

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP.No.10780 of 2017

and Crl.MP No.8107 of 2017

S.Thamizh Selvi

... Petitioner/Defacto Complainant

.Vs.

1. Home Secretary,
Government of Tamil Nadu,
St. George Fort,
Chennai 600 009.

2. Director General of Police,
Tamil Nadu Police,
Mylapore, Chennai 600 004.

3. The Commissioner of Police,
Greater City,
Vepery, Chennai 600 007.

4. The Joint Commissioner of Police,
South Zone, St. Thomas Mount, Chennai

5. The Deputy Commissioner of Police,
St.Thomas Mount, Chennai.

6. The Assistant Commissioner of Police,
Madipakkam, Chennai.

... Respondents

7. The Inspector of Police,
S-10, Pallikaranai Police Station,
Chennai.

..Respondent/Complainant

8. S.M.Ekambaram
(8th Respondent is impleaded as per the
order of this Court dated 09.08.2018 in
Crl MP No.8107 of 2017 in Crl OP No.10780 of 2017)

.. Respondent

PRAYER:Criminal Original Petition filed under Section 482 of
Cr.PC to ensure the fair, impartial and independent
investigation by transferring the said murder case of any other

law enforcement agency either by the State or by Central and preserve the witnesses / evidences by arresting the influential named accused S.M.Ekambaram (A2).

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.P.Bakiyaraj

For Respondents: Mr.M.Mohammed Riyaz,
Additional Public Prosecutor
for R1 to R7
Mr.G.Mohanakrishnan for R8

ORDER

This petition has been filed seeking to transfer the investigation, which is now pending on the file of the 6th respondent.

2. The petitioner is the wife of the deceased. On 03.04.2017, at about 3.30 p.m., the husband of the petitioner viz., Sankaran was brutally attacked with deadly weapons by three named accused persons and others and all of them escaped from the scene of occurrence in a Scorpio Car bearing registration No.TN69 AL 0979. The husband of the petitioner was immediately rushed to the hospital and it was informed that he has been brought dead. The petitioner therefore gave a complaint before the 7th respondent on the same day at about 4.30 p.m. and an FIR came to be registered in Crime No.937 of 2017 against three named accused persons and others, for offences under Sections 147, 148, 448, 302, 506(2) IPC.

3. The grievance of the petitioner is that A2 viz., Ekambaram, was the brain behind the entire incident and he was also present in the scene of occurrence and that he was not secured by the respondent police and he is moving around scot-free. The further grievance of the petitioner is that there has been no progress in the investigation and certain vital aspects like the phone calls made between the accused persons and the car that was used by the accused persons, has not even been seized by the respondent police. The prime accused is said to be a very influential person and therefore, the respondent police are reluctant to even arrest him and therefore, the investigation is not proceeding in a proper manner.

4. Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner was an eye-witness for the entire incident and she had specifically named A2 in her complaint and had also alleged that he was the brain behind the entire incident. In spite of the same, the accused person has not even been arrested by the respondent

police and that itself shows that the investigation is not done in a proper manner.

5. The learned Senior Counsel submitted that there are 14 accused persons, who are involved in this case and the investigation is pending for the last two years without any substantial progress and the investigation was transferred to the file of the 6th respondent by adding the offence under the SC & ST Act. This attempt according to the learned Senior Counsel, was made only to water down the entire case after fully knowing well that A2 also belongs to a Schedule Caste Community. The learned Senior Counsel submitted that a fair investigation will not be conducted by the 6th and 7th respondents and taking into consideration the seriousness of the offence committed by the accused persons, the case has to be transferred to an independent agency.

6. The learned Additional Public Prosecutor appearing on behalf of the respondents 6 & 7 submitted that the investigation is progressing in a proper manner and except A2, all the other accused persons have either been arrested or have surrendered before the Court. The learned counsel further submitted that a time can be fixed for the completion of the investigation and for filing of the final report.

7. This Court has carefully considered the submissions made on either side and also the materials available on record.

8. This Court is thoroughly disappointed with the manner in which the investigation has progressed in this case. It is the specific case of the petitioner that A2, is the brain behind the entire incident and he was also present in the scene of occurrence while the deceased was brutally attacked with deadly weapons and in spite of the same, A2 has not been arrested by the respondent police. This itself throws a lot of doubt regarding the fairness with which the investigation is being conducted by the respondent police. सत्यमेव जयते

9. This is a case where the husband of the petitioner was brutally killed right in front of the petitioner and the petitioner has been running from Pillar to Post to get justice and the investigation has not even been completed for the last two years. If investigation is conducted in this manner for such serious offences, the general public will lose their faith in the entire criminal justice system. The right to fair trial also encompasses a fair investigation to be conducted by the police. Unless, there is a proper investigation, a fair trial can never be conducted.

10. This Court is convinced that the Investigation has to

be transferred to a different agency, in order to ensure that all the accused persons are brought to book and the case is taken to its logical conclusion.

11. In view of the above, the investigation which is now pending on the file of the 6th respondent Viz., the Assistant Commissioner of Police, Madipakkam in Crime No.937 of 2017, is hereby transferred to the file of the CBCID, Chennai. The 6th respondent is directed to hand over the Case Diary to the Superintendent of Police, CBCID, Chennai by 28.08.2019 and the case shall immediately be allotted to an officer not less than the rank of the Deputy Superintendent of Police. The investigation shall proceed further in an effective manner and all the accused persons shall be brought to book. The investigation shall be completed and a final report shall be filed, within a period of three months and further statements shall be taken from all the witnesses.

12. This Criminal Original petition is disposed of with the above directions. It is made clear that any observations made by this Court on the merits of this case, shall not in any way influence the mind of the Investigating Officer and the investigation shall be conducted in a free and fair manner.

13. The Registry is directed to communicate the copy of this order to the Superintendent of Police, CBCID, Chennai.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

To

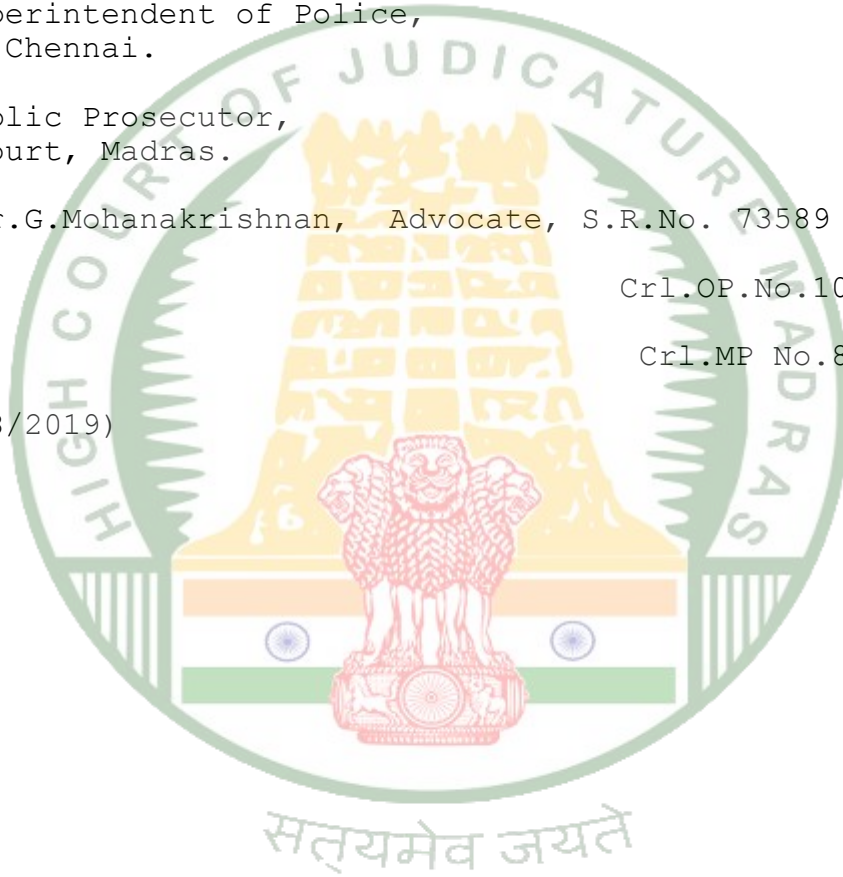
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8. The Superintendent of Police,
CBCID, Chennai.
9. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.G.Mohanakrishnan, Advocate, S.R.No. 73589 (30/08/19)

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