

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2020

Pronounced on : 14.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.No.32837 of 2019

Selvi ..Petitioner/Defacto complainant

Vs.

1. The Commissioner of Police,
Greater Chennai City,
Veppery, Chennai.

2.State by its
Inspector of Police,
W-32, All Women Police Station,
Madipakkam, Chennai

..Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the transfer of investigation of the case in Cr.No.7 of 2014 on the file of the 2nd respondent to any other appropriate office not below the rank of Assistant Commissioner of Police by altering the FIR and incorporating appropriate provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 for its investigation and file a final report.

For Petitioner : Mr.S. Senthilnathan

For Respondents : Mr.M. Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed by the defacto complainant to transfer the investigation in Cr.No.7 of 2014 on the file of the second respondent to any other appropriate officer not below the rank of Assistant Commissioner of Police by altering the FIR and incorporating appropriate provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "SC/ST (POA) Act" for investigation and file a final report.

2. The learned counsel for the petitioner has submitted that the petitioner belongs to Hindu Adi Dravidar Community (SC community). She was employed as a sweeper at Quide Milleth College for men at Medavakkam at Chennai for the past 22 years. He further submitted that the petitioner was continuously subjected to sexual harassment and caste discrimination and humiliations by Rafi, the Principal of the said College and Mr. Mohamed Iqbal, Office Superintendent. He further submitted that the petitioner was also insulted by them because of their caste. Since the sexual harassment and caste humiliations made by the aforesaid persons, became intolerable, the petitioner made a complaint dated 06.09.2013 to the second respondent and other authorities. Since no action was taken by the second respondent on her complaint, the petitioner approached this court by filing a petition under Section 482 Cr.P.C., in Crl.O.P.No.24672 of 2013 praying for registration of complaint. He further submitted that on the direction of this court, the first respondent forwarded the petitioner's complaint dated 06.09.2013 to the second respondent for registration of complaint. Only thereafter, the second respondent has registered an FIR in Cr.No.7 of 2014 under Section 4 of Tamil Nadu TNPHW Act 2002 alone. He further submitted that the second respondent ought to have registered a case along with the provisions of SC/ST (POA) Act, but she did not register the case under the said provisions of law.

3. The learned counsel for the petitioner has further submitted that the second respondent has been highly subjected to the influence of the accused persons. Since she has not investigated the matter, the petitioner has filed Crl.OP.No.8409 of 2015 before this court praying for transfer of investigation. He further submitted that when the said petition came up for hearing on 20.03.2019, the learned Additional Public Prosecutor has submitted that the closure report has been filed before the learned Judicial Magistrate, Alandur and on recording the same, this court has dismissed the said petition as infructuous. He further submitted that the petitioner has filed a copy application on 11.11.2019 before the Judicial Magistrate, Alandur, to grant certified copy of closure report, but the learned Judicial Magistrate has returned the said copy application stating that the closure report is not filed. He further submitted that the second respondent has falsely informed this court that the closure report has already been filed before the Judicial Magistrate only with a view to prevent the petitioner from getting order of transfer of investigation. He further submitted that since so far the final report has not been filed before the Jurisdictional Magistrate, the contention of the second respondent that already

investigation has been completed and final report filed is totally false and therefore, he requests to transfer the investigation to any other appropriate officer not below the rank of Assistant Commissioner of Police.

4. When this matter came up for hearing on 18.12.2019, the learned Additional Public Prosecutor has submitted that already a referred charge sheet has been filed before the Judicial Magistrate, Alandur. He further submitted that the learned Judicial Magistrate has issued notice to the defacto complainant/petitioner and the matter is pending before the learned Judicial Magistrate. The learned counsel for the petitioner has submitted that to his knowledge, no such referred charge sheet was filed before the Court.

5. Considering the aforesaid submission, this court has directed the registry to call for a report from the Judicial Magistrate, Alandur as to whether a report was filed referring the matter in Cr.No.7 of 2014 on the file of the second respondent and if so, what is the stage of the said report. Accordingly, the Registry has called for a report from the concerned Magistrate. The learned Judicial Magistrate, Alandur, has sent a report dated 20.01.2020 stating that on 30.12.2019, the Inspector of Police, All Women Police Station, Madipakkam, Chennai, has filed RCS report dated 14.08.2017. She further stated that immediately on receipt of final report, a notice was ordered to the defacto complainant returnable by 28.01.2020.

6. The learned Additional Public Prosecutor has submitted that since already final report has been filed by referring the matter as mistake of fact, at this stage, investigation cannot be transferred to any other authority.

7. The learned counsel for the petitioner by way of reply has submitted that even as per the Judicial Magistrate's report, the final report was filed only on 13.12.2019 and that would show that the second respondent has falsely informed this court on 20.03.2019, when the CrI.OP.No.8409 of 2015 came up for hearing, that already closure report was filed before the learned Judicial Magistrate, Alandur and therefore he prayed to set aside the said final report and order for further investigation by transferring the investigation to some other authority.

8. A perusal of the FIR prima facie shows that the provisions of SC/ST (POA) Act 1989 would attract. Further, in the typed set of papers filed by the petitioner, the petitioner has enclosed a copy of the letter sent by the National Commission

for Scheduled Castes dated 12.12.2013 to the Director General of Police, Tamil Nadu and others wherein the said Commission has observed as follows:-

"The NCSC has observed that a prima facie case has been made out by Smt. Selvi. Chennai. In view of the above, the NCSC recommends punitive action should be taken on the culprits under Sec.3(1)(xi) & (xii) of the SCs/STs (POA) Act, 1989. Further, the wilful negligence by a Public Servant attracts penal action under Sec.3(2)(vii) & 4 of SCs/STs (POA) Act, 1989. Also necessary action should be taken to revoke the suspension order of Smt.Selvi and she should be re-instated immediately. "

9. A copy of the said letter has been marked to the petitioner herein also but even thereafter, the police has not altered the FIR by including the aforesaid provisions of SC/ST (POA) Act.

10. The petitioner has filed Crl.OP.No.8409 of 2015 before this court to transfer the investigation in Cr.No.7 of 2014 on the file of the second respondent herein. This court has disposed of the said petition on 20.03.2019, with the following observations:-

"2. The learned Additional Public Prosecutor submitted that the closure report has been filed before the learned Judicial Magistrate, Alandur.

3. In view of the above, the prayer sought for in the petition has become infructuous. Accordingly, the Criminal Original Petition is dismissed as infructuous. Consequently, connected miscellaneous petitions are closed. "

11. In the typed set of papers filed by the petitioner, she also enclosed a copy of the application filed by her in C.A.No.2260 of 2019 on the file of the Judicial Magistrate, Alandur. A perusal of the said copy application shows that the petitioner has filed the said copy application before the Judicial Magistrate, Alandur, seeking copy for the closure report, but the learned Judicial Magistrate, Alandur, has returned the said copy application on 11.11.2019 stating that the closure report not filed. Thereafter, the petitioner has filed the present petition stating that the submission made by the second respondent herein in Crl.OP.No.8409 of 2015 that already investigation has been completed and the closure report has been filed before the Judicial Magistrate, Alandur is false and hence she requests to transfer the investigation to some other officer.

12. When this petition came up for hearing on 05.12.2019, the learned Additional Public Prosecutor asked adjournment for getting instructions and hence the matter has been adjourned to 11.12.2019. On 11.12.2019 also, the learned Additional Public Prosecutor requested to grant time for filing status report and hence the matter was adjourned to 18.12.2019. On 18.12.2019, when this matter came up for hearing before this court, the learned Additional Public Prosecutor has submitted that already referred charge sheet was filed before the Judicial Magistrate, Alandur and the learned Judicial Magistrate has issued notice to the defacto complainant. The learned counsel for the petitioner has submitted that to his knowledge, no such referred charge sheet was filed before the concerned Magistrate Court. Considering the same, this court has called for the report from the Judicial Magistrate, Alandur and the said Judicial Magistrate sent a report dated 20.01.2020 stating that on 13.12.2019, the Inspector of Police, All Women Police Station, Madipakkam, has filed RCS report dated 14.08.2017 and on receipt of the said final report, she ordered notice to the defacto complainant, returnable by 28.01.2020.

13. This court has perused the case diary and the said case diary contains a copy of the final report said to have been filed by the second respondent before the Judicial Magistrate, Alandur. In the said final report, the second respondent has signed by putting date as 09.08.2017, but she has not mentioned on which date the said report was filed before the court. But the report of the learned Judicial Magistrate No.1, Alandur, shows that the second respondent has filed RCS report dated 14.08.2017. It appears that only after knowing the fact that the petitioner has filed this petition, stating that so far, final report has not been filed before the concerned Magistrate, the second respondent has hurriedly filed the RCS report before the concerned court on 13.12.2019. Therefore, the conduct of the second respondent would show that only with a view to prevent the petitioner from getting order for transfer of investigation, the second respondent has informed this court on 20.03.2019 in CrI.OP.No.8409 of 2015 as already closure report was filed before the Judicial Magistrate, Alandur. Further, as observed by the National Commission for Scheduled Castes, the allegations made in the complaint would prima facie attract the provisions of SC/ST (POA) Act. As per Rule 7 of the Scheduled Castes and Scheduled Tribes Rules, in respect of offences under the SC/ST (POA) Act, investigation shall be conducted by a police officer not below the rank of Deputy Superintendent of Police. But in this case, the second respondent without altering the FIR by incorporating the provisions of SC/ST (POA) Act as recommended by the National Commission for Scheduled Castes she herself

investigated the matter and filed final report referring the matter as mistake of fact.

14. For the aforesaid reasons, this court is of the view that the second respondent has not acted in accordance with the law and therefore, the report filed by her referring the matter as mistake of fact is liable to be set aside and further investigation should be ordered. Accordingly, the final report filed by the second respondent is set aside. Further investigation is ordered. The first respondent is directed to comply with the recommendations issued by the National Commission for Scheduled Castes by the letter dated 12.02.2013 and appoint a police officer not below the rank of Deputy Superintendent of Police / Assistant Commissioner of police for further investigation and file final report in accordance with law.

15. With the aforesaid direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Police,
Greater Chennai City,
Veppery, Chennai.
2. The Judicial Magistrate,
Alandur.
3. The Inspector of Police,
W-32, All Women Police Station,
Madipakkam, Chennai
4. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.S.Senthilnathan, Advocate Sr.No. 12507

AKM/19.03.2020/6P- 6C /

Order made in
CRL.OP.No.32837 of 2019