



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL.O.P.(MD) No.20907 of 2015

M.Punitha Malliga

... Petitioner

Vs.

1.Anand

2.The Inspector of Police,
Vadasery Police Station,
Nagercoil.

3.The Inspector of Police,
C.B.C.I.D.,
Nagercoil.

... Respondents

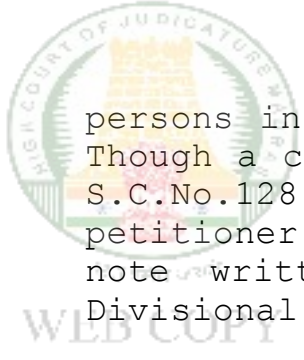
PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the impugned order passed in Crl.M.P.No.323 of 2014 in S.C.No.128 of 2012 on the file of Fast Track, Mahila Court, Nagercoil, dated 15.07.2015 and further directed to transfer the further investigation in S.C.No.128 of 2012 on the file of Fast Track, Mahila Court, Nagercoil in Crime No.726/2010 to the 3rd respondent CBCID herein, of the above Crl.O.P.

For Petitioner	: Mr.M.P.Senthil
For R1	: Mr.C.Christopher
For R2 & R3	: Mr.C.Ramesh
	Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the impugned order passed in Crl.M.P.No.323 of 2014 in S.C.No.128 of 2012 on the file of Fast Track, Mahila Court, Nagercoil, dated 15.07.2015 and to transfer the further investigation in S.C.No.128 of 2012 on the file of Fast Track, Mahila Court, Nagercoil, in Crime No.726/2010 to the 3rd respondent CBCID herein.

2.The petitioner states that her daughter, namely, Padmasurya committed suicide in her house and a case was registered in Cr.No.726/2010 under Section 174 of Cr.P.C., and that it was subsequently altered into Section 306 I.P.C. Though one Anand was subsequently handed to judicial custody, the petitioner states that she has given a complaint to the Superintendent of Police, Kanyakumari District, regarding the involvement of few more



persons in the crime and requested them for a fair investigation. Though a charge sheet was filed and the same was taken on file in S.C.No.128 of 2012 by the Fast Track, Mahila Court, Nagercoil, the petitioner states that the material evidence, namely, the suicidal note written by her daughter and the report of the Revenue Divisional Officer are not available in the Court records.

3. In these circumstances, the petitioner states that she filed an application under Section 174 Cr.P.C., to transfer the investigation to CBCID. The said petition was dismissed by the lower Court by order dated 15.07.2017. Aggrieved by the said order, the petitioner has preferred the above Criminal Original Petition. Before the lower Court, the main contention was by relying upon the fact that the original suicidal note was not available in the Court records and therefore, the case should be transferred to some other agency. It is to be noted that no motive is alleged as against any of the officers. It was never suggested that the original suicidal note was misplaced by some one or the previous investigation officer purposefully to help any one in the criminal case. In the absence of any specific allegation for misplacing the original suicidal note, that cannot be a sole reason to ask for transferring the investigation. In this case, it is reported that the whole investigation is over and the matter is now at the stage of trial.

4. The learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of **Rubabbuddin Sheikh Vs. State of Gujarat and Others** reported in **(2010) 2 Supreme Court Cases 200**, wherein the Hon'ble Supreme Court has held as follows:

".....53. It is an admitted position in the present case that the accusations are directed against the local police personnel in which the high police officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the police personnel of the State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local police authorities, we feel that all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility however faithfully the local police may



carry out the investigation, particularly when the gross allegations have been made against the high police officials of the State of Gujarat and for which some high police officials have already been taken into custody....."

5. The learned counsel for the petitioner fails to advert to the facts of the case before the Hon'ble Supreme Court. The position in the present case is not similar to the facts that were dealt with by the Hon'ble Supreme Court, in the case referred to above and cited by the learned counsel for the petitioner. Now, the original Investigation Officer, who was responsible for the loss of original records, was replaced by subsequent officers, who were entrusted with the investigation and proceeded further and the investigation is completed in all aspects and the case is now for trial. In the said circumstances, the transfer of investigation will not serve any purpose and therefore, this petition cannot be entertained.

6. The learned counsel for the contesting respondent relied upon a judgment of the Hon'ble Supreme Court in the case of **Reeta Nag Vs. State of West Bengal and Others** reported in (2009) 9 Supreme Court cases 129, wherein the Hon'ble Supreme Court considered the scope of Section 173(8) Cr.P.C., in the following lines:

"In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant under Section 173(8) was a direction given by the learned Magistrate to reinvestigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a reinvestigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant".

Hence, this Court is also convinced that further investigation cannot be permitted at the instance of the de-facto complainant.

7. Having regard to the facts of this case, this Court is not inclined to entertain this petition and hence, dismissed accordingly. Considering the fact that the petitioner is aged and her anxiety is reasonable, the Fast Track Mahila Court, Nagercoil, is directed to complete the trial and dispose of the case in S.C.No.128 of 2012 within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(P&A)



To

1.The Sessions Judge, Fast Track Mahila Court, Nagercoil.

2.The Inspector of Police,
Vadasery Police Station,
Nagercoil.

3.The Inspector of Police,
C.B.C.I.D.,
Nagercoil.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

mm / cmr

MAS/GT/SAR3:20.10.2017:4P-5C

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