



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:08.02.2018

Pronounced on:22.03.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.(MD) No.1926 of 2018

Sithalakshmi

... Petitioner

-Vs-

1. The Superintendent of Police,
Kanyakumari District,
Kanyakumari.

2. The Sub-Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
(Cr.No.386/2017)

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the 2nd respondent to alter the First Information Report in Cr.No.386 of 2017 on the file of the 2nd respondent from the offence under Sections 279, 337, 187 of I.P.C to an offence u/s. 302 I.P.C with other offences and further direct the respondents to conduct impartial investigation in accordance with law.

For Petitioner	:	Mr.C.Christopher
For Respondent	:	Mr.Prabhu Ramachandran Govt. Advocate (Crl.Side)

O R D E R

This Criminal Original petition has been filed to direct the 2nd respondent to alter the First Information Report in Cr.No.386 of 2017 from under Sections 279 and 337 I.P.C and Section 187 of the Motor Vehicles Act, 1988 to under section 302 I.P.C with other offences and to direct the respondents to conduct impartial investigation in accordance with law.

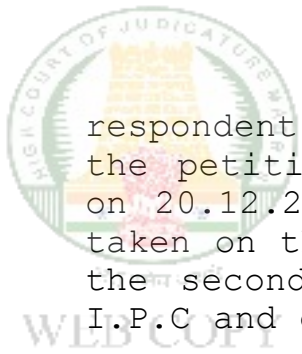
**2.The brief facts of the case are as follows:**

One Selvan gave a complaint stating that on 11.11.2017, when the village people assembled in a temple festival at Rasthakadu Village, one of the goats which was meant for sacrificing to the deity, missed from the temple and hence at about 8.00 a.m, the petitioner's husband namely Krishnan and one Maniselvan went in search of the said goat. While crossing the Anjugramam to Nagercoil Main road, in the process of searching the goat, a motorcycle rider rashly and negligently driven his vehicle and dashed against the petitioner's husband and subsequently, he was admitted in the Sivanthi Private Hospital at Kanyakumari. Based on the complaint given by the said Selvan, the second respondent herein has registered a case in Cr.No.386/17 under Sections 279 and 337 I.P.C r/w Section 187 of Motor Vehicles Act, 1988.

3.Heard both sides.

4.The learned counsel for the petitioner has submitted that on the date of occurrence, i.e on 11.11.2017, on hearing the incident, the petitioner and her daughter and her son-in-law went to the hospital and immediately, her son-in-law namely Rajasekar has lodged a complaint before the second respondent stating that one Selvaraj, Head of the village and 8 others are responsible for the injury sustained by the petitioner's husband, but the second respondent, in stead of registering the case, based on the said complaint, registered a case based on the complaint given by one Selvan, who is not at all an eye witness. He further submitted that on 11.11.2017, the petitioner's husband went in search of the goat in a motorcycle driven by one Chithirai Kumar, in which the petitioner's husband and one Sivalingam were riding as pillion riders. He further submitted that seven other accused persons followed the aforesaid motorcycle and if any untoward incident was occurred to the petitioner's husband, the aforesaid persons are liable to be held for the same. He further submitted that the aforesaid persons did not inform the incident to the petitioner. On the other hand, one of the persons namely Sivalingam, who accompanied the petitioner's husband informed the alleged incident to the cousin of the petitioner's husband. That itself shows that it is a pre-planned attack on the petitioner's husband. He further submitted that the petitioner's husband succumbed to the injury on 14.11.2017 at about 9.20 p.m. He further submitted that the hospital records show that as if the petitioner's husband was admitted in the hospital by the petitioner herself, but actually, she did not admit him in the hospital. The said record was created in order to help the accused persons.

5.The learned counsel for the petitioner further submitted that since the complaint dated 11.11.2017 preferred by the son-in-law of the petitioner did not yield any fruitful result, he sent another complaint on 15.11.2017 to the first



respondent and other higher officials of the police. Thereafter, the petitioner preferred a complaint before the first respondent on 20.12.2017 and other officials, but so far, no action has been taken on the aforesaid complaints and hence, he requests to direct the second respondent to alter the case into under Section 302 I.P.C and conduct impartial investigation.

6.The learned Government Advocate (Crl.Side) has submitted that based on the complaint given by one Selvan, the case was originally registered by the second respondent in Cr.No.386/17 under Sections 279 and 337 I.P.C r/w Section 187 of the Motor Vehicles Act, 1988. He further submitted that the petitioner's husband, while taking treatment as inpatient in Sivanthi Private Hospital, died on 14.11.2017. He further submitted that in the mean while, the petitioner's son-in-law namely Rajasekar gave a complaint on 11.11.2017, stating that one Selvaraj and 8 others might have committed murder of the petitioner's husband and after receipt of the said complaint, CSR No.462/17 has been issued and the case has been altered into under Section 174 Cr.P.C. He further submitted that after conducting inquest, the dead body has been sent for autopsy and post-mortem has been done in the Kanyakumari Government Medical College and awaiting for chemical analysis report. He further submitted that after receipt of the chemical analysis report only, the second respondent can take a decision as to whether the petitioner's husband was committed murder or not. He further submitted that the case is under investigation and under the said circumstances, the present petition may be dismissed.

7.The case diary relating to Cr.No.386 of 2017 on the file of the 2nd respondent perused. The records show that though originally the case was registered under Sections 279 and 337 I.P.C r/w 187 of the Motor Vehicles Act, after receipt of the complaint from the petitioner's son-in-law namely Rajasekar, the second respondent herein has altered the case into under Section 174 Cr.P.C and investigation has been done on that line. Further the records show that post-mortem has been done and the internal organs were sent for chemical analysis and the chemical analysis report is not yet received. So, it cannot be said that the second respondent has not done investigation, based on the complaint submitted by the petitioner's son-in-law. According to the learned Government Advocate (Crl.Side), only after receipt of the chemical analysis report, further action will be taken. Under the said circumstances, the second respondent cannot be directed to alter the case under Section 302 I.P.C at this stage. Therefore, the first respondent is directed to monitor the investigation and if the investigation reveals that the petitioner's husband has been murdered, then, he should direct the Investigating Officer to

<https://hcservices.ejglnil.in/reports>



8. With the aforesaid observation, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (Crl side)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Kanyakumari District,
Kanyakumari.
2. The Sub-Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.C.Christopher , Advocate in SR No. 57380

vs

AE/JC/SAR2/17.04.2018/4P/5C

Crl.O.P.(MD) No.1926 of 2018

22.03.2018