



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.12.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.OP(MD)No.16209 of 2017

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K.Arun

: Petitioner

Vs.

1.The State of Tamilnadu
represented by the
Inspector of Police,
Sholavandan Police Station,
Madurai District.
(Crime No.159 of 2017)

2.Mrs.Kasthoori

3.The Superintendent of Police,
Madurai Rural,
Madurai District Police Office,
Alagarkoil Road, Madurai.

: Respondents

Prayer: Criminal Original Petition filed under section 482 of the Criminal Procedure Code, directing the 3rd respondent to transfer the investigation of the case in Crime No.159 of 2017 from the file of the 1st respondent to any other competent investigating agency at the supervision of higher officials and also direct to conduct fair investigation considering petitioner's representation and pass such other or further orders.

For Petitioner : Mr.R.Narayanan

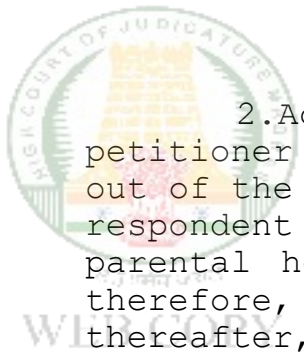
For R1 and R3 : Mr.K.Karmegam
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.I.Suthakaran

O R D E R

(Thro' VC)

This Criminal Original Petition is filed seeking for a direction to direct the 3rd respondent to transfer the investigation of the case in Crime No.159 of 2017 from the file of the 1st respondent to any other competent investigating agency at the supervision of higher officials and also direct to conduct fair investigation considering petitioner's representation and pass further orders.

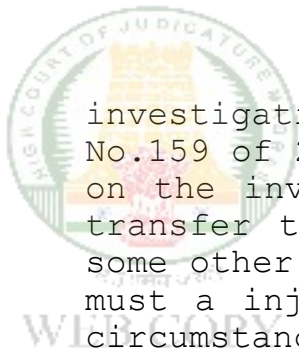


2. According to the prosecution, the marriage between the petitioner and the 2nd respondent was solemnized on 01.12.2013 and out of the wedlock, one female child was born and thereafter, the 2nd respondent compelled the petitioner to lead marital life in her parental home, but the petitioner refused to accept the same and therefore, she lodged a complaint against the petitioner and thereafter, both were living together at the intervention of the elders. While so, on 15.04.2017, the 2nd respondent left the matrimonial home and when the petitioner gone Thiruvadagam to get back his wife, the accused persons have attacked him with lethal weapons and caused multiple injuries to him and also made life threat to him with dire consequences.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The main contention raised on the side of the petitioner is that in the alleged occurrence, his bike, cell phone and gold chain were unauthorisedly detained by the 2nd respondent and her relatives and in the alleged incident, the petitioner was seriously injured and hence, he was admitted to Sholavandan hospital and later, he was referred to Madurai Rajaji hospital, where he took treatment as in-patient for quite sometime and the Sub Inspector of Police attached to the 1st respondent came to the hospital and taken notes from the petitioner and he had stated that the actual happenings and also requested to get back the bike, cell phones and his chain, which were forcibly taken by the 2nd respondent's parents and brother. But the 1st respondent, without disclosing those statements, simply registered counter FIR against the 2nd respondent and her parents and brothers and after treatment, he came to know about the same and therefore, he submitted a representation to the 1st respondent requesting to include his statement regarding the forcible removal of his bike, cell phone and gold chain by the opposite parties. But the 1st respondent initially assuring the same, later neglected and supported the opposite parties with local influence and he made a representation to the 3rd respondent requesting to take necessary action on the 1st respondent and also do necessary justice to get back the bike, cell phone and chain, but all his efforts are ended in vail and still the 1st respondent is supporting the opposite parties with local influential persons and therefore, he could not be able to secure proper justice. It is the further contention of the petitioner that the 1st respondent Investigating Authority did not recover the bike, cell phone and gold chain even after the petitioners' representation to the higher officials and hence, there was no fair investigation on the part of the 1st respondent and hence, he prays to transfer the investigation to any other authority under the supervision of the 3rd respondent.

5. On the side of the 2nd respondent/accused, it is argued that there is no material available to establish the allegations levelled against the 1st respondent regarding biased and unfair



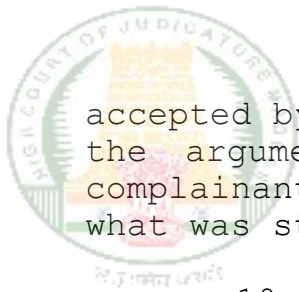
investigation taken by him in connection with the case in Crime No.159 of 2017 and the present petition is nothing, but for dragging on the investigation process and a party simple cannot be seek to transfer the investigation from a jurisdictional police station to some other station without make out a strong apprehension that there must a injustice will be happen. But in the present case, no such circumstances arose and the 2nd respondent is also one among a victim in connection with a counter case in Crime No.158 of 2017 pending on the file of the very same Investigation Officer and if there is reasonable apprehension on the part of a party to a case, that justice may not be done, he may seek for transferring the investigation. But in this case, there is no apprehension on the part of the petitioner and hence, the investigation cannot be transferred and prays that the criminal original petition may be dismissed.

6.On the side of the 1st respondent, it is argued that already in this case, investigation was completed and charge sheet was also filed and and the petitioner failed to state that at the time of occurrence his bike, cell phone and gold chain were unauthorisedly retained by the 2nd respondent and his brothers and the petitioner cannot be given the representation immediately and further he recovered the copy of the FIR and now the representation is only a after thought of the petitioner and there was no bias on the part of the 1st respondent and hence, it is not necessary to take up the investigation and prays that the criminal original petition may be dismissed.

7.In this case, the petitioner and the 2nd respondent are husband and wife. The 2nd respondent also gave the complaint against this petitioner and a criminal case was registered as against this petitioner and this petitioner gave complaint against the 2nd respondent and her relatives. The petitioner stated that the Sub Inspector of Police, who recorded his statement failed to record the statement what he was stated, but he recorded the statement according to his whims and fancies and hence, it is not possible for him to receive his bike, cell phone and gold chain, which were unauthorisedly retained by the 2nd respondent and her relatives and hence, there was no fair investigation on the part of the 1st respondent and prays to seek transfer of the investigation from the 1st respondent to any other investigating authority.

8.In this case, the alleged occurrence took place on 15.04.2017. But the petitioner gave representation to the respondents 1 and 3 to the effect that his bike, cell phone and gold chain were unauthorisedly retained by the 2nd respondent and her relatives on 20.05.2017 and 26.05.2017 respectively.

9.On perusal of the First Information Report, in which the petitioner gave the complaint, it is stated that contents of the FIR were read over to the petitioner/de-facto complainant and it was



accepted by him and a copy of the FIR was also served on him. Hence, the argument put forth on the side of the petitioner/de-facto complainant that the 1st respondent failed to record the statement what was stated by him is not at all acceptable.

10. It is to be noted that the petitioner received the copy of the FIR only after knowing the contents found in the FIR. The petitioner failed to state the above allegation at the time of recording 161(3) statement. Hence, it is held that there was no bias on the 1st respondent's investigation. Further, in this case, after completion of the investigation, final report was also filed before the Judicial Magistrate, Vadipatti and it was taken on file as CC No.95 of 2020. Under these circumstances, this court is of the view that the matter became infructuous. Hence, it is not necessary to keep this petition pending. The remedy open to the petitioner for recovery of his bike, cell phone and gold chain from the 2nd respondent is by way of filing separate proceedings.

11. In view of that, this criminal original petition is dismissed.

Sd/-

Assistant Registrar(CRL SIDE)

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Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Sholavandam Police Station,
Madurai District.

2.The Superintendent of Police,
Madurai Rural,
Madurai District Police Office,
Alagarkoil Road, Madurai.

3.The Judicial Magistrate,
Vadipatti, Madurai District.

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

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23.12.2020

KG(CO)

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