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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.02.2018

Delivered on : 05.03.2018

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.O.P. (MD) No.14703 of 2013

Selvi

... Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District.

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

3.The Inspector of Police,
C.B.C.I.D.,
Kanyakumari District.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the first respondent to transfer the investigation in Crime No.1172 of 2012 on the file of the second respondent to the third respondent.

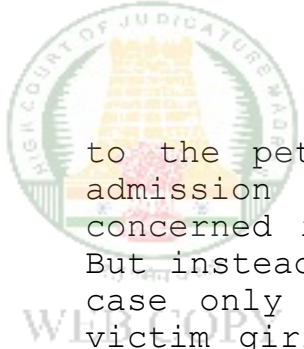
For Petitioner : Mr.P.T.Ramesh Raja
For Respondents : Mr.A.Robinson
Government Advocate
(Criminal side)

ORDER

The petitioner herein is the defacto complainant in Crime No.1172 of 2012 on the file of the second respondent police. The said case was registered for an offence punishable under Section 174 Cr.P.C. Now, this Criminal Original Petition has been filed by the petitioner to transfer the investigation of the abovesaid case from the file of the second respondent to the file of the third respondent.

2.The brief averments made in the petition are as follows:-

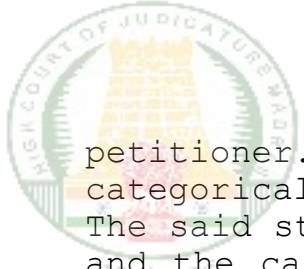
On 04.11.2012 at 10.00 p.m., while the victim girl ignite the kerosene stove for frying egg, the stove got fired and her husband viz., Vijayakumar extinguished fire and admitted the victim in the Government Hospital and thereafter, informed the occurrence



to the petitioner, who is the mother of the victim. After the admission of the victim girl in the hospital, the authorities concerned informed the occurrence to the second respondent police. But instead of registering the case immediately, they registered the case only on 09.11.2012. On 04.11.2012, the house owner of the victim girl informed the occurrence to the petitioner over phone. Immediately, the petitioner and her husband proceeded to the hospital and they saw the victim's husband and his family members along with one Kamaraj in the said hospital. On seeing the petitioner, they moved away. On enquiry with her daughter, she cried and said that this occurrence would not have happened, if she was taken to the parental home. Suddenly, the victim's husband and his relatives came there and informed the petitioner that the occurrence was happened only at the time of frying the egg. On the next day, when the petitioner went to the house of the victim, she noticed that the kerosene stove was undisturbed and no symptoms were found to indicate the slide of the stove. Near to the stove, a half filled kerosene can was found in an open state. So, the petitioner enquired with the neighbours, at that time, she was informed by the neighbours that at 10.00 p.m., there was a power cut and within a minute, they heard a screaming sound for help. So, they rushed to the house of the victim, but the door was locked from inside. After 10 minutes, the door was opened by the victim's husband and he informed the neighbours that the accident had happened. On the next day, while the petitioner was allowed to meet the victim, she informed the petitioner that on 04.11.2012 at 9.30 a.m. when she was preparing to return to the parental home, she was forcibly dragged into the house by her husband and he poured kerosene on her body and set fire. The petitioner being an illiterate lady, the police officers got her signature in the unfilled paper and registered a case under Section 174 Cr.P.C. as the occurrence was accidental one. On 10.11.2012, the petitioner informed the correct facts to the investigation officer, but he was not in a position to hear the cry of the petitioner. So, the petitioner sent written representations to the first respondent on 23.05.2013 and 29.07.2013 narrating the entire grievance. Even though the victim girl was in the hospital from 04.11.2012 to 09.11.2012, the second respondent police was not intended to register a case and also they had not made any arrangements for recording the dying declaration of the victim girl. Those lapses show that the second respondent was not acted in accordance with the law laid in the Cr.P.C. and therefore, the petitioner prayed to allow this petition.

3. The learned counsel appearing for the petitioner made a submission before this Court as the second respondent and the husband of the victim girl utilizing the illiteracy of the petitioner and her husband closed the case as accidental one instead of altering the provision from 174 Cr.P.C. to 304-B IPC.

4. Now, on going through the circumstances, which seem in and around the registration of the case, it is clear that the said impugned FIR was registered based on the statement given by the



petitioner. In the statement given before the police officers, she categorically told that the occurrence was happened accidentally. The said statement was recorded by the police officers on 09.11.2012 and the case has been registered on 10.11.2012. Now, according to the contention raised by the petitioner, the petitioner knows the entire facts through the mouth of the victim before 10.11.2012. There is no necessity for the petitioner for giving a statement before the police officers as stated above. Furthermore, after the death of the victim on 10.11.2012, the petitioner made a representation to the first respondent only on 23.05.2013. Thereafter, on 17.07.2013, she sent a written statement to the second respondent. If really the occurrence was happened as alleged by the petitioner, she would have lodged a complaint or otherwise sent a representation before the first respondent immediately after the occurrence. But, in this case, after completion of five months only, she sent representations to the first respondent as the alleged offence was not accidental one. Apart from that, only on 29.08.2013, she filed this Criminal Original Petition for changing the investigating agency. Before filing final report as action was dropped during the time of investigation, the Sub-Divisional Magistrate has enquired the case and recorded the statement of witnesses and came to the conclusion that the alleged offence was not happened due to the fire set out by the husband of the victim girl. Further, the enquiry conducted by the RDO reveals that there is no dowry harassment from the accused. So, only after considering all those aspects, the case has been closed by the second respondent as action dropped.

5. Now, the delay in sending the representations creates a doubt whether this petition is filed in order to find out the truth or to take vengeance against the accused in this case. Therefore, this Court comes to the conclusion that changing of investigation is unwarranted. Hence, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Kanyakumari District.
2. The Inspector of Police,
Thucklay Police Station,
Kanyakumari District.
3. The Inspector of Police,
C.B.C.I.D.,
Kanyakumari District.



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

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MS/KK/SAR-1/20.03.2018/4P.5C

order in
Cr1.O.P.(MD)No.14703 of 2013
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