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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.02.2019
CORAM
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.O.P.(MD)No.280 of 2016

S.Packiam ... Petitioner

Vs.

1.The Inspector General of Police,
South Zone, Madurai.

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

3.The Deputy Superintendent of Police,
C.B.C.I.D., Virudhunagar.

4.The Inspector of Police,(Law and Order)
Tiruchuli Police Station,
Tiruchuli, Virudhunagar District. ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to direct the 1st respondent to transfer the investigation of the case in Crime No.293 of 2015 on the file of the 4th respondent to the file of the 3rd respondent for further unbiased, proper and fair investigation based on the petitioner's complaint in the form of representation dated 16.12.2015 made to the 1st respondent.

For Petitioner : Mr.K.Kannan
For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor

O R D E R

This petition is filed by the petitioner to transfer the investigation in Crime No.293 of 2015, from the file of the fourth respondent to the file of third respondent.

2.The petitioner is the complainant in Crime No.293 of 2015. According to the petitioner, his son viz., Boominathan married one Muniyammal and the relationship between Boominathan and his wife viz., Muniyammal was not cordial. The brothers of Muniyammal had intimidated Boominathan and for that, the petitioner had lodged a complaint before the fourth respondent on 10.06.2005, which was enquired by the fourth respondent in S.R. No.97 of 2005 and the same was closed by the fourth respondent by warning Muniyammal and her brothers. On 16.12.2015, the petitioner found his son's body lying in a Well and therefore, the petitioner suspecting that Muniyammal and her brothers committed the murder, has lodged the present complaint.

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3.The learned Additional Public Prosecutor, on instructions

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submitted that the complaint of the petitioner was registered by the fourth respondent police under Section 174 Cr.P.C as "suspected death" in Crime No.293 of 2015 and after investigation the respondent police filed a final report before the Executive Magistrate.

4.If the FIR registered under Section 174 Cr.P.C., the final reports are filed before the concerned Executive Magistrate. In similar such matter, this Court in Crl.O.P.(MD)Nos.15515 and 11764 of 2017 & 11802 of of 2018, dated 17.09.2018, has taken a view that the final report even registered under Section 174 Cr.P.C., ought to have filed only before the concerned Judicial Magistrate and not before the Executive Magistrate, which 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.*

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

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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.

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i)The Police on the conclusion of the

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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].***

5.Hence, the respondent police is directed to file the final report before the concerned Judicial Magistrate and the Magistrate shall issue summons to the de-facto complainant enabling him to file a protest petition.

6.With the above directions, this Criminal Original Petition is closed with liberty to the petitioner to file a protest petition before the concerned Magistrate, if he so advised.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1.The Inspector General of Police,
South Zone, Madurai.

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

3.The Deputy Superintendent of Police,
C.B.C.I.D., Virudhunagar.

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

1 CC to M/s.K.KANNAN, Advocate (SR-46173[F] dated 11/02/2019)

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