

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Cr1.OP.No.892 of 2021

V.Mahalingam

...Petitioner

.Vs.

1.State rep.by
The Superintendent of Police,
Dharmapuri District.

2.The Inspector of Police,
Mathikonpalayam Police Station,
Dharmapuri District.

..Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to issue direction to the 1st respondent to transfer of investigation in Crime No.859 of 2019, on the file of the 2nd respondent police to the some other competent agency.

For Petitioner : Mr.M.K.Bhoopathy Rajan

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking for transfer of investigation in Crime No.859/2019, pending on the file of the 2nd respondent.

2.The case of the petitioner is that on 06.05.2020, when he had left his home to his tailoring shop, his son who is the deceased in this case was taken by the accused persons and he was forced to climb a coconut tree and he fell down and sustained grievous injuries. He was immediately rushed to KMC Hospital and he ultimately died on 10.05.2020. The further case

of the petitioner is that the accused persons pressurised him to immediately cremate the body of the son taking advantage of the pandemic situation. The petitioner thereafter gave a complaint on 20.05.2020 to the 1st respondent. This ultimately reached the file of the 2nd respondent and an FIR came to be registered in Crime No.859 of 2020 for an offence under Section 174 of Cr.P.C. Since the petitioner was not satisfied with the investigation and there was no progress in the investigation, the present petition has been filed seeking for transfer of investigation.

3.The 2nd respondent has filed a status report in this case. The relevant portions in the status report are extracted hereunder:

"3. I submit that during the course of investigation, I have visited the spot and buried place and conducted inquest in the presence of Panchayatars and witnesses without the deceased body. I have also prepared observation mahazar drew rough sketch, in the presence of witnesses namely Tr.Mohan and Tr.Velu, and also examined the following witnesses and recorded their statements:

- (i)Tr.Mahalingam- Defacto complainant/Petitioner herein
- ii) Tr.Sivasankar - Uncle of the deceased
- iii) Tr.Vajravel - Grandfather of the deceased
- iv) Tr.Pushpalingam & (v) Tr.Saravanan-Uncles of the deceased
- Vii) Selvi.Aarthi - Sister of the deceased
- Viii)Tr.Muthulingam - Neighbour and eye witness
- ix)Tr.Munusamy & (x) Tr.Selvam-Hear say witnesses
- x)Tr.Lakshmanan - Land owner of the s.o.c

Based on the witnesses 1 to 10, except eye witness i.e. 8th witness Muthulingam, on one was present in the s.o.c. at the time of occurrence. On the basis of the statement of eye witness as well the material evidence i.e. A.R.copy issued by the Govt. Medical College Hospital, Dharmapuri, it is very clear that the deceased was plugging coconut unfortunately, he was fell down from the tree and got severe injuries. Even after given proper treatment, both Govt. Hospital and private Hospital, he was died on the way of hospital to Bangalore. Hence, the body of the deceased was brought to the complainant's house and after discussing all the family members themselves, without lodging complaint about the reason for death of the deceased at the

time of burial by setting fire. But, after the delay of 37 days, the de fact complainant intentionally preferring complaint through registered post to the respondent with false allegations against the accused persons. It is also pertinent to note that the 4th witness Muthulingam, who brought the deceased to the hospital, also speaks about that the deceased was fell down from the coconut tree by himself [self fall].

4.I submit that based on the witnesses statement and material evidences, on 9.7.2020, I have altered the section of this case into "U/s.176 IPC" against the petitioner and others i.e. Mahalingam & others. The investigation of this case is pending for filing final report before the competent court in accordance with law".

4. Heard Mr.M.K.Bhoophi Rajan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondents.

5.The status report filed by the 2nd respondent reads as if statements have been recorded from 10 witnesses. Unfortunately, the 2nd respondent has proceeded to make the petitioner as one of the accused for an offence "under Section 176 of IPC" on the ground that there was an omission to give the complaint immediately after the incident took place. This was pointed out by the learned counsel for the petitioner and it was submitted that the respondent police instead of taking action against the accused persons has proceeded to add the petitioner as an accused and that itself shows that the respondent Police is not serious about the investigation conducted in the present case.

6.In the present case after the death of the son of the petitioner, he has already been cremated. Therefore, no post-mortem report is available in this case. It is seen that the petitioner has made attempts to lodge a complaint at the earliest point of time however, the FIR itself got registered only on 08.07.2020. The Investigation Officer instead of effectively proceeding further with the investigation, unnecessarily made the petitioner as an accused for an alleged offence under Section 176 IPC. This attitude of the 2nd respondent has now resulted in the petitioner losing confidence against the 2nd respondent.

7. In view of the above, this Court is inclined to transfer the investigation in this case to a higher level Officer. The 2nd respondent is directed to immediately hand over the entire case diary to the DSP, Dharmapuri Town, within a period of two weeks from the date of receipt of a copy of this

order. The DSP Dharmapuri, immediately on receipt of the case diary shall continue with the investigation effectively and file a final report as expeditiously as possible.

8.This criminal original petition is disposed of with the above directions.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The District Superintendent of Police,
Dharmapuri Town, Dharmapuri.
- 2.The Superintendent of Police,
Dharmapuri District.
- 3.The Inspector of Police,
Mathikonpalayam Police Station,
Dharmapuri District.
- 4.The Public Prosecutor,
High Court, Madras.

सत्यमेव जयते Cr1.OP.No.892 of 2021

PI (CO)
KM(20/04/2021)

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