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W.P.No.19672 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2022

PRONOUNCED ON : 31.10.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.No.19672 of 2022

and

W.M.P.Nos.18988, 18990 & 18991 of 2022

1. V.Vinoth

2. V. Vijay

3. V.Sathya

(P2 and P3 are substituted in the place of P1
vide order dated 26.08.2022 made
in WMP No.21730/2022)

...

Petitioners

/vs/

1. The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Home Department, Secretariat,
Chennai 600 009.
2. The Director General of Police(CBCID),
Crime Branch Criminal Investigation Department (CBCID),
No.3, SIDCO Electronic Complex, 1st Floor,
Guindy, Chennai 600 032.



W.P.No.19672 of 2022

WEB COPY

3. The Deputy Superintendent of Police,
Crime Branch Criminal Investigation Department(CBCID),
OCU-I, Chennai,
Egmore, Chennai 600 008.
 4. The Inspector of Police,
Crime Branch Criminal Investigation Department(CBCID),
OCU-I, Chennai,
Egmore, Chennai 600 008. (Cr.No.3 of 2022).
 5. The District Collector,
62, Rajaji Salai, 4th Floor,
Chennai 600 001.
 6. The Director,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai 600 005.
 7. The District Adi Dravidar and Tribal Welfare Officer,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai 600 005.
 8. The Dean,
Government Kilpauk Medical College and Hospital,
Kilpauk, Chennai 600 010.
 9. The Director,
Central Bureau of Investigation (CBI)
New Delhi.
- Respondents

Prayer : Writ Petition has been filed under Section 226 of the Constitution of India to issue a writ of Mandamus directing the respondents 1 and 2 to transfer the investigation in Crime No.3 of 2022 on the file of the CBCID



W.P.No.19672 of 2022

PS OCU-1 Chennai to the CBI and direct the CBI to file a periodic investigation report before this Court within a time that may be stipulated by this Court till the chargesheet is filed before the competent Court.

For Petitioner	...	Mr. J. Saravanel
For Respondents	...	Mr.E.Raj Thilak Additional Public Prosecutor for R1 to R8

ORDER

The Writ Petition has been filed to transfer the investigation in Crime No.3 of 2022 from the 4th respondent to the CBI for effective investigation.

2. Though the first petitioner has filed this writ petition, the 2nd and 3rd petitioners, who are the brothers of the first petitioner, are substituted in the place of first petitioner vide order of this Court dated 26.08.2022 in WMP.No.21730 of 2022.

3. The brief fact of the case reads as follows:-

The first petitioner V.Vinoth is the brother of the deceased Vignesh in this case. When the police personnels, i.e. 1) Puzhalumperumal, S.I.,



W.P.No.19672 of 2022

2) Pavunraj, P.C., 3) Deepak, H.C, were on vehicle checkup on 18.04.2022 at about 23:45 hours, near Kellys Junction, G5 Secretariat Colony Police Station Limit, an Auto bearing Registration No.TN F 5616 was intercepted by the police personnels and they found Vignesh S/o. Vadivel, Pattinambakkam and one Suresh @ Jollu Suresh S/o. Ganesan, Triplicane, Chennai were found with injuries in the auto. At that time, the above said two persons quarrelled with the police personnels and as both of them attempted to run away, they were arrested. Based on their confession statements, machete (patta knife), copper brandy bottles and two packets of Ganja were seized under the Mahazar and recorded their confession statements. After that, they were brought to Secretariat Colony Police Station and produced before the Inspector of Police R.Senthilkumar. Thereafter, a case in Crime No.127 of 2022 for the alleged offences under Sections 341, 294(b), 353, 323 and 506(ii) of IPC was registered. Both Vignesh as well as Suresh @ Jollu Suresh were having injuries on their bodies. Since Vignesh got fits and vomited, the Inspector took him to Kilpauk Medical College Hospital immediately, where he was declared dead. Therefore, the Inspector of Police gave a complaint before the Assistant Commissioner, Ayanavaram Range and a case in Crime No.128 of 2022 under Section 176 Cr.P.C. was registered at G5 Secretariat



W.P.No.19672 of 2022

Colony Police Station on 19.04.2022 at 13:30 hours by R.Saravanan, Assistant Commissioner of Police, Ayanavaram Range and he took the case for investigation.

4. The Director General of Police ordered to transfer the case for investigation to CBCID by his proceedings in ROC No.054/006064/Cr.II(I)2022, dated 26.04.2022. As per the proceedings, the District Superintendent of Police, CBCID, OCU-I, Egmore, took up the case for investigation and reassigned the Crime No.3 of 2022 and after investigation, the case has been altered for the offence under Section 302 of IPC and Section 3 (ii)(v) SC/ST Act 1989 on 06.05.2022. Again, the offences were altered into Sections 302, 324 of IPC and Section 3(2)(v), 3(2)(va) of SC/ST (POA) Act 1989 on 18.05.2022. Now, the case is under investigation of CBCID. At this stage, the present petition has been filed to transfer the investigation to CBI and also direct them to file a periodic investigation report before this Court till the filing of the charge sheet before the Competent Court.



W.P.No.19672 of 2022

5. The learned counsel for the petitioners submitted that the Post-Mortem report of Vignesh, who died in the police custody, indicates 13 external injuries on the body of the deceased. All the injuries are Anti-Mortem injuries. In this case, 6 police officials, namely Pounraj, [Police Constable], Kumar, [Special Sub Inspector of Police], Munab, [Head Constable], Deepak, [Home Guard], Jegajeevan, [Armed Reserve Police] and Chandrakumar, [Police Constable], were arrested and remanded to judicial custody. The present investigating officer has deliberately failed to follow the provision of Section 15(A)(3) and 5 of the Scheduled Caste/ Scheduled Tribe (Prevention of Atrocities) Amendment Act 2015. Further, the Investigating Officer is not properly conducting the investigation. One Mohandass, Inspector of Police, came to the first petitioner's house, threatened him and also attempted to give Rupees One Lakh to close the matter.

6. He further submitted that no notice was given to the petitioners while the accused/police personnels, filed bail petitions, as per Section 15-A of SC/ST (POA) Act, and the 3rd respondent is conducting the investigation in a biased manner. The petitioners are afraid that the 3rd respondent police



W.P.No.19672 of 2022

may not do justice as their investigation is slack and total disregard of the victims. The first petitioner had sent a representation dated 22.07.2022 to the first respondent seeking to transfer the investigation to CBI, but no action has been taken so far and final report has not been filed. Viscera Report, DNA analysis and analysis of Mobile Phones are all pending before the Forensic Science Department. Fair Investigation is part of the Constitutional Rights guaranteed to the victims under the Constitution of India. Therefore, investigation has to be fair and transparent. But, it is not fair in this case. The Investigating Agency cannot be permitted to conduct an investigation in a tentative and biased manner. Thus, pleaded to allow the writ petition and transfer the investigation of the case in Crime No.3 of 2022 on the file of the CBCID to CBI.

7. To support his argument, the learned counsel placed reliance upon the judgments of the Hon'ble Supreme Court in ***R.S.Sothi, Advocate /vs/ State of U.P. & others (1994 Supp (1) SCC 143)***, ***Mithilesh Kumar sigh /vs/ State of Rajasthan and others (2015 (9) SCC 795)***, and ***Hariram Bhambhi /vs/ Satyanarayan & anothers (2021 SCC Online SC 1010)***.



W.P.No.19672 of 2022

8. The learned Additional Public Prosecutor appearing for the respondents 1 to 8 submitted that the State has shown its bonafideness by taking appropriate action in this matter through the Director General of Police by transferring the case to CBCID from the Assistant Commissioner, Ayanavaram Range and reassigned the case in Crime No.3 of 2022 under Section 176 Cr.P.C. During the course of investigation, the CBCID, so far examined 84 witnesses and further recorded the statements of two witnesses under Section 164 Cr.P.C., secured 15 CCTV footages and recovered material objects from the Police Station and the same were sent to the Forensic Science Department for DNA analysis and a report has been obtained that the blood stains on stainless steel rod and back side partition door area of G5 Secretariat colony police station are human blood. On 04.05.2022, after obtaining School Registration Sheet pertaining to one Surya, who is none other than the brother of the deceased Vignesh and Sureshkumar @ Suresh @ Jollu Suresh, the Section was altered as the deceased Vignesh belongs to Hindu Adhi Dhiravidar. Since no record is available with regard to community certificate of the Surya, brother of the deceased, in the Middle School, Triplicane, they sent a request to the Tahsildar, Mylapore for issuing community certificate and legal heir certificate on 05.05.2022, 11.05.2022, 20.05.2022, 01.07.2022



W.P.No.19672 of 2022

and 19.07.2022. In continuation of the same, the Tahsildhar, Mylapore, issued a letter, dated 05.08.2022 stating that the deceased belongs to Hindu Adi Thiravidar and there is no legal heir for the deceased, since his father and mother had already expired and deceased did not marry. He further submitted that they have raised objection by filing counter in the bail petitions filed by the accused/Police Personnels before the Principal District Sessions Court, Special Court for SC/ST (POA) Act and the same were dismissed.

9. The learned Additional Public Prosecutor further submitted that now, investigation is pending only for the reason that (1) Viscera Report from the Forensic Science Department, Mylapore, Chennai, Enquiry Report from the II Metropolitan Magistrate, Egmore with regard to cause of the death of the deceased, (2) Expert Opinion, with regard to the analysis of DNA extracted from the Suresh @ Jollu Suresh and the deceased along with the DNA extracted from the stainless steel rod and back side partition door of the G5 Secretariat Colony P.S. is pending with the DNA Division of Forensic Science Department, Chennai-4, (3) The expert opinion with regard to analysis of mobile phones of 6 accused, deceased, victim Suresh @ Jollu Suresh and 4 witnesses is also pending, and (4) a petition filed before the II Metropolitan



W.P.No.19672 of 2022

Magistrate, Egmore, Chennai for transferring the mother case F.I.R., viz., G5 Secretariat Colony P.S.Cr.No.128 of 2022, registered for the offence under section 176 of Cr.P.C and the same is pending. Now, investigation is almost completed in accordance with law without any deviation and there is no bias on the part of the Investigating Officer and thus, pleaded to dismiss the writ petition.

10. I have considered in the light of the submissions made by the learned counsel for the parties and I have examined the facts and circumstances of the case and the Status Report filed by the prosecution.

11. Fairness of investigation is important, not only for the accused, but even for the victims. [*Nirmal Singh Kahlon /vs/ State of Punjab- (2009(1) SCC 441) /*. The decision whether transfer of investigation should or should not be ordered rests on the Court's satisfaction, whether the facts and circumstances of a given case demand such an Order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases.



W.P.No.19672 of 2022

12. No doubt that transfer of investigation have been ordered by the Hon'ble Supreme Court as well as this Court in various cases at varied situations. In the case relied on by the learned counsel for the petitioners in ***R.S.Sothi, Advocate /vs/ State of U.P. & Others (1994 Supp (1) SCC 143***, during the month of September 1991 at Pilibhit, 10 persons were killed in encounter between the Punjab Militants and the local police. Based upon the reports in the Times of India, that writ petition was filed. In that case, to find out, whether the loss of lives was an account of a genuine or a fake encounter, the accusations were directed against the local police Personnels, and the matter was entrusted to the investigation of CBCID.

13. In the case of ***Mithilesh Kumar Singh /vs/ State of Rajasthan and others (2015 (9) SCC 795)***, a girl while studying at College, fell down from the 4th floor of the College Hostel and sustained injuries and in consequence to that, she died. The police concluded that she committed suicide because of an unwarranted pregnancy, which she was carrying, but in the Post Mortem Report, it does not establish in clear terms the presence of pregnancy. This make the parents to dis-believe the swearing that the deceased was pregnant and therefore she committed suicide. The parents



W.P.No.19672 of 2022

complaint was that the deceased was subjected to harassment by ragging senior students, the college authorities did not attend the matter and only because of the negligence of the college authorities, it was happened. The college, to save its name, fabricated the records by accusing the State Police. In that circumstances, the Court concluded that there was no fairness in the investigation and hence, directed to transfer the investigation to CBCID.

14. In the another case of *Hariram Bhambhi /vs/ Satyanarayanan and anothers (2021 SCC Online SC 1010)*, while considering the bail application, the High Court, without notice to the defacto complainant under Section 15-A of the SC/ST Act, granted bail. Aggrieved by the order of the Court, Criminal Appeal was filed before the Hon'ble Supreme Court, in which, the Hon'ble Supreme Court set-aside the order of the High Court and cancelled the bail and modified the order stating that a reasonable timely notice has to be issued to the victim or the defacto complainant. All these above judgments, emphasising the fact about the fair investigation and the investigating agency cannot be permitted to conduct investigation in tentative and biased manner.



W.P.No.19672 of 2022

15. In the present case, admittedly, the deceased Vignesh died when he was in the police custody at Secretariat Colony Police Station on 19.04.2022. After the death, a case has been registered on a complaint given by the Inspector of Police, before Mr. R.Saravanan, the Assistant Commissioner, Ayanavaram Range in crime No.128 of 2022 under Section 176 Cr.P.C. at G5 Secretariat Colony Police Station on 19.04.2022 at 13.30 hours and he took up the case for investigation. Since the police personnels are accused persons, as per the order of the Director General of Police, Head of the Police Force in RC.No.000125/CrimeI(I)/2002, dated 22.04.2022, the CD file of G5 Secretariat Colony P.S. Crime No.128 of 2022 was transferred to CBCID. Subsequently, as per the order of the Director General of Police, CBCID, in RC.No.C.No.054/006064/Cr.II(I)2022, dated 26.04.2022, the 3rd respondent received the CD file of the case and reassigned Crime No.3 of 2022 under Section 176 Cr.P.C. at CBCID, OCU-I, Chennai and after investigation, the District Superintendent of Police, CBCID, OCU-I, Egmore, altered the offence under Section 302 of IPC and Section 3(ii)(v) SC/ST Act 1989 and again altered as 302, 324 IPC and Section 3(2)(v), 3(2)(va) of SC/ST (POA) Act 1989.



W.P.No.19672 of 2022

16. On perusal of the investigation report, the further fact reveals that the accused persons, namely, 1, Pounraj, [Police Constable], 2) Munab, [Head Constable], 3) Kumar, [Constable], 4) Deepak, [Home guard], 5) Jegajevan Ram, [Police constable], Chandrakumar, [Police Constable], were arrested and remanded to judicial custody and 164 Cr.P.C. Statements of the eye-witnesses were recorded and material objects, blood stained steel rod and bamboo stick and other materials were seized under Mahazar and DNA Test report of the victim is pending with the Forensic Science Departments. According to the prosecution, almost investigation has been completed.

17. On a perusal of the investigation status report, I find no materials to show that the present investigating agency, CBCID conducted the investigation in a tainted or bias manner. I am of the opinion that the present case does not fall into the category of rare cases. Upon consideration of the materials, in my view, proper investigation is being conducted. At this stage, the observation of Constitution Bench of the Hon'ble Supreme Court in ***State of West Bengal /vs/ Committee for protection of Democracy Rights*** reported in ***2010(3) SCC 571*** has to be taken into consideration. In paragraph 70 of the judgment, it is held as follows:-



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W.P.No.19672 of 2022

" 70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations"



W.P.No.19672 of 2022

18. Therefore, in the facts and circumstances of the case, the non-interference of the Court would not result in failure of justice. Hence, this case does not warrant special investigation by CBI and I find no merit in the writ petition and the same is liable to be dismissed.

19. Accordingly, this writ petition is dismissed. No cost. Consequently, connected miscellaneous petitions are closed.

31.10.2022

mrp

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Home Department, Secretariat,
Chennai 600 009.
2. The Director General of Police(CBCID),
Crime Branch Criminal Investigation Department (CBCID),
No.3, SIDCO Electronic Complex, 1st Floor,
Guindy, Chennai 600 032.
3. The Deputy Superintendent of Police,
Crime Branch Criminal Investigation Department(CBCID),
OCU-I, Chennai,
Egmore, Chennai 600 008.



W.P.No.19672 of 2022

WEB COPY

4. The Inspector of Police,
Crime Branch Criminal Investigation Department(CBCID),
OCU-I, Chennai,
Egmore, Chennai 600 008. (Cr.No.3 of 2022).
5. The District Collector,
62, Rajaji Salai, 4th Floor,
Chennai 600 001.
6. The Director,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai 600 005.
7. The District Adi Dravidar and Tribal Welfare Officer,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai 600 005.
8. The Dean,
Government Kilpauk Medical College and Hospital,
Kilpauk, Chennai 600 010.
9. The Director,
Central Bureau of Investigation (CBI)
New Delhi.
10. The Public Prosecutor,
High Court, Madras.



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W.P.No.19672 of 2022

V.SIVAGNANAM ,J.

mrp

Pre-delivery order
in
W.P.No.19672 of 2022

31.10.2022