



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P. (MD) No.22411 of 2013

WEB COPY

Rajapandi

... Petitioner

Vs.

1.The Director General of Police,
Office of Director General of Police,
Chennai.

2.The Inspector General of Police,
South Zone,
Madurai.

3.The Commissioner of Police,
Tirunelveli City.

4.The Inspector of Police,
Palayankottai Police Station,
Tirunelveli City,
In Crime No.853 of 2013

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to direct the respondents 1 to 3 to transfer the investigation in Crime No.853 of 2013 to any other competent independent investigating agency.

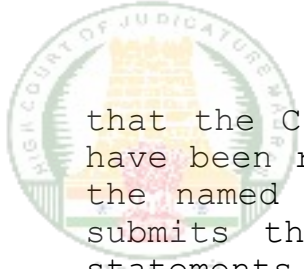
For Petitioner : Mr.P.T.Ramesh Raja
For Respondents : Mr.A.Robinson
Government Advocate (Crl.Side)

ORDER

The petitioner is the defacto complainant in Crime No.853 of 2013 on the file of the fourth respondent herein. His son was murdered. The First Information Report was registered on 31.08.2013. The petitioner has named 5 persons in particular. They are namely Ramesh, Boologapandi, Thangaiah, Balamurugan @ Mulikulam Prabhu and Sowmiya and others. Four of the accused filed Anticipatory Bail petitions before this Court in Crl.O.P.(MD) No.15786, 15913 to 15915 of 2013. The petitioner herein intervened in those Crl.O.Ps and following his strong opposition, the Crl.O.Ps were dismissed as withdrawn.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The specific contention raised by the defacto complainant is



that the CrI.O.Ps were filed on the strength of statements said to have been recorded under section 161 of Cr.P.C., whereby four of the the named accused appear to have been exonerated. The petitioner submits that the accused could not have had access to the said statements unless there was connivance on the part of the Investigating Officer. The petitioner herein would strongly submit that the statements attributed by the witnesses namely Kottaisamy, Manikandan and Narayanan under section 161 Cr.P.C were not given by them at all.

3. The learned counsel for the defacto complainant took me to the statement of the said Kottaisamy. The concluding portion of the said statement appears to have been incorporated, so as to specifically exonerate Boologapandi. This Court posed a specific question to the petitioner's counsel as to whether the said witness would disown having given such a statement during investigation. The learned counsel for the petitioner would submit that the accused persons are having a number of criminal cases to their credit and that, that is why the defacto complainant came to this Court, seeking transfer of investigation. His further contention is that the Investigating Officer did not bother to record his statement initially. Thus there are three circumstances so apparent in this case.

i) That the accused moved this Court and applied for Anticipatory Bail on the strength of the statements said to have been recorded under Section 161 Cr.P.C.

ii) The deliberate omission on the part of the Investigating Officer to even examine the petitioner in the first instance.

iii) The manner in which the statements have been recorded containing enough and more ammunition for the accused to seek acquittal later and naming of the persons who were not connected with the crime. For instance, in the statement of Kottaisamy one Alagu Durai, Raja, Ravi S/o. Subbiah Thevar have been introduced. According to the petitioner who himself is an eye witness, the said persons were not even present in the scene of occurrence. Introduction or unconnected persons in the scene of occurrence is obviously to aid the defence in the trial.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side).

5. The learned Government Advocate pointed out that in this case, the fourth respondent has filed a counter affidavit while, the third respondent has submitted a report before this Court. He pointed out that the third respondent has issued appropriate instructions to ensure that the investigation proceeds on the right lines. This Court accepts that the third respondent had taken good initiative in this case to ensure that the investigation is not derailed. But then this Court is of the view that the fourth respondent had already done sufficient damage to the investigation. This warrants change of investigation for the reasons earlier set out in this order.



6. In this case, the petitioner as a defacto complainant has placed enough material before this Court which throws considerable doubt on the fairness of the investigation. Therefore, the first respondent is directed to transfer the investigation from the file of the fourth respondent and entrust the same to CBCID. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

1. The Director General of Police,
Office of Director General of Police, Chennai.
2. The Inspector General of Police,
South Zone, Madurai.
3. The Commissioner of Police,
Tirunelveli City.
4. The Inspector of Police,
Palayankottai Police Station,
Tirunelveli City,
In Crime No.853 of 2013
5. Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO MR.P.T.Ramesh Raja , ADVOCATE IN SR No.61836

pnn

KK/RSK/SAR 2/18/05/2018/3P/7C

CRL.O.P. (MD) No.22411 of 2013

17.04.2018