

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21206 of 2017

Rajarathinam

... Petitioner

Vs.

The Inspector of Police,
Bommidi Police Station.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondent/Police to complete the Re Investigation of Crime No.213 of 2012, registered by the Respondent/Police in the light of the directions in C.M.P.No.2064 of 2013 in Crime No.213 of 2012 on the file of the learned District Munsif cum Judicial Magistrate, Pappireddipatti.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to reinvestigate the case in Crime No.213 of 2012, pending on the file of the respondent Police.

2.The petitioner is the defacto complainant in Crime No.213 of 2012. The case of the petitioner is that on 26.05.2012, the petitioner was working in the godown of the Tamil Nadu Civil Supplies Corporation. At about 02.10 p.m., his wife R.Gomathi called him through mobile phone and informed that someone set fire to his mother's house. When the petitioner reached the house, the Tamil Nadu Fire and Rescue Services and neighbours were extinguishing the fire. Due to fire, the household articles were burned and damaged. Hence, the petitioner suspecting the accused viz., M.S.Balamurugan, Kuppusamy, N.Kumaresan, N.Ramalingam, N.Paramasivam, Azhagarasan and N.Muthusamy as the persons, who set fire to his mother's house, due to previous enmity and land dispute, lodged a complaint before the respondent Police. The respondent Police on receipt of the same, registered a case in Crime No.213 of 2012, for offence under Section 435 IPC.

3.The respondent Police, on completion of investigation filed Referred Charge Sheet and closed the case as 'Mistake of

Fact' and served R.C.No.14 of 2012 to the petitioner. Annoyed over the same, the petitioner filed Protest Petition before the learned District Munsif cum Judicial Magistrate, Pappireddipatty.

4.The learned District Munsif cum Judicial Magistrate, Pappireddipatty on considering the submission and on perusal of the documents, directed the respondent Police to reinvestigate case in Crime No.213 of 2012 and submit a report as per law, by order dated 23.07.2015, in C.M.P.No.2064 of 2013. Despite the order of the lower Court dated 23.07.2015, the respondent Police failed to reinvestigate the case and the same is kept pending. Hence, the petitioner filed the above petition.

5.The learned counsel for the petitioner submitted that the accused persons named in the FIR had set fire to the house of the petitioner, in which the mother of the petitioner was living. Due to the fire accident, the entire house was destroyed and the household articles including the television, motor and documents were completely destroyed. The learned counsel for the petitioner further submitted that the accused are the neighbours of the petitioner. At their instigation due to the personal animosity with the petitioner's family, they had set fire to his mother house and also attempted to do away his family. On coming to know about the same, the petitioner lodged a complaint to the respondent Police. The Police registered FIR in Crime No.213 of 2012 and on completion of investigation, filed referred charge sheet before the Court below and closed the case as 'Mistake of Fact' on 26.06.2020, against which the petitioner filed protest petition before the Court below in C.M.P.No.2064 of 2013. The Court below, by order, dated 23.07.2015 directed the respondent Police to reinvestigate the case and to file a report.

6.The learned counsel for the petitioner further submitted that the respondent Police during the investigation, have not collected any burned articles and other materials and also not examined the officials of the Tamil Nadu Fire and Rescue Department and neighbours to ascertain the cause of the fire accident. Since the fire officials have not examined to ascertain the cause of fire and the samples not sent for chemical examination, it could not be said that the fire accident could have taken place due to leakage in electricity connection or due to throwing of match sticks or cigarette pieces. Further, the respondent Police failed to send the electricity metre box and wires for expert opinion and also failed to note down the damaged articles in the Observation Mahazar.

7.Thus, the respondent Police without following the procedure, filed the referred charge sheet. He submitted that before filing the negative report, RCS notice to be served to

the petitioner/defacto complainant. In this case, it has not been done. Despite the same, the petitioner filed a protest petition before the Court below and the lower Court rightly ordered reinvestigation of the case. Despite the same, no further investigation has been done till now.

8.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the case in Crime No.213 of 2012 was registered, for offence under Section 435 IPC. After investigation, the case was closed as 'Mistake of Fact' on 26.06.2012. Thereafter, the petitioner filed protest petition and the matter was referred for reinvestigation. He further submitted that the further investigation could not be carried out, due to the frequent transfer of officers, the investigation could not be completed. Hence, this Court may issue a direction for completion of investigation and filing of final report before the concerned Court.

9.On considering the rival submissions and on perusal of the materials, it is seen that the respondent Police hurriedly filed the referred charge sheet by closing the matter as 'Mistake of Fact', without conducting proper investigation. It seems that the respondent Police failed to collect the burned articles from the scene of occurrence and send the same for examination and also failed to examine the witnesses either present in the scene of occurrence or the family members of the petitioners. No personnel from the Tamil Nadu Fire and Rescue Department was examined and their report obtained, which would be an important factor for the investigation.

10.Thus, the investigation cannot be closed without providing a reasonable opportunity of being heard the person likely to be affected and the further investigation is necessary in the FIR in Crime No.213 of 2012 as directed by the lower Court in C.M.P.No.2064 of 2013. The word mentioned therein as reinvestigation has to be read as further investigation.

11.Hence, the respondent Police is directed to complete the investigation in Crime No.213 of 2012 and file a final report before the concerned Court, within a period of four months from the date of receipt of a copy of this order.

12.This Criminal Original Petition is disposed of with the above direction.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

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To

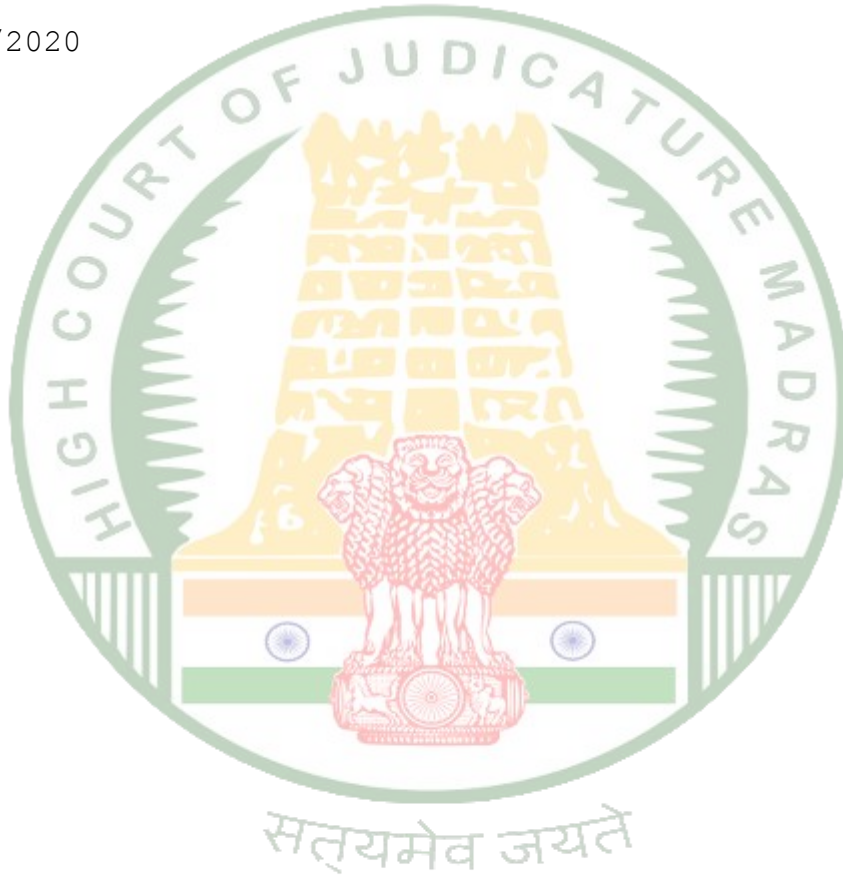
1.The Inspector of Police,
Bommidi Police Station.

2.The Public Prosecutor,
High Court, Madras.

+1cc sto Mr.S.Kalyanaraman Advocate SR.NO.32497

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