

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.O.P.No.10453 of 2018

G.Vimala

... Petitioner

... Vs ...

The State rep. by

1. The Director General of Police
Director General Office
Radhakrishnan Salai
Mylapore, Chennai.
2. The Commissioner of Police
Commissioner Office
Veppery, Periyamedu
Chennai.
3. The Deputy Commissioner of Police
Deputy Commissioner Office
St. Thomas Mount
Chennai.

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to order for enquiry and investigation into the above matter by a suitable other IPS Officer of an independent agency like C.B.C.I.D or C.B.I or any other appropriate agency with a direction to change of investigation on the petitioner complaint dated 02.03.2018. For proper investigate and file a report before this Hon'ble Court within the time as may be stipulated.

For Petitioners : Mr.K.Jayakumar

For Respondents : Ms. P. Kritika Kamal
Government Advocate (CrI. Side)

O R D E R

This Criminal Original Petition has been filed to order for enquiry and investigation into the above matter by a suitable other IPS Officer of an independent agency like C.B.C.I.D or C.B.I or any other appropriate agency with a direction to change

of investigation on the petitioner complaint dated 02.03.2018 and to file a report before this Hon'ble Court within the time as may be stipulated.

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

3. On the complaint lodged by the petitioner, the respondent police has registered a case in Crime No. 34 of 2017 on 17.11.2017 under Sections 406, 420, 384, 506(i) IPC and Section 4 of the Women Harassment Act against (1) Gunasekar and (2) Manju, w/o. Gunasekar. After completing the investigation, the respondent police have closed the case as 'mistake of fact' and have filed the closure report before the learned Judicial Magistrate, Tambaram.

4. Whiles, the petitioner has given a representation dated 02.03.2018 to the Commissioner of Police, Chennai, making allegations against the Investigating Officer of Cr.No. 34 of 2017 and also against the witnesses, whose statements the Investigating Officer recorded and sought for filing an FIR against them. Thereafter, the petitioner has filed the present petition for transferring his complaint dated 02.03.2018 from the file of the Commissioner of Police to CBCID for investigation.

5. The learned counsel appearing for the petitioner submitted that there are interpolations in the complaint, that was given by Vimala, in as much as the date was written as 17.10.2017, but whereas the seal by the Lower Court Registry shows the date as 17.11.2017. Mr.K.Jayakumar, learned counsel for the petitioner has also contended that in the last portion of the complaint, the respondent police have recorded as if the complaint was received by them on 17.11.2017. This according to Mr.K.Jayakumar requires a police investigation.

6. I am unable to persuade myself to agree with the statement because the date, seal of the Court is 17.11.2017 and that should be taken on its face value. The veracity of the complaint depends upon the allegations in the complaint. In this case, after some investigation and recording the statements of certain witnesses, the Police Officer has come to the opinion that cognizable offence has not been made out and therefore, the closure report has been filed. The remedy available to the petitioner is to file a protest petition before the concerned Court and not to file a second complaint for taking action against the Investigating Officer for improperly investigating the case.

7. Every Police Officer has a protection under the Police Act for due performance of the official duty. That apart, the Hon'ble Supreme Court in Shariff Ahmed and Others Vs. State (NCT of Delhi) reported in (2009 SCC 184 has clearly held that the High Court cannot issue a direction to the police as to how a case has to be investigated as that would be encroaching into the domain of the executive.

8. In such view of the matter, the prayer sought by the petitioner for change of investigation is misconceived and accordingly, devoid of merits. Hence, this Criminal Original Petition is dismissed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Director General of Police
Director General Office
Radhakrishnan Salai
Mylapore, Chennai.
2. The Commissioner of Police
Commissioner Office
Veppery, Periyamedu
Chennai.
3. The Deputy Commissioner of Police
Deputy Commissioner Office
St. Thomas Mount
Chennai.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Jayakumar Advocate SR.No.24993

SDR 16.04.2018

CrI.O.P.No.10453 of 2018