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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2021

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THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 2113 of 2017

And

Crl.M.P.No. 1508 of 2017

N.Ganapthy

... Petitioner

Vs.

1. The Director General of Police
Tamil Nadu.
2. The Superintendent of Police
O/o. Superintendent of Police
Namakkal District.
3. The Inspector General of Police (Crime)
Crime Branch (Criminal Investigation
SIDCO Electronics Complex Department)
Block 3, I Floor,
Chennai - 32.
4. The Inspector of Police
Vennandur Poilce Station
Rasipuram Taluk
Namakkal District.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to direct reinvestigation of the case in Crime No. 329 of 2008 on the file of the 4th respondent to be handed over to the third respondent.

For Petitioner	:	Mr. I.Abrar Md. Abdullah
For Respondents	:	Mr. E.Raj Thilak Additional Public Prosecutor

ORDER

Heard Mr. I. Abrar Md. Abdullah, learned counsel for the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing on behalf of the respondent herein.



2. The present petition has been filed taking advantage of Section 482 of the Code of Criminal Procedure seeking a direction to reinvestigate the allegations in Crime No. 329 of 2008 now on the file of the Inspector of Police, Vennandur Police Station, Rasipuram Taluk, Namakkal District.

3. The brief facts necessitating lodging of the said complaint which further led to filing of FIR in Crime No. 329 of 2008 by the said official / Inspector of Police, Vennadur Police Station was that the father of the present petitioner was the victim of a gunshot wound. Admittedly, the gunshot wound was from a weapon which was in the possession of the accused. Owing to the said incident, FIR in Crime No. 329 of 2008 was registered on 03.09.2008 under Sections 336 and 337 and also under Section 25(1A) of the Arms Act, 1959. It was reasonably presumed that investigation would be conducted on proper lines with respect to the offences which had been committed. Pursuant to the investigation, a final report had been filed, purportedly, after obtaining an opinion from the Assistant Director of Prosecution, Namakkal.

4. In the final report which had been taken cognizance in C.C.No. 76 of 2009 by the learned Judicial Magistrate at Rasipuram, the offences alleged against the accused were only under Sections 336 and 337 of IPC and the offence under Section 25(1A) of the Arms Act, 1959. The Assistant Director of Prosecution, Namakkal, had given an explanation or rather an opinion as to why Section 25(1A) should not be invoked by stating that under Section 3 of the Arms Act, 1959 a person who holds the license, can, under written authority handover the weapon to any third person for repair, or for renewal of license or for use.

5. I am really shocked such a opinion being given in the absence of any such written authority for such purpose produced. A letter had been produced indicating that the weapon had been handed over for safe keeping alone which is not provided under Section 3 of the Act.

6. The license to possess a fire arm is issued to a person, who has responsibility over the possession of the weapon and it is not an object which could be transferred or handed over to any third person at his whims and fancies.

7. The Assistant Director of Prosecution at Namakkal, should have examined the proviso to Section 3 of the Arms Act where it had been stated quite clear that weapon can be handed over only for specified purposes.



8. Casual handing over of the weapon cannot be encouraged and cannot be cited as a reason for handing over the fire arm by the license holder to any third person. I am also deeply concerned by the learned Judicial Magistrate, Namakkal, taking cognizance on the basis of the final report filed. The learned Judicial Magistrate, Namakkal, must realise that he has to act as a check post and peruse the complaint and I take cognizance after examining the contents and the offences which have been indicated in the final report.

9. It is to be noted that the Court take cognizance of the offence and not of the offenders. Therefore, effort should be taken that the final report is not taken cognizance blindly. The Magistrate has every authority to question the Investigating Officer over the contents in the final report. If the learned Judicial Magistrate does not exercise such authority, it would only give leverage to investigating officers to add and subtract accused persons or even add and subtract offences and file a final report, in the manner in which it so pleases the Investigating Officer to file the final report. There is a sacrosanct duty cast upon every Judicial Magistrate to examine the final report and see that it is just, not only in letter but also in spirit.

10. In the instant case, being aggrieved with the fact that the offence under Section 25(1A) of the Arms Act, 1959 had been dropped and the Investigating Officer had stated as a reason that the Assistant Director of Prosecution at Namakkal, had so opined and it is therefore evident that the Investigating Officer had not based the final report on the basis of the investigation done by him, this Court will have to interfere with the said proceedings and with the said investigation.

11. A status report had been filed, and the fourth respondent/Inspector of Police, Vennandur Police Station, had stated the steps taken by the petitioner herein to transfer the investigation. A petition in this regard was not countenanced by this Court by order dated 11.06.2010. Thereafter, the petitioner appears to have filed another petition before the trial Court and that was also dismissed. The petitioner then filed a petition under Section 173(8) Cr.P.C., before the learned Judicial Magistrate and that was withdrawn. It was also stated that the petitioner has, for good measure filed an application to assist the prosecution.

12. I would rather swing the pendulum in favour of the petitioner herein, taking note of the fact that he has been knocking the doors, so that, the grievance raised by him, namely that the injury was caused by a gun shot is recognized and



necessary offence in that regard is tried during the course of trial. I also understood the predicament of the Inspector of Police, if the petitioner herein is given the opportunity to assist the prosecution. The petitioner has obviously taken that step only because he has lost all confidence in the Investigating Agency.

13. Taking into consideration the fact that it is very obvious that the injuries were caused by a gun shot wound, the explanation given in the status report that the accused was driving as pillion rider in a motor bike and the motor bike went zig zag and the road was also having a rough surface and therefore, unexpectedly, the accused triggered the gun and most unexpectedly, the bullet hit the father of the petitioner herein are explanations to be rejected on the face of it. It is only appropriate that such explanation is given in the witness box. When an explanation of that nature is given, it is only understandable that the petitioner herein would file application to assist the prosecution because it gives a lurking suspicion that the said statements of the Investigating Officer are more to help the accused rather than to discharge official duty.

14. In view of these facts, exercising inherent power under Section 482 of the Cr.P.C., and in the interest of justice, I would interfere with the investigation and direct further investigation however by the very same Investigating Agency. Let the officer realise that he has a larger duty to discharge, namely, to link the injury with the weapon and thereafter bring to account the person who used the weapon and charge him with appropriate provisions for usage of that particular weapon. Let the Investigating Officer, reinvestigate the issue and file a further final report before the learned Judicial Magistrate.

15. The learned Judicial Magistrate, Namakal, must realise that he is an Officer on whom the general public repose confidence and should therefore view every final report not only with magnifying glasses but also view them minutely through a microscope.

16. With the said observation, this Criminal Original Petition is allowed to reinvestigate however by the same Investigating Agency as directed and a further report may be filed by the Investigating Officer. Consequently, connected Miscellaneous Petition is closed.

17. I would straight away reject the opinion given by the Assistant Director of Prosecution dated 03.07.2009. Let not the Investigating Officer be swayed by such a report. Further final report, after recording statements of witnesses if any and also



after collecting further documents or further examination of the materials already collected to be filed on or before 31.12.2021.

18. The Investigating Officer, may also examine violation of Section 5 of the Arms Act, 1959 and whether the said provision will be attracted in the circumstances surrounding the explanation given by the license holder of the gun.

19. The trial Judge may await further final report by the Investigating Officer and thereafter proceed in manner known to law.

Sd/-

Assistant Registrar (CS IV)

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Sub Assistant Registrar

vsg

To

1. The Director General of Police
Tamil Nadu.
2. The Superintendent of Police
O/o. Superintendent of Police
Namakkal District.
3. The Inspector General of Police (Crime)
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4. The Inspector of Police
Vennandur Police Station
Rasipuram Taluk
Namakkal District.
5. The Public Prosecutor,
High Court, Madras.
6. The Judicial Magistrate,
Rasipuram, Namakkal

Crl.O.P.No. 2113 of 2017

And

Crl.M.P.No. 1508 of 2017

CP (CO)

K.RK. (26.10.2021)