



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

W.P. (MD)No.8784 of 2016

and

W.M.P. (MD) .No.6982 of 2016

Valsalan

... Petitioner

vs.

- 1.The State of Tamil Nadu
Rep. by Inspector of Police,
Marthandam Police,
Vilavankode Taluk,
Kanyakumari District.
- 2.The Superintendent of Police,
Kanyakumari District,
Nagercoil.
- 3.The Director General of Police,
Office of Director General,
Mylapore, Chennai.
- 4.The Secretary to Government
Home Department,
Government of Tamil Nadu,
Secretariat, Fort St, George,
Chennai.

5.Balamurugan

6.Ponmurugan

... Respondents

[Respondents 5 and 6 are impleaded vide order dated
23/01/2016 in W.M.P. (MD)No.13848 of 2016]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to withdraw the charge sheet in Crime No.289 of 2014, under Section 34, 302, 392 r/w 397, 201, 404 of IPC of Marthandam Police Station, pending as S.C.No.92 of 2015, on the file of the Principal District and Sessions Judge, Kanyakumari District at Nagercoil and transfer the investigation of the same to CBCID police or District Crime Branch Police or CBI or any other investigating agency to investigate the case in the right angle and file charge sheet



afresh.

For Petitioner : Mr.S.Titus
For R1 to R4 : Mr.S.Chandrasekar
Additional Public Prosecutor
For R6 : No Appearance

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ORDER

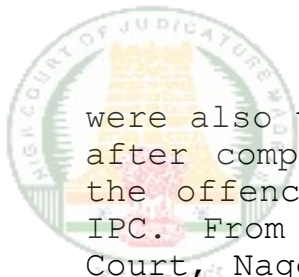
Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State.

2.The writ petition has been filed for transfer of investigation alleging that the respondent police has not properly investigated the case of murder of one Rajan, a school teacher. While the prosecution has filed final report against two persons, namely, Balamurugan and Ponmurugan for the murder of Rajan, the petitioner herein contends that it was handiwork of one Devadoss, under whom Rajan was employed as a driver. Since there was previous enmity between Rajan and Devadoss, regarding piling up of river sand in front of the house, the said Devadoss has engaged his driver Rajan, who in turn has taken his office friend Balamurugan to kill Rajan and thrown him in the Thamirabarani river water. The body was recovered after three days of the occurrence.

3.The specific case of the petitioner is that right from registration of the First Information Report and investigation, including the post-mortem report, everything was concocted and the respondent police has not properly investigated showing a photograph of the deceased person.

4.The learned counsel for the petitioner would submit that there is injury near neck and blood stains found on the body, but the post-mortem report does not reflect the said injury. Further, the learned counsel would go to the extent of stating that the petitioner has sent the severed head of the deceased person to the police station, which was shown to him, whereas, the post-mortem report does not reflect the same.

5.On perusing the statements of the witnesses recorded by the respondent police and the final report as well as the counter filed by the first respondent, this Court finds that based on the VAO information, the dead body of Rajan was recovered from the river water and thereafter, sent for post-mortem. Investigation initially disclosed the identity of the victim and thereafter, the two accused persons were arrested from the materials collected from the witnesses. The accused persons have given their confession statement as regards the manner in which they committed the murder and they



were also taken to the scene of occurrence to re-enact the crime and after completion of investigation, final report has been filed for the offences under Sections 34, 302, 392 r/w 397, 201 and 404 of IPC. From the record, this Court finds that after the Sessions Court, Nagercoil has taken the case on record in S.C.No.92 of 2015, the present writ petition has been filed for transfer of investigation. Pending writ petition, this Court on 29.10.2018, has stayed further proceedings. Hence, the trial could not be proceeded further. This Court, from the materials relied by the prosecution and the averments made in the affidavit finds that the petitioner herein has stated several facts which are not backed by any evidence or documents.

6.The learned counsel for the petitioner would submit that there are eye-witnesses for the occurrence and improper investigation of the respondent police may lead to acquittal of the accused persons and unfortunately, the petitioner has neither referred the so-called eye-witnesses nor has come out with the specific material for the investigating agency to make further investigation in this case.

7.In the said circumstances, this Court is of the view that after a lapse of six years from the date of occurrence and after final report being filed in the year 2015 and trial under progress, change of investigation will be a futile exercise. If the petitioner herein has no specific material which warrants further investigation, Section 173(8) of Cr.P.C., always provides for the investigation agency to conduct further investigation.

8.Hence, the writ petition stands disposed of. It is open to the petitioner herein to provide materials to the investigating agency, if any, worth for further investigation and if such materials are produced, either the Sessions Judge before whom the matter is pending or the investigation agency, may take appropriate action. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

sj i



To

1.The Principal District and Sessions Judge,
Kanyakumari District at Nagercoil.

2.The Inspector of Police,
Marthandam Police,
Vilavankode Taluk,
Kanyakumari District.

3.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

4.The Director General of Police,
Office of Director General,
Mylapore, Chennai.

5.The Secretary to Government
Home Department,
Government of Tamil Nadu,
Secretariat, Fort St, George,
Chennai.

+1 CC to M/s.S.TITUS, Advocate (SR-11224[F] dated 12/03/2020)

W.P. (MD)No.8784 of 2016
10.03.2020

JMN(23.03.2020) 4P : 7C