

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2018

DELIVERED ON: 28.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Cr1.O.P.No.16305 of 2013

Sathyabama

.. Petitioner

Vs.

State represented by
The Inspector of Police,
Elachipalayam Police Station,
Namakkal District,
Crime No.324 of 2012

...Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to transfer the investigation in Crime No.324 of 2012 of ElachiPalayam Police Station to the CBCID, Namakkal or any other competent Agency.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.T.Shunmugarajeswaran

ORDER

This petition under Section 482 of the Code of the Criminal procedure has been filed by the petitioner Sathyabama, who lost her husband Subramani in an alleged hit and run case on 16.12.2012, which according to the petitioner is a suspected premeditated murder. This petition is praying for the transfer of the investigation in Crime No.234 of 2012 of Elaichapalayam Police Station to CBCID, Namakkal or any other appropriate Agency.

2. Briefly the facts are as follows. Late Subramani was working as Firka Surveyor at Rasipuram Taluk Office and there was an existing land dispute between him and one Mr.Kandasamay and Crusher Palaniappan with regard to the property in Survey No.16 A2/3A, 3B of Maraparai Village, Namakkal. On 16.02.2012, it is reported that late Subramani left the residence in a by-cycle early in the morning at 5.15 a.m. to supply milk from his residence to Maraparai Milk Society

and was found lying with injuries in a pool of blood at Paruthipali-Maraipparai Road. He was taken to Kovai Medical Centre, Erode on the same day at 12.07 hours, and was in the Intensive Care Unit, where he succumbed to the injuries on 18.12.2012 at about 00.05 hours. According to the petitioner, who was the de-facto complainant, she was forced not to mention in her complaint her suspicion of conspiracy by the said Crusher Palaniappan along with crusher Palaniappan's father Muthusamy and one Krishnasamy, who according to her deliberately murdered her husband and made the entire episode appear like a hit and run case, wherein the actual accused were unknown. It is also her contention that this was the pre-condition by the police namely one Mr.Chellamuthu, Inspector of Police, Mr.Sengottayan, Sub Inspector of Police and Mr.Ramajayam, Head Constable of Elachipalayam Police station to even proceed further with the formalities of taking the injured for treatment to the hospital. After the demise of her husband, the petitioner came to know that the police had registered the case in Crime No.324 of 2012 for offences under Section 279 and 337 of the Indian Penal Code. It has also been contended that the deceased, husband of the petitioner and the petitioner had on earlier occasion, complained to the police of their apprehension that there was life threat to them from Kandasamy and crusher Palaniappan and one such petition was numbered as C.S.R.No.197 of 2012 of Elachipalayam Police Station and within a few days, the petitioner's husband was killed. Having no faith in the investigation by the police officials of Elachipalayam Police Station, the petitioner has approached this court for transfer of investigation from the Elachipalayam Police Station to CBCID or any other competent agency.

3. The respondent has countered by stating that the petitioner's allegations regarding the death of her husband is an after thought and without any basis. According to the respondent, the accident was one of a hit and run, in which, considerable efforts were made to find out the culprits and the petitioner has after the death of her husband, now claims that it was not a hit and run case by an unknown accused, but, clearly a case of murder. The final status report of the investigation has also been filed, which according to the learned Government Advocate (Crl.Side) would go to show that the police had done their duty without fear or favour and there was no reason to suspect any foul play, as alleged by the petitioner and hence, the petition is liable to be dismissed.

4. The petitioner to substantiate her contention, has adduced the documentary evidence which are copies of the written complaints made by her and her deceased husband about the incidents involving measurement of the land and the subsequent verbal threats made to them. In this context, it is pertinent

to mention that none of these complaints bear any acknowledgment by the police and therefore, cannot be accepted as a valid legal evidence. However, according to the petitioner, her representation dated 12.12.2012 was acknowledged as C.S.R.No.197 of 2012 by the Elachipalayam Police Station. Though, the copy of the C.S.R.197 of 2012 was not filed by the petitioner, the respondent has also not disputed the same and the contents of the petitioner's complaint is not only a few days before the alleged accident, but also clearly mentions the life threat posed to her family members by the said persons mentioned in her petition.

5. Mr.T.Shunmugarajeswaran, learned Government Advocate (Crl. Side) would contend that none of the representations allegedly given by the petitioner was received by the police and the First Information Report, which was given by the very same petitioner, speaks only about the accident that took place on 16.12.2012. According to him, all the allegations of the petitioner are only an after thought and the police after thorough investigation has filed a referred charge sheet before the Judicial Magistrate, Namakkal stating that it is a hit and run case by unknown persons, who were undetectable.

6. The police have filed the referred charge sheet on 28.07.2016 which is 4 years after the incident and three years after this petition. That the matter has been handled very casually is evident from the fact that even the date of death of the victim has been mentioned as 16.12.2012 (the same day of accident), whereas the victim was in the hospital for two days and died on 18.12.2012 as is found in the Postmortem Report.

7. The police have also not acted upon the petitioner's complaint in C.S.R.No.197 of 2012, which was just few days before the actual death of the victim. In such circumstances, this court finds no reason as to why the case should not be transferred to CBCID for proper and thorough investigation to find out the truth. In view of the foregoing reasons, the petition is liable to be allowed.

8. In the result, this petition is allowed and the Superintendent of Police, Namakkal is directed to transfer the investigation in Crime No.324 of 2012 of Elachipalayam Police Station, Namakkal to the Inspector of Police, CBCID, Namakkal for proper and thorough investigation.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. The Superintendent of Police,
Namakkal.
2. The Inspector of Police,
Central Bureau of Criminal Investigation Department,
Namakkal,
3. The Inspector of Police,
Elachipalayam Police Station,
Namakkal.
3. The Public Prosecutor,
Madras High Court.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.58973

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GSP(14/09/2018)



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