi v. State of U.P. & Ors., AIR 1994 SC 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors., AIR 1994 SC 1023; Vineet Narain & Ors., v. Union of India & Anr., AIR 1996

SC 3386; Union of India & Ors. v. Sushil Kumar Modi & Ors., AIR 1997 SC 314; Disha v. State of Gujarat & Ors., AIR 2011 SC 3168; Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors., (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar & Ors. Etc., 2012 (1) RCR (Criminal) 126: 2011 (6) Recent Apex Judgments (R.A.J.) 303).

11. In State of West Bengal v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571, a Constitution Bench of the Hon'ble Supreme Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice.

12 Admittedly, the Court can exercise its powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI, but only in rare and exceptional cases where it is necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.

13. In the case on hand, it is the specific case of the learned Senior Counsel appearing for the petitioner that despite lapse of six years from the lodging of the complaint, till date the respondent police have not proceeded on the basis that the deceased Thangaraj, who was an Industrialist, has started a new branch at Coimbatore and one of his enemies would have been behind his death. Nothing has been placed on record by the respondent police to show that they have enquired on this line. Despite lapse of six years, the respondent police have not shown any material progress in the investigation of the case.

14. This Court is of the view that the investigation is prima facie not proceeding in the right direction. In order to instil confidence in the investigation and to do substantial justice, this Court is inclined to allow this petition with the following directions:

- (i) the first respondent is directed to transfer the case in Crime No.320 of 2012 on the file of the second respondent to the third respondent within a period of two weeks from the date of receipt of a copy of this order;

- (ii) On receipt of the file, the third respondent is hereby directed to conduct further investigation and file a final report before the Court concerned, within a period of three months thereafter; and
(iii) There is no order as to costs.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Director General of Police
Kamarajar Street
Chennai - 4.
2. The Inspector of Police
Kinathukadavu Police Station
Coimbatore District.
3. The Inspector of Police
CBCID, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.M.Srividhya, Advocate Sr.76214



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