



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.6269 of 2021 and
Crl.M.P.No.4136 of 2021

P.Vijayam

... Petitioner

Versus

1.The State,
Rep. by the Inspector of Police,
Race Course Police Station,
Coimbatore.

2.K.Priya

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to transfer the investigation of the case in Crime No.802 of 2020 from the file of the 1st respondent Police to some other investigation agency.

For Petitioner : Mr.V.Parthiban for
Mr.S.B.Viswanathan

For R1 : Mr.E.Raj Thilak,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to transfer the First Information Report in Crime No.802 of 2020 from the file of the 1st respondent Police to some other investigation agency.

2.The petitioner is the mother of one Karthikeyan, who committed suicide by hanging. A case in Crime No.802 of 2020 was registered by the 1st respondent Police on the complaint given by the 2nd respondent, the wife of the deceased Karthikeyan.

3.The apprehension of the petitioner is that her son Karthikeyan (deceased) and the 2nd respondent had love marriage against the wish of both family members. Out of their wedlock, they had two children viz., Riya and Kritwik. After the marriage, her son and the 2nd respondent along with their children living separately at flat No.S-7, Vignesh Town Apartment, Jaisimhapuram, P.N.Palayam, Coimbatore for couple



of years. The petitioner, the mother of the deceased is residing at Uppilipalayam, Coimbatore. On 29.07.2020, at about 05.30 a.m., the 2nd respondent called the brother of the petitioner and informed that the deceased Karthikeyan was not well. Immediately, the petitioner and his brother rushed to the house of the deceased at about 06.15 a.m., at that time, the 2nd respondent brought the ambulance and took her son to CMD Hospital. The petitioner followed the ambulance and reached the hospital at about 08.15 a.m., where the Doctor examined the deceased and declared dead.

4.The learned counsel for the petitioner further submitted that the 2nd respondent was money minded and she tortured her son. At one point of time, the petitioner's husband, her mother-in-law and sister-in-law gave their ancestral property measuring to the extent of 1193 sq.ft together with the old house thereon by way of a sale deed to the deceased to enable him to conduct a new house by availing home loan from Sundaram Home Finance Limited. The deceased on couple of times informed the petitioner over phone that the wife is money minded person and she would do anything for money. Further, the petitioner came to know through her relatives that the matrimonial life was not well between the petitioner and his wife. One week prior to the mysterious death of the petitioner's son, the deceased called the petitioner over phone and informed that there was serious fight between him and his wife. The petitioner could not believe that her son had committed suicide as he was a brave person. Immediately after the death, the petitioner though had some doubt on the 2nd respondent, did not lodge a complaint considering the future of her grand children. Subsequently the attitude and behaviour of the 2nd respondent grossly changed and suspicion aroused. Thereafter, the 2nd respondent lodged a complaint to the 1st respondent Police. The petitioner had requested the copy of First Information Report from the 2nd respondent which was not given. The 2nd respondent was preventing petitioner from new home constructed by her deceased son in their ancestral land. On the date of the death, the petitioner's brother had opportunity to look into the mobile phone of the deceased and saw there have been several messages exchanged between the deceased and her wife (2nd respondent). The screenshot of the messages have been taken and filed along with the petition.

5.In the complaint, the 2nd respondent alleged that at about 10.00 p.m., on the previous night of the suicide, she and her children had gone to bedroom and started sleeping. Only at 04.30 a.m., when she woke up for nature call, found ceiling fan in Karthikeyan's bedroom not on. On suspecting the same, she knocked his bedroom, but no response. With the help of her neighbour, broke open his bedroom and found him hanging on the 'U' clamp on the ceiling. Thereafter, she admitted her husband in CMC Hospital at about 06.15 a.m., and the Doctor examined the deceased and declared dead. From the



screenshot of the messages, it is seen that from 01.24 a.m., there have been lot of exchange of messages. The petitioner with great difficulty obtained the First Information Report in Crime No.802 of 2020 by filing RTI Application dated 16.12.2020. The Executive Magistrate (Tahsildar), Coimbatore North Taluk, Coimbatore conducted inquest and failed to furnish report. Further, the copy of the First Information Report and post mortem certificate on the mysterious death of her son was not made available. The petitioner filed Copy Application before the learned Judicial Magistrate No.III, Coimbatore seeking copy of the documents and the same was returned with the endorsement that the 1st respondent not sent the First Information Report and other documents in Crime No.802 of 2020 to the lower Court till 10.03.2021. The explanation given by the 2nd respondent about the death of the petitioner's son is false. When the petitioner applied for First Information Report through RTI, the 2nd respondent objected the same. The reason given for suicide of the petitioner's son by the 2nd respondent that since the petitioner's son was in fear of losing job, had committed suicide is not acceptable. Further, the 1st respondent Police is conducting the investigation in favour of the 2nd respondent and failed to entertain the complaint of the petitioner to conduct investigation in that angle. Since the petitioner being the mother of the deceased Karthikeyan, she is the legal heir and victim in this case.

6.The learned Government Advocate (Crl. Side) appearing on behalf of the 1st respondent Police filed counter and submitted that on investigation, the contentions of the petitioner are not sustainable. The suspicion raised by the petitioner on her son's death is not valid for the following reasons.

"5.I submit that the investigation so far made does not make out a case of money minded of the 2nd respondent and her alleged torture to the deceased. The averment that the petitioner, her husband and sister gave their ancestral land with the old house to Karthikeyan for sale to construct a new house thereon is not correct. In fact the deceased and his wife Priya purchased the said land from one Rangammal and her daughter Jeyamani for Rupees 10 lakhs on availing loan for Rs.8 lakhs from City Bank, Coimbatore City and paying Rupees 2 Lakhs by issuing Cheque No.831873, dated 09.01.2012 of Axis Bank, Avinashi Road Branch.

6.I submit that the averment of the petitioner in paragraph No.6 of her affidavit that her son told her over phone that Priya was money minded and that she would do anything for money cannot be true. The investigation so far made does not support their such averment.



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7.I submit that Priya her sister Subha, Subha's husband Santhosh Babu, and Priya's brother Sathish Kanna Raja, have categorically stated in their statements that Karthikeyan was suffering from mental tensions, for the reasons 1.he was afraid that he would be dismiss from service in his company due to COVID-19 and if so how could be settle the bank loan obtained for the construction the house 2.he was addict to liquor and smoking 3.he was suffering from Neurology problem on his right leg and he was taking medicines. Had the petitioner Vijayam really developed a suspicion over the death of her son she would have definitely lodged a complaint or representation in this regard before me or my superior officers which she has not made so far. Without making any such representation the petitioner has now come forward with the said allegation before this Court for the first time. Her averment that she did not make such complaint to any authorities considering the future of her grandchildren cannot be accepted, because, her grandchildren have been taken care of and they are being brought up by the second respondent Priya.

8.I submit that the averment of the petitioner in para No.8 of the affidavit that she asked for a copy of the FIR from the 2nd respondent and that Priya refused to give a copy to her cannot be true and is not relevant also. Infact the copy of the death certificate of Karthikeyan was sent to the petitioner on 21.08.2020 by the Priya's brother Santhosh Kanna Raja by whatsapp and legal heir certificate issued by the Tahsildar sent to the petitioner Vijayam on 16.09.2020 by Priya's brother Santhosh Kanna Raja by whatsapp.

9.I submit that the averment of the petitioner in para No.9 of her affidavit that there were whatsapp messages exchanged between her son and the second respondent during the previous night of Karthikeyan's death is not true and the petitioner has not substantiated her averment in this regard.

10.I submit that averments of the petitioner in para No.10 that there were calls and messages between Karthikeyan and Priya and previous night of the crucial day and that Priya has suppressed those communication in the FIR is not correct.

11.I submit that the averment of the petitioner in para No.11 that there is no consistency between the version of Priya to the petitioner and the FIR is not correct. The investigation disclosed that a copy of the post-mortem certificate was sent to



Venkatesh, younger brother of the petitioner from Sathish Kanna Raja, elder brother of Priya. Any no of copies of the FIR could have been easily downloaded from the concerned Government website."

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7.Hence, the learned Government Advocate prayed for dismissal of the above petition.

8.This Court considered the rival submissions and perused the materials available on record.

9.The investigation has been carried out on the right path sofar by the 1st respondent Police. The contention of the petitioner seems to be misplaced. The petitioner on the wrong premise had taken the Whatsapp messages as true. In the screenshot of the Whatsapp messages, nothing can be inferred against the 2nd respondent. The post mortem certificate clearly leads to inference that the petitioner's son had committed suicide by hanging and the injuries confirmed the same. There seems to be some confusion with the Investigating officer with regard to the investigation being conducted under Sections 174 and 176 Cr.P.C. This Court in the case of "Manohari Versus the District Superintendent of Police, Sivagangai District, Sivagangai in CrI.O.P(MD).No.15515 of 2017, dated 17.09.2018," had discussed the same and held that the enquiry conducted by the Tahsildar or Executive Magistrate would no way curtail or stop or interfere the investigating power of the Police and the Police to conduct the investigation independently. The enquiry conducting by the District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate is only an additional material in a case registered under Section 174 and 176 of Cr.P.C. The investigating power of the Police has never been curtailed or taken away. In cases of last nature, immediately collecting the evidence is sine quo non. The delay in conducting the investigation would only lead to vital evidence being lost or camouflaged.

10.Thus, the Investigating Officers in the cases registered under Section 174 and 176 of Cr.P.C., apart from sending the copy of the complaint and the First Information Report to the Executive Magistrate or any other Magistrate, the copy of the same and other documents and materials collected should be sent forthwith to the jurisdictional Magistrate as per Section 157 Cr.P.C. Hence, the Investigation Officer to follow this procedure without any breach. If any violation disciplinary action to be taken against the concerned officers.

11.It is would be beneficial to remind the Investigating Officer to follow the guidelines issued by this Court in the case of Manohari (Cited Supra):-

"24. In view of the above, this Court proceeds to answer the issue that was raised in this case as



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follows:

a) The Police on receipt of an information about the suspicious death shall register an F.I.R under Section 174 of Criminal Procedure Code and thereafter he can proceed to the scene of occurrence and prepare an Inquest Report.

b) When a Police Officer receives an information to the effect that the deceased is lying in a serious condition, he can rush to the scene of occurrence, in order to see if he can save the victim and if in case the victim does not survive he can proceed to prepare the Inquest Report in accordance with Section 174(1) of Cr.P.C, and thereafter register an F.I.R under Section 174 of Cr.P.C. The Inquest Report has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and state in what manner, or by what weapon or instrument [if any], such marks appear to have been inflicted.

c) The Police Officer shall also prepare a Rough Sketch of the place of occurrence.

d) The Inquest Report and the Rough Sketch shall be prepared in the presence of two or more respectable inhabitants of the neighborhood.

e) The object of the Inquest Proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. The Inquest Report need not contain details such as how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted and these facts are not within the scope of Inquest Proceedings and they fall within the scope of the investigation to be conducted by the Police.

f) Immediately after the preparation of the Inquest Report in accordance with Section 174(1) of Criminal Procedure Code, the Police shall submit the same to the Executive Magistrate under Section 174 (2) in order to enable the Executive Magistrate to hold an independent inquest as contemplated under Section 174(4) of Criminal Procedure Code.

g) The Executive Magistrate on completion of the inquest shall submit a report to the Police and such report shall form part of the investigation conducted by the Police and the Police shall collect details from such report and conduct the investigation accordingly.

h) The power of the Police to investigate is in no way stopped or curtailed or interfered with by the inquest held by the Executive Magistrate and the



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freedom of the Police to proceed with the investigation will be left untouched.

i)The Police on the conclusion of the investigation shall file a Final Report under Section 173(2) of Cr.P.C only before the jurisdictional Magistrate and not before the Executive Magistrate. This will apply, in both cases, whether the Final Report is a positive report or is a Closure Report.

j)If in case the Police proceeds to file a Closure Report, the victim shall be entitled to be served with a R.C.S notice in order to enable him to file a protest Petition before the concerned Magistrate.

k)On such protest Petition being filed, the concerned Judicial Magistrate shall act in accordance with law laid down by the Hon'ble Supreme Court in Vinay Tyagi .Vs. Irshad Ali, reported in [2013 (5) SCC 762]."

12.On the facts and circumstances of the above case, the apprehension of the petitioner seems to be misplaced. This Court is satisfied with the investigation sofar conducted by the 1st respondent Police. The 1st respondent Police is to continue with the investigation and file a final report in this case forthwith. Whatever may be the outcome after completion of investigation, since the petitioner being the legal heir of the deceased Karthikeyan and a victim in this case, she is entitled for the copy of the final report and other documents as per Section 157 Cr.P.C. The final report copy to be furnished to the petitioner, thereafter, it is for the petitioner to take any further action, if she so desires.

13.With the above directions, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Race Course Police Station,Coimbatore.

2.The Public Prosecutor,High Court, Madras.

+1cc to Mr.S.B.Viswanathan, Advocate SR.No. 32711

CRL.O.P.No.6269 of 2021

PA (CO)

<https://hcservices.courts.gov.in/hcservices/>
A.SR(02.08.2021)