



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**
Criminal Original Petition[MD] No.1207 of 2020

Merlin Shaly : Petitioner/Defacto Complainant
vs.

1.The Superintendent of Police,
Kanniyakumari District.

2.The Sub Inspector of Police,
All Woman Police Station,
Colochel,
Kanyakumari District.
(Crime No.13 of 2019)

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to the investigation of Crime No.13 of 2019 from the file of second respondent and transfer the same to some other unbiased police or agency or to conduct fair and proper investigation.

For Petitioner : Mr.K.P.Narayanakumar
For Respondents : Mrs.S.Bharathi
Govt. Advocate (crl.side)

O R D E R

This petition is filed to transfer the investigation in Crime No.13 of 2019 from the file of second respondent to the some other agency.

2.The learned counsel for the petitioner would submit that the petitioner is the de-facto complainant in Crime No.13 of 2019 on the file of the second respondent police. There are four accused in this case. The first accused is the husband, the second accused is the mother in law, the third accused is the sister in law and the fourth accused is the husband of the third accused/sister in law. The marriage between the petitioner and the first accused was solemnized on 27.11.2004 and at the time of marriage on the demand of the accused persons, Rs.20 lakh cash and a medical shop were given to the first accused as dowry and subsequently, there was also torture by the petitioner due to demand of dowry. He would further submit that the fourth accused, who is the husband of the sister in



law, committed rape on the petitioner by sedating her and though in the complaint, it had been specifically stated by the petitioner, the second respondent police had registered a case only for the offences under Section 498(A), 294(b), 506(i) IPC and Section 4 of Tamil Nadu Dowry Prohibition Act. Due to the rape committed by the fourth accused, the petitioner had become pregnant and a child was also born. Though the case was registered on 04.04.2019 and the specific allegations were made against the fourth accused, the investigation officer did not take any steps to conduct DNA test to prove the same. He would further submit that the fourth accused is also an accused in the case registered by the Colachal police in Cr.No.109/2019 for offences under Sections 366 A and 376 of IPC and he is also habitual offender. Since the investigation has not been done in a proper manner, the petition has been filed seeking for transfer. He would submit that only after the filing of the transfer petition, the second respondent has now altered the F.I.R and added Section 376 IPC against the fourth accused. He would further submit that no further investigation has been done by the second respondent and even after alteration of FIR, DNA test has not been taken by the second respondent to prove the rape committed on the petitioner while she was under sedation. Thereby, he would submit that the petitioner cannot expect fair investigation at the hands of the second respondent.

3.The respondent has filed a status report. It has been stated that the accused have obtained anticipatory bail on 26.07.2019 and thereafter, the case has been altered adding Section 376 IPC. Further, steps have been taken to cancel the anticipatory bail

4.The learned Government Advocate (criminal side) would submit that the respondent police has filed status report. She would further submit that after filing of the transfer petition, FIR has been altered and Section 376 IPC has also been added.

5.Having gone through the facts, this Court is of the opinion that the investigation has not been done in a proper manner. Though specific allegations were made in the complaint that the petitioner was raped under Sedation, the case was registered only for the offence under Section 498A, 294(b), 506(i) IPC and Section 4 of the TNPD Act and not under Section 376 IPC. It is a case where custodial interrogation was very much essential, the accused were allowed to get anticipatory bail. Even thereafter, no steps have been taken by the respondent police to take blood samples from the victim, the child born and the accused, who committed rape to confirm the allegation of the petitioner. Further, in the status report, nowhere it has been stated that steps are being taken to cancel the anticipatory bail granted to the accused for the purpose of taking blood samples for conducting DNA test. Though it has been



stated that the accused did not appear for enquiry, only after filing of the transfer application, major offence of 376 IPC has been added in the FIR. This Court is of the opinion that the investigation done is in shabby manner so as to help the accused. This Court is of the firm opinion that if the present officer is allowed to continue with the investigation, the petitioner may not get justice.

6. In view of the same, the first respondent is directed to transfer the investigation in Crime No.13/2019 now pending on the file of the second respondent to the Inspector of Police, All Woman Police Station, Nagercoil within a period of one week from the date of receipt of a copy of this order. The Inspector of Police, All Woman Police Station, Nagercoil will complete the investigation in Crime No.19 of 2019 within a period of four months and file final at the earliest.

This Criminal Original Petition is disposed of accordingly.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

skn

To

1. The Superintendent of Police,
Kanniyakumari District.

2. The Sub Inspector of Police,
All Woman Police Station,
Colachel,
Kanniyakumari District.

3. The Inspector of Police,
All Woman Police Station,
Nagercoil.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.P.NARAYANA KUMAR, Advocate (SR-5514[F] dated
10/02/2020)

CrI.O.P. [MD] No.1207 of 2020
07.02.2020