

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.02.2020	Delivered on: 13.05.2020
-------------------------	--------------------------

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CrI.O.P.No.22758 of 2019
and
CrI.M.P.No.11838 of 2019

K.Umadevi

Vs.

... Petitioner

- 1.The Superintendent of Police
Salem District,
Salem.
- 2.The Deputy Superintendent of Police
Attur Taluk
Salem District.
- 3.The Inspector of Police
CBCID, Salem District
Salem.
- 4.State rep.by
Inspector of Police
Malliyakarai Police Station
Attur Taluk, Salem District.
(Crime No.69/2019)

...Respondents

PRAYER: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to transfer the investigation of the case in Crime No.69/2019 from the file of the fourth respondent herein to the third respondent/CBCID Police and to file a final report within time limit to be fixed by this Court.

For Petitioner : Mr. B.Kumarasamy
for Mr.S.Gunalan

For Respondents : Mr.A.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed by the de facto complainant to transfer the investigation in Cr.No.69/2019 from the file of the fourth respondent to the file of the third respondent.

2. The petitioner herein has lodged a complaint before the fourth respondent on 08.07.2019 at about 10.30 a.m., alleging that she is residing at Salem Town; that her father A.Kaliaperumal (TNEB employee retired as AO) was staying at their Agricultural lands at Seeliyampatti Pudhur; that her mother was staying with her at Salem and that on 08.07.2019 at about 7.00 a.m., one Kasi, resident of Seeliyampatti Pudhur has informed her maternal uncle Manivannan as the said A.Kaliyaperumal fell down in a well belongs to one Nallamuthu of Seeliyampatti Pudhur. Immediately, the said Manivannan instructed the petitioner's paternal uncle Vaithiyalingam to go to the place of occurrence and see what happened. Accordingly, the said Vaithiyalingam went to the scene of occurrence and found that the said Kaliyaperumal died and his body was lying in the said Nallamuthu's Well and thereafter, the said Vaithiyalingam informed the said facts to the petitioner. Immediately, the petitioner rushed to the scene of occurrence and the body of Kaliyaperumal was taken out of the Well and found serious injuries on his head and hence, she suspected about the cause of his death.

3. Accordingly, she lodged a complaint before the fourth respondent on 08.07.2019 at 10.30 a.m., and on receipt of the said complaint, the Special Sub-Inspector of Police, who is attached to the fourth respondent's police registered an FIR in Cr.No.69/2019 under Section 174 of Cr.P.C., and placed the papers before the fourth respondent for investigation. The fourth respondent took the matter for investigation and went to the scene of occurrence, prepared Observation Mahazar, rough sketch and after conducting inquest, he sent the body for postmortem.

4. Feeling that the fourth respondent has not properly and fairly investigated the matter, the de facto complainant has filed the present petition seeking to transfer the investigation to the third respondent.

5. The learned counsel for the petitioner has submitted that the postmortem certificate indicated that the deceased would have died of multiple injuries. He further submitted that the said Nallamuthu, in whose Well the petitioner's father's

dead body was found, was having protracted fight with the petitioner's father for grabbing land belonging to him. He further submitted that in the year 2000 itself, the said Nallamuthu and his maternal uncle along with two sons including a dozen of henchmen attempted to murder the petitioner's father under the guise of engaging the petitioner's father in a conversation on the eve of Pongal festival.

6. He further submitted that in fact to avoid quarrel with the said Nallamuthu, the petitioner's father has given away 5 cents of land, irrigation water path along with EB service connection sometimes later. He further submitted that the said Nallamuthu's grandfather installed a few stones under the tree growing in the petitioner's father's patta land and started worshipping as his guardian God. When the petitioner's father protested the same, Nallamuthu's grandfather and his henchmen threatened the petitioner's father that if he removed the God he would be left with no progeny and the said occurrence took place in the year 1975. He further submitted that the petitioner's father was working as A.O. in the Tamil Nadu Electricity Board and he retired in the year 2007 and he was taking care of the land by farming. At that time Nallamuthu, through his mediators, threatened the petitioner's father to sell the land to him, otherwise to face dire consequences.

7. He further submitted that the petitioner's father was hale and healthy and he had very good eyesight. He further submitted that the said Nallamuthu was abetted in all his quarrel with the petitioner's father by one Arumugam a close relative of Nallamuthu, who has a number of hirelings in his hands. He further submitted that the fourth respondent is acting in glove with the said Nallamuthu and his henchmen and hence, he has not conducted the investigation in a fair manner. He further submitted that the postmortem certificate and the photographs of the dead body would clearly establish that it is a clear-cut case of murder. He further submitted that with a view to help the real accused persons, the fourth respondent is taking emergent steps to file a final report as if the petitioner's father died by accidental fall. Therefore, the learned counsel for the petitioner requests the Court to transfer the investigation from the file of the fourth respondent to the third respondent.

8. In support of the aforesaid contentions, the learned counsel for the petitioner has relied upon the following decisions:-

1) Ankush Maruti Shinde V. State of Maharashtra, 2019 AIR (SC) 1457.

2) Gargi Vs. State of Haryana, MANU/SC/1288/2019 = AIR 2019 SC 4864.

9. Per contra, the learned Additional Public Prosecutor has submitted that based on the complaint lodged by the petitioner herein, an FIR has been registered in Cr.No.69/2019 on the file of the fourth respondent under Section 174 of Cr.P.C., on 08.07.2019 at about 10.30 a.m., and thereafter, the fourth respondent has taken the matter for investigation and went to the scene of occurrence and prepared observation mahazar at 11.15 a.m., and also prepared a rough sketch. He further submitted that the fourth respondent has lifted the body of the deceased Kaliyaperumal from the Well of Nallamuthu with the help of the Villagers and conducted an inquest in the presence of Panchayatars and witnesses and they have categorically opined that on 08.07.2019 at early morning at about 5.30 a.m., the deceased Kaliyaperumal was going to his land for irrigating coconut trees and at that time due to his old age and poor eyesight, he fell down in a Well which belongs to one Nallamuthu and the same is situated adjacent to the land of the deceased. He further submitted that the Panchayatars and witnesses have opined that at the time of falling in the said Well, the deceased would have collided with the rock portions which were projecting in the said Well and sustained serious injuries all over his body and because of the said injuries, he would have drowned into the water and died. He further submitted that the fourth respondent, after conducting the inquest, has sent the body of the deceased to Government Medical College Hospital, Salem and the Doctor attached to the said hospital has conducted the postmortem and he has opined that "the deceased would appear to have died of combined effects of multiple injuries and drowning".

10. He further submitted that the petitioner in her complaint and also in her statement recorded under Section 161 Cr.P.C., has not stated that there was an enmity between her father Kaliyaperumal and the said Nallamuthu. He further submitted that only in the petition filed before this Court for the first time, she has stated that there was an enmity between her father and the said Nallamuthu. He further submitted that the witnesses have not stated that there was an enmity between the petitioner's father and Nallamuthu. He further submitted that the fourth respondent has investigated the matter in a fair manner without any bias and hence, there is no necessity to transfer the investigation to any other agency and therefore, he prayed to dismiss the petition.

11. A perusal of the typed set of papers filed by the petitioner shows that the petitioner has lodged a complaint before the fourth respondent on 08.07.2019 at about 10.30 a.m., and on receipt of the said complaint, the Special Sub-Inspector of Police who is attached to the fourth respondent's Police Station has registered an FIR in Cr.No.69/2019 under Section 174 of Cr.P.C., and thereafter placed the papers before the fourth respondent for investigation.

12. A perusal of the case diary (CD) shows that the fourth respondent has taken up the matter for investigation and went to the scene of occurrence and prepared observation mahazar on the same day at about 11.15 a.m., and also prepared a rough sketch. He conducted an inquest on the body of the deceased Kaliyaperumal in the scene of occurrence itself on the same day between 13.15 hours and 14.15 hours in the presence of Panchayatars and witnesses. A perusal of the said inquest report shows that all the Panchayatars unanimously opined that on 08.07.2019 at about 5.30 a.m., the deceased Kaliyaperumal went to his land for irrigating coconut trees and due to his old age and poor eyesight, he would have fallen into the Well belongs to one Nallamuthu which is situated adjacent to the land of the deceased Kaliyaperumal. They have also opined that when the deceased was falling into the Well, he would have collided with the rock portions which were projecting in the Well and sustained serious injuries all over his body and drowned into the water and died.

13. The CD file further shows that after conducting the inquest, the fourth respondent has sent the body of the deceased Kaliyaperumal to Government Medical College Hospital, Salem for conducting postmortem and accordingly, the Doctor who is attached to the said hospital has conducted postmortem and issued postmortem certificate stating that the deceased would have died due to multiple injuries sustained by him and also drowning.

14. Though the petitioner has stated in her affidavit which is filed along with the petition that the said Nallamuthu was having protracted fight with her father for grabbing the land, she has not stated the said fact in her complaint. Though she has stated in the representation which was said to have been sent by her on 13.07.2019 to the Superintendent of Police, Salem District that her father's body was found in the well of Nallamuthu who is having enmity for 35 years, she has not stated what was the enmity prevailing between them. Further, she has not produced any material to show that an enmity was prevailing between her father and the said Nallamuthu. So, it appears that

as an afterthought, she has made allegations against the said Nallamuthu.

15. It is also to be pointed out that as per the postmortem certificate, the deceased Kaliyaperumal is aged about 70 years. Admittedly, he was retired from the Tamil Nadu Electricity Board as A.O. in the year 2007 and thereafter, he stayed at Seeliyampatti Pudur, Salem District in his farm house lonely. The petitioner has stated in her complaint that she is residing at Salem Town and her mother is also staying with her. She has stated in her statement recorded under Section 161 of Cr.P.C., that her mother was staying with her for the past three years and she was not doing well. So, it is clear that no one was staying with the deceased Kaliyaperumal to take care of him at his advanced age. If really the petitioner was interested in the welfare of her father, either she should have stayed with her father or she should have advised her mother to stay with her father or she should have taken him to her house or she should have made arrangement to look after him. But, it appears that she has not even made any arrangement to look after her father during his old age. After his death, now she is making a hue and cry.

16 In Ankush Maruti Shinde V. State of Maharashtra (cited supra) the Hon'ble Supreme Court has held that it is the responsibility of the investigating agency to ensure that every investigation is fair and does not erode the freedom of an individual, except in accordance with law. With regard to the said proposition there is no quarrel.

17. In Gargi Vs. State of Haryana, (cited supra), the Hon'ble Supreme Court taking into consideration of several loopholes in the investigation, has acquitted the accused. So, the said decision also will not help the case of the petitioner.

18. The averments made in the affidavit filed by the petitioner, in support of the petition shows that the deceased Kaliyaperumal toiled for his family even at the age of 70 years, but his family members did not take care about him during his life time. If really, there was an enmity between the said Nallamuthu and the petitioner's father, the petitioner should not have left her father to stay alone. Though the petitioner has stated in her affidavit that there was an enmity between her father and Nallamuthu from the year 1975, she has not produced any material to substantiate the same.

19. As already pointed out that the C.D.file produced by the fourth respondent shows that he has conducted the investigation in a fair and impartial manner. This Court does not find any merit in this petition.

20. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

dna

To

- 1.The Superintendent of Police
Salem District,
Salem.
- 2.The Deputy Superintendent of Police
Attur Taluk
Salem District.
- 3.The Inspector of Police
CBCID, Salem District
Salem.
- 4.The Inspector of Police
Malliyakarai Police Station
Attur Taluk, Salem District.
(Crime No.69/2019)

5. The Public Prosecutor
High Court, Madras.

CO/KJ
adl/30.05.2020

CRL.OP.NO.22758 of 2019