



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.16801 of 2021

and

CrI.M.P.Nos.9177 & 9178 of 2021

V.Vijayaran

... Petitioner

Versus

1.State

Rep. by The Inspector of Police,
Thandrampet Police Station,
Tiruvannamalai District.
(Crime No.450 of 2019)

2.V.Anitha

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in PRC.No.9 of 2021 on the file of the learned Judicial Magistrate, Thandarampattu and quash the same in the interest of justice.

For Petitioner : Mr.Manuraj

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor,

O R D E R

This Criminal Original Petition is filed to call for the records in PRC.No.9 of 2021 on the file of the learned Judicial Magistrate, Thandarampattu and quash the same in the interest of Justice.

2.The petitioner is the A2 in PRC.No.9 of 2021 facing trial for the offence under Sections 147, 364, 302, 201 and 34 IPC has filed this quash petition.

3.The contention of the petitioner is that the petitioner has been arrayed as an accused in this case for the only reason that he is the brother of A1. The bike of A1 was found missing and later with the help of GPRS, the bike was found near the field of the accused. The petitioner's bike was recovered from the field and he was taken to the rice mill of A1, later he died there, he was transported in a lorry with the help of the workers in the rice mill. Initially the case was registered under Section 174 Cr.P.C. on the complaint of the wife of the deceased. Thereafter, the case has been altered on 26.11.2019, the only allegation against the



petitioner is that on 25.11.2019, at about 09.30 a.m., the petitioner had been along with other accused and at that time, he had gone to the field of the deceased in his Hero Honda Splendor bike along with another accused and there he is said to have called the deceased as "டேய் பிரகாஷ் இங்க வாடா" and thereafter, the said deceased was taken by A1 and A3 to the rice mill, other than that there is no overtact against the petitioner.

4.He further submitted that from the post mortem, the Government Doctor had given the final opinion state that the reason for the death was due to Coronary Artery Disease with evidence of soft tissue injuries. It seems that the deceased was already a patient, due to other reason, the petitioner cannot be charged for the offence under Section 302 IPC. He further submitted that the petitioner was not arrested in this case. He had filed an Anticipatory Bail before this Court and this Court by an order dated 20.01.2021 in Crl.O.P.No.16672 of 2020 had granted Anticipatory Bail. Thereafter he had appeared before the respondent police, as per the condition and the respondent police was not sure, whether the petitioner to be made as an accused or a witness for that reason only, 161(3) Cr.P.C. statements have been recorded on 25.02.2021. In view of the above, the petitioner submits that the entire investigation is vitiated and prayed for quashing of the case.

5.The learned Additional Public Prosecutor submits that in this case A1 and A2 are brothers, the other accused are either employees of A1 and A2, rice mill and the others are villagers. In this case, there are totally 12 accused. All the 12 accused had joined together, actively participated in the commission of the offence. The deceased Prakash was suspected to have stolen the bike of A1 with the help of GPRS. The bike was found near the field of A1. A1 and A2 and other accused gone only to the field, thereafter they took away deceased to the rice mill at about 09.30 a.m., and later he was beaten black and blue by the accused.

6.A6 to A12 had taken the body of the accused in a lorry bearing Registration No.TN 25 L 2197 and the body was rolled down near the field of the deceased. On registration of the FIR, investigation conducted, the accused were arrested, gave confession, weapons seized, Observation Mahazar and rough sketch prepared in the presence of the independent witnesses. Inquest conducted and body was sent for post mortem. During post mortem injuries found in the body of the deceased noted. The medical report and the ocular statement confirm that it is a murder.

7.It is found that the death is an un-natural death. Viscera has been sent to Forensic study, after receiving the report examining the witnesses, listing LW1 to LW21 and documents, final report filed. The presence of the petitioner right from taking the deceased Prakash to the rice mill,



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during the assault of Prakash in the rice mill and later when the body of the Prakash thrown away, in all these places. The witnesses clearly confirm the presence of the petitioner. The petitioner's contention is contrary to the statements and materials produced and opposed the quash petition.

8. Considering the submissions and on perusal of the materials, it is seen that there are eye witnesses for forcibly taking away Prakash from his field by the accused including the petitioner. Thereafter, the said Prakash was taken to the rice mill of A1 and A2 and he was beaten by the employees i.e. A3 to A6. A7 to A12 are the local villagers present in the rice mill, joined the assault. The Prakash was beaten badly and assaulted with the deadly weapons viz., Iron rods, bamboo sticks etc., and he was beaten to death.

9. From the post mortem certificate, it is seen that there are Ante mortem injuries are found and the same reads as follows:

"1. Irregular dark red abrasions: a) 2x1 cm on the outer aspect of right eye; b) 1/7x1 cm on the outer aspect of upper 1/3rd of left arm; c) 2.6x1 cm on the outer aspect of upper 1/3rd of left thigh; d) 3x2 cm on the front of upper 1/3rd of left leg; e) 2x1 cm on the front of upper 1/3rd of right leg; f) 3.2x1.5 cm on the outer aspect of lower 1/3rd of left side of chest.

2. Dark red contusion 6x4x0.5 cm on the outer aspect of upper 1/3rd of right side of back.

3. Dark red contusion 3x2x0.4 cm on the outer aspect of lower 1/3rd of right side of back.

4. Tram line contusion 8x1x0.3 cm with 0.6 cm central pallor on the outer aspect of upper ½ of right side of chest."

10. The injuries confirm the deceased was badly beaten and the injuries are sufficient to cause death, though, on the first reading of the final opinion it might appear that the deceased had some Artillery disease. From the Anti Mortem Injuries, it is seen that the Tram line contusion 8x1x0.3 cm with 0.6 cm central pallor on the outer aspect of upper ½ of right side of chest. This might be the reason for the death, which reduced the blood flow to the vessels. But one thing is certain that the deceased was beaten to death.

11. In view of the same, this Court is not inclined to entertain this Criminal Original Petition and this petition deserves to be dismissed. Further, this Court directs the respondent police to get a second opinion by producing the post mortem report, final death report, the inquest, to a Forensic Professor, Department of Forensic, from any Government College and Hospital, to get a second opinion, to remove the doubt created, which would be beneficial for the trial Court, while deciding the case. The Superintendent of Police, Tiruvannamalai is directed to review the charge sheet



to find out how the statement of A2 recorded under Section 161 (3) Cr.P.C. on 25.02.2021. Moreso, placing it along with the final report, and if found laxity on the part of the Investigating Officer, the Superintendent of Police, Tiruvannamalai is directed to take appropriate action against him. The second opinion to be submitted before the Sessions Court, within a period of two weeks, from the date of receipt of a copy of this order, which shall form part of the charge sheet documents, a copy of the documents to be furnished to the accused, well before examination of post mortem Doctor.

12. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Thandrampettu.
2. The Inspector of Police,
Thandrampet Police Station,
Tiruvannamalai District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. Manuraj, Advocate, S.R.No.48276

CRL.O.P.No.16801 of 2021

RP(CO)
GN(21/10/2021)