



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2022

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.1419 of 2022
and
Crl.M.P. (MD)No.1055 of 2022

xxxxxxx

... Petitioner/Accused Rank Not Known

Vs.

1.The Director General of Police,
Government of Tamil Nadu,
O/o. Director General of Police,
Chennai.

2.The Superintendent of Police,
O/o. Superintendent of Police,
Sivagangai District,
Sivagangai.

3.The Deputy Superintendent of Police CBCID,
O/o. Superintendent of Police CBCID,
Madurai District,
Madurai.

4.Ramesh

5.The Inspector of Police,
All Women Police Station,
Devakottai,
Sivagangai District.

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the respondent No.1 to withdraw the case in Crime No.4 of 2021 dated 30.12.2021 registered under Sections 7 and 8 of POCSO Act and Section 506(1) of Indian Penal Code r/w. Section 3(1)(xi) of SC ST Act on the file of the fifth respondent and entrust the same to any other competent officer and file a final report before the jurisdictional Magistrate within the time stipulated by this Court.



For Petitioner : Mr.Lajapathi Roy
For Respondents : Mr.M.Sakthi Kumar,
Govt. Advocate (Crl. Side)
for R1 to R3 & R5.

WEB COPY

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondents 1 to 3 and 5. Considering the nature of relief to be granted, issuance of notice to the fourth respondent is dispensed with.

2.The petitioner is figuring as an accused in Crime No.4 of 2021 registered on the file of the Inspector of Police, All Women Police Station, Devakottai. The case of the prosecution is that the petitioner who is having some matrimonial misunderstanding with her husband was having a live in relation with Natchiyappan. The said Natchiyappan and the petitioner used to consume liquor together often. According to the daughter of the petitioner, on 06.06.2021 and 08.06.2021, the said Natchiyappan tried to sexually molest the petitioner's daughter. Though the petitioner's daughter complained to the petitioner, the petitioner is said to have asked her to keep quiet. The petitioner is also said to have threatened her children that she would poison them, if they revealed the occurrence. Thereafter, the petitioner's son is said to have sent a voice message to the petitioner's husband, who is said to be abroad. The petitioner's husband passed on the same to his brother Gunalan, who lodged a complaint before the fifth respondent. Since the petitioner belongs to scheduled caste community, the fifth respondent registered a criminal case not only for the offences under Section 7 and 8 of POCSO Act but also under the provisions of SC/ST Act. The petitioner is figuring as the second accused while Natchiyappan was shown as the first accused. The petitioner herein seeks transfer of investigation to CBCID.

3.The learned Government Advocate (Crl. Side) opposed the request stating that the investigation is proceeding on the right lines and that no case for transfer of investigation has been made out and he called upon this Court to dismiss this criminal original petition.

4.I carefully considered the rival contentions and went through the materials on record. The first accused/Natchiyappan in this case filed Crl.O.P.(MD)No.399 of 2022 under Section 482 of CrPC for directing the jurisdictional Special Court to dispose of his bail petition on the same day of surrender. Mr.A.Robinson, learned counsel who appeared for the first accused submitted that money was taken from Natchiyappan but then it did not reach the victim's father. He also drew my attention to the statements made by the victim before the child welfare committee. Even though I found his



contentions to be persuasive, in view of invocation of the provisions of POCSO Act, I was not inclined to grant the relief sought for. The said criminal original petition was therefore dismissed as withdrawn.

5.Today, when this criminal original petition for transfer of investigation was taken up for hearing, learned counsel for the petitioner submitted that Natchiyappan committed suicide on 25.01.2022. My attention is drawn to the representation dated 30.12.2021 filed by the petitioner before the Superintendent of Police, Sivagangai. In the said representation, the petitioner has alleged that the petitioner is residing in the house bearing Door No.1/270, Tamilar Street, Kallal, Karaikudi Taluk, Sivagangai District. The said house originally belonged to the petitioner's father-in-law. The petitioner's father-in-law had executed a Will in favour of his daughter, who is said to have sold the same to a third party. From the said third party, Gunallen, petitioner's brother-in-law is said to have purchased the same. The petitioner's specific allegation is that in order to evict the petitioner from the house which she is occupying, the said Gunalan is putting pressure in several ways. According to the petitioner, lodging of the present complaint is one such mode adopted by the said Gunalan. I do not want to go into the factual controversy. This is more so because the said Gunalan is not before me. It will be unfair on the part of the Court to render a finding against Gunalan without hearing him.

6.Be that as it may, a specific allegation has been made that a substantial sum was taken by the fourth respondent from Natchiyappan for closing the complaint. On the earlier occasion also, Mr.A.Robinson, learned counsel for the first accused alleged that the money taken from Natchiyappan by the fourth respondent did not eventually reach the hands of the petitioner's father and that is why, Crime No.4 of 2021 came to be registered. Again, this Court will not be justified in giving a finding on the merits of the said allegation. The fact remains that when such an allegation has been specifically made, the fourth respondent cannot be entrusted with the investigation. Of-course investigation cannot be transferred merely because the accused has made some allegation against the investigation officer. But in the case on hand, the first accused/Natchiyappan committed suicide. The death of first accused does make a difference.

7.In the present case filed by the petitioner also, the very same allegations are reiterated. Therefore, accepting the contentions advanced by Mr.T.Lajapathi Roy, I direct the Director General of Police, CBCID, Mylapore, Chennai to issue proceedings for entrusting the investigation in Crime No.4 of 2021 registered on the file of the fifth respondent to the hands of the third respondent. In other words, the investigation shall be transferred from the file of the fifth respondent to the file of the third respondent.



8.This criminal original petition is allowed. The Registry is directed to mark a copy of this order to Director General of Police, CBCID, Mylapore, Chennai for issuing appropriate proceeding at the earliest. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2022

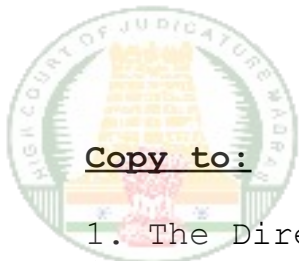
Sub Assistant Registrar(CS)

ias

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,
O/o. Director General of Police,
Chennai.
- 2.The Superintendent of Police,
O/o. Superintendent of Police,
Sivagangai District,
Sivagangai.
- 3.The Deputy Superintendent of Police CBCID,
O/o. Superintendent of Police CBCID,
Madurai District,
Madurai.
- 4.The Inspector of Police,
All Women Police Station,
Devakottai,
Sivagangai District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to:

1. The Director General of Police,
CBCID,
Mylapore, Chennai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-3078[F] dated 31/01/2022
)

Crl.O.P (MD) No.1419 of 2022
27.01.2022

ark(CO)
TR(15.02.2022) 5P 8C