



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.23332 of 2021

K.Sulochana

... Petitioner

Versus

1.State of Tamilnadu,

Rep.by Inspector of Police,
Crime Branch-CCB-EDF-III, TEAM XX,
Greater Chennai Police,
Chennai Police Commissionerate,
Vepery, Chennai - 600 007.

... 1st Respondent/Complainant

2.Thulaseedharan

3.Kavitha

... Respondents 2 to 3/Accused 1 & 2

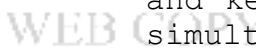
PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to direct the learned Metropolitan Magistrate CCB, CBCID Court, Egmore to allow the petition in unnumbered Crl.M.P.No. of 2021 filed under Section 256 r/w 302 of Cr.P.C., to permit the petitioner herein to continue and conduct the prosecution in the above unnumbered C.C.No. /2020 filed on 22.12.2020 by the Defacto Complainant herself, on the file of CCB, CBCID Court, Egmore in Crime No.356 of 2016 and to expedite the disposal of unnumbered C.C.No. of 2020 within a suitable time frame.

For Petitioner : ***M/s.G.Daisy John**

For Respondent : Mr.R.Vinothraja for R1
Govt. Advocate (Crl.Side)

ORDER

This petition has been filed to direct the learned Metropolitan Magistrate CCB, CBCID Court, Egmore to allow the petition in unnumbered Crl.M.P.No. of 2021 filed under Section 256 r/w 302 of Cr.P.C., to permit the petitioner herein to continue and conduct the prosecution in the above unnumbered C.C.No. /2020 filed on 22.12.2020 by the Defacto Complainant herself, on the file of CCB, CBCID Court, Egmore in Crime No.356 of 2016 and to expedite the disposal of unnumbered C.C.No. of 2020 within a suitable time frame.



3. The gist of the case is that the said Janaki was cheated and kept in confinement, threatened and abused for two years and simultaneously tortured by the respondents 2 and 3. Earlier taking advantage of the loneliness of Janaki, the respondents 2 and 3 had projected as though the second respondent was taken in adoption by Janaki. Thereafter, she had executed a Will bequeathing her property in Anna Nagar which was purchased from Tamil Nadu Housing Board and for developing the property, had executed several documents. Further the said Janaki was confined by the 2nd respondent. Thereafter, the said Janaki was rescued and later lodged a complaint to the Police with suspected illegal activities and FIR came to be registered in this case.

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



welfare association who informed the petitioner and her husband Kumar about the illegal confinement, on 15.11.2015, the petitioner and her husband were able to rescue the said Janaki. Thereafter on verification it was found that an adoption deed has been falsely created and the same has been registered on 06.02.2008 in Doc.No.66/2008 in SRO at Sowcarpet. Thereafter, a Will in favour of the second respondent in Doc.No.2/2008 has been created and registered on 06.02.2008 in SRO at Sowcarpet. Followed by it, a settlement deed in Doc.No.3687/2008 on 15.10.2008 in SRO at Villivakkam. On finding that the petitioner's sister had been cheated and forged documents were created and further she was kidnapped and tortured after which she was rescued, she has lodged a complaint with the Police on 16.12.2015. In the meanwhile, the adoption deed was cancelled in Doc.No.1 of 2016 in SRO at Sowcarpet. The suit in O.S.No.14 of 2016 was filed before the District Munsif Court, Ambattur seeking declaration against the second respondent and Repco Home Finance Ltd., that they can have no alienation or encumbrance over the Anna Nagar property. The Will was cancelled by Doc.No.13/2016 on 10.03.2016 in SRO at Sowcarpet. The petitioner's complaint was forwarded to the CCB, Chennai. The CCB by its report dated 20.05.2016, finding that it is a civil dispute, had closed the complaint of the petitioner. Thereafter, the said Janaki had filed Crl.O.P.No.11807 of 2016 before this Court at that time it was informed the complaint of the petitioner was forwarded and closed on 27.05.2016 and this Court by the order dated 13.06.2016 directed to furnish a copy of the closure report. Thereafter, Crl.O.P.No.15626 of 2016 was filed before this Court seeking to set aside the closure report dated 27.05.2016.

5. Considering the submission and on perusal of the materials, it is seen that in a perfunctory manner the investigation has been conducted. Finding that the said Janaki is aged about 72 years old being cheated by creating the documents, this Court had set aside the closure report on 27.05.2016 and directed the Deputy Commissioner of Police, Central Crime Branch to assign the complaint of Janaki dated 16.12.2015 to a competent Inspector of Police for registration of the First Information Report to proceed in accordance with law. Thereafter, the First Information Report came to be registered in Crime No.356 of 2016 for the offence under Section 506(i) of IPC against the respondents 2 & 3. Since no worthwhile investigation was proceeded with, the said Janaki, in Crl.O.P.No.17063 of 2017, sought direction to complete the investigation in Crime No.356 of 2016 within a stipulated time. By the order dated 15.09.2017, this Court directed the City Crime Branch to complete the investigation within a period of four weeks. Thereafter, in Crl.M.P.No.4308 of 2018 extension of time petition filed. Finally, by the closure report on



28.07.2018, the CCB had closed the case as mistake of fact and RCS notice No.05985539 dated 24.07.2018 was served to the petitioner's sister Janaki. The petitioner's sister Janaki filed a protest petition in CrI.M.P.No.4266 of 2018, and the trial Court had recorded the statement of Janaki and one Devaki and thereafter not accepting the closure report has sent back the case and directed the Deputy Commissioner of Police, CCB to appoint a fresh investigation agency and file a final report. On 07.10.2019 again closure report in Crime No.356 of 2016 filed. The petitioner's sister Janaki now aged about 84 years had filed a protest petition in CrI.M.P.No.10645 of 2018 which was filed on 14.10.2019. The trial Court in CrI.M.P.No.10644 of 2020 had accepted the closure report on 18.09.2020 giving liberty to the said Janaki to file a private complaint. Thereafter, the petitioner's sister Janaki had filed a private complaint under Section 200 of Cr.P.C., on 21.12.2020 the same was not immediately taken on file and SR.No.11 of 2021 was assigned and pending adjudication. In the meanwhile, the petitioner's sister Janaki died on 24.12.2020. Thereafter, the petitioner filed unnumbered SR.No.11 of 2021 before the trial Court on 16.02.2021 informing the death of the petitioner's sister and also filed a petition under Section 256 r/w 302 of Cr.P.C., to permit the petitioner to continue and conduct the prosecution in the above unnumbered Calender Case. The trial Court for the reason best known to it had returned the petition and questioned how petition is maintainable. Hence, the above petition.

6. The facts and circumstances of the case have been narrated in detail. It is not in dispute that the petitioner's sister is Janaki and she has made a complaint for being tortured and also on the grounds of forged documents and other allegations. She was alone when the complaint was registered. Thereafter, the First Information Report came to be registered in this case and closure report has been filed. The protest petition was not entertained and she was given liberty to file a private complaint under Section 200 of Cr.P.C., this was on 18.09.2020. Thereafter, she had filed a complaint on 21.12.2020. Thereafter, SR.No.11 of 2021 was assigned the case has been periodically adjourned for one reason or other. Finally the said Janaki passed away on 24.12.2020. Thereafter, the petitioner being her sister, has filed the petition under Section 256 r/w 302 Cr.P.C. to continue the prosecution.

7. The learned counsel for the petitioner relied upon the judgment of Chand Devi Daga and others Vs. Manju K.Humatani and others reported in (2017) SCC Online SC 1282, wherein, the Hon'ble Supreme Court has held at Para Nos.14 & 15 as follows:

"14. Two-Judge Bench in Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley referring to this Court's



judgment in Ashwin Nanubhai Vyas had held that heirs of the complainant can continue the prosecution. Following was held in para 5: (SCC p.512)

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"5. The question as to whether the heirs of the complainant can be allowed to file an application under Section 302 of the Code to continue the prosecution is no longer res integra as the same has been concluded by a decision of this Court in Ashwin Nanubhai Vyas Vs. State of Maharashtra in which case the Court was dealing with a case under Section 495 of the Code of Criminal Procedure, 1898, which is corresponding to Section 302 of the Code. In that case, it was laid down that upon the death of the complainant, under the provisions of Section 495 of the said Code, mother of the complainant could be allowed to continue the prosecution. It was further laid down that she could make the application either herself or through a pleader. Undisputedly, in the present case, the heirs themselves have not filed the applications to continue the prosecution, rather the same have been filed by their power-of attorney holders. ..."

15. In view of what has been discussed above, we are of the view that the High Court did not commit any error in allowing the legal heirs of the complainant to prosecute the criminal miscellaneous petition before the High Court. We do not find any error in the order of the High Court. The appeal is dismissed."

8. In view of the same, this Court directs the trial Court to entertain the petition filed by the petitioner and permit her to give her sworn statement and thereafter, number the case in unnumbered C.C.SR.No.11 of 2021 and proceed with the case and decide the case on its own merits.

9. With the above directions, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-V)

Dated : 14.02.2022

***Corrected as per letter given by**

M/s.G.Daisy John, Advocate dated 02.03.2022

//True copy//

Sub Assistant Registrar



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To

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- 1.The Metropolitan Magistrate CCB,
CBCID Court, Egmore, Chennai.
- 2.The Inspector of Police,
Crime Branch-CCB-EDF-III, TEAM XX,
Greater Chennai Police,
Chennai Police Commissionerate,
Vepery, Chennai - 600 007.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Daisy John, Advocate SR.No.3238

**To be substituted to the
order already despatched
on 23.02.2022**

CRL.O.P.No.23332 of 2021

NMI (CO)
GN (15/02/2022)
GMY (16/03/2022)