



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1 OP(MD)No.17280 of 2017

Vijay Pandi

... Petitioner

Vs.

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

2.The Inspector of Police,
Odaipatti Police Station,
Theni District.

3.The Inspector of Police,
CBCID,
Madurai Unit,
Madurai.

...Respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to transfer the investigation in Crime No. 108 of 2017 on the file of the 2nd respondent to the 3rd respondent or some other investigating agency.

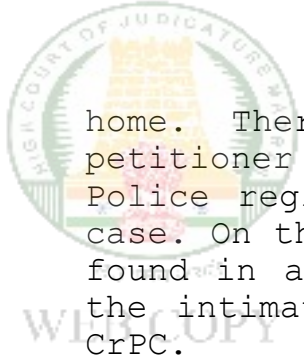
For Petitioner
For Respondents

: Mr.V.Sasi Kumar
: Mrs Bharathi,
Government Advocate (Cr1 Side)

ORDER

This petition has been filed seeking to transfer the investigation in Crime No.108 of 2017, pending of the file of the second respondent.

2.It is the case of the petitioner that his father-in-law, who is the deceased in this case had leased some property in favour of one Polivu Murugan. However, the said lessee had in turn sub-leased the property in favour of one Veppampatti Murugan and two others. When this was questioned by the father-in-law, he was threatened. On the threat exerted by the above said persons, the lease was also extended twice. But however, the above said persons refused to handover the possession of the property to his father-in-law.



home. Therefore, a complaint was given on 07.05.2017 by the petitioner to the second respondent Police and the second respondent Police registered an FIR in Crime No.108 of 2017 as 'man-missing' case. On the same day at about 5.30 pm, the father-in-law's body was found in an empty well belonging to one Thava Muruga and based on the intimation given, the case was altered into Section 174 of CrPC.

4.The learned Counsel for the petitioner brought to the notice of this Court the postmortem report that was filed in this case. The entries which were noted by the Doctor reads as follows:

"APPEARANCE FOUND AT THE POSTMORTEM

Moderately built body of a male and toe nails blue. Face swollen, lips swollen. Tongue protruded in between the lips. Decomposition fluid oozes out from mouth and nostrils. Eyes protruded out. Postmortem belbs seen in upper limbs. Lower limbs and chest. Postmortem peeling of skin seen some places of upper limb and abdomen. Scalp hairs comes off with minimal effort. Marbling of skin seen in upper limbs and abdomen.

THE FOLLOWING ANTEMORTEM INJURIES WERE NOTED:

- 1. Contusion of size 15 X 12 cm seen in front and outer aspect of left side chest.*
- 2. Contusion of size 7 X 5 cm seen in back of upper part of left side abdomen.*
- 3. Contusion of size 6 X 5 cm seen in back of centre part of lower part of abdomen*
- 4. Contusion of size 8 X 5 cm seen in outer aspect of upper part of left thigh.*
- 5. Contusion of size 5 X 3 cm seen in outer aspect of lower part of left thigh.*
- 6. Contusion of size 5 X 3 cm seen in outer aspect of lower part of left arm.*
- 7. Contusion of size 8 X 5 cm seen in seen in inner aspect of lower part of right thigh.*
- 8. On dissection of chest:200 ml of blood stained decomposition fluid. Left side 4th, 5th and 6th ribs found fractured in its outer aspect with surrounding contusion.*
- 9. On dissection of head. Scalp contusion of size 7 x 5 cm seen in centre of occipital region. Brain matters liquefied with blood stained."*

5.The learned Counsel for the petitioner by pointing out the above report would submit that it is clear that his father-in-law was attacked and killed by the accused persons and thereafter was thrown into the well. The learned Counsel therefore, submitted that the respondent Police ought to have altered the FIR into one under Section 302 of IPC, instead of doing so, the respondent Police continue to investigate the case under Section 174 of CrPC. In this



regard a complaint was also made to the Superintendent of Theni on 15.06.2017. However, no action has been taken in this regard and therefore, the present petition has been filed before this Court seeking change of investigation.

6.The learned Government Advocate would submit that the second respondent had investigated the case properly and had also examined eight witnesses and also the Medical Officer, who conducted the autopsy over the dead body. The learned Government Advocate would further submit that the death of the person had occurred due to shock and hemorrhage due to multiple injuries sustained. The learned Government Advocate would further submit that the Police did not find any material in order to alter the FIR into one under Section 302 of IPC and therefore, the respondent Police after investigation have filed a final report on the ground of 'action dropped' before the Executive Magistrate, Uthamapalayam.

7.The learned Government Advocate would submit that the second respondent Police have conducted proper investigation by examining witnesses. Therefore, it is submitted that there is no need to transfer the investigation.

8.This Court is not satisfied in the manner in which, the investigation has taken place in this case. A plain reading of the postmortem report will clearly reveal that the deceased person had sustained multiple injuries all over his body and the Police should have been more careful in examining the witnesses before coming to any conclusion.

9.The injuries sustained by the deceased person do not *prima facie* seem to be one sustained by him falling into the well. The number of contusions that are found in the body requires a thorough investigation, in order to find out, as to who attacked the deceased person before throwing into the well.

10.This Court is also disappointed with the manner in which the final report came to be filed before the Executive Magistrate. This procedure followed by the respondent Police is illegal. The respondent Police ought to have filed a final report before the jurisdictional Magistrate and only then the petitioner would have known the fate of the case. However, the petitioner has been kept in dark and therefore, the petitioner was not even aware about the progress that was made in this case.

11.This Court is of the considered view that the case needs to be transferred to a different agency in order to continue with the investigation.

12.In the facts and circumstances of the case, the investigation in Crime No.108 of 2017 is hereby transferred to the file of the third respondent. The second respondent is directed to hand over the entire CD file to the third respondent, within a

period of ten days from the date of receipt of copy of this order.

13. The third respondent on receipt of the CD file from the second respondent, shall conduct a *de nova* investigation and take statements from the witnesses and complete the investigation as expeditiously as possible.

14. The Criminal Original Petition is disposed of with the above direction.

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-IV)

To

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

2. The Inspector of Police,
Odaipatti Police Station,
Theni District.

3. The Inspector of Police,
CBCID, Madurai Unit,
Madurai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.V.SASIKUMAR, Advocate, SR.No. 88580

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DSK
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