



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 02.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.13126 of 2020

and

Crl.MP(MD)No.5983 of 2020

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Habeeb Mohamed

... Petitioner

Vs.

1.The Director General of Police,
Office of Director General of Police,
Dr.Radha Krishnan Salai,
Mylapore, Chennai - 600 004.

2.The Superintendent of Police,
Office of Superintendent of Police,
Thoothukudi District,
Thoothukudi - 628 101.

3.The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi District.
(Crime No.303 of 2020)

4.The Deputy Superintendent of Police,
C.B.C.I.D,
Crime Branch, Criminal Investigation Department,
No.26 D, Colony,
Perumalpuram, Vasantha Nagar,
Tirunelveli - 627 007.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., direction to transfer the investigation to the 4th Respondent office for conducting fair and impartial investigation in Crime No.303 of 2020 on the file of the third Respondent.

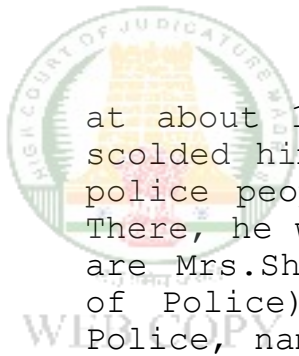
For Petitioner : Mr.Henri Tiphagne
For Respondents : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to transfer the investigation to the fourth Respondent office for conducting fair and impartial investigation in Crime No.303 of 2020 on the file of the third Respondent.

2. The case of the petitioner in brief:-

The petitioner is engaged in Auto Driving work. On 09.06.2020,



at about 10.30 a.m. two police people stopped the petitioner and scolded him for not wearing mask. So, at the same time, some other police people gathered and took him to Arumuganeri Police Station. There, he was brutally attacked by the police officials. Their names are Mrs.Shanthi (Inspector of Police), Mr.Saravanan (Sub-Inspector of Police) and others' names are not known. The Inspector of Police, namely, the said Shanthi, kicked him on his face. The other Police people beat him, by using blue colour plastic pipes on various parts of the body. They beat him for two hours and let him at 02.30 p.m by getting his signature on a paper. On the next day, his leg and hands were found swelling and blood was oozing while urinating.

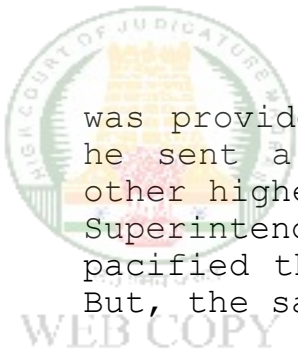
3. He was under fear for next two days. During that time, his health condition started deteriorating. He was unable to pass urine and experienced pain. On 11.06.2020, he went to KMT Hospital, Kayalpattinam and he informed the Medical Officer about the incident. He was given treatment and shifted to the Kayalpatinam Government Hospital.

4. On 11.06.2020, at about 06.30 p.m, he was admitted in the hospital and he informed the Medical Officer about the incident. So, on their advise, he went to the Government Hospital, Thoothukudi, for further treatment. At that time, the police officials from Arumuganeri Police Station, by name, Mr.Saravanan, along with other two police members came to the hospital and personally threatened the petitioner, not to go to the Thoothukudi Government Hospital. The said Sub Inspector of Police, Saravanan has forced to return the ambulance and later, he came to know that the policemen had tampered the Accident Register.

5. On 11.06.2020, at about 10.30 p.m, during the night hours, he experienced severe pain. So, he came to the hospital for treatment and due to fear that he may not be admitted in the hospital, he informed the Medical Officer that he sustained injuries, when he fell down from the autorickshaw. Later, he was shifted to Rosemary Hospital, Tirunelveli. On 12.06.2020, he was admitted in the hospital and stayed there, till 18.06.2020, even though, he felt very same thing. Later, he underwent Dialysis in the Rosemary Hospital. After he was taking continuous treatment.

6. In the meantime, one organization namely, Mass Empowerment and Guidance Association, Kayalpattinam, came to know about the incident and sent complaint to the higher officials. It was also published in the news paper.

7. On 28.06.2020, the Deputy Superintendent of Police, Tiruchendur, by name, Mr.Bharat, came to his residence and advised to pacify the matter. One Mr.Henri Tiphagne, the Executive Director of the People's Watch Group, Madurai, wrote about the matter to the District Legal Aid Society (DLAS), Thoothukudi. Following that, he



was provided with legal assistance. So, based on the legal advice, he sent a complaint to the Inspector of Police, Arumuganeri and other higher officials. Even though after enquiry made by the Deputy Superintendent of Police, no complaint was registered. They also pacified the petitioner to accept the money and drop the complaint. But, the same was refused by him.

8. Later, he filed a petition, under Section 156 (3) Cr.P.C before the learned Judicial Magistrate, Tiruchendur, seeking a direction. On the basis of the direction given by the Court, a First Information Report was registered by the third respondent police, in Crime No.303 of 2020, for the offences punishable under Sections 323, 324, 341, 342 and 506 (i) IPC. But, even after that, there was no enquiry.

9. On 17.09.2020, one Mr.Ilangovan, the Deputy Superintendent of Police, Anti Land Grabbing Cell, came to his house and stated that he had been appointed as an Investigating Officer. So, the circumstances and events that have been mentioned above would show that the petitioner may not get justice at the hands of the Thoothukudi Police Station. So, he sent a representation, on 22.07.2020, seeking transfer of the case to CBCID for impartial investigation and also requested for alteration of the First Information Report. Hence, this petition.

10. Heard both sides.

11. On the basis of the direction of this Court, CD file has been produced by the learned Additional Public Prosecutor. Similarly, a status report was directed to be filed. It was also filed by the second respondent herein, and the matter was heard in full and reserved for orders.

12. On perusal of records as well as CD file, it is seen that totally, 28 witnesses have been examined by the Investigating Officer, namely, the Deputy Superintendent of Police, Anti Land Grabbing Cell. So, the matter was reopened for getting clarification from the learned counsel for the petitioner about the desirability of transferring the investigation to the some other agency. During the course of the arguments, the learned counsel would submit that a reading of the status report filed by the police shows that they are impartial and every attempt is being made to cover up the assault and the incident that took place as mentioned in the petition.

13. The learned counsel for the petitioner would also take this Court through various medical records, which have been produced for the purpose of pointing out a simple fact that the injuries shown in the records would not have been caused due to fall from the autorickshaw. So, according to him, only due to the threat made by the police, he made a submission before the private hospitals that the injuries due to fall from the autorickshaw.



14. The learned counsel for the petitioner would submit that the Investigating Officer wants to close the First Information Report by sticking to the stand that the petitioner sustained injuries only due to fall from the autorickshaw.

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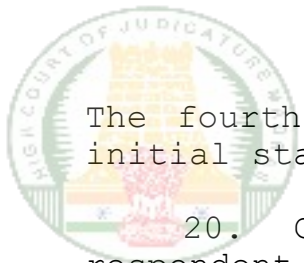
15. On 09.11.2020, a letter has been addressed by the Investigating Officer to the Additional Superintendent of Police, stating that he went to the residence of the petitioner for recording the statement. But, he refused to give statement stating that he is not feeling well and his family members also refused to give statement. Summons were issued to appear, on 30.09.2020. But, none appeared. On further enquiry through phone, he was informed that they are not going to give any statement. So, the submission of the other witnesses have not been recorded. So, this has been pointed out by the learned Additional Public Prosecutor to the effect that only the petitioner has not co-operated for the enquiry.

16. Reading of the Status Report filed by the Investigation Officer shows that more or less, he comes to the conclusion that the complaint given by the petitioner, is not true. But, I am unable to appreciate the stand taken by the Investigating Officer, at this stage. There is some force in the arguments of the learned counsel for the petitioner to the effect that the Investigating Officer has come to a pre-conclusion about the occurrence. Reading of the Status Report, strengthened the arguments of the learned counsel for the petitioner.

17. Even though, the petitioner filed for rejoinder, I am unable to accept the grounds taken by the petitioner with regard to the materials collected by the Investigating Officer, during the course of investigation. The pitfall projected by the petitioner in the investigation, cannot be a matter for consideration, at this stage.

18. But, however, from the facts and circumstances of the case as well as from the records produced, there is some force in the argument of the learned counsel for the petitioner to show that the Investigating Officer has come to a pre-concluded opinion. As mentioned above, I am unable to appreciate the stand taken by the Deputy Superintendent of Police before the conclusion of the investigation. So, on this ground, the apprehension that has been entertained by the petitioner that he may not get fair investigation, at the hands of the present Investigation Officer, cannot be termed as without any basis.

19. Considering the facts and circumstances of the case, I am of the considered view that if the investigation is undertaken by the fourth respondent herein, it will become unbiased and proper. So, the case in Crime No.303 of 2020, is transferred from the third respondent to the file of the fourth respondent for investigation.



The fourth respondent should undertake the investigation from the initial stage, so that, unnecessary complication can be avoided.

20. Considering the oldness of the matter, the fourth respondent shall complete the investigation within six months from the date of receipt of a copy of this order and file a final report before the concerned Court and file a 'compliance report' before the Registry of this Court.

21. With the above direction, this Criminal Original Petition stands disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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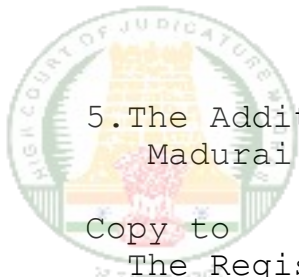
Sub Assistant Registrar(CS)

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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 Director General of Police,
Office of Director General of Police,
Dr.Radha Krishnan Salai,
Mylapore, Chennai - 600 004.
- 2.The Superintendent of Police,
Office of Superintendent of Police,
Thoothukudi District,
Thoothukudi - 628 101.
- 3.The Inspector of Police,
Arumuganeri Police Station,
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- 4.The Deputy Superintendent of Police,
C.B.C.I.D,
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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to
The Registrar (Judicial)
Madurai Bench of Madras High Court,
Madurai.

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SSS (CO)
LR (15.07.2021) 6P 7C