

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.6704 of 2017 and
W.M.P.Nos.7246 & 7247 of 2017 and
W.M.P.No.8096 of 2017

Rajakili

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Home Department,
Secretariat, Chennai - 600 009

2.The Director General of Police,
State of Tamil Nadu,
No.601, Kamarajar Salai,
Mylapore, Chennai

3.The Superintendent of Police,
Ariyalur District,
Tamilnadu

4.The Deputy Superintendent of Police,
Jeyamkondam Sub - division,
Ariyalur District, Tamilnadu

5.Manivannan

6.The Additional Director General of Police,
Crime Branch CID,
Chennai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the respondents 1 and 2 to transfer the investigation in Crime No.3 of 2017 on the file of the 4th respondent to the 6th respondent to be conducted by a woman officer not below the rank of Deputy Superintendent of Police with a direction to submit the report within a time frame fixed by this Court and to initiate an enquiry against respondents 3 to 5 for the delay in registering the FIR and for not taking any steps to

prevent the crime that led to the gang rape and death of the petitioner's female child and punish them as per Section 166-A of the Indian Penal Code read with Section 4 of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 21 of the Protection of Children from Sexual Offences Act, 2012 and other provisions of law.

For Petitioner : Mr.N.R.Elango,
Senior Counsel for
Mr.K.C.Karl Marx
For Respondents : M/s.Narmada Sampath,
Additional Advocate General
Assisted by
M/s.Thangavadhana Balakrishnan,
Additional Government Pleader

ORDER

This writ petition has been filed for a direction to transfer the investigation in Crime No.3 of 2017 pending on the file of the fourth respondent to the file of the sixth respondent and the enquiry to be conducted by a woman officer not below the rank of Deputy Superintendent of Police. Further prayed to initiate enquiry against the respondents 3 to 5 for the delay in registering the FIR.

2. Mr.N.R.Elango, Senior Counsel appearing on behalf of Mr.K.C.Karl Marx, the learned counsel for the petitioner submitted that the petitioner's minor daughter aged about 16 years was subjected to gang rape and murder in a cruel and barbaric manner and her daughter was missing on 29.12.2016 and lodged a complaint. Unfortunately her complaint was not registered immediately and no investigation at all. If the investigation had been carried out within the time definitely the life of the daughter would have been saved. In fact, after the death of her daughter, the police personnel are defending the accused and reprimanded the petitioner for not bringing up the child properly. The learned Senior counsel further submitted that in fact, the petitioner lodged a complaint and specifically alleged that her daughter had been kidnapped by one, Thamizharasan. Even then the fifth respondent refused to register the case and issued a receipt in CSR.No.559 of 2016. Again on several occasions, the petitioner along with her elder daughter visited the fifth respondent police station, but to no avail. They also furnished information about her daughter's kidnap by the accused persons and requested to secure her daughter from illegal custody or otherwise her life would be in danger.

Till 04.01.2017, the fifth respondent did not even register FIR for the complaint dated 29.12.2016. Only on 05.01.2017, the fifth respondent registered FIR in Crime No.3 of 2017 that too, for girl missing. Again on 08.01.2017, the petitioner lodged a complaint to the fourth respondent to secure her daughter from the illegal custody of one, Manikandan but to no avail. Again, the petitioner lodged a complaint to the fourth respondent to secure her daughter. Even then, no action has been taken against the said Manikandan and others.

3. The learned Senior Counsel further submitted that to the petitioner's shock and surprise on 14.01.2017, a Police Constable called him over phone and informed that her daughter's body was found in a well. Thereafter, the body of her daughter was taken to Ariyalur Government Hospital and postmortem was carried out. In fact, no signature was obtained from the petitioner or her relatives. Her daughter was seen by some persons on 30.12.2016 and as such she had been under custody of the accused persons for 5 to 6 days and only thereafter she was killed. Since the first accused Manikandan is the Taluk Secretary of Hindu Munnani, he has been protected by police officials.

4. The learned Senior Counsel further submitted that the Police did not include the offence under Section 376(d) I.P.C. Therefore, respondents 3 and 4 have failed in their duties. Only because of their inaction, her minor daughter was murdered and death occurred only due to sheer negligence of the respondents 3 to 5 herein. Therefore he prayed to change the investigation and also sought for action as against respondents 3 to 5 herein.

5. Per contra, M/s.Narmada Sampath, Additional Advocate General assisted by M/s.Thangavadhana Balakrishnan, Additional Government Pleader appearing for the respondents filed counter and submitted that CSR.No.559 of 2016 has been issued on the written complaint submitted by the petitioner. On enquiry no person in the name of Thamizharasan in Vellur Village as mentioned in the complaint lodged by the petitioner. The said complaint was lodged only on 30.12.2016. Thereafter on 05.01.2017, the case has been registered in Crime No.3 of 2017 as girl missing and enquired several persons including the elder daughter of the petitioner and her friends and found that the deceased had love affair with one, Manikandan. Thereafter the police officials enquired him and directed him to appear on the next day. Thereafter he was absconding as such the fifth respondent concluded that the said Manikandan had love affair with the deceased as such she would have

eloped with him. On intimation on 12.01.2017 that the said Manikandan was admitted into the private hospital for treatment since he attempted to commit suicide by consuming pesticide, therefore the case was registered in Crime No.3 of 2017 for the offences under Sections 309 I.P.C. as against the said Manikandan on 13.01.2017. On enquiry, he confessed that the victim girl was raped and murdered on 29.12.2016 night itself. The said contention also corroborated with the post mortem certificate which states as "patchy area of peeling of cuticles was found all over the body with adipocere formation on front and brownish discolouration at back" and "fully grown maggots of white colour was found rushing out from skin defect at the posterior aspect of neck". Therefore, the death was happened two weeks before and no chance for illegal custody of the deceased with the accused. Thereafter, the said Manikandan was discharged from the hospital and surrendered before the Village Administrative Officer and confessed that he along with his cousin, Manivannan kidnapped, raped and murdered her and the body of the deceased was disposed by dropping it into the Well by tied with big stone. Thereafter, the FIR was altered into under Sections 120(b), 364, 302, 201 I.P.C. read with 5 and 6 of POCSO Act and 3(1) (w) (i), 3(2) (va) SC ST Act. On 17.01.2017 the dead body was taken away from the well and it was received by the elder daughter of the petitioner and buried.

6. Further in counter, it is averred that the penal section for the aggravated sexual assault under Section 6 of POCSO Act, 2012 already included and when laying the charge sheet offences under Section 376 (d) I.P.C. also would be added. She also submitted that on 18.01.2017, the District Collector, Ariyalur District issued cheque for a sum of Rs.4,12,500/- as victim compensation to the petitioner. In fact, the accused, Manikandan, Manivannan, Vetriselvan and Thirumurugan were also detained under Goondas Act on 05.02.2017 itself. After receipt of all the reports, the fourth respondent filed final report for the offences under Sections 120(b), 364, 302, 201 I.P.C. read with 5 and 6 of POCSO Act and 3(1) (w) (i), 3(2)(va) SC ST Act before the jurisdictional Magistrate, but the learned Magistrate has returned the same stating that this Court has already stayed the said proceedings. She further submits that the charge sheet is now ready to file before the Magistrate concerned. Therefore, there is absolutely no political influence or undue favour as alleged by the petitioner in the investigation. In fact, the petitioner's family is protected by continuous police protection. At this stage, the investigation cannot be transferred and prayed for dismissal of this writ petition.

7. Heard, Mr.N.R.Elango, Senior Counsel appearing on behalf of Mr.K.C.Karl Marx, the learned counsel for the petitioner and M/s.Narmada Sampath, Additional Advocate General assisted by M/s.Thangavadhana Balakrishnan, Additional Government Pleader appearing for the respondents.

8. The petitioner is the mother of the deceased victim. She lodged a complaint on 30.12.2016 alleging that her daughter Nandhini was kidnapped by one, Tamizharasan and further alleged that his relative namely Vennila received phone call from the cell phone No.8939439565 and informed that his daughter is with one, Thamizharasan. Immediately on receipt of the same, CSR number was issued in CSR.No.559 of 2016 and enquired about the cell phone and about the said Tamizharasan. The fourth respondent found that no such person is living in the Vellur village. Thereafter on 05.01.2017, the crime has been registered in Crime No.3 of 2017 on the file of the fifth respondent as girl missing.

9. It is also seen that on enquiry the fourth respondent found that the deceased daughter had love affair with one Manikandan. Immediately the said Manikandan was brought to the police station but they could not obtain any information about the deceased till evening. Therefore, he was directed to appear on the next day namely on 06.01.2017. But he was absconded and thereafter found that he was admitted into the private hospital for consuming pesticide. The crime was also registered against him in Crime No.3 of 2017 for the offences under Sections 309 I.P.C. by the Inspector of Police, Koovagam Police Station. After his discharge from the hospital, he himself surrendered before the Village Administration Officer, Keelamaligai Village and confessed that he along with his cousin raped the deceased and murdered her. Thereafter the body of the deceased was disposed by dropping into the well by tying with big stone. On 17.01.2017, the body was taken from the well and all the organs were sent for chemical examination and conducted post mortem and after post mortem, the Viscera, Virginal Swab, Uterus and femur bone were sent for chemical examination. After receipt of the reports, they completed enquiry and filed final report under Sections 120(b), 364, 302, 201 I.P.C. read with 5 and 6 of POCSO Act and 3(1) (w) (i), 3(2) (va) SC ST Act.

10. In the counter the fourth respondent averred that the offence under Sections 376 (d) I.P.C. will be added while laying charge sheet. On the confession of the first accused, there is a gang rape and also statements recorded from the

witnesses revealed that the offence under Section 376(d) is clearly made out as against the accused persons. Even then, the fourth respondent failed to add the offence in the final report. Further it is seen from the investigation, the complaint lodged on 30.12.2016 and on the same day, CSR number has been issued by the fifth respondent in CSR.No.559 of 2016.

11. Though, specifically averred in the complaint that one, Thamizharasan kidnapped the deceased, no case was registered as against him since the fifth respondent conducted search in the entire village and found that no such person was there in the village. After enquiry with the elder daughter of the petitioner found that the deceased had love affair with one, Manikandan and eloped with him. Therefore, there is no fault or delay on the part of the fifth respondent to register the case. Normally the girl aged about 16 or 17 years are missing and the police would thought she might have eloped on love affair. Further even in the complaint the petitioner stated that one, Thamizharasan kidnapped the deceased daughter. Therefore, the fifth respondent would have come to the conclusion that the deceased would have eloped with that Thamizharasan. The fifth respondent also made search in all over the village and only on the enquiry with the elder daughter of the petitioner, found that the deceased eloped with one, Manikandan. Therefore, it cannot be said that there is a delay on the part of the fifth respondent to register the case. It is also revealed from the confession statement of the first accused that on 29.12.2016 itself, the deceased daughter was raped by him and his cousin and murdered. Therefore, it is not at all possible for the fifth respondent to save the life of the deceased daughter of the petitioner. When the elder daughter of the petitioner herself knows the fact that the deceased daughter already had love affair with the first accused namely Manikandan, she would have very well informed to the Police or to her own mother / petitioner herein.

12. Therefore, this Court is of the opinion that the fifth respondent did not commit any wrong on the enquiry. It is true that the petitioner lost her daughter and she was raped by gang and brutally murdered. The accused persons have to be tried and punished in accordance with law. Now, the offence has been altered into Sections 120(b), 364, 302, 201 I.P.C. read with 5 and 6 of POCSO Act and 3(1) (w) (i), 3(2) (va) SC ST Act and final report is also ready to be filed.

13. At this stage, the transfer of investigation would not serve any purpose since the fourth respondent already completed investigation and filed final report. The change of investigation would not also serve any useful purpose, since there is no fault committed by the fourth and fifth respondents herein. Therefore, considering the above facts and circumstances, this Court is of the view that the transfer of investigation in Crime No.3 of 2017 on the file of the fourth respondent to the sixth respondent cannot be ordered when there is no fault or wrong committed by the respondents 3 to 5 for delayed FIR, no direction can be given for enquiry against respondents 3 to 5 herein.

14. But the fourth respondent averred in the counter that while laying charge sheet offence under Section 376 (d) I.P.C. also will be added. Therefore, the fourth respondent is directed to file final report including the offence under Section 376 (d) I.P.C. as against the accused persons to the final report within the period of two weeks from the date of receipt of the order. On receipt of the same, the learned Magistrate concerned is directed to commit the same within a period of two weeks thereafter to the trial court. Thereafter, the trial court is directed to complete the trial within a period of six months.

15. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

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Sd/-
Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Secretary,
Home Department,
Secretariat, Chennai - 600 009

2.The Director General of Police,
State of Tamil Nadu,
No.601, Kamarajar Salai,
Mylapore, Chennai

3.The Superintendent of Police,
Ariyalur District,
Tamilnadu

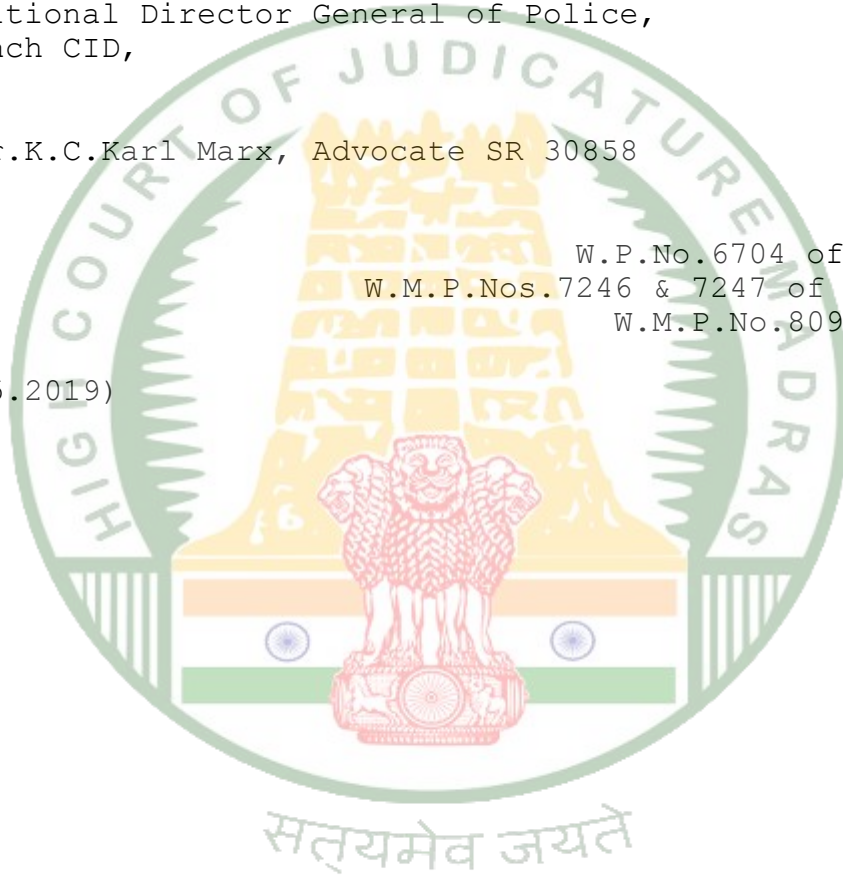
4.The Deputy Superintendent of Police,
Jeyamkondam Sub - division,
Ariyalur District, Tamilnadu

5.The Additional Director General of Police,
Crime Branch CID,
Chennai

+1cc to Mr.K.C.Karl Marx, Advocate SR 30858

W.P.No.6704 of 2017 and
W.M.P.Nos.7246 & 7247 of 2017 and
W.M.P.No.8096 of 2017

gsk (20.05.2019)



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