



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on : 08.04.2019**

**Delivered on : 08.07.2019**

CORAM

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**W.P. (MD)No.6817 of 2013**

**and**

**M.P. (MD)No.1 of 2013**

N.Somarajan

... Petitioner

Vs.

1. The Government of Tamil Nadu,  
Rep. by the Home Secretary,  
Secretariat, St. George Fort,  
Chennai.
2. The Director General of Police,  
O/o. the Director General of Police,  
Beach Road, Chennai.
3. The Superintendent of Police,  
O/o. the Superintendent of Police,  
Kanyakumari District,  
Nagercoil.
4. The Superintendent of Police,  
CBCID, B.B.Kulam, Narimedu,  
Madurai District.
5. The Inspector of Police,  
Aralvaimozhi Police Station,  
Kanyakumari District.  
Crime No.389 of 2012

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the third respondent to transfer the case in Crime No.389 of 2012 dated 21.06.2012 on the file of the fifth respondent and entrust the same to the fourth respondent for investigation of the case by a competent officer and file a final report before the jurisdictional Magistrate within a stipulated time limit.

For Petitioner  
For Respondents

: Mr.T.Lajapathi Roy  
: Mr.R.Anandharaj  
Additional Public Prosecutor



**ORDER**

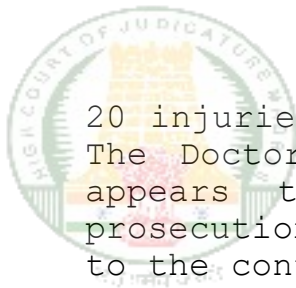
This writ petition has been filed by the petitioner seeking a Writ of Mandamus directing the third respondent to transfer the case in Crime No.389 of 2012 from the file of the fifth respondent to fourth respondent [CBCID].

2. The petitioner before this Court is the father of one S.Arjun Raj, who was found dead on 21.06.2012, at Perumalpuram KM 302/700-800 Railway Track between Nagercoil and Aralvaimozhi Railway Station railway track. Based on the information given by Railway Gangman, namely, Mani, the Sub-Inspector of Police, Railway Police Station, Nagercoil conducted spot enquiry and thereafter, lodged a complaint before the fifth respondent stating that the deceased appears to be brutally murdered by unknown persons. She has also noted down cut and stab injuries on the body of the deceased. A case was registered by the fifth respondent in Crime No.389 of 2012 under Section 302 IPC on 21.06.2012. Alleging that the fifth respondent is not conducting the enquiry in a proper manner and is attempting to close the case as suicide, the petitioner has filed this petition for transfer of investigation.

3. The learned Additional Public Prosecutor, on instructions, submitted that based on the complaint lodged by the Sub-Inspector of Police, Railway Police Station, Nagercoil, a case was registered in Crime No.389 of 2012 for the offence punishable under Section 302 IPC. The deceased was studying B.E., ECE Department, IV year, at the relevant point of time and was staying in a rental house, along with his friends, namely, Nikhil, Kiran, Arun, Dominic, Anup, Seriyan, Thomas and Thibin at Murugan Koil Street, Subramaniapuram, belonging to one Nainaar. On the night of 20.06.2012, they had liquor and there was a wordy quarrel among themselves, due to which, the neighbours shouted that they would call the police. Thereafter, the deceased left the house stating that he is going to commit suicide and on the next day, he committed suicide by falling over the railway line. The investigation reveals that the deceased, because of the playful pranks among the friends, committed suicide. The postmortem report sails with the same and therefore, the prosecution has altered the Section from 302 IPC to 174 Cr.P.C., and filed the final report before the Executive Magistrate under Section 174 of the Criminal Procedure Code.

4. Heard the learned Counsel appearing on either side and perused the documents placed on record.

5. The Sub-Inspector of Police, Railway Police Station, Nagercoil, who lodged the complaint and who conducted the spot enquiry, has noted several cut and stab injuries on the body of the deceased and further stated that the deceased appears to be brutally murdered. But, the Doctor, who conducted the Autopsy, has noted down



20 injuries, of which, most of them are of laceration and abrasion. The Doctor has further gave his final opinion that the deceased appears to have died of head injury and according to the prosecution, the injuries found on the body of the deceased are due to the contact with the railway engine.

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6. As per the version of the prosecution, the deceased and his roommates, who were in the final year of their college studies, had alcohol on 20.06.2012 and there was a petty wordy quarrel among themselves. Due to the noise raised by them, the neighbours shouted that they would call the police. Thereafter, the deceased walked out of the house that he would commit suicide and on the next day, his body was found on the railway track. Therefore, the prosecution, holding that it is a clear case of suicide, has altered the offence under Section 174 Cr.P.C. and filed final report before the Executive Magistrate.

7. Though the case is registered under Section 174 Cr.P.C., this Court in the decision reported in **2018 (3) MWN (Cr.) 143**, in the case of **Manohari and others v. District Superintendent of Police, Sivaganai District and others**, has held that the final report has to be filed only before the concerned Judicial Magistrate and not before the Executive Magistrate. The relevant portion from the said decision is extracted hereunder:

"22. .... the inquiry that is held by the Executive Magistrate under Section 174 of Criminal Procedure Code is a plain and simple non judicial function. The report submitted by the Executive Magistrate relating to the inquiry shall form part of the investigation conducted by the Police and such report shall be used by the Investigating Officer in the course of investigation. The investigation conducted by the Investigating Officer has to proceed independently in accordance with law and the inquiry conducted by the Executive Magistrate is not a bar for the Police to go ahead with the investigation.

23. From the above discussion, it is clear that the Police after registration of a FIR under Section 174 of Cr.P.C will have to conduct an inquest in accordance with Section 174(1) of Cr.P.C and submit a report to the Executive Magistrate under Section 174(2) of Criminal Procedure Code. The Executive Magistrate will independently conduct an inquest in line with the power given under Section 174(4) of Cr.P.C. This power has been given to the Executive Magistrate, since the legislature thought that an inquest should be conducted by an independent authority distinct from the Investigating Agency. Where a report is prepared by



the Executive Magistrate after the inquest, the same shall be submitted to the Investigating Officer who shall make it a part of his investigation and may also proceed to make further investigation based on the report. The powers of the Investigating Officer is not curtailed in any manner and he has to proceed independently like in every other case and file a Final Report. This Final Report must be filed only before the jurisdictional Magistrate and not before the Executive Magistrate.

24. In view of the above, this Court proceeds to answer the issue that was raised in this case as follows:

a)The Police on receipt of an information about the suspicious death shall registered an F.I.R under Section 174 of Criminal Procedure Code and thereafter he can proceed to the scene of occurrence and prepare an Inquest Report.

b)When a Police Officer receives an information to the effect that the deceased is lying in a serious condition, he can rush to the scene of occurrence, in order to see if he can save the victim and if in case the victim does not survive he can proceed to prepare the Inquest Report in accordance with Section 174(1) of Cr.P.C, and thereafter register an F.I.R under Section 174 of Cr.P.C. The Inquest Report has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and state in what manner, or by what weapon or instrument [if any], such marks appear to have been inflicted.

c)The Police Officer shall also prepare a Rough Sketch of the place of occurrence.

d)The Inquest Report and the Rough Sketch shall be prepared in the presence of two or more respectable inhabitants of the neighborhood.

e)The object of the Inquest Proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. The Inquest Report need not contain details such as how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted and these facts are not within the scope of Inquest Proceedings and they fall within the scope of the investigation to be conducted by the Police.

f)immediately after the preparation of the Inquest Report in accordance with Section 174(1) of Criminal Procedure Code, the Police shall submit the



same to the Executive Magistrate under Section 174(2) in order to enable the Executive Magistrate to hold an independent inquest as contemplated under Section 174 (4) of Criminal Procedure Code.

g)The Executive Magistrate on completion of the inquest shall submit a report to the Police and such report shall form part of the investigation conducted by the Police and the Police shall collect details from such report and conduct the investigation accordingly.

h)The power of the Police to investigate is in no way stopped or curtailed or interfered with by the inquest held by the Executive Magistrate and the freedom of the Police to proceed with the investigation will be left untouched.

i)The Police on the conclusion of the investigation shall file a Final Report under Section 173(2) of Cr.P.C only before the jurisdictional Magistrate and not before the Executive Magistrate. This will apply, in both cases, whether the Final Report is a positive report or is a Closure Report.

j)If in case the Police proceeds to file a Closure Report, the victim shall be entitled to be served with a R.C.S notice in order to enable him to file a protest Petition before the concerned Magistrate.

k)On such protest Petition being filed, the concerned Judicial Magistrate shall act in accordance with law laid down by the Hon'ble Supreme Court in **Vinay Tyagi .Vs. Irshad Ali**, reported in **[2013 (5) SCC 762]**.

8. Therefore, the fifth respondent police is directed to file the final report before the concerned Judicial Magistrate. A copy of the final report shall also be provided to the petitioner, enabling him to agitate before the concerned Magistrate in the manner known to law. If any application is filed by the petitioner before the concerned Magistrate, the Magistrate shall consider the same as that of a protest petition and decide the further course of action as contemplated by the Hon'ble Supreme Court in **Bhagwant Singh vs. Commissioner of Police** reported in **(1985) 2 SCC 537**. For better appreciation, the relevant portion from the said decision is extracted as under:

"4. ...When the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may



accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.

...

We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

9. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

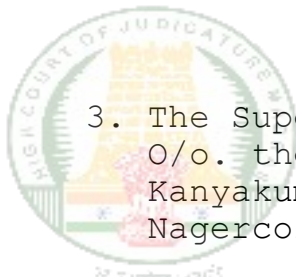
Assistant Registrar

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Sub Assistant Registrar(CS )

To

1. The Secretary,  
Home Department,  
Government of Tamil Nadu,  
Secretariat, St. George Fort,  
Chennai.
2. The Director General of Police,  
O/o. the Director General of Police,  
Beach Road, Chennai.



3. The Superintendent of Police,  
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5. The Inspector of Police,  
Aralvaimozhi Police Station,  
Kanyakumari District.
6. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai

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**and**  
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**gk**

**MK (19.09.2019) 7P 7C**