



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

THE HON'BLE MR.JUSTICE P.N. PRAKASH

Crl.O.P. No.26285 of 2016 & Crl.M.P. No.13083 of 2016

Rajkumar Gupta

.. Petitioner

vs.

1 The Deputy Superintendent of Police
Mamallapuram Sub-Division
Kancheepuram District

2 Praveen Kumar .. Respondents
(R2 is Suo motto impleaded as per
order dated 06.06.2018 made in
Crl.OP.No.26285 of 2016)

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the first respondent to re-investigate the case in Cr.No.233 of 2016 on the file of E-8 Kelambakkam Police Station and further direct to collect such evidence as well as obtain the call records and voice records of conversation between informant, deceased and son of the informant from the service provider concerned.

For petitioner : Mr.Manoj Sreevalsan

For R1 : Mr.C.Iyappa Raj
Addl.Public Prosecutor

For R2 : Mr.V.N.Subramanian

ORDER

This Criminal Original Petition has been preferred seeking a direction to the first respondent to re-investigate the case in Cr.No.233 of 2016 on the file of E-8 Kelambakkam Police Station and also to collect such evidence as well as obtain the call records and voice records of conversation between informant, deceased and son of the informant from the service provider concerned.

2 For the sake of convenience, the parties are referred to by their name.



3 The facts in a nutshell, leading to the institution of this Criminal Original Petition, are as under:

3.1 Praveen Kumar (accused) got married to Akanksha Raj on 11.05.2014 at Patna, Bihar. They were not blessed with issues. They established a nuclear family by taking on rent, Flat No.TG-92 in Jemcrow Apartments at Kelambakkam, within the limits of Kelambakkam Police Station.

3.2 On 15.05.2016, around 12 o' clock in the midnight, Akanksha Raj was found in a pool of blood on the ground. On hearing a weird sound of someone falling, Aakash Varma and Kaushik Kumar, residents of Jemcrow Apartments, came out and found her lying on the floor, with her husband Praveen Kumar weeping by her side. She was immediately rushed to Chettinad Hospital in Kelambakkam, where, she was admitted for treatment. At the time of admission, it was recorded in the hospital records as under:

"Alleged H/o fall from 9th floor of Gem Groove Apartment, Padur, at 12.30 a.m. on 16.05.2016. H/o Head injury & LOC since the time of incident. Pt. was brought gasping to the Emergency Department."

3.3 Despite the treatment given to her, she succumbed to the injuries within 45 minutes of her admission in the hospital, pursuant to which, on the complaint given by Rajkumar Gupta, her father, the Kelambakkam police registered a case in Cr. No.233 of 2016 on 16.05.2016 under Section 174(3) Cr.P.C. and took up investigation of the case.

3.4 Since the death of Akanksha Raj was within seven years of marriage, Mr. Panneerselvam, District Revenue Officer, conducted inquest and submitted a report dated 08.06.2016, opining that there was no dowry harassment, however, a thorough investigation has to be done to find out as to whether it was a case of homicide or suicide. In the meantime, the body of Akanksha Raj was sent for post-mortem and visceral examination. The Deputy Superintendent of Police conducted the investigation and after completing the same, filed a final report in P.R.C. No.6 of 2016 before the Additional Mahila Court (Magisterial Level), Chengalpet, against Praveen Kumar for the offences under Sections 498-A, 304-B and 306 IPC and Section 4 of the Dowry Prohibition Act, 1961. After committal, the case was taken on file as S.C. No.180 of 2016 by the Sessions Judge (Mahila Court), Chengalpet and the case is now pending trial before the said Court.

3.5 Not satisfied with the investigation, Rajkumar Gupta, father of the deceased Akanksha Raj, preferred the instant



petition, viz., Crl.O.P.No.26285 of 2016 before this Court praying for re-investigation of the case on the ground that the investigation conducted by the Deputy Superintendent of Police was perfunctory and that it was not a case of suicide, but, a case of murder.

4. In Crl.O.P. No.26285 of 2016, Praveen Kumar was not made a party respondent. A learned Single Judge of this Court ordered notice to the police, pursuant to which, the Investigating Officer filed a status report denying the allegations and stoutly justifying the final report. The learned Single Judge, vide order dated 16.08.2017, ordered this Criminal Original Petition in the following terms:

"8 It is made clear that this Court has doubted the investigation conducted by the Deputy Superintendent of Police and that further investigation is being ordered only to rule out the doubts raised by the father of the deceased.

9 In view of the above findings, the respondent is directed to conduct a further investigation.

10 In the result, the Criminal Original Petition stands ordered in the following terms.

a) The petitioner is granted liberty to set forth the circumstances to which he seeks for further investigation to the respondent in Crime No.223 of 2016 on the file of the E-8 Kelambakkam Police Station, within a period of 7 days from the date of receipt of a copy of this order.

b) The respondent, on receipt of such request, shall conduct further investigation on the aspects pointed out by the petitioner and file an additional charge sheet/supplementary report.

c) Such further investigation shall be completed within a period of 4 weeks from the date of receipt of the petitioner's request for further investigation. The supplementary report/additional charge sheet shall form part and parcel of the earlier charge sheet filed in S.C.No.180 of 2016 on the file of the Sessions Judge, Mahila Court, Chengalpattu.

Consequently, connected miscellaneous petition is closed."



WEB COPY

5 Aggrieved by the said order, Praveen Kumar took up the matter to the Supreme Court in Crl. Appeal No.2116 of 2017 contending that he was not heard by this Court when the order in Crl.O.P. No.26285 of 2016 was passed. The Supreme Court, vide order dated 07.12.2017, allowed the appeal with the following directions:

"After perusal of the aforesaid judgments, we find that they all are distinguishable and, accordingly, we distinguish the same. In our considered opinion, the High Court should have afforded an opportunity of hearing to the appellant and, therefore, we are inclined to allow the appeal and set aside the order passed by the High Court and, accordingly, it is so ordered.

Resultantly, the appeal is allowed and the matter is remitted to the High Court with a request to dispose of the application within three months hence. Be it clarified, we have not expressed any opinion on the merits of the case."

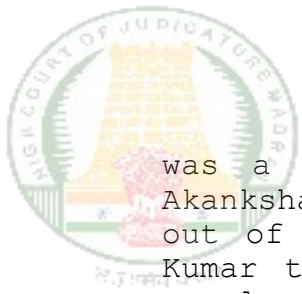
Thus, on the Supreme Court remitting the matter to this Court, this Criminal Original Petition is listed before this Court, once again.

6 As per the aforesaid direction of the Supreme Court, Praveen Kumar was suo motu impleaded as a party respondent on 06.06.2018 and on notice, he has entered appearance through his counsel Mr.V.N.Subramanian.

7 Heard Mr. Manoj Sreevalsan, learned counsel for Rajkumar Gupta, father of the deceased Akanksha Raj, Mr.C.Iyappa Raj, learned Additional Public Prosecutor appearing for the first respondent State and Mr. V.N. Subramanian, learned counsel for Praveen Kumar.

8 Mr. Manoj Sreevalsan, learned counsel for Rajkumar Gupta submitted that the entire investigation conducted by Mr. Sekar, the then Deputy Superintendent of Police would not stand legal scrutiny, inasmuch as, he had failed to collect even the call details which would show that both Akanksha Raj and Praveen Kumar were frequently calling Akanksha Raj's parents and that there was a quarrel between them at that time, which has been burked by the police.

9 In the opinion of this Court, had the Investigating Officer collected the call details, it would only throw light on the limited aspect as to whether there was conversation between the parents of Akanksha Raj and Praveen Kumar and would have corroborated the assertion of the parents on this aspect. However, that, by itself, cannot lead to the conclusion that it



was a case of murder. The altercation could have impelled Akanksha Raj to jump from the ninth floor for committing suicide out of frustration or it could have been a motive for Praveen Kumar to push her from the balcony. All depend upon where the couple was standing and quarrelling. This Court cannot speculate over it now.

10 Mr. Manoj Sreevalsan further contended that knotted dupatta, cross chappals, broken bangles and broken mangal sutra of the deceased were not seized by the Investigating Officer. When it is his contention that Praveen Kumar pushed her from the ninth floor, it is not known as to how the seizure of the said articles would have advanced the complainant's case. Post-mortem report does not show that Akanksha Raj was strangled. In every case of bride death, it is natural for the distraught family of the deceased to ask for the scalp of the groom and his family members. This case is no exception. In this case, though the Revenue Divisional Officer has stated in the Inquest Report that it is not a case of dowry death, yet, the Deputy Superintendent of Police has ignored the said finding and has filed the final report under Sections 498-A, 304-B and 306 IPC and Section 4 of the Dowry Prohibition Act, which are far more dangerous penal provisions than Section 302 IPC, because, the reverse burden under Section 113-B of the Evidence Act will fall upon the accused in a prosecution under Section 304-B IPC, whereas, in a prosecution under Section 302 IPC, the burden is on the police to prove the case beyond reasonable doubt. Therefore, this Court cannot hold that the Deputy Superintendent of Police had favoured the accused by not prosecuting him under Section 302 IPC.

11 Per contra, the learned counsel for Praveen Kumar submitted that when the police have taken a clear stand that there was no remiss in the investigation, a few discrepancies here and there, by themselves, cannot have the effect of vitiating the entire investigation warranting re-investigation in a case of this nature. He further submitted that the de facto complainant has no locus standi to seek re-investigation, de nova investigation or further investigation under Section 173 (8) Cr.P.C.

12 While so, the learned Additional Public Prosecutor brought to the notice of this Court, a very important fact that has occurred between 16.08.2017, i.e., the date of the order passed by this Court and 07.12.2017, i.e., the date of the order passed by the Supreme Court. He submitted that pursuant to the order dated 16.08.2017 passed by this Court, the police prepared a questionnaire and submitted the entire case records to the Assistant Director, Narcotics Division of Forensic Science Department for an independent opinion as to whether Akanksha Raj



would have been pushed from the ninth floor of Jemcrow Apartments or would have herself jumped therefrom. The expert has given her opinion vide report dated 27.10.2017, about which, this Court cannot disclose at this juncture, especially, in the light of the order that this Court proposes to pass.

13 This Court cannot turn a Nelson's eye to the aforesaid report which is available in the case diary nor can this Court eschew this material and uphold the investigation that has been conducted by Mr. Sekar, the then Deputy Superintendent of Police.

14 The learned Additional Public Prosecutor submitted that Mr.Sekar, the then Deputy Superintendent of Police has been transferred and in his place, one Mr.R. Subbaraju, Deputy Superintendent of Police, has taken over the case and on his efforts, the questionnaire was prepared and answers obtained from the expert.

15 Though the de facto complainant cannot seek a further investigation under Section 173(8) Cr.P.C. in view of the law laid down by the Supreme Court in Amrutbhai Shambubhai Patel vs. Sumanbhai Kantibhai Patel and others [(2017) 4 SCC 177], yet, the power of the Constitutional Court either to order re-investigation or further investigation or de nova investigation cannot be whittled.

16 Under such circumstances, this Court directs the Additional Superintendent of Police, Kancheepuram District, to conduct further investigation in this case and submit a supplementary report, be it, in favour of or against the accused within three months from the date of receipt of a copy of this order. Until then, further proceedings in S.C. No.180 of 2016 before the Sessions Judge (Mahila Court), Chengalpet, will stand stayed. The supplementary report shall be filed directly before the Sessions Judge (Mahila Court), Chengalpet in S.C. No.180 of 2016. Thereafter, the Sessions Judge (Mahila Court), Chengalpet shall proceed with the matter in accordance with law. The further investigation shall proceed uninfluenced by what has been observed above.

With the above directions, this Criminal Original Petition stands disposed of. Connected Crl.M.P. stands closed.

Sd/-
Deputy Registrar

//True Copy//
Sub Assistant Registrar

pns/cad



To

1 The Additional Superintendent of Police
Kancheepuram District

WEB COPY

2 The Deputy Superintendent of Police
Mamallapuram Sub-Division
Kancheepuram District

3 The Inspector of Police
E-8 Kelambakkam Police Station, Chennai

4 The Sessions Judge
Mahila Court, Chengalpet

5 The Public Prosecutor
High Court of Madras, Chennai 600 104

+1cc to Mr.Manoj Sreevalsan, Advocate, S.R.No.52131

+1cc to Mr.V.N.Subramanian, Advocate, S.R.No.51961

Crl.O.P.No.26285 of 2016

CS/21/08/18