



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2017

CORAM

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

**CrI.O.P.(MD) No.6081 of 2017**

**and**

**CrI.M.P.(MD) No.4089 of 2017**

Thangappan

... Petitioner/Petitioner

-vs-

1. The Superintendent of Police,  
Pudukkottai,  
Pudukkottai District.

2. The Inspector of Police,  
Gandharvakkottai,  
Adanakkottai.  
(in Crime No.77 of 2014)

3. Balan ... Respondents/Respondents  
(**R3 suo motu impleaded by this Court on 05.06.2017**)

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to set aside the final report in C.C.No.231 of 2014 on the file of the learned Judicial Magistrate, Pudukkottai and direct to transfer the investigation to C.B.C.I.D. or any other independent agency and conduct a fresh enquiry in Crime No.77 of 2014 on the file of the 2nd respondent herein on the basis of the petitioner's representation dated 08.03.2017.

For Petitioner : Mr.K.Balasundharam  
For R1 & R2 : Mr.K.Anbarasan  
Govt. Advocate  
For R3 : Mr.K.S.Muthu

| Reserved on | Pronounced on |
|-------------|---------------|
| 29.06.2016  | 07.07.2017    |

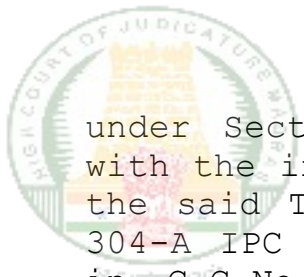
\*\*\*\*\*

### **O R D E R**

This petition has been filed to set aside the final report in C.C.No.231 of 2014 on the file of the learned Judicial Magistrate, Pudukkottai and direct to transfer the investigation to C.B.C.I.D. or any other independent agency and conduct a fresh enquiry in Crime No.77 of 2014 on the file of the 2nd respondent herein on the basis of the petitioner's representation dated 08.03.2017.

2. For the sake of convenience, the parties will be referred to by their name.

<https://hcservices.courts.gov.in/hcservices/> On the complaint lodged by Alagarsamy, the respondent Police registered a case in Crime No.77 of 2014 on 17.10.2014



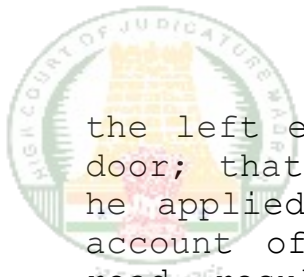
under Sections 279 and 337 IPC against one Balan in connection with the injury sustained by one Thavakumar and after the death of the said Thavakumar, the case was altered into one under Section 304-A IPC and after completing the investigation, a charge sheet in C.C.No.231 of 2014 was filed before the learned Judicial Magistrate, Pudukkottai under Section 304-A IPC against Balan. Not satisfied with the investigation conducted by the Inspector of Police, Gandharvakottai Police Station, Thangappan / father of the deceased Thavakumar filed a protest application in Cr.M.P.No.6812 of 2015 in C.C.No.231 of 2014 before the Judicial Magistrate, Pudukkottai, who, by order dated 09.08.2016 directed the 2<sup>nd</sup> respondent herein under Section 173(8) Cr.P.C. to conduct further investigation. Thangappan was not satisfied with the said order, because, according to Thangappan, the case requires to be investigated by the CBCID. Therefore, Thangappan filed CrI.R.C. (MD) No.717 of 2016 before this Court, in which this Court passed the following order on 20.10.2016:

"In the light of the above submissions made on by the learned counsel appearing on either side, the order, dated 09.08.2016, passed by the learned Judicial Magistrate, Pudukkottai, is modified to the effect that the further investigation is to be done by the Circle Inspector of Police, Gandharvakottai. The Deputy Superintendent of Police, Pudukkottai, Pudukkottai District, is directed to monitor the investigation. The Circle Inspector of Police, Gandharvakottai, is also directed to file the final report within a period of two months from the date of receipt of a copy of this order."

4. Thereafter, the investigation was conducted by the Investigating Officer and a fresh charge sheet has been filed on 05.04.2017 against Balan for the offence under Section 304-A IPC. Under such circumstances, Thangappan is before this Court to set aside the final report filed by the Police on 03.04.2017 and order *de novo* investigation by the CBCID.

5. Heard the learned counsel for the petitioner, the learned Government Advocate (CrI.Side) appearing for the State and the learned counsel for R3.

6. To appreciate the submissions of the learned counsel for the petitioner, it may be relevant to briefly narrate the prosecution version of the death of Thavakumar. According to the prosecution, Thavakumar was working as an Electrician in Pudukkottai Zone of the Tamil Nadu State Transport Corporation; that a construction work was going on in the bus depot at Gandharvakottai, for which materials were being transported on the transport vehicle bearing Reg.No.TML 2357; that Balan was on the wheels and one Ravi Pandian was sitting on his left side and next to Ravi Pandian, Thavakumar was sitting near



the left entrance of the vehicle's cabin, which did not have any door; that Balan (accused) was driving the vehicle very fast and he applied the brakes suddenly on hitting the speed breaker, on account of which, Thavakumar was thrown off the vehicle on the road, resulting in head injuries followed by his death.

WEB COPY

7. Learned counsel for the petitioner submitted that the defacto complainant in the case, namely, Alagarsamy is none other than the brother-in-law of the deceased and that he was not present at the scene of occurrence; that Alagarsamy came to the place of occurrence only subsequently after hearing the news of Thavakumar's fall, but whereas the Police have obtained a statement from him as if he had seen the accident himself. Learned counsel for the petitioner further submitted that in the FIR, it is stated by Alagarsamy that Thavakumar was carried to the hospital by 108 Ambulance, but in the subsequent statement, it is stated that the accused carried him to the hospital in the lorry that was involved in the accident. He also submitted that the Police had failed to recover the mobile phone of Thavakumar as that would have thrown some light about the involvement of others in the offence. Lastly, it was submitted by the learned counsel for the petitioner that the Police have not even examined Ravi Pandian and have not included him as a witness in the final report. In fine, learned counsel for the petitioner submitted that the death of Thavakumar was not on account of a road accident, but must have been on account of murder.

8. Per contra, learned Government Advocate (Crl.Side) refuted the contention.

9. This Court gave its anxious consideration to the rival submissions and perused the postmortem certificate in order to find out the nature of injuries suffered by Thavakumar. The Postmortem Certificate No.1357/2014 dated 18.10.2014 reads as follows:

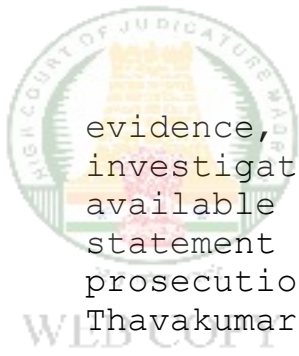
**"APPEARANCE FOUND AT THE POST MORTEM:**

Moderately built body of a male Finger toe nail appear Blue

**THE FOLLOWING ANTE MORTEM INJURIES WERE NOTED:  
ON DISSECTION OF HEAD:**

Thick scalp contusion noted entire surface of scalp. Both temporo muscle found contused vertical fissure fracture of length 22 cm noted over middle of frontal parietal & occipital bone. Subdural & subarachnoid hemorrhage seen over entire surface of cerebrum and cerebellum. Brain found edematous. Subdural clots noted base of brain.





evidence, that does not mean that they had not conducted any investigation in this regard. The statement of Ravi Pandian is available and for the fault of the Police in not filing the statement along with the charge sheet and including him as a prosecution witness, it cannot be said that the death of Thavakumar was not on account of a road accident, but a murder.

13. The statement of Deepa Devi, wife of the deceased Thavakumar shows that on the fateful day, they had a quarrel in the house and Thavakumar left for work. Again, he called her around 2.30pm on her mobile and they both were quarrelling over the phone. Suddenly, the conversation got cut and after sometime, Deepa Devi received information that her husband had fallen from the transport vehicle and sustained injuries. The contention of the learned counsel for the petitioner that, had the mobile phone of the deceased been seized, it would have thrown some light on the incident, does appear plausible, but the failure of the Police to seize the mobile and check the call details cannot lead to the interference that the death of Thavakumar was culpable homicide.

14. It may be relevant to state here that no oblique motives have been attributed either to Balan (accused) / driver or Ravi Pandian, who was sitting in the middle of these two persons. It is not the case of the petitioner that Balan and Ravi Pandian had murdered Thavakumar and had made it look as if he had died in a motor accident. The contention of the learned counsel for the petitioner that Alagarsamy / defacto complainant was not an eyewitness to the accident and that he became aware of it only after receiving information about the accident and therefore, the case requires re-investigation, does not cut much ice with this Court, because Alagarsamy, being the brother-in-law of the deceased Thavakumar would not have voluntarily lent his name as the defacto complainant for the purpose of covering up a murder of his close relative, unless it is alleged that he had a personal axe to grind for the cover up. The petitioner has not made any such allegation against Alagarsamy.

15. In the result, this Court is of the view that this is not a fit case to order re-investigation and accordingly, this petition stands dismissed. The Trial Court is directed to furnish a copy of 161(3) statement of Ravi Pandian to the accused and the petitioner and include him in the memo of evidence as a prosecution witness. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(Records)

/True Copy/



To:

1. The Judicial Magistrate,  
Pudukkottai.
2. The Superintendent of Police,  
Pudukkottai,  
Pudukkottai District.
3. The Inspector of Police,  
Gandharvakkottai,  
Adanakkottai.
4. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

AR

VB/SV/SAR4/21.07.2017/6P/5C

**ORDER IN**  
**Cr1.O.P. (MD) No. 6081 of 2017**  
**07.07.2017**