

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 34365 of 2019

Kowsalya
W/o.Late Jayamurthy

... Petitioner

Vs.

1. The Secretary to the Government of Pudhcherry
Department of Home,
The Union Territory of Puducherry,
Puducherry State.
 2. The Union Territory of Puducherry,
Represented by
The Inspector of Police,
PCR Cell, Puducherry.
 3. The Deputy Director,
CBI, South Zone,
Rajaji Bhavan,
Besant Nagar,
Chennai.
- Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to transfer the investigation in Crime No.2 of 2019 on the file of the second respondent to third respondent to secure the ends of justice.

For Petitioner :Mr.R.Sankarasubbu

For Respondents:Mr.V.Balamurugane
Additional Public Prosecutor (Pondy)
for R1 & R2
Mr.Srinivasa, Standing Counsel
for CBI

O R D E R

This petition has been filed to transfer of investigation in Crime No.2 of 2019 from the file of the second respondent to the third respondent.

2. The learned counsel appearing for the petitioner submitted that the petitioner's husband was illegally detained and tortured by the police personnel attached to Bagur Police Station, Puducherry on 21.11.2018 and he was remanded to

judicial custody on 23.11.2018 as if he was shown as arrested on 22.11.2018. He was suffered injury during the judicial custody by the jail authority. Therefore he had 33 ante-mortem injury on his body and died on 27.11.2018, due to the wounds inflicted on him. The custodial torture and death was reported to the Police Complaint Authority and after enquiry, the Police Complaint Authority directed the first respondent to register a case under Section 302 of IPC along with SC/ST Act. However the case was registered under Section 304 of IPC and SC/ST Act and the case is under investigation over a period of one year. Further the learned counsel contended that since the accused persons are local police and jail authorities, they allowed to file anticipatory bail petition. Though three accused persons were surrendered, one of the accused is still absconding and the investigation officer did not take any steps to arrest the absconding accused. The entire investigation is still under initial stage, though the crime was registered one year before. Since the accused persons are the police officials as well as the jail superintendent along with doctor, the petitioner lost her hope with the investigation agency and if the same investigation agency continues the investigation, she would not have firm investigation. In fact, the investigating officer did not even register a case under Section 302 of IPC. Therefore, prayed to transfer the investigation from the second respondent to the third respondent herein.

3. Per contra, the learned Additional Public Prosecutor (Pondy) filed counter and submitted that on 27.11.2018, the second accused had forwarded the complaint to the Station House Officer, Kalapet, stating that one remand prisoner viz., the husband of the petitioner herein, had the complaint of breathlessness and sever body pain. Since his vital signs appeared unstable, he was referred to India Gandhi Government Hospital, Puducherry, by the Medical Officer, Central Prison, Pondicherry, who is arrayed as third accused. He also stated that the husband of the petitioner had injured even at the time of admission and he also sustained injuries during the investigation. Thereafter, he died on 27.11.2018. Therefore, the case has been registered under Section 176 of Cr.P.C., in Crime No.71 of 2018. Thereafter post mortum was conducted on 28.11.2018. As per the order of the Chief Judicial Magistrate, the learned Judicial Magistrate-IV, Pondicherry, conducted enquiry and considering the seriousness of allegations, the case was transferred from the Kalapet Police Station to CBCID, Puducherry.

3.1. On receipt of Post mortum report, the Inspector of Police, CBCID altered the offences into under Sections 304, 342 r/w 34 of IPC against the Sub Inspector of Police, Bagur Police Station, the Jail Superintendent, Central Prison, Kalapet and the Medical Officer, Central Prison, Pondicherry. On behalf of the victim, one social activist approached the Puducherry Police Complaint Authorities and on the

recommendation of the Puducherry Police Complaint Authorities, altered the offences by including the offences under Sections SC/ST Act and other offences into under Sections 304, 330, 331, 342, 348, 166, 166A, 201, 220 of IPC and Section 3(2)(v) (v-a) & (vi) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.

3.2. Thereafter the second accused surrendered before the Court and remanded to judicial custody. The first accused was arrested in the presence of two independent witnesses and also recorded his confession statement. He confessed that the deceased viz., the husband of the petitioner herein was under custody more than 24 hours in respect of the case in crime No.156 of 2018, registered for the offence under Section 379 of IPC on the file of the Bagur Police Station. He also assaulted him with wooden log in order to get the information about the theft. Thereafter the fourth accused also surrendered and his voluntary confession statement also recorded. In his confession statement, the fourth accused confessed that he arrested the deceased/the petitioner's husband and handed over him to the Central Prison, Kalapet.

3.3. After his remand, on further investigation, they examined two witnesses, who were inmates of the deceased/petitioner's husband in the central prison. They stated that one Alex, who was inmate of the deceased assaulted the deceased by kicking his hip area, while he was sleeping. Therefore on 30.10.2019, the said person Alex impleaded as accused and thereafter he absconded from arrest. Again in view of the material on record, the offences are altered under Sections 342, 302, 304, 330, 331, 348, 166, 166-A, 201, 220 of IPC and Sections 3(2)(v) (v-a) & (vi) of SC/ST (POA) Act 1989 r/w Section 34 of IPC.

3.4. Insofar as the third accused viz., the Doctor of the central prison is concerned, he absconded from the arrest. In fact, his anticipatory bail petition was dismissed by this Court and he approached the Hon'ble Supreme Court of India in S.L.P.Cr.No.11747 of 2020 and the Hon'ble Supreme Court restrained the investigating officer from taking any coercive action and the SLP is still pending. He further submitted that the second accused also filed writ petition before this Court challenging the order passed by the Police Complaint Authority in W.P.No.16756 of 2019 and the same was also dismissed.

3.5. Insofar as the compensation to the victim/petitioner is concerned, a sum of Rs.8,20,000/- was sanctioned and a sum of R.4,12,500/- was paid to the petitioner. Therefore, the investigation is under process and they are about to complete the investigation and file final report and therefore prayed for dismissal of this transfer petition.

4. Heard Mr.R.Sankarasubbu, learned counsel appearing for the petitioner and Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondy) appearing for the respondents.

5. The petitioner's husband initially arrested in pursuant to the complaint lodged by one Sivakumar with regard to theft of his motor cycle on 21.11.2018 before Inspector of Police, Bagur Police Station. The fourth accused registered a case in Crime No.156 of 2018 for the offence under Section 379 of IPC. In pursuant to the same, the first accused arrested the deceased/husband of the petitioner herein on 22.11.2018 and produced him before the Magistrate on 23.11.2018 for remand. Even before that, he was examined by the medical officer and remanded to judicial custody. Thereafter he was undergone to medical examination by the jail Doctor and the injuries found in the reports from both the medical officers were differed. Thereafter on 27.11.2018, the deceased had complaint of breathlessness and sever body pain and vital sings appeared to be unstable, as such he was referred to Government General Hospital, Puducherry by the third accused. Thereafter he died.

6. On the complaint lodged by the first accused, the case was registered in Crime No.71 of 2018 for the offences under Section 176 of Cr.P.C. Thereafter, the investigation was handed over to the second respondent herein and on receipt of report from the Magistrate the offence was altered into under Sections 304, 342 r/w 34 of IPC. On the report from the Police complaint authority, once again the offences are altered under Sections 304, 330, 331, 342, 348, 166, 166A, 201, 220 of IPC and Section 3(2)(v)(v-a) & (vi) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. Except the third accused all other accused viz., A1, A2 and A4 were surrendered and remanded to judicial custody. Once again the offences are altered into under Sections 342, 302, 304, 330, 331, 348, 166, 166-A, 201, 220 of IPC and Sections 3(2)(v)(v-a) & (vi) of SC/ST (POA) Act 1989 r/w Section 34 of IPC by including the offence under Section 302 of IPC and one of the jail met of the deceased added as fifth accused.

7. While being so, this Court dismissed the anticipatory bail petition filed by the third accused, as such the third accused preferred Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.Cr.No.11747 of 2020 and the Hon'ble Supreme Court of India also restrained the second respondent that not to take coercive steps and the SLP is still pending. Therefore, the second respondent could not be able to complete the investigation. Under these circumstances, the petitioner come forward with this petition to change the investigating officer.

8. The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in (1980) 3 SCC 488 in the case of Sunil Batra (II)

Vs. Delhi Administration, which reads as follows :-

"11. After the prisoner was subjected to brutal hurt he was removed to the jail hospital and later to the Irwin Hospital but on his re-transfer he was neglected; but we do not pursue the identity of the culprit or the crime or the treatment since a police investigation is under way. Nevertheless, we cannot but remark that whatever damage might have been done upto now, a second investigation by a C.B.I. Officer is justified, if truth has been suppressed. Dr. Chitale pointed out certain poignant facts such as the prisoner himself having been pressured into statements contrary to the case of anal infliction. We do not make comments on them although we are unhappy at the way the business of investigation has been done. Indeed, the potential for oblique mutual help between the police and the prison staff makes Jail offences by jail officials undetectable; and so, to obviate this possibility, the C.B.I. may well be entrusted, as a regular practice, with such cases. The prisoner being a person, we cannot write him off."

9. He also relied upon the judgment reported in (1980) 2 SCC 559 in the case of Niranjan Singh and anr Vs. Prabhakar Rajaram Kharote and ors, as follows:-

"12. We conclude this order on a note of anguish. The complainant has been protesting against the State's bias and police threats. We must remember that a democratic state is the custodian of people's interests and not only police interests. Then how come this that the team of ten policemen against whom a magistrate after due enquiry found a case to be proceeded with and grave charges including for murder were framed continue on duty without so much as being suspended from service until disposal of the pending sessions trial? On whose side is the State? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government responsive to appearances of justice, would have placed police officers against whom

serious charges had been framed by a criminal court under suspension unless exceptional circumstances suggesting a contrary course exist. After all a gesture of justice to courts of justice is the least that a government owes to the governed. We are confident that this inadvertence will be made good and the State of Maharashtra will disprove by deeds Henry Clay's famous censure :

"The arts of power and its minions are the same in all countries and in all ages. It marks its victim denounces it; and excites the public odium and the public hatred to conceal its own abuses and encroachments."

The Hon'ble Supreme Court of India held that potential for oblique mutual help between the police and the prison staff makes jail offences by jail officials undetectable and so, to obviate this possibility, the C.B.I. may well be entrusted as a regular practice with such cases.

10. In the case on hand, already five persons have been impleaded as accused, in which three accused persons were arrested and remanded to judicial custody. The third accused approached the Hon'ble Supreme Court of India and he was given interim protection. In these circumstances, the above cases referred by the learned counsel appearing for the petitioner is not helpful to the case on hand and factually completely different one.

11. Considering the above facts and circumstances of the case, this Court feels that the change of investigation would affect the investigation done by the second respondent as such this Court is not inclined to transfer the investigation from the second respondent. Accordingly, this Criminal Original Petition stands dismissed. However the second respondent is directed to complete the investigation and file final report as expeditiously as possible in Crime No.2 of 2019 and the Senior Superintendent of Police, L&O, Puducherry, shall monitor the investigation done by the second respondent.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

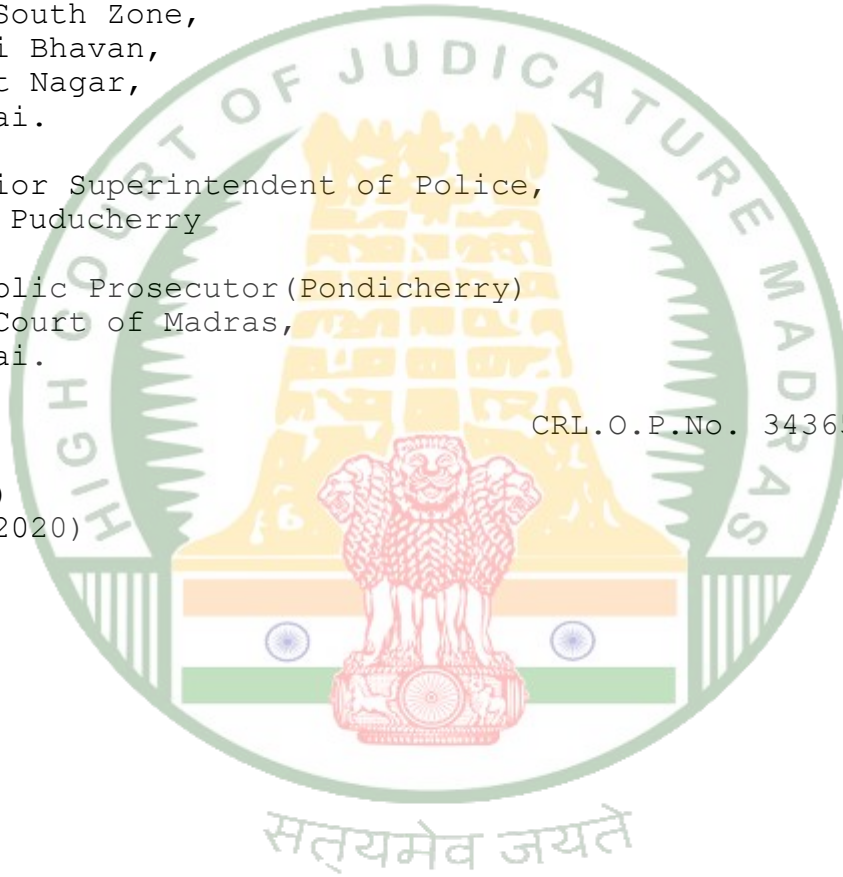
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To

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5. The Public Prosecutor (Pondicherry)
High Court of Madras,
Chennai.

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VSN II (CO)
CB (28/07/2020)



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