

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL. O.P.NO.5741 OF 2008

and

M.P.No.1 of 2008

S.Thamizh Mullai

...Petitioner

vs.

1. The Superintendent of Police,
District Police Head Quarters,
Nagapattinam.

2. The Inspector of Police,
Seerkazhi Police Station,
Nagapattinam District.

3. The Revenue Divisional Officer,
Mayiladuthurai & Taluk,
Nagapattinam District.

...Respondents

Prayer: Criminal OP is filed under Section 482 of Cr.P.C, praying this Hon'ble Court to direct the 3rd respondent to conduct the re-enquiry on the Cr.No.310/07 dated 12.04.2007 registered by the 2nd respondent.

For Petitioner : Mr. P.Vijendran

For Respondents: Mr.T.Shunmuga Rajeswaran
Government Advocate
(Criminal Side)

ORDER

This Criminal Original Petition has been filed by the petitioner seeking a direction to the third respondent for re-enquiry in respect of the case in Crime No.310 of 2007, dated 12.04.2007, registered by the second respondent.

2. According to the petitioner, she is a widow and her daughter, namely, Brush Kaya was married to one Pradap in the year 2006. Her daughter was subjected to cruelty at the hands of her husband and in-laws and on account of that, the petitioner's

daughter died on 11.04.2007 in her in-laws' house, even within 6 months from the date of marriage. In this regard, she has lodged a complaint before the Deputy Superintendent of Police, Seerkazhi on 23.01.2008, making averments as against the in-laws of the deceased Brush Kaya. In the meantime, the second respondent herein registered a case in Crime No.310 of 2007 on 12.04.2007 under Section 174 of Cr.P.C., as it is a suspicious death and an enquiry was also contemplated. The third respondent has also submitted a report before the Tahsildar and based on the report of the third respondent, further action on the complaint was dropped on 01.03.2008.

3. The grievance of the petitioner is that on the intervention of one Munusamy, Tahsildar of Myladuthurai, who said to have induced her son-in-law for the marriage and for the demand of dowry, the third respondent has filed the report in such a manner and the second respondent had also dropped further action without any intimation to the petitioner. Therefore, the learned counsel prayed for allowing the present petition.

4. The learned Government Advocate (Crl. Side), on the other hand, submitted that the third respondent has conducted the enquiry in a fair manner. In fact, as per the provisions under Section 174 Cr.P.C., there is no necessity for the police to file the final report before the concerned Magistrate and there is no enabling provision for the police to furnish the copy to the complainant also. Therefore, he prayed for dismissal.

5. Heard the learned counsel appearing on either side and perused the documents placed on record.

6. This Court is of the view that it would not be proper to close the complaint even without furnishing a copy of the closure report to the complainant. In fact, in this case, a specific allegation has been taken out by the petitioner as against the Tahsildar of Myladuthurai, namely Munusamy. Therefore, the grievance of the petitioner must be addressed to and the petitioner/complainant must be put to know what is the outcome of her complaint.

7. Though the case is registered under Section 174 Cr.P.C., this Court in the decision reported in 2018 (3) MWN (Cr.) 143, in the case of Manohari and others v. District Superintendent of Police, Sivaganai District and others, has held that the final report has to be filed only before the concerned Judicial Magistrate and not before the Executive Magistrate. The relevant portion from the said decision is extracted hereunder:

"22. the inquiry that is held by the Executive Magistrate under Section 174 of Criminal Procedure Code is a plain and simple non judicial function. The report submitted by the Executive Magistrate relating to the

inquiry shall form part of the investigation conducted by the Police and such report shall be used by the Investigating Officer in the course of investigation. The investigation conducted by the Investigating Officer has to proceed independently in accordance with law and the inquiry conducted by the Executive Magistrate is not a bar for the Police to go ahead with the investigation.

23. From the above discussion, it is clear that the Police after registration of a FIR under Section 174 of Cr.P.C will have to conduct an inquest in accordance with Section 174(1) of Cr.P.C and submit a report to the Executive Magistrate under Section 174(2) of Criminal Procedure Code. The Executive Magistrate will independently conduct an inquest in line with the power given under Section 174(4) of Cr.P.C. This power has been given to the Executive Magistrate, since the legislature thought that an inquest should be conducted by an independent authority distinct from the Investigating Agency. Where a report is prepared by the Executive Magistrate after the inquest, the same shall be submitted to the Investigating Officer who shall make it a part of his investigation and may also proceed to make further investigation based on the report. The powers of the Investigating Officer is not curtailed in any manner and he has to proceed independently like in every other case and file a Final Report. This Final Report must be filed only before the jurisdictional Magistrate and not before the Executive Magistrate.

24. In view of the above, this Court proceeds to answer the issue that was raised in this case as follows:

a) The Police on receipt of an information about the suspicious death shall register an F.I.R under Section 174 of Criminal Procedure Code and thereafter he can proceed to the scene of occurrence and prepare an Inquest Report.

b) When a Police Officer receives an information to the effect that the deceased is lying in a serious condition, he can rush to the scene of occurrence, in order to see if he can save the victim and if in case the victim does not survive he can proceed to prepare the Inquest Report in accordance with Section 174(1) of Cr.P.C, and thereafter register an F.I.R under Section 174 of Cr.P.C. The Inquest Report has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and state in what manner, or by what weapon or instrument [if any], such marks appear to have been inflicted.

c) The Police Officer shall also prepare a Rough Sketch of the place of occurrence.

d) The Inquest Report and the Rough Sketch shall be prepared in the presence of two or more respectable

inhabitants of the neighborhood.

e)The object of the Inquest Proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. The Inquest Report need not contain details such as how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted and these facts are not within the scope of Inquest Proceedings and they fall within the scope of the investigation to be conducted by the Police.

f)immediately after the preparation of the Inquest Report in accordance with Section 174(1) of Criminal Procedure Code, the Police shall submit the same to the Executive Magistrate under Section 174(2) in order to enable the Executive Magistrate to hold an independent inquest as contemplated under Section 174(4) of Criminal Procedure Code.

g)The Executive Magistrate on completion of the inquest shall submit a report to the Police and such report shall form part of the investigation conducted by the Police and the Police shall collect details from such report and conduct the investigation accordingly.

h)The power of the Police to investigate is in no way stopped or curtailed or interfered with by the inquest held by the Executive Magistrate and the freedom of the Police to proceed with the investigation will be left untouched.

i)The Police on the conclusion of the investigation shall file a Final Report under Section 173(2) of Cr.P.C only before the jurisdictional Magistrate and not before the Executive Magistrate. This will apply, in both cases, whether the Final Report is a positive report or is a Closure Report.

j)If in case the Police proceeds to file a Closure Report, the victim shall be entitled to be served with a R.C.S notice in order to enable him to file a protest Petition before the concerned Magistrate.

k)On such protest Petition being filed, the concerned Judicial Magistrate shall act in accordance with law laid down by the Hon'ble Supreme Court in Vinay Tyagi .Vs. Irshad Ali, reported in [2013 (5) SCC 762]."

8. Therefore, the second respondent police is directed to file the final report before the concerned Judicial Magistrate. A copy of the final report shall also be provided to the petitioner, enabling her to agitate before the concerned Magistrate in the manner known to law. If any application is filed by the petitioner before the concerned Magistrate, the Magistrate can consider the same as that of a protest petition and can decide the further course of action as contemplated by the Hon'ble Supreme Court in Bhagwant Singh vs. Commissioner of

Police reported in (1985) 2 SCC 537. For better appreciation, the relevant portion from the said decision is extracted as under:

"4. ...When the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.

...

We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

9. With the above observations and directions, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CJ Judicial)

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Sub Assistant Registrar

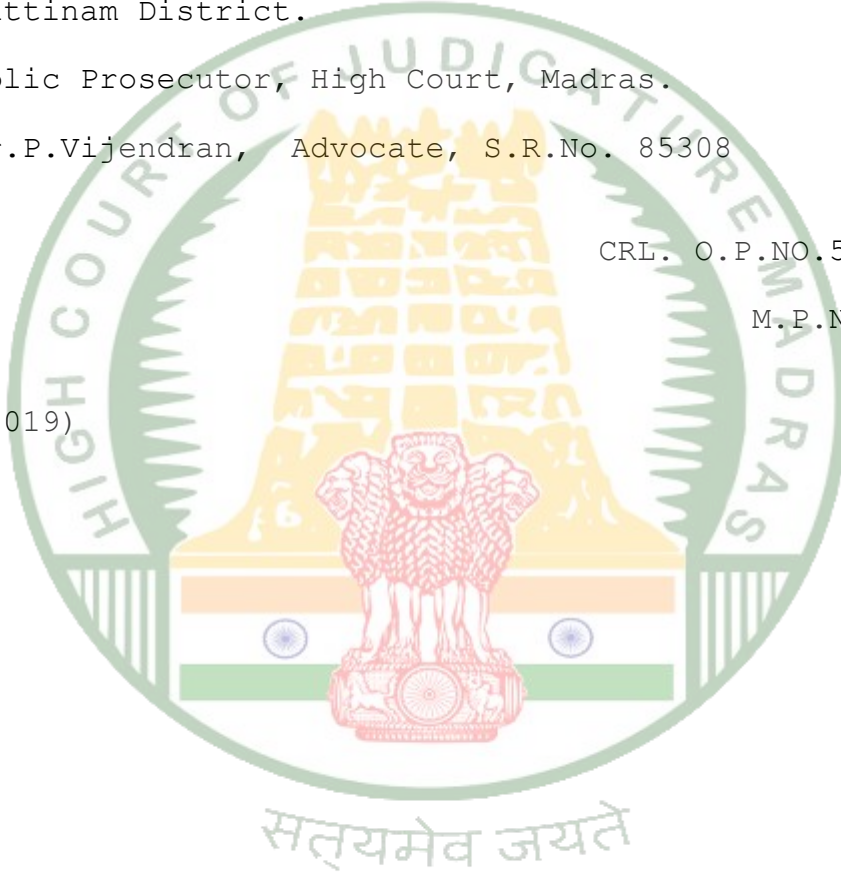
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To

1. The Superintendent of Police,
District Police Head Quarters,
Nagapattinam.
 2. The Inspector of Police,
Seerkazhi Police Station,
Nagapattinam District.
 3. The Revenue Divisional Officer,
Mayiladuthurai & Taluk,
Nagapattinam District.
 4. The Public Prosecutor, High Court, Madras.
- +1cc to Mr.P.Vijendran, Advocate, S.R.No. 85308

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M.P.No.1 of 2008

NRJK (CO)
GN (08/07/2019)



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