

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2020

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.O.P.No.1506 of 2020
and Crl.M.P.No.905 of 2020

Valliyammal

... petitioner

Vs.

- 1.The state rep by,
The Home Secretary,
St.George Fort,
Chennai-600 009.
- 2.The District Collector,
Salem District,
Salem.
- 3.The Superintendent of Police,
O/o, Superintendent of Police,
Salem District,
Salem.
- 4.The Dean,
Kumaramangalam Government Medical College Hospital,
Salem-1.
- 5.The Inspector of Police,
Thalaivasal Police Station,
Salem District.
Crime No.15/2020

... Respondents

PRAYER : This petition has been filed under Section 482 of the Code of Criminal Procedure, to direct the 1st respondent to transfer the investigation which is pending on the file of the 5th respondent police in Crime Number.15/2020 to CRIME BRANCH CRIME INVESTIGATION DEPARTMENT (CB CID) for investigation.

For Petitioner : Mr. R.Thirumoorthy

For Respondents : Mr.M.Mohamad Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the petitioner, to direct the 1st respondent to transfer the investigation which is pending on the file of the 5th respondent police in Crime Number.15/2020 to CRIME BRANCH, CRIME INVESTIGATION DEPARTMENT (CB CID) for investigation.

2. The learned counsel for the petitioner has submitted that the petitioner is a Scheduled Tribe and the accused persons belongs to Vellala Gounder community (Caste Hindu). He further submitted that the Al Prakash, S/o.Sengottiyan, approached this petitioner and her family members and requested to marry their daughter namely Rajeswari, and since the petitioner belongs to Scheduled Tribe and the accused belongs to Vellala Gounder community, initially she hesitated to express her consent, but the parents and Prakash convinced her and her husband by promising that they never consider about community and they do not have any discrimination view upon the caste and hence, finally on 04.09.2019, the marriage was solemnized between the petitioner's daughter Rajeswari and the accused Prakash @ Palani Vel. Thereafter, the said Rajeswari informed the petitioner that by citing their community, the accused and his family members were harassing her and also demanded dowry. Under the said circumstances, on 08.01.2019 the said Rajeswari was admitted in a Sundaram, Private Hospital at Attur and Doctor informed that she was suffering from Jaundice and she was taken to the hospital at 5.00 o'clock and since then huge amount was demanded for treatment. Thereafter, she was shifted to Aishwarya Private Hospital at Salem. On 14.01.2020, doctors informed the petitioner that her daughter Rajeswari died. While giving treatment, the petitioner enquired with the doctor and that the doctor told her that if pesticide drugs administered, it may bring down such health condition. Further, the petitioner learnt that her son-in-law family gave powder to her daughter for the past two months before her death and compelled her to consume the said powder and hence, the petitioner suspected that the Rajeswari would have died by administering poison by the accused and hence, the petitioner has lodged a complaint before the 5th respondent on 14.01.2020 and after receipt of the said complaint, the 5th respondent has registered an FIR in Crime No.15/2020 under Section 174 (3) Cr.P.C.). He further submitted that even though sufficient allegations were made in the complaint, the 5th respondent has purposefully registered the case under Section 174(3) Cr.P.C. in order to help the accused persons and hence the petitioner has sent representations to the respondents 1 to 3, to transfer the investigation to some other

investigating agency and also to order for repost-mortem. So far, they have not taken any steps on the petitioner's representation and therefore he prayed to order for transfer of investigation to some other investigating agency, i.e. CB CID and also to conduct repost-mortem.

3. In support of the aforesaid contention, the learned counsel for the petitioner has relied on the following decisions:

1. People's Union for Civil Liberties and Another Vs. State of Maharashtra and Others (2015) 1 Supreme Court Cases (Cri) 180 (2014) 10 Supreme Court Cases 635.

2. Malathi Vs. The Home Secretary, Home Department, Government of Tamil Nadu, Secretariat and Others, in W.P.No.11317 of 2018 dated 24.05.2018.

4. Mr.V.Raju, Investigating Officer, Deputy Superintendent of Police, Attur Sub-Division, Salem District has filed status report stating that he has been appointed as Investigating Officer in the above case and hence, he took the matter for investigation and he visited scene of occurrence, prepared observation magazar and rough sketch and also examined the witnesses. He further stated that after recording the statements from the accused, he altered the case under Section 3 (1)(r), 3(1), (s) 3(2)(va) of SC/ST (POA) Amendment Act 2015. He further stated that on 15.01.2020, Revenue Divisional Officer/Sub-Divisional Executive Magistrate, Salem, conducted inquest on the body of the deceased Rajeswari and sent requisition letter to the Government Mohan Kumaramangalam Hospital, Salem for conducting post-mortem and the post-mortem was conducted on the same day. He further stated that the petitioner and her relatives not received the body of the deceased Rajeswari and it was kept in the Hospital mortuary. He further stated that viscera liver and kidney of the deceased were taken and sent to the Regional Forensic Science Laboratory, Salem and Department of Pathology of GMKM college hospital, Salem on 21.01.2020. Analytical report yet to be received to get the final opinion from the doctor for the cause of the death. He further stated that Revenue Divisional Officer, in his report, has stated that there is no dowry harassment. He further stated that the husband of the deceased namely Prakash @ Palani Vel was arrested on 17.01.2020 and remanded to judicial custody. He further stated that the established procedure has been strictly followed and postmortem has been completed and only after receipt of the viscera report, further action will be taken in the aforesaid case.

5. So, it is clear that the Deputy Superintendent of Police, has altered the provisions of law into SC/ST (POA) Act and also arrested the petitioner's son-in-law and remanded to Judicial custody.

6. Therefore, this Court is of the view that the Deputy Superintendent of Police, has conducted the investigation without any bias in a fair manner and therefore the investigation need not be transferred to any other agency.

7. In People's Union for Civil Liberties and Another Vs. State of Maharashtra and Others (cited supra), the Hon'ble Supreme Court has issued certain guidelines to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation. Whereas in this case, it is not the case of the petitioner that the deceased died due to encounter made by the police against the deceased and therefore, the above said decision will not apply to the present case.

8. In Malathi Vs. The Home Secretary, Home Department, Government of Tamil Nadu, Secretariat and Others (cited supra), a learned single Judge of this Court ordered repost-mortem taking into consideration the allegations made in the FIR that the petitioner and her relatives have seen contusions and wounds in the body of the deceased. But, in this case, the petitioner in her complaint has not stated that she has seen any contusions or wounds on the body of the deceased. Therefore, the aforesaid decision also will not apply to the facts of this case.

9. In this case, in the complaint, the petitioner has stated that since her daughter has informed her when she was under treatment in the hospital, that the family members of the accused compelled to take some powder for the past two months and hence, she entertained a doubt as to the cause of death of her daughter and that she would have died by administering poison and for that, repost-mortem is not required. In the status report filed by the Deputy Superintendent of Police, it has been stated that viscera and the internal organs were collected and sent for chemical analysis. Only after receipt of the chemical report, it can be said whether any poison was administered to the deceased. Under the said circumstances this Court is of the view, no repost-mortem is required in this case.

10. In the aforesaid facts and circumstances, this Court does not find any merit in this case. Hence, the Criminal Original Petition is dismissed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

gbi

To

1. The Home Secretary
State of Tamil Nadu
St.George Fort, Chennai-600 009.
- 2.The District Collector,
Salem District, Salem.
- 3.The Superintendent of Police,
O/o, Superintendent of Police,
Salem District, Salem.
- 4.The Dean,
Kumaramangalam Government Medical College Hospital,
Salem-1.
- 5.The Inspector of Police,
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Salem District.
- 6.The Additional Public Prosecutor,
High Court of Madras.

+1 cc to M/s.Thirumoorthy Advocate sr5760

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