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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.23308 of 2021

Benazir

...Petitioner

Versus

- 1.The Commissioner of Police,
Tambaram,
Chengalpattu District.
- 2.The Inspector General of Police,
South Zone,
New Natham Road,
Madurai - 625 014.
- 3.The Superintendent of Police,
Surveyor Colony,
Madurai - 625 007.
- 4.The Inspector of Police,
W-32, All Women Police Station,
Madipakkam,
Chennai - 600 091.

5.Sekar

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C. to transfer the investigation of the case in Crime No.5 of 2021 from the file of the fourth respondent police to some other competent police officer subordinate to the Commissioner of Police, Vepery, Chennai based on the petitioner's representation dated 24.09.2021.

For Petitioner : Mr.R.Sankarasubbu

For R1 to R4 : Mr.E.Raj Thilak
Additional Public Prosecutor.



O R D E R

This Criminal Original Petition is filed to transfer the investigation of the case in Crime No.5 of 2021 from the file of the fourth respondent police to some other competent police officer subordinate to the Commissioner of Police, Vepery, Chennai based on the petitioner's representation dated 24.09.2021.

2.The grievance of the petitioner is that the petitioner got married with one Mohammed Javeed Haneef on 29.04.2018, at Buharis Blue Lagoon Marriage Hall, Chennai as per the Islamic rites and customs. Out of their marriage, a girl child born on 19.03.2020. During her stay in the matrimonial home, the petitioner was subjected to cruelty and harassment, for demanding more dowry. Thereafter, she was sent to her paternal house. At the instigation of her in-laws, the petitioner's husband sent a Talaq Notice dated 06.06.2020. The petitioner along with her child and relatives returned to her matrimonial house. There she was not allowed to enter the matrimonial house and a quarrel was picked up. Due to the same, a police emergency call was made by the neighbours. Accordingly, a police patrol came to the spot and they advised every one to come and report to the fourth respondent. Thereafter the complaint was raised and a case in Crime No.5 of 2021 came to be registered, for the offence under Sections 498(A) and 406 IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

3.He further submits that the petitioner had furnished the Passport particulars of her husband and also informed the respondent police that he is likely to be flee away from the country, since he is a Marine Engineer. The respondent police is taking steps to issue LOC and the petitioner's husband is not in India. The petitioner's husband is a Marine Engineer by profession and he is sailing to various countries and it will be take months for him to touch the shore. The fifth respondent is interfering with the investigation, since he is known to the petitioner's in-laws. In fact, the petitioner's father was called and threatened by the fifth respondent.

4.The learned counsel appearing for the petitioner further submits that the petitioner's apprehension is that the fifth respondent is influencing the higher police officials of the fourth respondent, if the investigation is continued by the fourth respondent, on the instigation of the fifth respondent



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the fourth respondent may close the above case either as "Mistake of Fact" or as "Action dropped". In the meanwhile, the petitioner has filed a maintenance case against her husband in M.C.No.364 of 2021, which is pending before the VII Additional Principal Family Court, Chennai. The petitioner's husband filed a suit in O.S.No.111 of 2020 before the VI Additional Principal Family Court, Chennai, seeking for relief of declaration to validate the Talaq Notice dated 06.06.2020. After the amendment of the Mohammedian Law, the issuance of Single Talaq or Triple Talaq are no more permitted and banned, violating the same three years imprisonment can be imposed. The respondent police seems to be insensitive and no worthwhile investigation is conducted. Earlier the petitioner moved a petition before this Court in Crl.O.P.No.21527 of 2021, to direct the fourth respondent herein to alter the FIR, by including Section 4 of Dowry Prohibition Act, 1961 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 in the said Crime No.5 of 2021, which has been left over at that time, this Court on 22.11.2021 disposed the case by recording the submissions of the learned Government Advocate [Crl. Side] that during investigation, if the offence punishable under Sections Section 4 of Dowry Prohibition Act, 1961 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 is made out, the same shall be included.

5.The learned counsel appearing for the petitioner further submits that subsequent to the registration of the said FIR, the petitioner's husband and her in-laws moved an anticipatory bail petition before the Principal District and Sessions Court, Chengalpattu in Crl.M.P.No.4235 of 2021. The learned Principal District and Sessions Judge, Chengalpattu had granted anticipatory bail to the petitioner's in-laws and had dismissed the anticipatory bail, as regards the petitioner's husband. Then too the respondent police were not arrested the petitioner's husband.

6.The learned Additional Public Prosecutor submits that the respondent police on receipt of the complaint immediately registered the FIR, enquired the witnesses, the petitioner is summoned for enquiry and investigation is in progress. He further submitted that steps have been taken to alter the FIR and included Section 4 of the Dowry Prohibition Act. In the mean while, statements have been recorded. The petitioner's husband was issued with the summons and he failed to appear and necessary steps have been taken to secure the petitioner's husband.



7.The learned counsel appearing for the petitioner submits that the petitioner has got serious apprehension in the manner of investigation conducted. The respondent police should have shown some alacrity in ensuring the petitioner's husband from fleeing the country. The petitioner's husband is a Marine Engineer by profession and the chances of fleeing the country was more.

8.Considering the submissions and on perusal of the materials, this Court finds that it would be appropriate that the fourth respondent for some reason have not taken proper action, ensuring the presence of the petitioner's husband, so that the matrimonial dispute could have been resolved. On the other hand, allowed the petitioner's husband to flee away. Further the representation of the petitioner dated 24.09.2021, not acted upon. In view of the same, this Court is inclined to transfer the investigation from the file of the Inspector of Police, W-32, All Women Police Station, Madipakkam, to the file of Inspector of Police, All Women Police Station, Tambaram, without any delay. The All Women Police, Tambaram to conduct speedy and fair investigation and to complete the investigation without any delay.

9.With the above observation, this Criminal Original Petition stands disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Police,
Tambaram,
Chengalpattu District.
- 2.The Inspector General of Police,
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- 3.The Superintendent of Police,
Surveyor Colony,
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4.The Inspector of Police,
W-32, All Women Police Station,
Madipakkam,
Chennai - 600 091.

5.The Inspector of Police,
All Women Police Station,
Tambaram.

6.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.R.Sankarasubbu, Advocate sr 67674.

CRL.O.P.No.23308 of 2021

KJ(CO)
SP(04/01/2022)