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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.04.2017

DELIVERED ON: 27.04.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P (MD) No.13516 of 2016 & Crl.M.P. (MD) No.6302 of 2016

J. Sajjad Ali

..Petitioner

vs.

1 The Superintendent of Police
O/o the Superintendent of Police
Kanyakumari District

2 The Deputy Superintendent of Police
CBCID
Palayamkottai
Tirunelveli District

3 State represented by the Inspector of Police
Kottar Police Station
Kanyakumari
Kanyakumari District
(Cr. No.1017 of 2012)

..Respondents

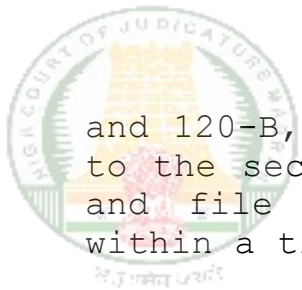
Criminal Original Petition filed under Section 482, Cr.P.C. seeking to direct the first respondent to withdraw the case in Cr. No.1017 of 2012 under Sections 147, 148, 294(b), 341, 302, 153-A and 120-B, IPC on the file of respondent no.3 dated 14.06.2012 and entrust the same to respondent no.2 for an investigation of the case by a competent officer and file a final report before the jurisdictional Magistrate within a time frame.

For petitioner Mr. T. Lajapathy Roy

For respondents Mr. A.P. Balasubramani
Govt. Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been preferred for a
<https://hcservices.courts.gov.in/hcservices/>
to the first respondent to withdraw the case in Cr. No.1017 of 2012 under Sections 147, 148, 294(b), 341, 302, 153-A



and 120-B, IPC on the file of the respondent and entrust the same to the second respondent for investigation by a competent officer and file a final report before the jurisdictional Magistrate within a time frame.

2 On 14.06.2012, around 9.30 a.m., the Kottar Police Station received an intimation from one Sriram Hospital relating to a medico legal case, based on which, the Sub Inspector of Police of Kottar Police Station went to the said hospital and found that one Ramesh was admitted with serious injuries and was being treated as an in-patient. Since Ramesh was unconscious, one Rama Nadar (husband of Ramesh's sister) and Nisha (W/o Ramesh), who were there in the hospital were enquired. On the statement given by Rama Nadar, the Kottar police registered a case in Cr. No. 1017 of 2012 under Sections 147, 148, 294(b), 341, 324 and 307, IPC. A day later, Ramesh succumbed to the injuries and the case was altered to one under Section 302 IPC.

3 In the statement given by Rama Nadar which formed the basis of the First Information Report, he has stated that:

a Ramesh is a Hindu and an auto driver by profession;

b he was in love with Nisha, the sister of Syed Ali and he eloped with her and got married to her, which was not to the liking of Syed Ali and his group;

c they were insisting that Ramesh should convert to Islam, lest, they would eliminate Ramesh's family, but, Ramesh did not budge;

d he (Rama Nadar) is also an auto driver in the same auto stand and on 14.06.2012, he received information from one Vijaya that Ramesh is being assaulted and on coming to know of it, he went to the place and found Ramesh with serious injuries;

e when Rama Nadar questioned Ramesh, Ramesh is said to have told him that two persons, who can be identified, came to the auto stand and called him for a trip and when he took them in his auto, they made him stop at a place and at that time, Syed Ali, Fausi, Asif Gani and others started attacking him saying that by his act of marrying a Muslim girl and not converting to Islam, he has brought disrepute to their caste and religion and that none should ever dare to do like this in future and when Ramesh tried to escape, he was chased and repeatedly attacked by the group with deadly weapons;

f immediately, Rama Nadar took Ramesh to Sriram Hospital and he was admitted in the Intensive Care Unit for treatment and that when the police came, he lost his consciousness.



4 As stated above, Ramesh died a day later and the case was converted to one under Section 302, IPC and during the course of investigation, it came to light that 11 persons belonging to Muslim community were involved in the gruesome murder of Ramesh.

5 While so, Sajjad Ali (the petitioner/A4) has preferred the present Criminal Original Petition for transferring the investigation of the case in Cr. No.1017 of 2012 from the file of the Kottar Police Station to the CB-CID on the ground that he has been falsely implicated by the police in the offence.

6 The Inspector of Police, Kottar Police Station, has filed counter affidavit denying the allegations levelled by the petitioner.

7 Heard Mr. Lajapathy Roy, learned counsel for the petitioner and Mr.A.P. Balasubramani, learned Government Advocate (Crl. Side).

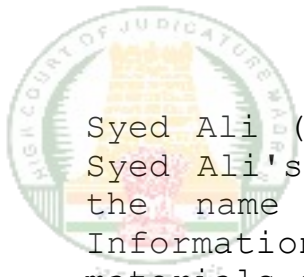
8 The learned counsel for the petitioner contended that the petitioner's name did not even figure in the First Information Report and he has been falsely implicated by the police on the confession statement of Syed Ali (A1). He further submitted that the police have falsely implicated one Mohamed Rafiq as accused no.11 in the case since the said Mohamed Rafiq (A11) went to Malaysia on 08.06.2012 and he was arrested by the Malaysian police on 09.06.2012 for an offence under the NDPS Act and that he was in Malaysian jail. The learned counsel for the petitioner, in support of his contention that for a fair investigation, the case should be transferred to the CB-CID, placed reliance upon the following judgments of the Supreme Court:

- Sasi Thomas v. State and others [(2006) 12 SCC 421]
- Commissioner of Police, Delhi and another vs. Registrar, Delhi High Court, New Delhi [(1996) 6 SCC 323]
- Sri Jayendra Saraswathi Swamigal, II Tamil Nadu vs. State of Tamil Nadu and others [(2005) 8 SCC 771]

9 The learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioner.

10 This Court gave its anxious consideration to the rival submissions.

11 It is not the case of the petitioner that Ramesh did not die at all or Ramesh committed suicide. The case records show that Ramesh's death was culpable homicide. Ramesh has given an oral dying declaration to Rama Nadar, in which, he has stated that the entire attack was pre-planned by



Syed Ali (A1) and his group to avenge his act of marrying Nisha, Syed Ali's (A1) sister and not converting to Islam. Just because the name of the petitioner does not figure in the First Information Report, it does not mean that there are no other materials implicating him in the offence.

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12 As regards the contention of the learned counsel for the petitioner that Mohamed Rafiq (A11) has been falsely implicated, it is stated in the counter affidavit filed by the police that though Mohamed Rafiq was not there in the place of occurrence, yet, he is none other than the brother of Syed Ali (A1) and Nisha and he was part of the conspiracy to eliminate Ramesh as Ramesh had not agreed to convert himself to Islam after marrying Nisha against their wishes. At this juncture, it is worth extracting the averments in the counter affidavit qua accused no.11:

"7. Further, in respect of the 11th accused, the offences charged against him are under Section 153A, 120B IPC read with 149, 147, 148, 364 and 302 IPC. It is pertinent to note that the 11th accused is the brother of both the 1st accused and the wife of the deceased Ramesh. After conspiring together the A11 has motivated the other accused in the name of religion and have absconded abroad and kept himself away from the scene of occurrence to establish as if he has no involvement in the occurrence. Hence those averments are falsified and it is clear that the matter was investigated in a fair and proper manner and there is no need or necessity arose for change of investigation."

13 It is felicitous to point out here that Nisha has also signed in the statement given by Rama Nadar to the police which formed the basis of registration of First Information Report. It is also seen that the investigation has been completed and charge sheet has been filed in P.R.C. No.25 of 2016 against 11 accused and the case is to be committed to the Court of Sessions. Of course, just because investigation has been completed, it does not mean that this Court cannot order transfer of investigation and this Court can have no quarrel with the proposition of law laid down by the Supreme Court in the three judgments relied upon by the learned counsel for the petitioner. However, the facts obtaining in this case are materially different from the facts in those three cases and hence, those three judgments cannot come to the aid of the petitioner. That apart, the petitioner is an accused and he cannot, as a matter of right, seek transfer of investigation by making reckless allegations against the Investigation Officer.



In view of the foregoing discussion, this Court is of the considered view that this Criminal Original Petition is devoid of merits and the same is accordingly dismissed. Connected CrI.M.P. (MD) No.6302 of 2016 is closed.

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Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1 The Superintendent of Police
O/o the Superintendent of Police
Kanyakumari District
- 2 The Deputy Superintendent of Police
CBCID
Palayamkottai
Tirunelveli District
- 3 The Inspector of Police
Kottar Police Station
Kanyakumari
Kanyakumari District
(Cr. No.1017 of 2012)
- 4 The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai

+1cc to M/s.T.Lajapathi Roy, Advocate, Sr No.53354

order in
CrI.O.P (MD) No.13516 of 2016
27.04.2017
2/2

cad
MS/BS/SAR-4/10.05.2017/5P.6C