



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

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CRL.O.P.(MD)No.1831 of 2018

Jeba Kingly

... Petitioner

-Vs-

1.The Superintendent of Police,
Kanyakumari District.

2.The Inspector of Police,
Palugal Police Station,
Kanyakumari District.

3.The Deputy Superintendent of Police,
CBCID, Tirunelveli Range,
Kanyakumari District.

... Respondents

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to transfer the investigation of Crime No.231 of 2016 from the file of 2nd respondent to the file of 3rd respondent for fair and impartial investigation.

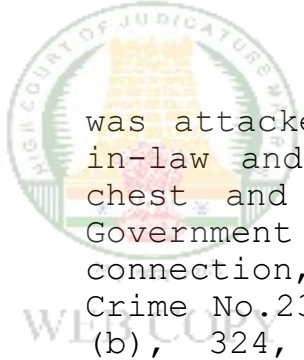
For Petitioner : Mr.A.Balakrishnan for
Mr.K.P.Narayanakumar

For Respondents : M/s S.Bharathi,
Government Advocate (Criminal side)

ORDER

This petition has been filed for transferring the investigation in Crime No.231 of 2016 from the second respondent to some other competent agency.

2.The learned counsel for the petitioner would submit that the petitioner is a soldier working in the Indian Army. He got married with one Julykumari in the year 2012. Subsequently, due to some mis-understanding, the wife of the petitioner left the matrimonial house. On 20.12.2016, the petitioner's wife called the petitioner through mobile phone and asked him to meet her and told the petitioner that they can continue to lead a happy married life considering the future of the children. The petitioner believing the words of his wife, met her and she took the petitioner to her parents' house. Immediately, on entering the house, the petitioner



was attacked with deadly weapons by his father-in-law and brother-in-law and the petitioner received serious injuries in his head, chest and hands. The petitioner was thereafter rushed to the Government Hospital and surgery was also performed. In this connection, an F.I.R was registered by the second respondent in Crime No.231 of 2016 for the offences punishable under Sections 294(b), 324, 506(ii) of I.P.C against the father-in-law and the brother-in-law of the petitioner. It is the case of the petitioner that inspite of the wife being named in the complaint, she was never made as an accused by the second respondent police.

3.The learned Government Advocate would submit that a final report has been filed by the second respondent police on 22.02.2017 and the same has been taken on file by the Judicial Magistrate No.I, Kuzhithurai in C.C.No.110 of 2018 for the offences punishable under Sections 294(b), 324, 326 and 506(ii) of I.P.C. Even in the final report the second respondent police did not add the wife as an accused.

4.The learned counsel for the petitioner would submit that a clear attempt to murder the petitioner was made by the father-in-law and the brother-in-law on the instigation by the wife of the petitioner. The main grievance of the petitioner is that the wife has not been made as an accused and an offence for attempt to murder under Section 307 IPC has not been added in the final report. The learned counsel for the petitioner therefore would submit that even at this stage this Court can order further investigation.

5.It is true that this Court in exercise of its power under Section 482 of Cr.P.C can order further investigation/reinvestigation at any stage of the proceedings. However, this power will have to be exercised only in rare circumstances. In the present case, the entire materials are now before the Court. The Court below has the power under Section 216 of Cr.P.C to alter the charges at any point of time during the proceedings. Similarly, the Court below has the power to add any person as an accused in exercise of its power under Section 319 of Cr.P.C. That apart the petitioner being an injured victim will be called as a witness before the Court below and the petitioner can always explain before the Court below as to what really happened and the persons who were all involved in the commission of the offence. Therefore, it is not as if the petitioner has lost all his rights. In the light of the evidence given by the petitioner and on the materials that have already been collected by the police and placed before the Court, the court can always alter the charges and add any person as an accused. When such a power is vested with the Court below, this Court does not deem it fit to exercise its power under Section 482 of Cr.P.C. and order for further investigation by different agency.



6. Therefore, this Criminal Original Petition is disposed of with a direction to the petitioner to work out his remedies as suggested above, in accordance with law, before the Court below during the course of the proceedings.

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Sd/-
Assistant Registrar(CO)

Sub Assistant Registrar(CS-II)

To

1. The Judicial Magistrate No.I, Kuzhithurai.
2. The Chief Judicial Magistrate,
Nagercoil at Kanyakumari.
3. The Superintendent of Police,
Kanyakumari District.
4. The Inspector of Police,
Palugal Police Station,
Kanyakumari District.
5. The Deputy Superintendent of Police,
CBCID, Tirunelveli Range,
Kanyakumari District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.K.P.Narayanakumar, Advocate, SR.No.81431

CRL.O.P.(MD)No.1831 of 2018
29.08.2018

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