

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRL. O.P. No.23375 of 2017
and
CRL.M.P.No.13609 of 2017

Palaniammal

... Petitioner

Versus

1.State rep. by
The Inspector of Police,
Elachipalayam Police Station,
Elechipalayam,
Tiruchengodu,
Namakkal Distirct.
(Crime No.105/2016)

2.The Superintendent of Police,
Office of the Superintendent of Police,
Namakkal,
Namakkal District.

.... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the first respondent police to complete the further in investigation under the supervision of second respondent and file a additional final report in FIR No.105/2016 within a time frame fixed by this Hon'ble Court.

For Petitioner : Ms. S.Benazir

For Respondents : Mrs.P.Kritika Kamal
Government Advocate (Crl.side)

ORDER

The prayer sought for in the present petition is to direct the first respondent police to complete the further in investigation in Crime No. 105 of 2016 under the supervision of second respondent and to file an additional final report within a time frame fixed by this Hon'ble Court.

2. On the basis of the complaint dated 29.04.2016 given by the petitioner, who is the defacto complainant, the case in

Crime No. 105 of 2016 came to be registered for the offence under Section 174 of Indian Penal Code (in short The Code). As per the version of the petitioner/complainant, her husband Ramasamy Gounder fell sick and she is taking care of him. It is also stated that there was a dispute with respect to the land owned by her husband Ramasamy Gounder and in connection with the same, a suit was also filed in the year 2008 which pending before the District Munsif Court, Tiruchengode. According to the defacto complainant, on 28.04.2016, she left the house at 5.00 am in connection with her avocation and when she returned home at 11.30 am, she found her husband dead in a suspicious circumstances. Her suspicion grew stronger when the face of the deceased was shaved as part of the ritual and she found there were injuries on the face, nose, jaw and his finger was smeared with ink indicating that his thumb impression was obtained to grab his land. On the basis of such complaint, the case in Crime No. 105 of 2016 was registered under Section 174 of Code of Criminal Procedure. During the course of investigation, the postmortem report was obtained which confirmed that the husband of the petitioner died due to combined effects of smothering, compression of neck and head injuries. After receipt of postmortem report, the investigation officer altered the case in Crime No.105 of 2016, into one under Section 302, 449 and 302 read with 34 of IPC. After completion of investigation, final report was filed by the investigation officer against Mrs. Jayamani, daughter in law of the petitioner as A-1 and Mrs. Athayee @ Pappathi as A-2, who is the mother of A-1.

3. The learned counsel for the petitioner submitted that immediately after noticing the death of her husband, the petitioner has given a complaint stating that she suspects the involvement of her daughter-in-law and others. However, the police refused to entertain the complaint and ultimately, the case was registered only for an offence under Section 174 of Code of Criminal Procedure. According to the counsel for the petitioner, he had sent several representations to the Deputy Director General of Police, Director General of Police, Human Rights Commission and to the Superintendent of Police. However, there was no proper reply. According to the learned counsel for the petitioner, in all the representations sent by the petitioner, she has categorically indicated the involvement of her relative Mr. Dineswaran, Grand son of the petitioner, Muthusami, Selvamani. However, the investigation officer has only chosen to register the criminal case only against A-1 and A-2 without registering it against the aforesaid persons. Further, in all the representations, the petitioner has categorically referred to the dispute with respect to the land owned by the deceased and the attempts made by her relatives to grab the land. It was specifically stated by the petitioner

that on one occasion Dineswaran even threatened to kill the deceased, if the land is not bequeathed in his favour. The learned counsel for the petitioner also invited the attention of this Court to the statement of the petitioner recorded under Section 161 of Code of Criminal Procedure wherein the petitioner has clearly stated that at about 11.00 am on 28.04.2016, when she was returning from her work, she saw A-1 and A-2 coming out of the house and thereafter, she saw her husband lying dead. The investigation officer has not considered the motive on the part of his grand son to commit the murder since, the deceased had earlier executed a settlement deed in his favour and had subsequently revoked it. The investigation conducted so far is not proper and therefore, the present petition has been filed.

4. On the above contentions, this Court heard the learned Government Advocate and perused the materials placed. On perusal of the statements, it is evident that even in the complaint given by the petitioner, it was stated that the petitioner's husband died in a suspicious manner, however, the investigation officer has registered the case only under Section 174 of Code of Criminal Procedure. Further, in the statement of the petitioner recorded under Section 161 of Cr.P.C. she has categorically stated about the various attempts made by his grand son and others to grab the land owned and possessed by the deceased. The postmortem report also clearly shows that the deceased died due to smothering, compression of neck and head injuries. The investigation officer also did not take note of the categorical statement of the petitioner in her statement under Section 161 of Cr.P.C. and other material particulars furnished by her. The petitioner has also invited the attention of the higher police officials seeking interference to ensure that the investigation proceeds in the right manner. Taking note of all the above facts, this Court feels that it would be appropriate to direct for further investigation and appoint a superior officer to monitor the investigation and file a fresh final report in this case.

"Learned counsel for the petitioner, at this juncture submitted that the first respondent police had not recorded any statement from the complainant under section 161(3) of Cr.P.C and that the statement alleged to have been obtained is not her version. Since the doubt is cast on the alleged statement under Section 161(3) of Cr.P.C. of the complainant itself, it would be appropriate that the investigation should be monitored by a superior officer."

5. Accordingly, the final report dated 11.11.2016 in Crime

No.105 of 2016 on the file of the **first** respondent is set aside and the **first** respondent is directed to conduct further investigation. The **second** respondent herein is directed to monitor the further investigation to be conducted in this case in Crime No. 105 of 2016 and file a final report within a period of eight weeks from the date of receipt of a copy of this order. The **second** respondent shall also monitor the manner in which the investigation is conducted by the **first** respondent in this case on a day to day basis and file a final report. Till the filing of the final report, the proceedings in S.C.N0. 42 of 2016 on the file of the Additional District Judge, Namakkal, shall be stayed. However, on receipt of the final report after further investigation, the trial Court, shall proceed on the same, in accordance with law without waiting for further orders from this Court.

6. With the above the observation the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

nmm

02.02.2018

For Being Mentioned:

This Petition has been posted 20.03.2018 under the Caption "for Being Mentioned in pursuance to the order of this court dated 02.02.2018 and made herein in the presence of the aforesaid Advocate, the court made the following order:

Today the matter is listed under the caption " For Being Mentioned" at the instance of the learned counsel for the petitioner.

2. In continuation of my earlier order dated 02.02.2018 made in Cr1.O.P.No.23375 of 2017, wherever the Crime No.353/2016 occurs, it shall be substituted with Crime No.105/2016 and in paragraph 5 wherever the word "first respondent" finds place, it shall be substituted with "second respondent" and wherever the word "second respondent" finds place, it shall be substituted with "first respondent".

3. After the 4th paragraph, the following paragraph shall be inserted:

"Learned counsel for the petitioner, at this juncture submitted that the first respondent police had not recorded any statement from the complainant under section 161(3) of Cr.P.C

and that the statement alleged to have been obtained is not her version. Since the doubt is cast on the alleged statement under Section 161(3) of Cr.P.Cof the complainant itself, it would be appropriate that the investigation should be monitored by a superior officer."

3. All other observations made in the order dated 02.02.2018 passed in Crl.O.P.No.23375 of 2017 shall remain intact.

Sd/-

Assistant Registrar(CS VII)

Dated: 09.03.2018

*Amended order copy to be issued as per order of this court dated 20.03.2018 and made in Crl.O.P.No.23375 of 2017.
Sd/- Assistant Registrar(CO)
Dated: 26.03.2018.

//True Copy//

Sub Assistant Registrar

nmm
To

1.The Additional District Judge
Namakkal

To be substituted copies already despatched on 14.03.2018 and issue fresh amended order copy vide Crl.o.P.No.23375 of 2017 dated 20.03.2018.

2.The Inspector of Police,
Elachipalayam Police Station,
Elechipalayam,
Tiruchengodu,
Namakkal Distirct.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Namakkal,
Namakkal District.

4.The Public Prosecutor
High Court, Madras.

+1cc to Mr.S.Benazir, Advocate, S.R.No.8879

CRL.O.P.No.23375 of 2017

RRK(13/03/2018)

SP(26/03/2018)