

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.04.2019	Pronounced on: 08.04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Case No.1261 of 2012

Girija,
W/o.Manavalan,
No.28/30, 3rd Street,
Jeganathapuram,
Chetpet, Chennai-31. Petitioner/Petitioner

/versus/

State: The Inspector of Police,
G-7, Police Station,
Chetpet, Chennai-31. Respondent/Complainant

Prayer:

This Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C, praying to call for the records pertaining to the impugned order in CrI.M.P.No.1138 of 2012 dated 10.08.2012 from the Learned Metropolitan Magistrate No.XIV, Egmore, Chennai and quash the same and consequently direct the respondent to reopen the case and to conduct a just and fair investigation in Cr.No.1098 of 2011 on the file of the G-7, Police Station, Chetpet, Chennai.

For Petitioner : Mr.P.Vijendran

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate

O R D E R

This revision petition is filed against the order passed by the 14th Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.1138 of 2012.

2. The Background of the said revision petition is that one Tamilarasan, Marine Engineer got married to Bharakath Nachiyar, in the year 2009. Being a Marine Engineer, he was frequently away to work offshore. On 26.01.2011, he purchased a house at Maduravoyal and shifted the family along with the

parents to that house and left to work offshore. On 26.11.2011, he reached the shore and joined the family. On 01.12.2011, he and Bharakath Nachiyar left the house at Maduravoyal and settled at Chetpet. On 17.12.2011, Tamilarasan died by hanging. His wife Bharakath Nachiyar was with him. She gave a complaint to G-7 Chetpet Police Station about the unnatural death of Tamilarasan.

3. The respondent police registered the case under crime No.1094 of 2011 under Section 174 of Cr.P.C. After investigation and obtaining the report from the police sergeant filed final report, action was dropped on 10.02.2012. The revision petitioner herein is the mother of Tamilarasan. She gave a complaint on 02.02.2012 alleging foul play in the death on her son and suspicion upon her daughter-in-law Bharakath Nachiyar and her relatives. Since, no action was taken by the police on her complaint, she approached this Hon'ble High Court. The Transfer of investigation from local police to CB-CID, Chennai. In the said petition filed under Section 482 of Cr.P.C in Crime No. 9279 of 2012 dated 17.04.2012, the respondent police submitted to the Court that on completion of investigation, already action was dropped, no offence made out and therefore transfer of investigation does not arise. Recording the same, this Court dismissed the petition with liberty to the petitioner (Girija) to workout the remedy in the manner known to law. In the said circumstances, the petitioner (Girija) has preferred a Miscellaneous Petition in CrI.M.P.No.1138 of 2012 before the 14th Metropolitan Magistrate, Egmore, Chennai, narrating the circumstances under which her son Tamilarasan married Bharakath Nachiyar, purchase of house at Maduravoyal by him, setting up of nucleus family at Chetpet on 01.12.2011 suspicious death of her son on 17.12.2011 and the reason for her suspicion.

4. Pointing out that the police has failed to follow the Police Standing Order 586 (ii), while investigating the case of hanging and fail to follow the directions under Section 174 of Cr.P.C, while lodging the protest petition she prayed for fair trial.

5. The learned Magistrate, after considering the material placed by the petitioner, in her protest petition and the records collected by the respondent police had dismissed the petition holding that there is no material evidence to re-open the investigation or to re-investigate.

6. In the revision petition, it is contended that the trial Court has not assigned any reason to dismiss the protest petition. The Principle laid down by the Hon'ble Supreme Court Shiv Shankar Singh Vs, State Of Bihar reported in (2004) 1 SCC

547 and Bhanwarlal Sharma vs K.V.Sathyanarayanan reported in 2011 5SCC 484 were not followed by the trial Court. The documents furnished by the protest petitioner, were not considered by the trial Court.

7. The post-mortem report is not a proof that Tamilarasan has committed suicide on his own. The possibility of abatement or assisting to commit suicide cannot be ruled out from the post-mortem report. The trial Court, solely relying upon the post-mortem report has given a clean chit to Bharakath Nachiyar, who in fact, master minded the episode. The make belief suicide note alleged to have been written by Bharakath Nachiyar to the Commissioner of Police not been properly investigated by the Police and the lapse of the police investigation not taken note by the trial Court.

8. The learned counsel appearing for the revision petitioner referring the letter, alleged to have been written by Bharakath Nachiyar to the Commissioner of Police, the news item alleged to have been reported in Deccan Chronicle dated 30.12.2011, alleging Fudging Autopsy Reports by Doctors at K.M.C Hospital and the Police Standing Order 586 (ii) would submit that grave injustice has been done by improper investigation leading to miscarriage of justice.

9. In response, the learned Government Advocate (Crl.Side) submitted that the respondent has properly investigated the case and had arrived at a right conclusion and closed the F.I.R, as mistake of facts. The complaint of the revision petitioner is an afterthought and to counter blast the complaint given by Bharakath Nachiyar against the revision petitioner, demanding her Shreethana properties back from the revision petitioner.

10. To verify whether there was faulty investigation and any merit in the protest made by the revision petitioner, this Court called for the CD file and perused. The concern Investigation Officer was also present before this Court, to explain. From the records, this Court finds that on 17.12.2011, the respondent police has received a complaint from Bharakath Nachiyar. She has appeared before the respondent and given the complaint stating that, she and Tamilarasan married on 06.09.2009, they loved each other and with the consent of both the families, the marriage was solemnized as per Hindu Rites and Customs. Her husband being a Marine Engineer used to be 6 months on shore and 6 months offshore. On 26.11.2011, he returned home after sailing. From Maduravoyal, they shifted to Chetpet as per the Doctor's advice. However, Tamilarasan was depressed for leaving his parents separately and was lamenting to Bharakath Nachiyar that it is better to die rather than

leaving their parents alone. Both of them decided to commit suicide. Tamilarasan hanged himself using dupatta of Bharakath Nachiyar. Bharakath Nachiyar tried to hang herself using her saree, due to throttling, she vomited. When she saw her husband legs touching the floor, she felt that Tamilarasan is playing, so she cut the dupatta. She called 108 Ambulance and took him to Mehta Hospital, Chetpet, there her husband was declared died.

11. According to the complaint, the incident has taken place at about 11.30 hrs, on 17.12.2011. The complaint was given on 13.30hrs. The police has gone to the house of the deceased and conducted the inquest and then went to the Mehta Hospital, Chetpet, shifted the body of Tamilarasan from Mehta Hospital, Chepet, to K.M.C Hospital, Kilpauk. On request, that some of the relatives from abroad has to come, the police has not requested for post-mortem immediately. The post-mortem was conducted on 19.12.2011. The post-mortem Doctor has opined that Tamilarasan died due to asphyxia, hanging. There is no serious doubt or allegations against Bharakath Nachiyar, till 02.02.2012. On 02.04.2012, Bharakath Nachiyar has given the complaint to the Protection Officer alleging dowry harassment and deprivation of assets by her mother-in-law and father-in-law, after the death of her husband. The complaint and counter complaints are subsequent to the death of Tamilarasan, in order to get the properties left by Tamilarasan. As far as, the incident relating to the death of Tamilarasan, the investigation indicates that it was death by hanging not a homicide, but suicide. Initially the witnesses including Girija, who is the revision petitioner herein had no suspicion. The viscera report say that no alcohol or poison substance present in the viscera report of Tamilarasan. The post-mortem Doctor had certified that the hyoid bone was intact. There suspicion in the death has been ruled out by the opinion of the police sergeant that it is not in all cases of hanging, the hyoid bone gets broken. Even if the hyoid bone is intact, the death may occur due to asphyxia, occurring on hanging. The post-mortem report further reveals that there was no external or internal injuries found on the body of Tamilarasan.

Police Standing Order 586 (2) reads as under:-
586 Points for the enquiry in death cases-
The following rules should be observed by Police Officers inquiring into cases of unnatural or sudden death:-

(2). In cases of hanging strangulation:-

(a). In order to decide whether a particular case is a suicidal hanging or whether the body is

suspended after death due to some other causes to simulate suicide, it is advisable whenever feasible to requisition the services of Medical Officer to visit the scene of occurrence before the body is disturbed.

(b). To preserved evidence of Finger Prints, marks of struggle a Police Constable should be posted immediately,

(c). The surrounding and the position of the body should be carefully inspected and if the body is suspended in a room the Investigating Officer should find out whether the doors, and windows are bolted from inside or outside,

(d). The Investigating Officer should take a photograph of the body to indicate the body is suspended.

(e). The ligature should be removed by cutting away from the knot. The neck should be photographed after the ligature is removed from the neck to show clearly the ligature mark. The ligature should be-preserved for comparison and identification latter with the materials found in possession with the accused in cases of strangulation. The ligature should be examined for any blood stains or any foreign materials or hair sticking.

12. In this case, when the police received the information through Bharakath Nachiyar, the body of Tamilarasan was already shifted from the house (scene of occurrence) to Mahta Hospital, Chetpet. The CD file reveals that Investigation Officer went to Mehta Hospital. He has immediately arranged to shift the body to K.M.C Hospital, for post-mortem and then, the body was kept in the mortuary till 19.12.2001, at the request of the relatives. Therefore, non-compliance or violation of Police Standing Order - 586 (ii) does not apply to the facts of the present case.

13. The other contention of the learned counsel for the revision petitioner is that there is a violation of Section 174 of Cr.P.C. The code of procedure under Section 174 is reads as below:-

174. Police to enquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives

information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body

of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) ¹ When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall. subject to such rules as the State Government may prescribe in this behalf, forward the body, with a

view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

14. The combine reading of Section 174 of Cr.P.C and the Police Standing Orders - 586 (2), it is very clear that the Police Officer who takes up the investigation of unnatural and sudden death, he has to make an investigation to the apparent cause of death. Whenever, he receives information that a persons has committed suicide, he is not required to hold an inquest by Executive Magistrate. If the death do not raise a reasonable suspicion that some other persons has committed an offence.

15. The intimation to the nearest Executive Magistrate to hold the inquest will arise only when there is a some suspicion about the death. Such suspicion must be a reasonable suspicion, that the death ought to have caused by some other persons and not by suicide.

16. On going through the records, the Police could not have entertained any doubt on 17.02.2012 when Bharakath Nachiyar came to the station and given the complaint. The inquest report also indicates the persons present did not indicate any suspicious information including Girija, the mother of the deceased Tamilarasan. No one had given any information to the Police, at that time, which may given arise to any reasonable suspicion. Therefore, the omission on the part of the Investigation Officer not to request the Executive Magistrate to conduct inquest, cannot be faulted.

17. The present revision petition by Girija, the mother of deceased of Tamilarasan, is the 2nd attempt by the family to tarnish the image of Bharakath Nachiyar and bring her under the zone of suspicion. The earlier petition given by Karthikeyan, the brother of Tamilarasan and the other son of present revision petition was dismissed by this Court on 06.06.2012 and only thereafter, with new set of facts suppressing the earlier dismissal, the revision petitioner Girija has approached this Hon'ble High Court and had obtained a direction.

18. The trial Court having gone through the records that there is no material to entertain the protest petition and has rightly dismissed. On perusing the records, this Court finds that the allegations made in the revision petition is baseless, contra to the facts and law. Hence, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To,

1. The Metropolitan Magistrate No.XIV,
Egmore, Chennai.
2. The Public Prosecutor,
High Court, Madras.
3. The Inspector of Police,
G-7 Police Station,
Chetpet, Chennai.
4. The Section Officer,
Criminal Section (Records),
High Court, Madras.

Criminal Revision Case No.1261 of 2012

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