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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2019

Pronounced on : 15.05.2019

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

W.P. (MD) No. 10590 of 2013

and

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

P. Porkodi

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by the Home Secretary,
Secretariat, Fort St. George,
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,
Theni District.

4. The Superintendent of Police,
CBCID,
B.B. Kulam, Narimedu,
Madurai District.

5. The Inspector of Police,
Keelavalavu Police Station,
Madurai District.
Crime No. 155 of 2011

6. Murugan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to transfer the case in Crime No. 155 of 2011 under Sections 279, 304(a) of Indian Penal Code dated 01.10.2011 registered by the 5th respondent and pending before the 3rd respondent and entrust the same to the 4th 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 : Mr. T. Lajapathi Roy

For Respondents : Mr. A. Robinson,

Government Advocate (Crl. Side)

for R.1 to R.5

Mr. K. Mahendran for R.6

**ORDER**

This writ petition has been filed by the petitioner seeking transfer of investigation in respect of Crime No.155 of 2011 from the file of the fifth respondent police [Keelavalavu police station] to the file of the fourth respondent police [CBCID].

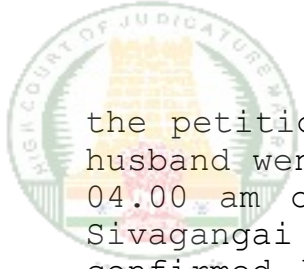
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2. The petitioner's husband, one Pitchai died in a suspicious manner on 01.10.2011 and on the complaint of the petitioner, a case in Crime No.155 of 2011 was registered on the file of the Keelavalavu Police Station, Melur Taluk, for the offence punishable under Sections 279, 304(A) IPC. Alleging that the investigation was not done in a proper manner, this writ petition has been filed for the aforesaid relief.

3. The case of the petitioner is that she belongs to Schedule Caste Hindu Parayar Community and her husband, namely, Pitchai, was working at Chennai as a Welder on daily wage basis. During the panchayat elections in the year 2011, her husband filed nomination for the President post of Vanamparaipatti Village, Melur Taluk. The sixth respondent / Murugan and his family members were enjoying the President post of Vanamparaipatti Village generation after generation, as they belong to a dominant community in that locality. When the petitioner's husband filed his nomination on 29.09.2011, he was threatened by the sixth respondent and his men and they made him to withdraw his nomination on the same day itself. Under such circumstances, on 01.10.2011, when her husband went to attend the nature's call in the early hours, he was hit by an unknown vehicle at Melur-Sivagangai Main Road, at about 04.00 am. Her husband sustained several injuries and died on the spot. Immediately, she lodged a complaint before the Keelavalavu Police Station and the same was registered on 01.10.2011 at 07.00 am in Crime No.155 of 2011 for the offence punishable under Sections 279 & 304(A) IPC.

4. According to the petitioner, after few days, she found a letter of her husband written to the Election Officer, Melur Panchayat Union stating that in his village, the persons to the posts of President and Vice President are elected in Kangaroo Courts and opposing the same, he was contesting the election for the post of President and filed necessary documents for the same. But, apprehending danger from the dominant community people, nobody in the village are prepared to stand as a witness for his nomination and therefore, he requested the Election Officer to make the Village Administrative Officer and the Village Assistant as witnesses to his nomination. Along with this letter of Pitchai, the petitioner has made a representation to the third respondent and various other investigation agencies for a proper investigation and for transferring the investigation to CBCID. Since no fruitful results emanated, she has approached this Court under Article 226 of the Constitution of India for the aforesaid relief.

5. The then Inspector of Police, Melur Circle, Madurai District, one Mr.K.Auvudaiyappan, has filed a status report on 04.07.2013 before this Court that even according to the complaint of



the petitioner and the statement of the witnesses, the petitioner's husband went to attend the nature's call in the early hours at about 04.00 am on 01.10.2011 and an unidentified vehicle on the Melur-Sivagangai Road hit him fatally. He died on the spot, which was confirmed by the 108 Ambulance and the Doctor, who conducted the postmortem, has also stated that the death was due to the road traffic accident.

6. The sixth respondent, who was a contestant in the Vanamparaipatti Village elections, has also filed a counter affidavit that this petition filed by way of a writ petition by invoking Article 226 of the Constitution of India is not maintainable, when there is a remedy available under Section 482 of the Criminal Procedure Code. According to the sixth respondent, the petitioner's husband was working at Chennai and used to visit the village once in a week. The petitioner's husband filed the nomination for the post of President of Vanamparaipatti Village, but even before the election, he withdrew his nomination. In fact, the sixth respondent and his father were elected as Panchayat President of the Village only in a democratic manner and there are no remarks, whatsoever, against his family members. Even in the year 2011, one N.Sekar has filed nomination as against him for the post of Panchayat President and therefore, it is not correct to state that it is only by dominance, he was elected as the President of the Village.

7. The learned counsel for the sixth respondent would further state that there is no intention or motive available for the sixth respondent to kill the petitioner's husband, when he had already withdrawn the nomination papers. In fact, the investigation also reveals that it is only a case of accident.

8. On 02.12.2015, the then Inspector of Police, Prohibition and Enforcement Wing, Melur, namely, N.Nagarajan, who was in-charge of Keelavalavu Police Station, filed a counter affidavit that he took up the further investigation from 15.04.2015, found the earlier Inspector of Police has examined 26 witnesses, recovered the Chappals of the deceased and the side mirrors of the vehicle and the investigation was conducted in a proper manner. He further stated that the Superintendent of Police has also verified the CD file in this case on 19.06.2012 and he was satisfied with the way in which the investigation was conducted. He has also concluded that it is only a hit and run case and that no compensation could be claimed as per Motor Vehicle Act, without identifying the vehicle. In order to get some compensation, the petitioner has made the representation as if it is a case of planned murder by the sixth respondent.

9. Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the petitioner, Mr.A.Robinson, learned Government Advocate (Crl. Side) appearing for respondents 1 to 5 and Mr.K.Mahendran, learned Counsel appearing for the sixth respondent.



10. The learned counsel for the petitioner reiterated the facts of the case and relied upon the following decisions in support of his case:

i) **Rubabbuddin Sheikh v. State of Gujarat and others**, reported in (2010) 2 SCC 200, wherein, the Hon'ble Supreme Court has transferred the investigation from the State Police and entrusted the same to the Central Bureau of Investigation, in view of the involvement of the police officials of the State in the crime.

ii) **Sasi Thomas v. State and others**, reported in (2006) 12 SCC 421, wherein, the Hon'ble Supreme Court has held that if there had been complete failure of justice and if the investigating and prosecuting agencies were found to have not performed their role in a manner they were expected to do, then transfer of investigation can be ordered.

iii) **Rajan v. Chief Secretary, State of Tamil Nadu and others**, reported in (2011) 1 MLJ (Cri) 33, wherein, this Court has held that Court is empowered to order transfer of investigation from local police to an independent agency like CBI, when there is a reasonable apprehension of unfair and unbiased investigation by the local police in view of the fact that the accused being a police personnel.

11. The learned Government Advocate (Crl. side), by referring to the counter affidavit and the status report, has submitted that the respondent police has conducted the investigation in a fair manner and would state that there is no irregularity or any infirmity in the investigation.

12. Mr.P.Mahendran, learned counsel for the sixth respondent, by referring to the First Information Report, would state that even according to the complainant, her husband went to attend the call of nature on 01.10.2011 at about 04.00 am and at that point of time, an unknown vehicle hit her husband fatally. The case was also registered as unidentified vehicle and the paper publications on this issue have also endorsed the same. According to him, the investigation was conducted in a proper manner and since there was some agitation, on the directions of the Superintendent of Police, the examination of witnesses have also been videographed. He would further submit that already a direction petition was filed and the same was dismissed and therefore, this petition cannot be maintained.

13. This Court has considered the rival submissions put forth by the learned counsel on either side and has perused the documents placed on record, including the CD-file.

14. It is the contention of the sixth respondent that this writ petition under Article 226 of the Constitution of India itself is not maintainable, since the relief to the petitioner exists under Section 482 of the Criminal Procedure Code. It would be relevant to mention here the decision of the Hon'ble Supreme Court in **M/s.Pepsi Foods Ltd. & Another v. Special Judicial Magistrate & Others**,

wherein it has been held as follows:

"Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdictional which otherwise it possesses, unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one, the court find that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code. ..."

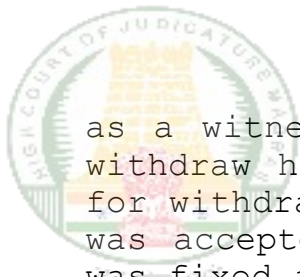
Therefore, this ground of the respondents lacks merits and this Court is inclined to proceed with the matter further.

15. The petitioner's husband died on 01.10.2011 at 04.00 am. The relatives of the petitioner, one Seethamal and Mookkammal have witnessed a vehicle hit somebody and with the help of the witness, one Ganesan, they have identified that it is the petitioner's husband Pitchai. The 108 Ambulance was called and the person from 108 Ambulance found the victim died and therefore, they left without taking him. Thereafter, the complaint was lodged before the Keelavalavu Police Station on 01.10.2011 at 07.00 am and the same was also duly registered in Crime No.155 of 2011 for the offence punishable under Sections 279, 304(A) IPC.

16. The Inspector of Police, Melur Police Station, went to the place of occurrence at about 08.00 am, prepared an observation mahazar and a rough sketch; recovered a pair of Chappal and a side mirror of a vehicle. Thereafter, he went to the Government Hospital, Melur, at about 08.45 am and conducted the inquest from 08.45 am to 10.10 am. After completing the inquest, he sent the body for postmortem and thereafter, examined the petitioner / wife of the deceased; one Seethammal, Mookkammal and Ganesan, who have first seen the dead body. The Inspector of Police has also examined the parents of the deceased and some other relatives. He has examined as many as 26 witnesses on the same day and concluded that it is only a case of hit and run. However, he has referred that further course of investigation has to be made from the check-posts and from the workshops with the recovered mirror.

17. The further investigation was carried out by one Aavudaiappan and a status report was filed by him on 04.07.2013 and by one N.Nagarajan from 15.04.2015. On perusal of the records, it appears that the subsequent investigation officers satisfied with the earlier investigation and filed a final report that the vehicle could not be identified and it is only a case of hit and run and not arising out of an election dispute, as apprehended by the petitioner.

18. The fact remains that the petitioner's husband filed his nomination papers on 29.09.2011. He gave a letter to the Election Officer that even for attesting the nomination, nobody from the village was dare enough to sign and therefore, he requested to direct the Village Administrative Officer and the Village Assistant



as a witness to his nomination. Surprisingly, he gave a letter to withdraw his nomination on the very same day. It was not the date for withdrawal of nomination. It was not known as to how this letter was accepted by the Election Officer, when the date for withdrawal was fixed as 30.09.2011.

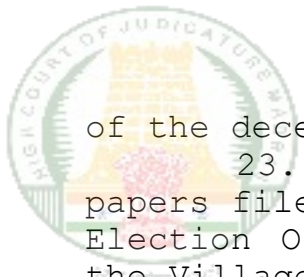
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19. On 01.10.2011, at about 04.00 am, when he went to attend the nature call, he was hit by an unidentified vehicle and died on the spot. The dead body was found in a bush on the side of the road. The side mirror of the vehicle, which hit the deceased, was found near the place of occurrence and was also recovered by the Inspector of Police under a cover of Mahazar. The Inspector of Police conducted the investigation on the same day and concluded that it is a case of hit and run.

20. On 05.10.2011, the petitioner sent a representation to the Superintendent of Police; District Collector, Madurai; and to the National Commission for Scheduled Caste, about the threat made by the sixth respondent and his men, along with a copy of the representation of her husband addressed to the Election Officer. The Director, National Commission for Scheduled Caste, based on the representation of the petitioner dated 05.10.2011, made a request to the District Collector, Madurai and the Superintendent of Police, Madurai, on 14.10.2011, to attend the representation and to take appropriate action. But, virtually, there is no further investigation subsequent to the investigation conducted on 01.10.2011. Though three Inspectors of Police have conducted the investigation in this case, they were not in a position to identify at least the make of the vehicle which was involved in the commission of offence from the available side mirror recovered from the place of occurrence. A reference is available in the CD file as if they have enquired some mechanics and they could not identify the vehicle. But there is no statement from any mechanic recovered under Section 161(3) CrPC in this regard.

21. Specific allegations have been made in the representation dated 05.10.2011 that the deceased, Pitchai was forced to withdraw the nomination and the petitioner has also mentioned the persons who have intimidated her husband to withdraw the nomination. Even after the receipt of this letter, there is no investigation in this regard, whatsoever. The investigation was concluded as if the deceased had withdrawn the nomination on 29.09.2011 itself and therefore, there is no intention for the sixth respondent to commit the offence.

22. The respondent police has not bothered to examine the Election Officer as to how he accepted the withdrawal letter on 29.09.2011, on the date which was fixed for nomination. The date for withdrawal is only on 30.09.2011. While so, the Election Officer has accepted the letter for withdrawal on 29.09.2011 and has closed his nomination. The investigation officer has not ascertained by way of any statement from the Election Officer as to whether the nomination



of the deceased, Pitchai, was rejected or withdrawn.

23. It appears that there was nobody to attest the nomination papers filed by the deceased on 29.09.2011. He made a request to the Election Officer to direct the Village Administrative Officer and the Village Assistant to stand as attestors to his nomination. There is no investigation as to whether the deceased gave the nomination papers on 29.09.2011 and under what circumstances, he withdrew his nomination on the same day. His withdrawal letter dated 29.09.2011 was neither recovered nor verified by any of the investigation officers.

24. A specific allegation has been made in the representation that the sixth respondent and his family members have been elected as panchayat Presidents and nobody is having the guts to contest against them. There is no investigation at all in this regard. The deceased was found in a bush nearby his house. It is not the case that he was hit by the vehicle in the middle of the road while he was crossing. Even according to the investigation officer, the road is a two way road, with a width of 15 meters. The occurrence took place at 04.00 am. The sketch also reveals that the occurrence was taken place on the edge of the road. There would not be much traffic in the early hours. When there is no traffic in the early hours, the deceased, who was on the side of the road, was hit by the vehicle. This could not be foreseen as that of an accident.

25. The mirror of the vehicle was recovered from the place of occurrence. But then, from the mirror, the police were not in a position to identify the make of the vehicle, which involved in the commission of offence. Moreover, the recovered side mirror has not been sent to the Court in Form 95. No steps have been taken for enquiry from the toll plaza or from the adjacent villages or from the mechanic sheds about the vehicle involved in the offence and there is no statement available in this regard. Though there are specific allegations against the sixth respondent and his family members, their call details have not been verified prior to the commission of offence, at least to rule out their involvement. The Doctor, one Sathish Kumar, who conducted the Autopsy was examined on 02.01.2012 and the 161(3) statement is left blank with regard to the cause of death. This would show the manner in which the investigation was conducted in this case.

26. Though a counter affidavit has been filed by the respondent police that final report has been filed before the concerned court on 09.06.2015 and a referred charge sheet has also been served upon the petitioner, the petitioner has denied the same. The respondent police are not in a position to establish the service of referred charge sheet upon the petitioner.

27. Under such circumstances and in view of the foregoing discussions, this Court is of the view that the investigation has not been conducted by the respondent police in a proper manner and therefore, this Court is inclined to order for transfer of



investigation. The third respondent is directed to withdraw the investigation in Crime No.155 of 2011 from the file of the fifth respondent police and transfer the same to the fourth respondent, who shall conduct the further investigation / re-investigation, as the case maybe, of the case in a fair and impartial manner to unearth the truth and shall complete the same, as expeditiously as possible.

28. In fine, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Secretary,
Home Department,
State of Tamil Nadu,
Secretariat, Fort St. George,
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,
Theni District.
 - 4.The Superintendent of Police,
CBCID,
B.B.Kulam, Narimedu,
Madurai District.
 - 5.The Inspector of Police,
Keelavalavu Police Station,
Madurai District.
- +1 CC to M/s.K.MAHENDRAN, Advocate SR-66127.

W.P. (MD) No.10590 of 2013
and
M.P. (MD) No.1 of 2013
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CS: (13/06/2019) 8P 7C

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