



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24 .03.2021

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

W.A.(MD)No.857 of 2012

and

M.P(MD)No.1 of 2012

S.Samayamuthu

.. Appellant/Petitioner

Vs.

1. The State of Tamilnadu
rep. By the Home Secretary,
Secretariat, Fort St. George,
Chennai.
2. The Director General of Police,
O/o.the Director General of Police,
Beach Road, Chennai.
3. The Superintendent of Police,
Madurai Rural, Madurai.
4. The Superintendent of Police,
Central Bureau of Investigation (CBI),
'A' Wing, 3rd Floor, Rajaji Bhavan,
Besant Nagar, Chennai.
5. The Inspector of Police,
Oomachikulam Police Station,
Oomachikulam, Madurai.
6. The Superintendent of Police,
CBCID, Narimedu, Madurai.
7. Usha Rani .. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 05.09.2012 in W.P.(MD)No.1971 of 2012 on the file this Court.

Prayer in WP(MD) . 1971/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, directing the case in Crime No.90 of 2012 on the file of the Respondent No.5 and the complaint of the petitioner dated 09-02-2012 and entrust the same to Respondent No.4 for investigation of the case and file the final report before the Jurisdictional Magistrate within the time stipulated by this Honourable Court.



For Appellant : Mr.Issac Mohanlal, Senior Counsel
for S.Xavier Rajini
For Respondents : Mr.Murugan,
Government Advocate for RR1 to 3, 5 & 6
NA for RR 4 and 7

WEB COPY

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The Writ Petitioner is the appellant in this Writ Appeal. He questioned the correctness of the order dated 05.09.2012 passed by a learned Single Judge of this Court in W.P.(MD)No.1971 of 2012.

2. The aforesaid writ petition was filed by the appellant seeking for a direction of transfer of the case in Crime No.90 of 2012 from the file of the fifth respondent to the file of the Central Bureau of Investigation/the fourth respondent for investigation and for filing the final report before the jurisdictional Magistrate within a specified time. The case was registered on the basis of his complaint dated 09.02.2012 for the death of his own son.

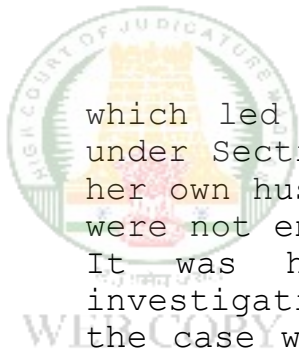
3. The learned Single Judge, after hearing the submissions of the learned counsel on either side and considering all the materials placed before the Court, which includes a detailed report dated 28.05.2012 filed by the third respondent, dismissed the writ petition holding thus :

"29. In this case, both sides made submissions on the basis of the pleadings, but since the investigation is pending, this Court is not inclined to render any findings on merits of the contentions raised regarding the circumstances relating to the death of the petitioner's son, as it may affect the course of the investigation and rights of the parties.

30. In the light of the above factual matrix and the legal precedents referred to above, there is no case made out to entertain this writ petition. The writ petition will stand dismissed. The 5th respondent is at liberty to complete the investigation and to file his final report before the Jurisdictional Magistrate."

3.1. The said order is now put to challenge before us.

4. The crux of the submissions of the learned counsel for the appellant/petitioner, as seen from the order of the writ Court, is that the petitioner alleged that his son one Veeranan @ Jothibas was done to death by his daughter-in-law, the seventh respondent, in connivance with her father, brother and her paramour with the assistance of hooligans. He lodged a complaint dated 09.02.2012



which led to the registration of the case in Crime No.90 of 2012 under Section 302 IPC. Surprisingly, his daughter-in-law, who killed her own husband, was released by the police and the police officials were not enquiring the witnesses, who speak the truth in his favour. It was his claim that if such Police Officers, who were investigating the case, were allowed to continue the investigation, the case would go in a wrong direction and the accused may escape. Hence, the petitioner sent letters dated 11.02.2012 and 14.02.2012 to the second and first respondents respectively in that regard and thereafter filed the writ petition on 17.02.2012 seeking the relief stated supra.

4.1. However, the third respondent, in the report dated 28.05.2012 before the writ Court, narrated the previous history of disputes between the petitioner's son and the seventh respondent and also the conduct of the petitioner's son on the alleged date of occurrence. According to the police, the petitioner's son, in a drunken-mood, attempted to commit sexual assault on his own daughter and his wife, after futile attempts to save their daughter, having left with no option, hit her husband/the petitioner's son with a cricket bat and thereafter caught hold of his testicles and squeezed them leading to his death. It was stated that the seventh respondent exercised her right of private defence, as has been contemplated under Section 100 IPC and hence, she was released on bail in accordance with law and the police did not support her case, but acted as per law. The police relied upon the statements recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C., in short), which corroborated the investigation.

4.2. Though the learned counsel for the petitioner placed heavy reliance on the letter dated 25.06.2012 allegedly sent by the District Collector, Madurai to the second respondent, based on the petitioner's complaint dated 09.04.2012, the same was rejected by the writ Court on the premise that the said letter ought not to have been sent, when the issue was *sub judice* before this Court, that too without receipt of any report from the fifth respondent, but only based on the discreet enquiry. The writ Court also took into account the fact that the State Government did not act upon the said letters.

4.3. The learned Single Judge negatived the apprehension of the learned counsel for the petitioner that the fifth respondent was guided by the third respondent, as the said official was transferred and the fifth respondent alone collected the entire materials/evidence in the case. The learned Single Judge also took note of the option available to the jurisdictional Magistrate after the filing of the final report, in terms of Section 156 (3) Cr.P.C. for further investigation and also the power of the Investigating Officer under Section 173(8) Cr.P.C., by placing reliance on the judgments of the Hon'ble Supreme Court in **State of Bihar V. P.P.Sharma, 1992 Supp (1) SCC 222, Rajesh V. Ramdeo, (2001) 10 SCC**



759 and Sakiri Vasu V. State of Uttar Pradesh, 2008 (2) SCC 409.

4.4. The learned Single Judge ultimately dismissed the writ petition vide the impugned order dated 05.09.2012, as indicated above.

WEB COPY

5. Mr. Issac Mohanlal, learned Senior Counsel appearing on behalf of the learned counsel for the appellant contended that the learned Single Judge failed to consider the serious allegations made by the appellant against the investigating officer warranting transfer of investigation to a fair agency. It is also contended that though the District Collector recommended for transfer of investigation, the learned Single Judge without going into the merits of such recommendation, negatived the prayer. It is further contended that the learned Single Judge failed to consider that the third respondent had released the accused at the preliminary stage of investigation, despite the fact that he had no jurisdiction to invoke Section 100 of the Indian Penal Code (in short, "IPC"), on the same day of confession. It is the further submission of the learned Senior Counsel that the learned Single Judge did not take into account the contradictions in the statements of the witnesses and the flaws in the investigation pointed out by the appellant. The learned Senior Counsel contended that though this writ appeal is pending before this Court and on that ground, the appellant submitted a representation before the third and fifth respondents not to file final report, but the final report was filed by the fifth respondent on 26.04.2013 before the Judicial Magistrate Court No.II, Madurai, which necessitated the appellant to file a protest petition on 17.06.2013 in Cr.M.P.No.3094 of 2013 before the said Court. But the same was dismissed by the learned Magistrate and therefore, unless the investigation is transferred to CBCID or any other specialized agency, a great injustice would be caused to the appellant.

6. The learned Government Advocate appearing on behalf of the official respondents of the State, *inter alia*, submitted that the investigation in the complaint preferred by the appellant was fairly investigated and the final report was filed by the fifth respondent as early as on 26.04.2013 and though the appellant filed a protest petition in Cr.M.P.No.3094 of 2013, the learned Magistrate dismissed the same on merits and the only course available to the petitioner is to challenge the said order in accordance with law. It is also submitted that the learned Single Judge considered all the submissions and passed a well-reasoned order and the same requires no interference from this Court.

7. We have heard the learned Senior Counsel for the appellant and the learned Government Advocate appearing on behalf of the State of Tamil Nadu and perused the materials availed on record.

8. There is no dispute with respect to the facts pleaded before



the Writ Court. The above narration of facts and the subsequent events make it abundantly clear that after investigation, the final report was filed by the fifth respondent as early as on 26.04.2013 and the protest petition filed by the appellant in Cr.M.P.No.3094 of 2013 was dismissed on merits. It is relevant to state that paragraph 28 of the order of the learned Single Judge reads as follows:

"28.Finally, for the question of change of investigation and the power of the Court to direct change of investigation, it is necessary to refer to the judgment of the Honourable Supreme Court reported in 2008(2)SCC 409 (Sakiri Vasu Vs. State of Uttar Pradesh, wherein in paragraphs 15 to 17 and 24 it has been observed as follows:-

"15.Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16.The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173 (8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha⁴ (SCC : AIR para 19).

17.In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

24.In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same.

Even though these powers have not been expressly



mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision."

Thus, it is clear that it is for the Magistrate to exercise the power under Section 156(3) Cr.P.C., after the filing of the final report and the learned Single Judge, keeping the well-settled principle that in exercise of power under Article 226 of the Constitution, this Court cannot usurp the power of the Magistrate Court, unless it is proved beyond reasonable doubt that the police investigation was very extremely casual, perfunctory and shoddy in nature, rightly dismissed the writ petition, in the terms indicated above. When the learned Magistrate dismissed the protest petition filed by the appellant, the only course available to the appellant is to challenge the order passed by the learned Magistrate in the manner known to law and at this stage, as stated above, this Court cannot usurp the power of the criminal Court.

9. The learned Senior Counsel for the appellant placed reliance on the following judgments of the Hon'ble Supreme Court :

- (i) **Kashmeri Devi V. Delhi Administration, 1988 (Supp) SCC 482 ;**
- (ii) **Hardeep Singh V. State of Punjab, (2009) 16 SCC 785 ;**
- (iii) **Babubhai V. State of Gujarat, (2010) 12 SCC 254 ; and**
- (iv) **Gangdhar V. State of Madhya Pradesh (Crl.A.No.504 of 2020, dated 05.08.2020.**

While there is no quarrel qua the law laid down in those judgments, the same are distinguishable on facts and render no help to advance the cause of the appellant, in the facts and circumstances of the given case.

10. Apropos the contention of the learned Senior Counsel for the appellant that the alleged story of exercise of right of private defence is not true and the same cannot be put in favour of the seventh respondent to the detriment of the appellant and the appellant filed typed set of documents to show that there were disputes between his son and his daughter-in-law, which led to the filing of criminal cases and matrimonial case before the police and the Court, it is to be stated that the same cannot be considered by this Court at this stage and it is for the appellant to workout his remedy in accordance with law.

11. From the foregoing discussion, it is clear that the appellant does not make out any ground warranting interference in the well-considered and reasoned order passed by the learned Single Judge and accordingly, this writ appeal is liable to be dismissed.

12. In the result, this Writ Appeal stands dismissed as devoid of merits. There shall be no order as to costs. Consequently,



connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
Home Department,
Government of Tamilnadu,
Secretariat, Fort St. George, Chennai.
2. The Director General of Police,
O/o.the Director General of Police,
Beach Road, Chennai.
3. The Superintendent of Police,
Madurai Rural, Madurai.
4. The Superintendent of Police,
Central Bureau of Investigation (CBI),
'A' Wing, 3rd Floor, Rajaji Bhavan,
Besant Nagar, Chennai.
5. The Inspector of Police,
Oomachikulam Police Station,
Oomachikulam, Madurai.
6. The Superintendent of Police,
CBCID, Narimedu, Madurai.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-13732[F] dated 25/03/2021)

W.A. (MD) No.857 of 2012
24.03.2021

SE (CO)

KB(26.04.2021) 7P 8C