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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2021
PRONOUNCED ON : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.7536 of 2021

Kalavathy

... Petitioner

Versus

1. The Superintendent of Police,
Office of the Superintendent of Police,
Chengalpet,
Chengalpet District.
2. The Inspector of Police,
Chengalpet Taluk Police Station,
Chengalpet,
Crime No.485 of 2019.
3. The Inspector of Police,
CBCID,
Kancheepuram,
Kancheepuram District.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to transfer the FIR pending in Crime No.485 of 2019 dated 09.09.2019 from the file of the Second Respondent Police to the third Respondent for investigation.

For Petitioner : Mr.M.Jaikumar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This petition has been filed to transfer the FIR pending in Crime No.485 of 2019 dated 09.09.2019 from the file of the Second Respondent Police to the third Respondent for investigation.



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2. The gist of the case is that the petitioner/defacto complainant, wife of the deceased Soundararaj, lodged a complaint on 09.09.2019. Her husband, a retired Economic Professor Pachaiyappan College was having an ancestral property at Pazhraveli Village, Chengalpattu District, a part of property is situated near Pazhraveli Bypass. The petitioner's husband used to visit the above said property regularly. On 03.09.2019, petitioner's husband visited the property at Chengalpattu. On 06.09.2019, a quarrel arose between him and the neighbouring land owners of the property. On the next day, the dispute became aggressive and the petitioner's husband informed his son Singaravelu about the same. On 08.09.2019, when he was contacted he failed to respond. On 09.09.2019, the Taluk Police Chengalpet received information that a male body was floating in their Well. Thereafter, the petitioner went to the Chengalpattu Hospital, identified the body of her husband and hence, the complaint. The respondent Police registered a case in Crime No.485 of 2019, under Section 174 of Cr.P.C., but they failed to take any proper action to find out the reason for the death of her husband.

3. The grievance of the petitioner is that her husband is having an ancestral property at Pazhraveli Village, her husband regularly visited the property, a portion of the property was sold to the SCAD School and they are having dispute over the boundaries of the property. When the petitioner's husband put up a fence, the same was opposed by one Rehman, who is the Administrative Officer of the School. The said Rehman came their along with one Abel, a former Panchayat President, and attempted to stop the work. Earlier to it, one Elangovan, proprietor of Vaigai Hotel, let out the drainage water in the petitioner's land, which was later resolved. Since the adjacent land owners, viz., Elagovan, Abel, Rehman, Puniyakooti and Manogaran, encroached the petitioner's land, there was no cordiality between them and her husband. Further, these persons were supporting the SCAD School management, forcing the petitioner's husband to withdraw his claim over the property. The Village Administrative Officer and the Revenue Inspector also supported the School. The petitioner's son went to Chengalpet, questioned the SCAD School Management and others. Subsequently, she was unable to contact her husband and finally she was informed that her husband drowned in the Well. The petitioner's husband had no reason to commit suicide or get slipped into the Well. Further, the said Well is in their field for decades, which has steps, regularly used by her husband and there is no reason that her husband could have slipped in to the Well and got drowned. Added to it, the Well had water of only 3 to 4 feet, her husband is more than 5.5 feet tall, and noway he would have drowned in case of accidental slip. Further, some of the people in the Village wanted to develop the property by



laying plots, on their own terms and conditions, which was not agreeable to the Petitioner's husband. He resisted the same, since the lands were abutting the main road, the property value got appreciated may fold, the local Chieftain and realtors were eyeing over the property.

4. The respondent Police for the reason best known to them not conducted proper investigation. Hence, the petitioner earlier filed Crl.O.P.No.755 of 2021 to transfer the case from the file of the second respondent/the Chengalpattu Taluk Police Station to CBCID, Kancheepuram. At that time, it was represented before this Court that the investigation was completed as 'Further action dropped' and RCS.No.95 of 2019 was served to the petitioner/defacto complainant and a copy was filed before the Judicial Magistrate No.II, Chengalpattu. Recording the same, the case was closed, giving liberty to the petitioner to challenge the same by filing protest petition, if she is aggrieved. Thereafter, the petitioner filed a copy application with the Judicial Magistrate No.II, Chengalpattu on 04.03.2021 and the same was returned on 15.03.2021 for the reason "RCS notice not yet filed in this Court by Taluk Police Station, hence, the copy application is returned." Hence, got apprehensive that the respondent Police in complacence with the Chieftains have done no investigation, made false representation to this Court and attempted to close the case. Hence, the petitioner filed the present petition.

5. The learned Additional Public Prosecutor filed a status report, wherein it found that on the complaint of the petitioner, a case registered in Crime No.485 of 2019 under Section 174 of Cr.P.C. On the same day, inquest conducted on the body of the deceased in the Government Hospital, Chengalpattu in presence of the Panchayathars. The body was sent for post mortem and after completion of post mortem, the body was handed over to the petitioner. The Forensic Doctor gave a report dated 22.10.2019 with the reason that "the deceased would appear to have died of Asphyxia due to drowning." After completion of detailed investigation and examination of 13 witnesses including the petitioner and her son, who are listed as LW1 to LW4, observation mahazar witness-LW5 and the nearby witnesses LW6 to LW11, expert witness LW12 and Investigating Officer's witness LW13, recording their statements, the case was closed. The closure report in RCS.No.95 of 2019 dated 22.10.2019 sent to the petitioner was returned on 21.06.2019 as 'no such person is available'. Thereafter, on 22.06.2021, the closure report was submitted to the Thasildar, Chengalpattu. Thus, the respondent Police conducted proper investigation and filed the closure report. He produced the Case Diary of the case.



6. Heard the submissions of the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents perused the materials and the Case Diary.

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7. It is seen that the petitioner's husband a retired Economics Professor at Pachaiyappan College, inherited ancestral property in Pazhraveli Village, the property is at prime place. The petitioner's husband regularly visits his property. During one of the visits, he was found dead in the Well. The reason given by the Police is that he would have slipped and fell into the Well and got drowned. It is the contention of the petitioner that her husband knew swimming, and there are also steps to go down the Well. LW11, a lessee of the petitioner's land, statement is that the the petitioner's husband used to take bath by getting down the steps or near the motor pump. He has not seen petitioner's husband swim in the Well. In the inquest, it is recorded that while taking bath in the Well, deceased could have slipped and fell into the Well and got drowned. On going through the records, this Court is of the view that the case of drowning is not possible for the simple reason that water in the Well was only 3 or 4 feet, the deceased is 5.5 feet tall. He was not intoxicated and he was in normal sense and good health. Further, the deceased getting into the Well, taking bath is routine for him. From the viscera, forensic report it is found that there was no alcohol or other poison being deducted.

8. The specific case of the prosecution is that the petitioner's husband died due to drowning, if so, the Investigating Officer ought to have taken steps for diatom test. On perusal of the post mortem report, it is seen that the body was found in a decomposed stage, there was no visible injury. On dissection of chest, it is seen that there is nothing to indicate that the deceased had fallen and drowned. The post mortem was conducted on 09.09.2019 at about 3.13 pm and the report made ready on 10.09.2019. The position of the body was not recorded, in the observation mahazar, in case of death by drowning position of body is important, further no diatom test conducted, the respondent Police unable to give any answer. These imperative factors not done. Thus, there are serious flaws in the investigation.

9. It is to be noted that S.R.Elangovan, who is the proprietor of Vaigai Hotel, had dispute with the deceased over boundary and letting of sewage water, who has given statement that he returned from Malaysia only on 06.09.2019. Likewise, one Abale, the former Panchayat President, who helped and supported the SCAD School to purchase land, stated that he along with his wife had gone to Thanjavur on 06.09.2019 and returned only on 09.09.2019 at 5.00 p.m. These aspects necessarily to be



investigated. The Village Administrative Officer and Revenue Inspector, who visited the SCAD School, present during dispute between the petitioner's husband and the Management of the School immediately which is soon before the death, their examination can give a insight of dispute and motive. Further, one Puniyakootai and Manokaran, who had dispute with the deceased was not examined by the Police and no reason given for the same. The neighbouring land owners had enmity with the deceased. Finally, on 09.09.2019 the body was found floating in the Well in a suspicious manner. Perusal of case diary makes it clear that investigation has been done in a shoddy manner. The Petitioner property is adjacent to the main road, property value got appreciated, potential land for layout the Chieftains, realtors were eyeing the property, the petitioner husband was seen as an obstacle, further except the petitioner's husband who visits the property once or one in two months, other family members shown no interest in the property. It was seen, except the petitioner's husband none of his family members interested in the property. Elimination of petitioner's husband would pave the way for realtors. Added to it the petitioners are not in friendly terms with the neighbours and locals which could be a reason for the death of the petitioner's husband, which a detailed proper investigation can give answer, since every persons life is precious. The investigation so far gives no answer.

10. This Court is of the view that the death is a suspicious one further the medical report is not complete and proper persons, animus with the petitioner's husband were been not examined. The value of the property of the petitioner's husband increased manifold. Further the way in which the observation mahazar recorded by the Investigating Officer, failure to take diatom test and medical report to these factors not obtained or verified. It is clear that the investigation has not proceeded in a proper manner for some reason.

11. Added to it, when the petitioner filed Crl.O.P.No.7556 of 2021 for transfer of investigation, a status report was filed by the respondent police informing 'action dropped' in Crime No.485 of 2019, and RCS notice vide RCS.No.95 of 2019 was served to the petitioner. However, on perusal of the case dairy, it is seen that no RCS notice was served. However, it reveals that the RCS notice sent through post on 21.06.2021 was returned on 25.06.2021 with an endorsement "no such person". On perusal of returned postal cover, it is seen that the notice was wrongly sent to one "Leelavathi", but the name of the petitioner is "Kalavathi". On the facts and circumstances of the case, it cannot be brushed aside as a mistake since "Kalavathi" is the complainant, who was fighting for justice for her husband's suspicious death. On the contrary, it was reported



before the Court that the notice was served to the petitioner. Added to it, RCS report was filed before the Thasildar, Chengalpattu on 22.06.2021. Though the Thasildar was not involved in the investigation, for what purpose the report was sent to Thasildar, there was no answer. In this case, there are 13 listed witnesses, the Thasildar is not a witness. Even if the inquest was conducted by the Thasildar, the final report ought to have been sent only to the Judicial Magistrate, since the Judicial Magistrate is the competent person to record the receipt of final report either it is positive or negative report.

12. In this case, the investigation is conducted in a shoddy manner. The adjacent land owners, SCAD School Administrative Officer and others are to be further enquired, for which a detailed proper investigation is necessary in this case. Second opinion of the Medical Officer from the Forensic Department to be obtained, since earlier report is not clear.

13. In view of the same, this Court is inclined to set aside the RCS notice and report in RCS.No.95 of 2019. Further, the Inspector of Chengalpattu Taluk Police Station shall submit case Diary and other relevant materials to the DGP, CBCID Chennai, forthwith who in turn shall entrust the investigation to the appropriate officer of the CBCID to conduct thorough and proper investigation and file a final report in this case preferably within a period of six months.

14. With the above observations and directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

dna

To

1. The Superintendent of Police,
Office of the Superintendent of Police,
Chengalpattu,
Chengalpattu District.
2. The Inspector of Police,
Chengalpattu Taluk Police Station,
Chengalpattu,
Crime No.485 of 2019.



3. The Inspector of Police,
CBCID,
Kancheepuram,
Kancheepuram District.

4. The Public Prosecutor
High Court, Madras.

+lcc to Mr.M.Jaikumar, Advocate, S.R.No.5555

Cr1.O.P.No.7536 of 2021

PMK[co]
NSK 14/02/2022