



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 09.03.2021

Delivered On : 30.04.2021

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THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.533 of 2020

and

Crl.M.P.(MD)No.4711 of 2020

K.Shanthi

..Revision

Petitioner/Petitioner/Victim PW.2

Vs.

1.The Superintendent of Police,
Office of the Superintendent of Police,
Pudukottai District.

2.The Inspector of Police,
K.Pudupatti Police Station,
Pudukottai District. ...Respondents 1 &2/Respondents
1&2/Complainant

3.P.Ganapathy

4.S.Karthick

5.P.Chinnaraja

6.K.Vadivel

7.P.Selvaraj

8.S.Palaniyappan

9.R.Madhavan

10.V.Murugan .. Respondent No 3 to 10/Respondents No 3
to 10/Accused No 1 to 8

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records relating to the judgment in Crl.M.P.No.40 of 2020 in S.C.No.61 of 2014 dated 23.07.2020 on the file of the learned Additional District Judge, Pudukottai and to set aside the same.

<https://hcservices.ecourts.gov.in/hcservices/>



For Petitioner : Mr.S.Karthikeyan
For Respondents 1 and 2 : Mrs.S.Bharathi
Government Advocate (Crl. side)
For Respondents 3 to 10 : Mr.C.M.Gunasekaran

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ORDER

This petition has been filed to set aside the judgment passed in Crl.M.P.No.40 of 2020 in S.C.No.61 of 2014 dated 23.07.2020 on the file of the learned Additional District Judge, Pudukottai.

2.The petitioner is the defacto complainant in the case in Crime No.27 of 2013 on the file of the second respondent. The chargesheet was filed and was taken on file as S.C.No.61 of 2014 on the file of the Additional District Court, Pudukottai. Pending trial, the petitioner has filed a petition in Crl.M.P.No.40 of 2020 seeking an order to direct the first respondent to conduct further investigation or re-investigation. That petition was dismissed by the trial Court. Against that order of dismissal, the petitioner approached this court by way of revision.

3.On the side of the petitioner, it is stated that proper eye witness and occurrence witness were not examined by the prosecution. Kattarimani accompanied the deceased on the fateful day. But he was not examined. The police failed to receive the complaint given by the petitioner and registered the case only on the complaint of P.W.1 Padikasu. P.W.1 has turned hostile. The call records of the deceased and P.W.1 Padikasu, during the relevant time was not collected by the police. P.W.20 also turned hostile. P.W.1 was utilized by the investigation officers only to help the accused. P.W.1 and Kattarimani abetted the offence of murder and they have to be treated as co accused and prayed for re-investigation of for further investigation.

4.On the side of the respondents, it is stated that this petition was filed by the petitioner only after the arguments were heard by the trial Court. The trial Court has no power to order for further investigation, after the commencement of the trial. The power of ordering further investigation ceases to exist on the commencement of the trial.

5.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya and Ors. v. The State of Gujarat and Anr.** in **Criminal Appeal Nos.478 to 479 of 2017**, which reads as follows:

'With the introduction of Section 173(8) in the Cr.P.C., the police department has been armed with the power to further investigate an offence even after



a police report has been forwarded to the Magistrate. Quite obviously, this power continuous until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173.'

6.On the side of the respondents, it is stated that the petitioner has appeared before the lower Court and he was examined as P.W.4 on 18.03.2017. P.W.2, P.W.3 and P.W.4 were assisted by a private advocate even though no such permission was granted by the trial Court. After four years, this petition was filed by the petitioner. The chargesheet was filed on 11.07.2013. Only in the revision petition, it is stated that five persons involved in the occurrence. The wife of the deceased and brother in law of the deceased have not stated anything about the other accused in their evidence. Only the son of the petitioner has mentioned something regarding the other accused. After the completion of the examination of the witnesses, after 313 proceedings and after the completion of oral and written arguments, the petitioner has come forward with this petition, that is after a lapse of seven years from the date of occurrence and prayed the petition to be dismissed.

7.On the side of the petitioner, it is stated that the superior Court is having the power to order re-investigation or further investigation and that only after engaging an advocate for assisting the prosecution, the petitioner came to know that the investigation was not fairly done and prayed for a direction for further investigation.

8.On the side of the respondents, it is stated that if at all there is any confusion in the investigation, the petitioner must have filed a petition for further investigation much earlier. But only after the competition of the arguments, the petitioner has come forward with this petition. The petitioner was examined five times before the trial Court. Even then there was no whisper against the other accused.

9.Already the petitioner has approached this court by way of Crl.O.P.(MD)No.18701 of 2019 for examination of five additional witnesses. That petition was dismissed by this Court with an observation that the petitioner has not filed any petition for further investigation at the time of commencement of trial.

10.It is seen that an opportunity to examine additional witness was not given by this Court on the ground that the



petitioner has not filed a petition for further investigation. In the above circumstances, denying a relief of further investigation may cause prejudice to the petitioner. It is stated that P.W.1 turned hostile. This is a murder case. For the above reasons, it is decided that further investigation is necessary. The order passed in Crl.M.P.No.40 of 2020 in S.C.No.61 of 2014 dated 23.07.2020 on the file of the learned Additional District Judge, Pudukottai is set aside. The investigation agency is hereby directed to take up the case for further investigation and to complete the investigation, after examining all the witnesses referred by the petitioner and to file a additional chargesheet within a period of three months.

11.On receipt of the additional chargesheet, the trial Court is directed to frame charges afresh and to proceed with the trial and to dispose of the case as expeditiously as possible.

12.With the above direction, this Criminal Revision Case is allowed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional District Judge, Pudukottai.

2.The Superintendent of Police,
Office of the Superintendent of Police,
Pudukottai District.

3.The Inspector of Police,
K.Pudupatti Police Station,
Pudukottai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.KARTHIKEYAN, Advocate (SR-18122[F] dated

<https://hcservices.hcma.gov.in/>



+1 CC to M/s.M.KARTHIKEYA VENKITACHALAPATHY, Advocate (SR-18488[F]
dated 06/05/2021)

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30.04.2021

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