



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Seventh day of January Two Thousand Nineteen

PRESENT

WEB COPY

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.19624 of 2018

1 NEELAARASAN
2 KANNAGAVALLI
3 THILAGAVATHI
4 PERIYATHAMBI
5 GANAPATHY

... PETITIONERS / ACCUSED NO. 1 TO 5

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
MATHUKKUR POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.188 OF 2018)

... RESPONDENT / COMPLAINANT

For Petitioner : MR.D.R.MURUGESAN Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Government Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences initially registered under Section 174 of Cr.P.C., subsequently altered into Section 306 IPC., and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interests Act, in Crime No.188 of 2018, on the file of the respondent Police, seek anticipatory bail.

2. The case of the prosecution is that the defacto complainant, who is the son of the deceased Malliga, had lodged a complaint on 25.10.2018, before the respondent Police stating that his mother had borrowed a sum of Rs.1,00,000/-, as loan, from Neelaarasan S/o.Samikannu; Rs.1,00,000/- from one Kannagavalli W/o. Muruganandham; Rs.50,000/- from Ganapathi S/o.Govindasamy Vandaiyar and Rs.50,000/- from one Periyathambi S/o.Appakannu Vanathiraiyar, one year prior to the occurrence and she was paying interest thereon. Since the brother of defacto complainant, who was working in Dubai, lost job, for the past three months, interest could not be paid to them. Hence, they were pressurizing and forcing the mother of the defacto complainant to repay the loan. On 23.10.2018, when the defacto complainant's child was not well, the child was



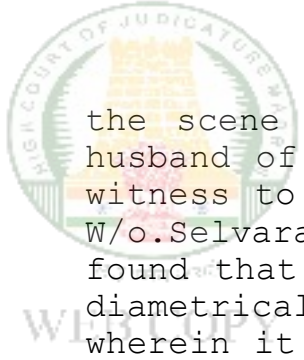
taken to the Hospital by the deceased. At that time, the said Kannagavalli and Thilagavathi waylaid the mother of the defacto complainant and used abusive and filthy language and pressurizing for repayment of loan and interest. The very next day ie., on 24.10.2018, at about 8.00 a.m., they came to the house of the deceased Malliga and continuing their demand, abused and threatened. Due to which, the deceased Malliga was in a depressed state. Under these circumstances, on 24.10.2018, 10.00 p.m., onwards the deceased Malliga was not to be found. On 25.10.2018, at about 6.00 a.m., Thilagavathi W/o.Neelarasan had informed the defacto complainant's father that his wife Malliga is found dead in her Kitchen Yard. Thereafter, the family members of the deceased rushed to the spot and the deceased was found dead. Hence, the defacto complainant lodged a complaint to the respondent against the five moneylenders, being the cause of his mother's death. Initially, a case under Section 174 Cr.P.C., was registered and latter, altered into Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act and Section 306 IPC., on 26.10.2018.

3. The learned counsel appearing for the petitioners would submit that the petitioners, who are A1 to A5 in the above case, never paid any loan to the deceased Malliga and they never demanded any amount, from the deceased Malliga, as alleged by the defacto complainant. The 2nd and 3rd petitioners are Housewife and the other petitioners are agriculturists and they never committed any offence, as alleged, and due to previous enmity, a false case has been foisted against them. Therefore, the learned counsel prayed for the relief of anticipatory bail in favour of the petitioners.

4. The learned Additional Public Prosecutor appearing for the State, on instructions, would submit that on receipt of the complaint, the respondent had immediately gone to the scene of occurrence, examined the witnesses, recorded their statements and on coming to know that death of Malliga was due to demand of exorbitant rate of interest for the loan obtained from the petitioners. Therefore, the Sections were altered, the body, after inquest, was sent to the Government Hospital for postmortem. He would further submit that investigation is in initial stage and Postmortem and Chemical Analysis Reports are awaited. Therefore, the learned Additional Government Pleader prayed for dismissal of the petition.

5. I have heard the learned counsels appearing on either side and perused the materials available on record.

6. Considering the rival submissions and on perusal of records and case Diary, this Court finds that there is some serious latches in the manner in which the investigation is being conducted. Initially, the case proceeded that the dead body was found in Kitchen yard of A3 and A1 and in the inquest report, the same was recorded. Thereafter, observation Mahazar had been prepared wherein



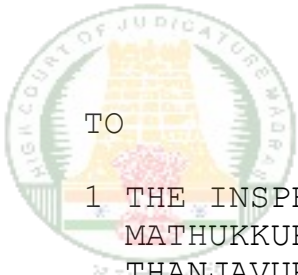
the scene of occurrence had been shown as House of Dhanapal, the husband of the deceased and Rough Sketch also shows the same. The witness to the Observation Mahazar and Rough Sketch are Jayalakshmi W/o.Selvaraj and Vimala W/o.Annadurai. From their statements it is found that scene of occurrence was the house of deceased, which is diametrically opposite to the earlier version of Investigation wherein it is categorical case that Thilagavathi / A3 is the person who had first seen the dead body at the scene of occurrence in the Kitchen Yard of Thilagavathi, which was informed to the deceased Malliga's Husband Dhanapal. No observation Mahazar has been prepared for this scene of occurrence. There are two rough sketches, in rough sketch No.II, the said Thilagavathi's home has been shown as scene of occurrence, shifting of scene of occurrence without proper examination with the witness would be fatal to the case. Further, on perusal of the case diary it is found that it is not maintainable as per Section 172 Cr.P.C., Day-to-day proceedings are not recorded, as per sub Section (1) and the importance of amendment of Sub Section (1-A) and (1-B) has not been followed. These amendments are the safeguard for investigation to be carried on giving no room for inclusion or exclusion of any facts and persons, by the Investigating Officer, contrary to the truth. Investigation is collection of evidence. This Court finds that if the investigation is allowed to be continued by the respondent, it would ultimately lead to real prospectus of the crime to so scot-free and it would amount to denial of justice to the victim's family.

7. This Court, on 13.11.2018, while granting interim anticipatory bail to the petitioners, directed the matter to be listed today ie., on 17.12.2018. The interim anticipatory bail will be in force till the case is transferred to the file of Inspector of Police, CBCID, Thanjavur. The Inspector of Police, CBCID, shall take necessary steps as contemplated in law.

8. Be that as it may, in view of the forgoing, this Court, invoking it's inherent powers, transfer the investigation in Crime No.188 of 2018 from the file of the Inspector of Police, Mathukkur Police Station, Thanjavur District to the file of the Inspector of Police, C.B.CID, Thanjavur. The Inspector of Police CBCID, Thanjavur, is directed to complete the investigation within a period of four months from the date of receipt of a copy of this order and file the final report before the court concerned. Such investigation shall be monitored by the Superintendent of Police, CBCID, Thanjavur.

sd/-
07/01/2019

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TO

1 THE INSPECTOR OF POLICE,
MATHUKKUR POLICE STATION,
THANJAVUR DISTRICT.

2 THE INSPECTOR OF POLICE,
CBCID, THANJAVUR.

3 THE SUPERINTENDENT OF POLICE, CBCID, THANJAVUR.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.D.R.MURUGESAN Advocate SR.No. 308

ORDER

IN

CRL OP(MD) No.19624 of 2018

Date :07/01/2019

JM/VR/SAR 1/08.01.2019/4P/6C