



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Cr1.O.P. (MD) No. 4030 of 2016

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Manimegalai

... Petitioner

Vs.

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

2. The Inspector of Police,
Thottiyam Police Station,
Trichy District.
Crime No. 278 of 2015

3. The Inspector of Police,
CBCID,
Trichy District.

... Respondents

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to direct the first respondent to withdraw the case in Crime No. 278 of 2015 on the file of the second respondent and transfer the same to the third respondent.

For Petitioner : Mr. S. Subash Babu

For Respondents : Mr. R. Anandharaj
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the daughter of the victim, seeking transfer of investigation in respect of Crime No. 278 of 2015 from the file of the second respondent police to the third respondent police [CBCID]. The case in Crime No. 278 of 2015 was registered under Section 174 Cr.P.C., and according to the petitioner, it is a retaliation and the relatives of the victim in Crime No. 272 of 2015 has committed the murder of her mother and therefore, she is before this Court with the aforesaid prayer.

2. When the Criminal Original Petition was taken up for hearing on 19.03.2019, this Court has passed the following order:

" ... 2. When the criminal original petition came up for admission on 08.03.2016, this Court has directed the respondent police to file their status report and



accordingly, they have filed a report by referring to the postmortem report as well as the preliminary investigation done by them. But, it appears that the investigation is still pending.

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3. Mr.G.Asaitambi, Head Constable attached to the second respondent police, who is present before this Court today, is not in a position to instruct the learned Additional Public Prosecutor on the present status of the investigation. According to the respondent police, they are awaiting for the Viscera report.

4. Though the case was registered in the year 2015 and this petition has been filed in the year 2016 seeking transfer of investigation by levelling certain allegations that it is a case of murder, the conduct of the respondent police in conducting the investigation seems to be very shabby. Even after this Court has taken cognizance and directed them to file their status report, as early as in the year 2016, they are stating that the investigation is still pending for the purpose of Viscera report. The manner in which the present case has been dealt with by the respondent police does not satisfy the judicial conscious of this Court.

5. Hence, the first respondent herein / Superintendent of Police, Trichy District, is directed to look into the present case and file a report,

i) as to why this case has been kept pending at the stage of preliminary investigation itself for about four years;

ii) is there any mechanism for the Higher officials to monitor the stage of the investigation and if so, why the status of the present case has not been verified.

The report of the Superintendent of Police shall reach this Court positively by 29.03.2019."

3. Pursuant to the same, the first respondent / Superintendent of Police, Trichy has filed a status report dated 28.03.2019 stating that the Director, Forensic Science Department, Trichy, has sent the Viscera report belatedly and therefore, the Doctor, who conducted the Autopsy, has given his final opinion on the death of the victim only on 27.03.2019 that the deceased appears to have died due to Asphyxia due to Ligature. The Superintendent of Police has also informed that sufficient warnings have been given to the concerned Inspector of Police.

4. Under the above circumstances, this Court directs that the investigation shall be monitored either by the Superintendent of Police, Trichy or the Additional Superintendent of Police, Trichy. All ensure that the final report is filed within a period of six weeks from the date of receipt of a copy of this order.



5. 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 register 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]**."



Judicial Magistrate, who shall proceed with the matter in accordance with law.

6. With the above directions, this Criminal Original Petition is disposed of.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

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

2.The Inspector of Police,
Thottiyam Police Station,
Trichy District.
Crime No.278 of 2015

3.The Inspector of Police,
CBCID,
Trichy District.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-59982[F] dated
09/04/2019)

gk

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08.04.2019

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