



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2017

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

Crl.O.P.(MD) No.7006 of 2017

WEB COPY

P.Santhana Mary

... Petitioner

-vs-

1. The Director General of Police,
Office of the Director General of Police,
Beach Road, Chennai.
 2. The Additional Director General of police, (CBCID)
Office of the Additional Director General of Police, (CBCID)
No.3, SIDCO Electronics Complex,
1st Floor, Guindy, Chennai.
 3. The Superintendent of Police,
Office of the Superintendent of Police
Tirunelveli District
 4. The Inspector of Police,
Ayyapuram Police Station,
Tirunelveli District.
- ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the respondent No.1 to transfer the investigation of the case in Crime No.27 of 2017, from the file of the 4th respondent to the 2nd respondent in accordance with the law within the time stipulated by this Court.

For Petitioner : Mr.S.Malaikani

For Respondents : Mr.K.Anbarasan

Government Advocate (Crl. Side)

ORDER

On the complaint given by the petitioner, the respondent police registered a case in Crime No.27/2017 on 05.04.2017 for offences under Sections 294(b), 323, 324, 506(ii) and 302 IPC. Not satisfied with the investigation, the petitioner is before this Court for transfer of investigation.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) for the respondents.



3. Today, Mr.K.Balasubramani, Special Sub Inspector of Police, Ayyapuram Police Station, is present before this Court.

4. The learned Government Advocate (Crl. side) submitted that the investigation in Crime No.27/2017 was completed and chargesheet has been filed on 02.06.2017 before the Judicial Magistrate, Sankarankoil and the same has not yet been taken on file.

5.Mr.Malaikani, learned counsel for the petitioner, submitted that the investigation conducted by the police is perfunctory, inasmuch as the police have implicated only Pilavendran as the sole accused and they have not taken into consideration the involvement of others, about whom, the petitioner had given representations to the police 6 days after the incident.

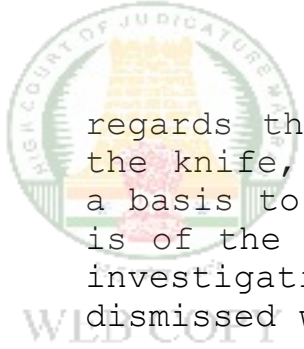
6. The learned counsel for the petitioner also submitted that the petitioner's husband and son were murdered in the incident and therefore, the FIR should have stated Section 302 IPC (2 counts), but, whereas, the expression 2 counts is absent in the FIR.He further contended that the police confession of Pilavendran showed that after committing the offence, he had handed over the knife to his mother, who is said to have hidden it in a nearby Well and therefore, she must also has been implicated in the offence.

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

8. On a reading of the FIR, it has been registered on the complaint given by the petitioner herself. It is seen that on 05.04.2017, around 8.45 p.m., when her husband went to leash the cows in the Cow shed in their house, a quarrel ensued between her husband and Pilavendran, a neighbour, in which, Pilavendran is said to have attacked her husband. When the petitioner's son Anandaraj intervened, he was also attacked by Pilavendran. Thus, it is apparent that this petitioner was an eye witness to the whole incident. It is not her case that Pilavendran was accompanied by any other person. It is her grievance that Pilavendran's brother must have been involved in the said offence.

9. In the opinion of this Court, mere suspicion cannot take the place of proof. In the absence of credible material, the persons named by the de-facto complainant in the representations cannot be made accused in a murder case.

10. As regards the contention that the FIR does not mention two counts, in the opinion of this Court, the FIR is not an ~~Services.complaint~~ of the prosecution case. Charges have to be framed by the Sessions Court and this Court is confident that when charges are framed, the same will be for 302 IPC (2 counts). As



regards the allegation that the mother of Pilavendran had hidden the knife, mere police confession, without anything more cannot be a basis to implicate his mother in the offence. Hence, this Court is of the view that this is not a fit case, in which, transfer of investigation needs to be framed. Hence, this petition is dismissed with certain directions, namely,

(i) The police shall ensure that sufficient protection is given to the petitioner, when she gives evidence before the Sessions Court;

(ii) The petitioner should have cross examined on the day, she is examined in chief in accordance with the law laid down by the Supreme Court in **Vinod Kumar v. State of Punjab** reported in **(2015) 3 SCC 220**;

(iii) If during the trial, sufficient credible evidence, surfaces against the other persons, it is needless to state that the provisions of Section 319 Cr.P.C. can be invoked by the trial Court.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To:

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Tirunelveli District.
4. The Inspector of Police,
Ayyapuram Police Station,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

RR

VB/MR/SAR3/20.06.2017/3P/6C

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Cr1.O.P. (MD) No.7006 of 2017
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