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CrI.OP.No.18514 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.18516 of 2023

M.Ganesan

... Petitioner

Vs.

1. The Inspector of Police,
Vellore North Police Station,
Vellore District.

2. The Superintendent of Police,
The office of the Superintendent of Police,
Vellore District, Vellore.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to transfer the investigation in Crime No.562 of 2021 pending on the file of the 1st respondent police to some other fair independent investigation agency and direct them to investigate the case properly and file a final report.

For Petitioner : Mr.Thiyagarajan B
For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to transfer the investigation in Crime No.562 of 2021, pending on the file of the 1st respondent police to some other investigating agency.



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2. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the investigation was completed and a closure report was filed as further action dropped after serving RCS notice to the defacto complainant in RCS No.14 of 2022, before the Taluk Magistrate (Tahsildar), Vellore.

3. The grievance of the petitioner, who is the father of the deceased is that the complainant viz., the daughter in law is suspected to be behind the demise of the son of the petitioner. Since the same was not properly investigated, the present petition has been filed seeking for transfer of investigation to some other investigating agency.

4. This Court in CrI OP [MD] Nos.15515 etc of 2018 by order dated 17.09.2018 has categorically held as follows :-

“22.It is very clear from the above judgment that the inquiry that is held by the Executive Magistrate under Section 174 of Criminal Procedure Code is a plain and simple non judicial function. The report submitted by the Executive Magistrate relating to the inquiry shall form part of the investigation conducted by the Police and such report shall be used by the Investigating Officer in the course of investigation. The investigation conducted by the Investigating Officer has to proceed independently in accordance with law and the inquiry conducted by the Executive Magistrate is not a bar for the Police to go ahead with the investigation.

23.From the above discussion, it is clear that the Police after registration of a FIR under Section 174 of Cr.P.C will have to conduct an inquest in accordance with Section 174(1) of Cr.P.C and submit a report to the Executive Magistrate under Section 174(2) of Criminal Procedure



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Code. The Executive Magistrate will independently conduct an inquest in line with the power given under Section 174(4) of Cr.P.C. This power has been given to the Executive Magistrate, since the legislature thought that an inquest should be conducted by an independent authority distinct from the Investigating Agency. Where a report is prepared by the Executive Magistrate after the inquest, the same shall be submitted to the Investigating Officer who shall make it a part of his investigation and may also proceed to make further investigation based on the report. The powers of the Investigating Officer is not curtailed in any manner and he has to proceed independently like in every other case and file a Final Report. This Final Report must be filed only before the jurisdictional Magistrate and not before the Executive Magistrate.

24. In view of the above, this Court proceeds to answer the issue that was raised in this case as follows:

a)The Police on receipt of an information about the suspicious death shall registered an F.I.R under Section 174 of Criminal Procedure Code and thereafter he can proceed to the scene of occurrence and prepare an Inquest Report.

b)When a Police Officer receives an information to the effect that the deceased is lying in a serious condition, he can rush to the scene of occurrence, in order to see if he can save the victim and if in case the victim does not survive he can proceed to prepare the Inquest Report in accordance with Section 174(1) of Cr.P.C, and thereafter register an F.I.R under Section 174 of Cr.P.C. The Inquest Report has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and state in what manner, or by what weapon or instrument [if any], such marks appear to have been inflicted.

c)The Police Officer shall also prepare a Rough Sketch of the place of occurrence.

d)The Inquest Report and the Rough Sketch shall be prepared in the presence of two or more respectable inhabitants of the neighborhood.

e)The object of the Inquest Proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. The Inquest Report need not contain details such as how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted and these facts are not within the scope of Inquest Proceedings and they fall within the scope of the investigation to be conducted by the Police.

f)immediately after the preparation of the Inquest Report in accordance with Section 174(1) of Criminal Procedure Code, the Police shall submit the same to the Executive Magistrate under Section 174(2) in order to enable the Executive Magistrate to hold an independent inquest as contemplated under Section 174(4) of Criminal Procedure



Code.

g)The Executive Magistrate on completion of the inquest shall submit a report to the Police and such report shall form part of the investigation conducted by the Police and the Police shall collect details from such report and conduct the investigation accordingly.

h)The power of the Police to investigate is in no way stopped or curtailed or interfered with by the inquest held by the Executive Magistrate and the freedom of the Police to proceed with the investigation will be left untouched.

i)The Police on the conclusion of the investigation shall file a Final Report under Section 173(2) of Cr.P.C only before the jurisdictional Magistrate and not before the Executive Magistrate. This will apply, in both cases, whether the Final Report is a positive report or is a Closure Report.

j)If in case the Police proceeds to file a Closure Report, the victim shall be entitled to be served with a R.C.S notice in order to enable him to file a protest Petition before the concerned Magistrate.

k)On such protest Petition being filed, the concerned Judicial Magistrate shall act in accordance with law laid down by the Hon'ble Supreme Court in *Vinay Tyagi .Vs. Irshad Ali*, reported in *[2013 (5) SCC 762]*.

25.It is made clear that in all future cases where the F.I.R is registered under Section 174 of Cr.P.C, the above procedure shall be scrupulously followed. A copy of this order may be sent to the Director General of Police, Chennai and also to the Inspector General of Police in the various Zones in order to enable them to sensitize the Police and give necessary instructions with regard to the manner in which the Police will have to proceed in all cases where an FIR is registered under Section 174 of Cr.P.C.”

4. After the above order was passed, this Court specifically directed the copy of the order be sent to the Director General of Police, Chennai and also to the Inspector General of Police of various zones to sensitize the police and to direct the police to follow the procedure as stipulated by this Court in the above order. Inspite of the same, the very same mistake has been committed in this



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in the year 2022. This only means that the earlier order passed by this Court is not being strictly followed.

5. This Court was inclined to initiate contempt proceedings against the respondent police for non compliance of the directions issued by this Court. However, this Court does not find this practice be followed very frequently as it used to happen in the past and this happens to be one rare case where the final report has been filed before the Taluk Magistrate (Tahsildar). Hence, this Court is inclined to condone the act of the respondent police.

6. There shall be a direction to the 1st respondent to file the final report / closure report before the concerned Jurisdictional Magistrate Court after serving RCS notice on the petitioner. Even though, the petitioner is not the complainant in this case, the petitioner is suspecting the hand of the defacto complainant and hence, the petitioner alone wants to agitate this matter. On such service of the RCS notice, it is left open to the petitioner to file a protest petition before the concerned Court and work out his remedy in the manner known to law. This direction is issued since the petitioner is the victim in this case and hence, such an opportunity is given to the petitioner.



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the 1st respondent to comply with the above directions within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the Director General of Police shall issue yet another circular reiterating the strict compliance of the directions issued by this Court in ***[Manohari Vs. The Deputy Superintendent of Police and others]*** referred supra. It shall be ensured that in all cases where the FIR is registered under Section 174 of Cr.PC, the procedure that was directed to be complied, shall be strictly complied with without any default in future.

16.08.2023

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1. The Inspector of Police,
Vellore North Police Station,
Vellore District.
2. The Superintendent of Police,
The office of the Superintendent of Police,
Vellore District, Vellore.
3. The Public Prosecutor,
Madras High Court,
Madras.



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N.ANAND VENKATESH, J.

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