

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.9972 of 2020
and Crl.M.P.No.4356 of 2020

Murugan,
S/o.Ganapathi,
3/5, Mariamman Kovil Street,
Tiruvonnainallur Taluk,
Villupuram District.

... Petitioner

Vs.

1. The Superintendent of Police,
Villupuram District,
Villupuram.
2. The State Rep by its
The Inspector of Police,
Thiruvonnainallur Police Station,
Villupuram District,
In Crime No.630 of 2020.
3. The Joint Director,
Central Bureau of Investigation (South) SBI,
College Road, Chennai - 600 006.
4. The Director,
Central Bureau of Investigation,
Plot No.5 B, 6th Floor,
CGO Complex,
Lodhi Road,
New Delhi - 110 003.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to transfer the investigation in Crime No.630 of 2020 on the file of the second respondent to the CBI or any other independent agencies to conduct for further investigation or reinvestigation in the manner known to law.

Prayer: Amended as per order in Crl.MP.No.4541/2020 in Crl.OP.No.9972/2020 dated 30/07/2020

For Petitioner : Mr.S.Saravana Kumar

For Respondents: Mr.S.Karthikeyan
Additional Public Prosecutor.

ORDER

This petitioner has been filed for transfer of investigation in Crime No.630 of 2020 from the file of the second respondent to the file of CBI or any other independent investigation agency to conduct further investigation or re-investigation.

2. The learned counsel appearing for the petitioner would submit that the case of the prosecution is that the petitioner along with the other accused trespassed into the defacto complainant's shop, where his elder daughter Jayashree was alone there. The accused persons assaulted her and also gagged her mouth with cloth, tied her hands and legs and poured petrol on her and set fire, then they closed the doors and ran away. He further submitted that as per FIR and the dying declaration of the deceased, the accused persons said to have been poured petrol. However, the second respondent introduced a new version by the confession statement of the accused that they were used kerosine. He further submitted that the victim and her father were illegally doing business by selling kerosine and petrol in their petty shop. Therefore they are capable to differ between the petrol and kerosine.

2.1. The relatives of the victim have been taken to the police station and they tortured to give statement by implicating the accused. In this regard, the phone calls of the witnesses from the police have been recorded and it would clearly prove that the relatives of the deceased were tortured by the police to implicate the petitioner as an accused. Further, a videograph was also uploaded through social media and subsequently it was removed. Therefore, there is absolutely no fair investigation done by the second respondent herein. The second respondent also suppressed the fact that the alleged occurrence took place at about 11 am., on 10.05.2020 and the victim died on next day i.e., on 11.05.2020 at about 9.40 a.m. The second respondent went to the hospital and recorded the statement and it was completely suppressed by the second respondent.

2.2. He further submitted that in fact, the petitioner's wife and other relatives were taken to the police station and they were denied in the police station till the arrival of the accused. Thereafter the petitioner was surrendered with the help of the advocate at about 8.30 p.m., on 10.05.2020. After his surrender, his wife and other relatives of the petitioner were released. The entire episode were recorded in the CCTV footage of the police station and it will reveal the fact that the accused was voluntarily surrendered before the second respondent on 10.05.2020 at about 8.30 p.m. Therefore, the

second respondent never arrested the first accused as per their contention.

2.4. He further submitted that with the assistance of one Vetrivel and Murugan, the victim's mother Raji and her aunty Vennila tortured the deceased and compelled her to give false statement including the dying declaration, thereby implicating the petitioner as accused. In support of his contention for transfer of investigation and for further investigation, the learned counsel appearing for the petitioner relied upon the judgment reported in 2013 SCC online mad 3830 in the case of C.Rajan Vs. Union of India, in which the Hon'ble Supreme Court of India held that the transfer of investigation can be sought for by the accused. He also relied upon another judgment of the Hon'ble Supreme Court of India dated 10.12.2019, passed in W.P.(Crl.).No.191 of 2020 in the case of ABCD Vs. Union of India & ors. Therefore he prayed to transfer the investigation from the second respondent to any other independent agency.

3. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that, this petition has been filed only to delay the committal proceedings and trial of the case. Already the second respondent completed investigation and filed final report in Crime No.630 of 2020 before the learned Judicial Magistrate No.II, Ullundurpettai, and the same has been pending for committal in P.R.C.No.5 of 2020. The crux of the complaint is that the defacto complainant Jayabal is an agriculturalist and also having 2 petty shops in Sirumadurai colony. The defacto complainant has two sons and two daughters. In the year 2013, the accused person, who are all his relatives, along with six others attacked his brother Kumar with knife, for which a case was registered in Crime No.596 of 2013 on the file of the second respondent and it is still pending. Therefore there was an enmity between the defacto complainant and the accused persons.

3.1. He further submitted that on 09.05.2020 at 10.30 p.m., one Praveenkumar asked beedi in the defacto complainant's shop and also assaulted his son Jayaraj on his ear, for which the defacto complainant and his wife went to Tirukoilur Government Hospital for giving treatment to his son by 11.00 p.m., and returned to home in the early hours on 10.05.2020. For the said occurrence, on 10.05.2020 at 10.00 a.m., the defacto complainant and his son Jayaraj went to Tiruvennainallore police station to lodge complaint and his wife went out to grazing their goats. While being so, the first accused along with the second accused trespassed into the defacto complainant's shop, where his elder daughter Jayashree was alone there. The accused persons assaulted her and also gagged her mouth with cloth, tied her hands and legs and poured petrol on her and set fire, then they closed the

doors and ran away. On hearing the hue and cry of the victim the neighbours rescued her and rushed to government hospital at Villupuram.

3.2. The learned Additional Public Prosecutor further submitted that after registration of FIR, the second respondent took up the investigation of this case and prepared the observation mahazar and rough sketch at 21.30 hrs in the presence of Village Administrative Officer. On intimation from the Government Medical College Hospital, Villupuram, on 11.05.2020, that the victim Jayashree was expired at 9.40 am., the Sections of the case were altered to under Sections 294 (b), 341, 342, 452, 302 of IPC r/w 4A of Tamil Nadu Prohibition of (Harrassment of Women) Act. Thereafter the accused were arrested and remanded to judicial custody on 11.05.2020.

3.3. He further submitted that during the course of investigation 44 witnesses were examined and the investigation was concluded on 09.06.2020 and then the respondent police filed final report and the same was taken on file in P.R.C.No.5 of 2020 on the file of the learned Judicial Magistrate-II, Ulundurpet. He also relied upon the judgment reported in W.P.Crl.No.130 of 2020 dated 19.05.2020 in the case of Arnab Goswami Vs. Union of India & ors. Now the case is pending for trial and thereafter he prayed for dismissal of this petition.

4. Heard Mr.S.Saravana Kumar, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents.

5. The petitioner is arrayed as A1 in Crime No.630 of 2020 registered for the offences under Sections 294(b), 341, 342, 452, 302 of IPC r/w 4A of Tamil Nadu Prohibition of (Harrassment of Women) Act. of IPC. The crux complaint is that due to previous enmity the petitioner along with second accused conspired together to do away the life of the deceased trespassed into defacto complainant's shop on 10.05.2020 at 11. a.m., with kerosene with intention to commit murder, where his elder daughter Jayashree was alone there. The accused persons assaulted her and also gagged her mouth with cloth, tied her hands and legs and poured petrol on her and set fire, then they closed the doors and ran away.

6. After registration of FIR the victim succumbed to the injuries caused due to fire and died on 11.05.2020 at about 9.40 a.m. While the victim was admitted in the Government Hospital, the learned Judicial Magistrate, Villupuram recorded her dying declaration. The entire investigation revealed the fact that the father of the victim is running two petty shops and also cultivating the land which

is adjacent to the house of the second accused. The first accused is the brother-in-law of the second accused. The first accused demanded the defacto complainant to hand over the said land to him for cultivation for which, the defacto complainant refused. Further the investigation revealed that the second accused place waste and rubbish materials in the said land which was frequently objected by the defacto complainant's family. Therefore, the first and second accused had inimical term with the defacto complainant and his family members.

7. In fact in the year 2013, the first and second accused along with others attacked the brother of the defacto complainant with knife in which a case was registered in Crime No.596 of 2013 on the file of the Inspector of Police, Thiruvennainallur Police station. Due to these enmities, the occurrence was took place on 10.05.2020. Now the petitioner is being an accused sought for further investigation by other investigation agency. This Court and the Hon'ble Supreme Court of India repeatedly held that the accused has no say in the investigation and the accused cannot choose the investigation agency. In this regard, the learned Additional Public Prosecutor relied upon the judgment of the Hon'ble Supreme Court of India passed in W.P.Crl.No.130 of 2020 dated 19.05.2020 in the case of Arnab Goswami Vs. Union of India & ors. which reads as follows :-

37. In Romila Thapar v Union of India²⁹, Justice AM Khanwilkar speaking for a three judge Bench of this Court (one of us, Dr Justice DY Chandrachud, dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in Narmada Bai v State of Gujarat³⁰, Sanjiv Rajendra Bhatt v Union of India³¹, E Sivakumar v Union of India³² and Divine Retreat Centre v State of Kerala³³. This Court observed:

"30...the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court monitored investigation."

8. Further the second respondent completed the investigation in fair manner under the supervision of the Deputy Superintendent of Police and the Superintendent of Police, Villupuram. There is absolutely no necessary for the

second respondent to foist the false case as against the petitioner. The final report has been filed on the statements of the witnesses and the material collected during the investigation and also on the basis of the dying declaration of the victim. Therefore, there is absolutely no malafide intention to implicate the petitioner as accused. In fact, this Court also dismissed the petition filed by the petitioner's wife with the prayer to collect call details records (CDR) of the mobile numbers and confiscate the same and to retrieve the CCTV footage of Police Station dated 09.05.2020 to 12.05.2020 related in Crime No.630 of 2020 dated 10.05.2020. Therefore, there is no material to support the contention of the learned counsel appearing for the the petitioner and also the judgements relied upon by him are not helpful to the case of the petitioner herein. Therefore this petition is devoid of merits and liable to be dismissed.

9. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Superintendent of Police,
Villupuram District,
Villupuram.
2. The Inspector of Police,
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5. The Public Prosecutor
Madras High Court,
Chennai.

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and Crl.M.P.No. 4356 of 2020

AJS (CO)
CB(22/10/2020)



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