

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.24440 OF 2012

ORDER:

This writ petition is filed seeking writ of mandamus declaring the action of the 2nd respondent in not changing the Investigating Officer in Cr.No.22 of 2012 of Narsipatnam Town Police Station and in not referring the matter to C.B.C.I.D or to the Deputy Superintendent of Police cadre officer basing on the representation of the petitioners dated 09.07.2012 as illegal and arbitrary and consequently to direct the 2nd respondent to refer the case to any other competent investigating authority like C.B.C.I.D or to any IPC cadre officer and also to direct the 2nd respondent to take action against the respondents 3 and 4.

2. It is the case of the petitioners that they are related to each other. The 2nd petitioner is the brother-in-law of the 1st petitioner. The 1st petitioner married to one Pitla Prakash on 19.05.2005. That the police charged both the petitioners in the death case of the husband of the 1st petitioner in Cr.No.22 of 2012 for the crime occurred on 08.02.2012 on the allegation that due to illegal intimacy between the petitioners, they murdered the deceased, who is husband of the 1st petitioner and brother of the 2nd petitioner. The 1st petitioner was arrested on 28.05.2012 and released on bail. That the 1st petitioner got illegal intimacy with the 5th respondent from the last 3 years, who is vegetable vendor in front of the shop of the 1st petitioner. The 5th respondent is married. It is the case of the 1st petitioner that whenever her

husband was away from the house on business work, she herself used to look after the shop. That on one day, the 5th respondent asked the 1st petitioner to bring house property documents and gold ornaments for eloping with him. The 1st petitioner refused to do the same as the house is in the name of her deceased husband. On 08.02.20012 at about 11.00 p.m, the deceased husband of the 1st petitioner by name Pitla Prakash came to house, changed his dress and slept in the bed room. The 1st petitioner and her daughter slept in the hall. That between 12.00 p.m and 1.00 a.m, in the night, the 5th respondent came and woke up her and that the 1st petitioner astonished on seeing the 5th respondent in the house. When the 1st petitioner questioned about his presence in the house at that time, the 5th respondent replied that he opened the door through the window and murdered her husband. She was worried and rushed to bed room and there she found her husband lying dead and at that time, she noticed her husband's legs were tied with ropes. That the 5th respondent was winding the clutch wire and placing it in his pocket and when the 1st petitioner questioned him as to why did he has done like that, he replied that he had done it for her sake. Subsequently, the 5th respondent dragged the dead body into the hall and then locked the 1st petitioner in bed room for half an hour and that she noticed some persons' movement in the hall due to their chappals' sound. The 1st petitioner found that the 2nd petitioner was fallen in a sofa situated in the hall in unconscious position. When the 1st petitioner questioned the same, the 5th respondent asked her to lie down beside him and that he made phone calls from the 2nd

petitioner's cell phone about 5 to 6 times and subsequently deleted the numbers. The 5th respondent suggested the 1st petitioner to tell others that she and 2nd petitioner murdered the deceased and that if she does not follow the instructions of the 5th respondent, he threatened to kill herself and her daughter. That on 09.02.2012, the Police came with dog squad and investigated the case. On 3rd day of the murder of the 1st petitioner's husband, police constable A.V.Satyanarayana and lady constable Achiyamma came and took her to police station between 3.30 p.m and 4.00 p.m for investigation. The 2nd petitioner was also brought to the police after 10 to 15 minutes of her reaching police station and that they were kept in illegal custody of the police for about 12 days. That the police took the signatures of the petitioners forcibly and produced before the Court and later sent to jail. The 1st petitioner was released on bail after 90 days. It is stated that the 3rd and 4th respondents colluded with the 5th and 6th respondents and his assistants and have implicated the petitioners in the murder case of the husband of the 1st petitioner and sent to jail. That the 3rd and 4th respondents had registered another First Information Report on 20.02.2012 in collusion with the local Village Revenue Officer by name A.Venkat Reddy. It is stated that the 2nd petitioner was subjected to humiliation, torture and harassment by the 3rd and 4th respondents and that they both were detained in illegal custody for about 12 days. It is stated that the 5th and 6th respondents have canvassed that they gave Rs.25,000/- to the 3rd and 4th respondents for not including their

names in Crime No.22 of 2012. Aggrieved by the action of the 3rd and 4th respondents, the present writ petition is filed.

3. Counter affidavit is filed by the 2nd respondent denying the allegations in the affidavit filed in support of the writ petition stating that the 1st petitioner lodged a complaint before the Narsipatnam Town Police stating that her husband by name Pitla Prakash, is running a masala shop at Narsipatnam. That on the night of 08.02.2012, her husband came to house from the said shop and went out side by his Motor cycle by saying that he went to get some tablets and that after long time, he did not return to home and she slept at her house. On the same day, i.e., on the intervening night, she woke up and found her husband lying in the vacant partly constructed site which belongs to her brother-in-law Pitla Gangadhar. Immediately she informed the matter to her co-daughter in-law and her brother-in-law and they rushed to the spot and shifted the dead body to down floor and informed to the nearby Government Medical Officer namely Apparao. The said Medical Officer examined her husband and declared that he was dead. That one small bleeding injury was found at the centre of the neck and also found black spot by the side of injury. Hence she suspected foul play over the death of her husband and requested the police to take necessary action. That basing on the said complaint, the Police Narsipatnam Town registered a case in Cr.No.22/12 under Section 174 Cr.P.C on 09.02.2012 and investigation was taken up. That the records revealed that investigating officer examined the complainant and witnesses and recorded their detailed statements. It was elicited in the

investigation that the petitioners herein, who lodged the complaint, have committed the offence. Basing on the evidence and on the confession given by the 1st petitioner-complainant, Section of law was altered into Section 302, 201 r/w 34 IPC and the 4th respondent-Circle Inspector of Police has taken up the investigation. The petitioners herein were shown as A1 and A2 in the said FIR and as per the evidence, they committed murder and were arrested on 20.02.2012 and 27.02.2012 respectively and they were sent to judicial custody. It is stated that inquest was held over the dead body of the deceased and post mortem examination report shows that the deceased died due to poisoning. That the investigation revealed that the A1 and A2 assassinated the deceased by mixing the poison in the liquor of Royal Stag Quarter bottle and got consumed by the deceased and disappeared the evidence of murder by way of creating cauterization on the neck of the deceased. It is stated that after completion of investigation, the case was charge sheeted on 28.09.2012 before the Addl. Judicial First Class Magistrate Court, Narsipatnam, vide PRC No.38/2012.

4. Counter affidavit is filed by the 6th respondent denying the averments in the affidavit filed in support of the writ petition stating that he knows the deceased Pitla Prakash since six years as he was running a masala shop besides his shop in Narsipatnam Market and that 5th respondent is running a vegetable shop in front of 1st petitioner's husband's shop. That whenever the 1st petitioner's husband went out of station on business work, the 1st petitioner used to take over the shop and

that as the 5th respondent was in front of the shop of the 1st petitioner's shop, she was familiarized with him and developed illegal contact between them and that the said relation between the 1st petitioner and 5th respondent was known to all the merchants in the vicinity. That on 09.02.2012 at 6.00 a.m, this respondent came to know about the death of the husband of the 1st petitioner. On 10.02.2012, the 3rd and 4th respondents asked him to attend Police Station for enquiry but they have not called 5th respondent herein. This respondent along with one Chinna and Chinnilu of Narsipatnam Market attended enquiry but not the 5th respondent and that this respondent and others gave information which is known to them personally. That when this respondent and others were present in the Police Station, the brother-in-law of the deceased by name Tataji, came to the Police Station and questioned them as to why they have murdered Prakash, said allegation was resisted by this respondent along with others. Subsequently, the 4th respondent asked this respondent and others to attend before him every day morning at 10.00 a.m and 05.00 p.m, but 5th respondent did not attend the Police Station. On 11.02.2012 at about 3.00 p.m, while this respondent and others present in the Police Station, one Police constable brought the 1st petitioner and after 20 minutes, the 2nd petitioner was also brought to police station and they were interrogated by the Police. It is stated that this respondent is not having any friendship with the 5th respondent but an enmity is running between them as they are doing same kind of business. It is stated that after he came to know through Police that both

the petitioners hatched a plan and murdered Prakash, this respondent along with others were relieved as there is no allegation against them.

5. Heard learned counsel for the petitioners, learned Assistant Government Pleader for Home appearing for the respondents 1 to 4.

6. Learned counsel for the petitioner submits that the respondents 3 and 4 have not conducted investigation in fair manner and that the investigation should be handed over to higher officers or to any other agency as the petitioners were deliberately arrested and put behind the bars in illegal custody. He further submits that the request of the petitioners for further investigation was also not considered. In support of his contention, he relied on the judgment reported in **Vinay Tyagi v. Irshad Ali @ Deepak and others**¹.

7. On the other hand, learned Assistant Government Pleader for Home submits that basing on the complaint of the 1st petitioner, investigation was done and it was found that the petitioners themselves have committed offence, as such, though First Information Report was registered under Section 174 of Cr.P.C, the same was altered into Section 302, 201 r/w 34 IPC and registered the same and thereafter charge sheet was also filed. He submits that after filing of the charge sheet, the question of changing the Investigating Officer does not arise and also that referring the matter for the investigation by the higher officers is not possible.

¹ 2013 (1) ALD (CrL.) 519 (SC)

8. It is to be seen that the petitioners themselves have given complaint and same was registered under Section 174 Cr.P.C. Subsequently, after investigation, when it was found that the offence was committed by the petitioners themselves, the section of law is altered into Section 302, 201 r/w 34 IPC and registered against the petitioners. Thereafter, charge sheet was also filed and same is numbered as PRC No.38 of 2012. In the counter affidavit of the 2nd respondent, it is stated that the matter is committed to Principal District and Sessions Judge Court, Visakhapatnam in the year 2013. In view of the same, by this time, Sessions Case might have been numbered.

9. After going through the pleadings of the petitioners and counter affidavits filed by the 2nd and 6th respondents, I do not see any extraordinary circumstances for changing Investigating Officer or transfer the case to C.B.C.I.D. More so, investigation is done and charge sheet is also filed. Even there is no interim order staying the investigation. Even as per the judgment relied on by the learned counsel for the petitioners, it is for the petitioners to seek for further investigation before the concerned Magistrate and that in exceptional circumstances, reinvestigation or *denovo* investigation can be ordered.

In view of above facts and circumstances, I do not see any exceptional circumstances to order for further investigation or *denovo* investigation in this writ petition, as such, the writ petition is liable to be dismissed and accordingly the same is dismissed.

There shall be no order as to costs. As a sequel to the dismissal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

19-06-2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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