



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE. N.SESHASAYEE

Crl.O.P.[MD].No.3677 of 2019

Poomaniammal : Petitioner / *De facto*
Complainant
/Vs./

1.The Superintendent of Police,
Virudhunagar District, Virudhunagar.

2.The Deputy Superintendent of Police,
CBCID, Madurai Range,
Madurai.

3.The Deputy Superintendent of Police,
Virudhunagar District,
Virudhunagar.

: Respondents / Respondents

4.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.

: 4th Respondent / Complainant

[Crime No.386 of 2018]

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to transfer the investigation in the case in Crime No.386 of 2018 on the file of the 4th respondent to 2nd respondent or any other independent investigating agency.

For Petitioner : Mr.M.Jothi Basu

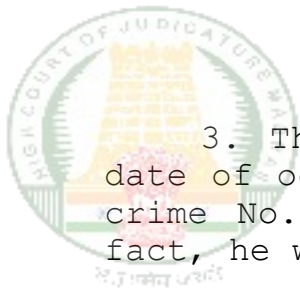
For Respondents : Mr.V.Neelakandan

Additional Public Prosecutor

ORDER

The petitioner herein is the *de facto* complainant in Crime No.386 of 2018, which was originally registered under Section 174 Cr.P.C., on 02.09.2018 and later altered to one under Sections 147, 148 and 302 IPC on 22.09.2018. The victim of the alleged offence was the petitioner's son.

2. The learned counsel appearing for the petitioner submits that including the statement of the petitioner to the police under Section 161 Cr.P.C., and confession statement given by the co-accused, one Manikandan's name is pinpointed as he committed the offence. However, the investigation is not focusing on the said Manikandan and his role in the crime.



3. The learned Additional Public Prosecutor submitted on the date of occurrence, the said Manikandan was in judicial custody in crime No.168 of 2018 for the offence under Section 302 IPC. In fact, he was in judicial custody from 11.06.2018 to 12.09.2018.

4. The learned counsel appearing for the petitioner would now submit that the fact that someone is in judicial custody does not necessarily imply that he could not have conspired for the commission of an offence. After all his physical presence at scene of crime is not required, if he can passively participate in the commission of offence by conspiring in its commission with other accused. Motive angle and conspiring angle are not being focused at all by the fourth respondent investigating agency.

5. The submissions show that the apprehension of the petitioner is not without merit. After all a person can participate in the commission of offence by conspiracy in its commission, and need not necessarily be bodily present at scene of crime and therefore, irrespective of whether someone is in judicial custody or not his involvement in the offence cannot be ignored entirely. If only Manikandan had an occasion to contact any of the accused, or anyone in between, that requires to be investigated.

6. This Court therefore directs the investigating agency to tune itself to the manner in which the offences are planned and executed in this new millennium rather than believing in something that might have lost of his relevance now. The petitioner is now directed to part with such information / materials with the fourth respondent as to the possibility of the involvement of Manikandan in the commission of offence. The first respondent / Superintendent of Police, Virudhunagar, is directed to either monitor the ongoing investigation either personally or through some other official superior to the fourth respondent and ensure whether the motive angle on the alleged involvement of certain Manikandan is there or not. This criminal original petition is accordingly disposed of.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Superintendent of Police,
Virudhunagar District, Virudhunagar.



2.The Deputy Superintendent of Police,
CBCID, Madurai Range,
Madurai.

3.The Deputy Superintendent of Police,
Virudhunagar District,
Virudhunagar.

4.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC TO MR.G.M.LAW OFFICE, Advocate Sr. No. 53038

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TR (03.04.2019) 3P 7C