



Crl.O.P.No.5522 of 2023

In the High Court of Judicature at Madras

Reserved on : 20.7.2023	Delivered on : 24.7.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.5522 of 2023
& Crl.M.P.No.3464 of 2023

R.Magi

Vs

...Petitioner

- 1.The Director General of Police,
Police Head Quarters, No.1,
Radhakrishnan Road,
Mylapore, Chennai-4.
- 2.The Additional Director General
of Police (CBCID),
24, Pantheon Road,
Komaleeswaranpet, Egmore,
Chennai-8.
- 3.The Superintendent of Police (CBCID),
North Zone, Alandur Municipal
Complex, Alandur, Chennai.
- 4.The Superintendent of Police,
Vellore District, Vellore.
- 5.The Deputy Superintendent of Police,
Katpadi, Vellore District.



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6.The Inspector of Police,
Melpadi Police Station,
Vellore District.

7.Mr.Gunarajan, Village
Administrative Officer (VAO),
Melpadi Village, Katpadi
Taluk, Vellore District.

...Respondents

PETITION under Section 482 of the Criminal Procedure Code seeking to call for the records with regard to the referred charge sheet filed by the fourth respondent in R.C.S.No.2 of 2022 on the file of the Special Court for SC/ST Act, Vellore, set aside the same and transfer the case in Crime No.74 of 2022 from the file of the fourth respondent to the second respondent police for conducting a de novo investigation.

For Petitioner	:	Mr.R.Sankarasubbu
For Respondents 1 to 6	:	Mr.A.Gopinath, Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking to set aside the referred charge sheet notice served by the fourth respondent police and to transfer the case in Crime No.74 of 2022 from the file of the fourth respondent to the file of the second



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respondent with a direction to conduct a de novo investigation.

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2. The case of the petitioner is as follows :

(i) Her son one Mr.Sarathkumar was humiliated by a police officer belonging to Melpadi Police Station, Vellore and as a result, her son immolated himself by setting ablaze near the police station and later died on 17.4.2022. A first information report came to be registered in Crime No.74 of 2022 initially under Section 309 of the Indian Penal Code (for brevity, the IPC) and thereafter, it was altered by including the offences under Sections 294(b) and 323 of the IPC read with Sections 3(1)(r) and (s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989).

(ii) The investigation was taken up by the Deputy Superintendent of Police, Katpadi and ultimately, a referred charge sheet was filed before the Special Court for Trial Cases under SC/ST Act (POA), Vellore (for short, the Court below) on 07.11.2022. The referred charge sheet notice was also served on the petitioner, who is the defacto complainant. Aggrieved by the same, the above criminal original petition has been filed before this Court.



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3. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for respondents 1 to 6.

4. The learned counsel for the petitioner submitted that the Investigation Officer wanted to save the skin of the concerned police officer, who had abetted the commission of suicide by the son of the petitioner and a complete slipshod investigation was conducted in this case. According to him, the dying declaration of the victim - son of the petitioner and also the evidence of four other witnesses would clearly show that the offence had been committed and in spite of the same, the Investigation Officer had relied upon the statements given by some of the interested witnesses and chosen to file a closure report before the Court below. He also submitted that the investigation must be transferred to the Crime Branch Crime Investigation Department (CBCID) and the referred charge sheet notice served on the petitioner must be set aside.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for respondents 1 to 6 submitted that an effective investigation has been conducted in this case and that immediately



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after the information was received by the police, the then Inspector of Police went to the scene of occurrence and prepared a rough sketch and an observation mahazar in the presence of witnesses. He would further submit that apart from the above, immediate arrangement was made for recording the dying declaration of the victim - son of the petitioner by the Judicial Magistrate concerned. He would also submit that the first information report was altered by including the offences under Sections 294B and 323 of the IPC read with Sections 3(1)(r) and (s) and 3(2)(va) of Act 33 of 1989 and that thereafter, immediately the investigation was also transferred to the Deputy Superintendent of Police, Katpadi based on the instructions given by the Superintendent of Police, Vellore on 13.4.2022.

6. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. This Court went through the final report as well as the statements recorded from the witnesses and also the materials that have been collected during the course of investigation. The materials



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collected contain the dying declaration of the victim - son of the petitioner and the statements of the parents and the brothers of the victim and all of them incriminate the accused person in this case. There are also other materials collected, which give a different version about the incident. The Investigation Officer has assessed all the materials and has come to the conclusion that the case must be closed as mistake of fact. Accordingly, the referred charge sheet notice was served on the defacto complainant namely the petitioner herein.

8. The question that arises for consideration is as to whether a transfer of investigation is warranted at this stage.

9. It is now too well settled that the Magistrate does not act like a post office on receipt of a closure report. A Magistrate can always ignore the closure report and take cognizance of the offence based on the materials placed under Section 190(1)(b) of the Criminal Procedure Code (for brevity, the Cr.P.C.). It is also open to the Magistrate to order for a further investigation under Section 156(3) of the Cr.P.C.



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10. Yet another option that is open to the Magistrate is to accept the closure report. Before taking such a decision, the defacto complainant will also be entitled to file a protest petition before the Magistrate. Once such a protest petition is filed, the Magistrate again has three options. The first option is to set aside the referred charge sheet notice and take cognizance of the offence against the accused person. The second option is to order for further investigation and the third option is to convert the protest petition into a private complaint under Section 200 of the Cr.P.C.

11. In the considered view of this Court, during the course of investigation, the statements of all the witnesses have been recorded including the dying declaration of the victim - son of the petitioner. Therefore, this Court must allow the Magistrate to apply his mind on the closure report filed along with all the statements and other materials. As already held supra, the Magistrate is not bound by the opinion of the Investigation Officer in filing the closure report as mistake of fact. When that being so, it is possible that the Magistrate may take cognizance of the offence by disregarding the opinion of the



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Investigation Officer. Under such circumstances, it may not be necessary for a further investigation since there is nothing more to investigate in the case. It is also possible for the Magistrate to order for further investigation if the case so warrants.

12. When all the above options are available to the Magistrate, it is not appropriate for this Court to order for a transfer of investigation to a different agency at this stage. This Court should not foreclose the power that is available to the learned Magistrate while dealing with the closure report filed by the Investigation Officer.

13. In the light of the above discussions, this Court is not inclined to transfer the investigation for the present. There shall be a direction to the Court below namely the Special Court for Trial Cases under SC/ST Act (POA), Vellore to independently apply its mind on the closure report filed by the Investigation Officer and proceed further in accordance with law. The Court below shall keep in mind the various options that are available and accordingly take a decision. This process shall be completed by the Court below within a period of four weeks from the date of receipt of a copy of this order. If,



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ultimately, the petitioner is aggrieved by any decision that may be taken by the Court below, it will always be open to the petitioner to work out her remedy in accordance with law.

14. The above criminal original petition is disposed of in the above terms. Consequently, the connected Crl.M.P. is closed.

24.7.2023

To

- 1.The Director General of Police, Police Head Quarters, No.1, Radhakrishnan Road, Mylapore, Chennai-4.
- 2.The Additional Director General of Police (CBCID), 24, Pantheon Road, Komaleeswaranpet, Egmore, Chennai-8.
- 3.The Superintendent of Police (CBCID), North Zone, Alandur Municipal Complex, Alandur, Chennai.
- 4.The Superintendent of Police, Vellore District, Vellore.
- 5.The Deputy Superintendent of Police, Katpadi, Vellore District.
- 6.The Inspector of Police, Melpadi Police Station, Vellore District.
- 7.The Special Court for Trial Cases under SC/ST Act (POA), Vellore.
- 8.The Public Prosecutor, High Court, Madras.

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N.ANAND VENKATESH,J

RS

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