

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.5908 of 2016
and Crl.M.P.No.3037 of 2016

B.Mohan

... Petitioner

Vs

1. The Director General of Police,
Office of the Director General
of Police,
Mylapore, Chennai-4.
 2. The Superintendent of Police,
Thiruvallur,
Thiruvallur District.
 3. The Inspector of Police,
E.2, Thirupalaivanam Police Station,
Ponneri Taluk,
Thiruvallur District.
- ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the first respondent to transfer the case in Crime No.58 of 2015 on the file of third respondent police to CBCID police to investigate the above same and file a final report expeditiously.

For Petitioner : Mr.R.Murugabharathi

For respondents : Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

The present criminal original petition has been filed seeking a direction to the first respondent to transfer the case in Crime No.58 of 2015 pending on the file of third respondent police to CBCID police to investigate the same and file a final report expeditiously.

2. It is the case of the petitioner that his son Satheeswaran along his colleagues Mohan, Thanigaivel, Sabari and Satheesh went to Pazghaverkadu Seashore area and all the persons have returned except his son and his son did not know swimming. Hence, he lodged a complaint with the third respondent police and requested him to conduct proper enquiry. He has also filed a Habeas Horbus Petition before this Court in H.C.P.No.1037 of 2015 and this Court closed the petition by observing that the petitioner is at liberty to seek remedy before the appropriate forum. Even thereafter, the third respondent police did not conduct the investigation properly. Hence, he made a representation dated 2.2.2016 to the respondents seeking proper investigation or otherwise, transfer the same to some other agency. Even after receiving the said representation, the respondents did not conduct proper investigation in the said case. Hence, the petitioner has come forward with the present petition seeking a direction to the first respondent to transfer the case in Crime No.58 of 2015 on the file of third respondent police to CBCID police to investigate the above same and file a final report expeditiously.

3. I have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor and perused the entire materials available on record.

4. On a perusal of the records, I find that earlier, the petitioner filed a Habeas Horbus Petition before this Court in H.C.P.No.1037 of 2015 seeking a direction to the respondents 1 to 3 herein to produce his son Satheeshwaran, aged about 20 years, before this Court and to set him at liberty forthwith and the Division Bench of this Court, by judgment dated 17.8.2015, closed the said petition. The operative portion of the said judgment is usefully extracted hereunder:-

"3. It is submitted by the learned Additional Public Prosecutor that the alleged detenu Satheeswaran, aged about 20 years, went along with his friends for taking bath in the Sea and in spite of objection raised by his friends, he was swimming in the Sea. Subsequently, the body of the Satheeswaran was not recovered and only his friends were returned and hence it is presumed that the detenu would be gone away along with the high tides and that is why the body of the detenu was not reached to Sea-shore and that the same is not sufficient to presume that he is no more.

4. It is also submitted by the learned Additional Public Prosecutor that one of the friends of the detenu who accompanied him, while taking bath, has taken a video through his cell phone. As

directed by this Court, a copy of the CD relating to the occurrence, was also furnished by the learned Additional Public Prosecutor to the learned counsel for the petitioner.

5. On the said circumstances, we find it just and reasonable to close this Habeas Corpus Petition. Accordingly, this petition is closed as nothing further remains to be considered. However, it is made clear that the petitioner is at liberty to seek remedy before the appropriate forum, on enquiry, with regard to the occurrence relating to the alleged detenu. "

5. Learned Additional Public Prosecutor submitted that during the course of investigation, the fishermen residing in the adjacent Pazhaverkadu seashore have stated that if the body could not be found in the sea shore within a period of three / four days, then there is no possibility of availability of the body, since the body might have gone into the deep sea, in turn, the body will be eaten by big fishes in the deep sea. To that effect he has also filed a status report, wherein, in para 9, it has been stated as follows:-

" 9. It is submitted that during the course of the investigation, i.e., on 7.4.2015 and 8.4.2015 respectively, the above investigation officer has examined the following witnesses and recorded their statements:-

- (1) Tr.Jayapaul, Fisherman of Pazhaverkadu Sea.
- (2) Tr.Raji, Fisherman of Pazhaverkadu Sea.
- (3) Tr.Rajendran, Fisherman of Pazhaverkadu Sea.
- (4) Tr.Chinnapillai, Fisherman of Pazhaverkadu Sea.
- (5) Tr.Manoharan, Fisherman of Pazhaverkadu Sea.
- (6) Tr.Mathialagan, Fisherman of Pazhaverkadu Sea.
- (7) Tr.Kavi, Fisherman of Pazhaverkadu Sea.
- (8) Tr.Varun, Fisherman of Pazhaverkadu Sea.

All the above witnesses, who are Fishermen in the Pazhaverkadu Sea residing in the adjacent Pazhaverkadu seashore have stated that if the body could not be found in the sea shore within a period of three / four days, then there is no possibility of availability of the body, since the body might have been gone into the deep sea, in turn, the body will be eaten by big fishes in the deep sea and even bone of the body also could not be available."

Thus, the learned Additional Public Prosecutor submitted that the third respondent police has taken sincere and effective steps in order to trace out the missing person, but for the said reasons, he could not able to trace him. Hence, there is no necessity to transfer the case to some other investigating agency.

6. Considering the above facts and circumstances of the case and in view of the said submission made by the learned Additional Public Prosecutor, I am of the opinion that nothing survives in this case to be examined and there is no need to transfer the investigation to some other agency. Hence, the criminal original petition is closed. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar (CS-IV)

//True Copy//

Sub-Assistant Registrar

To

1. The Director General of Police,
Office of the Director General
of Police,
Mylapore, Chennai-4.
2. The Superintendent of Police,
Thiruvallur,
Thiruvallur District.
3. The Inspector of Police,
E.2, Thirupalaivanam Police Station,
Ponneri Taluk,
Thiruvallur District.
4. The Public Prosecutor,
High Court, Madras.

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