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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.25604 of 2022

D.Jayamani
W/o.K.Dakchinamoorthy(late)

.. Petitioner

.Vs.

- 1.The State rep.by
Secretary to Government
Government of Tamil Nadu
Home Department
Fort St.George
Chennai 600 009.
- 2.The Inspector of Police
Melpatti Police Station
Gudiyatham Taluk
Vellore District.
- 3.The Superintendent of Police
Office of the Superintendent of Police
Vellore District.
- 4.The Deputy Superintendent of Police
Crime Branch, CID
Vellore.
- 5.The Superintendent of Police
Office of the Central Bureau of Investigation
Southern Region, Chennai.
- 6.M.Muralidharan
S/o.Munusamy
Inspector of Police
ALGSC, Vellore District.



S/o.Subramani, HC-1735
Omerabad P.S
Vellore District.

8.K.Inbarasan
S/o.M.Kannan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct to transfer further investigation of the case in C.C.No.546/2019, on the file of the Judicial Magistrate-III, Vellore in Crime No.1/2017 from 4th respondent/CBCID to 5th respondent/CBI.

For Petitioner : Mrs.S.Sridevi

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.side)
for R1 to R5

Dr.R.Sampath Kumar
R6 to R8

ORDER

This criminal original petition has been filed by the *de facto* complainant seeking for transfer of investigation from the file of CBCID to CBI, on the ground that the CBCID has also taken side with the police who had committed a brutal offence against the son of the petitioner and they are attempting to give a clean chit to the police in this case.

2.When the matter came up for hearing on 26.6.2023, this Court passed the following order :



Ms.Gomathi.V, Additional Superintendent of Police, CBCID, Villupuram is present today.

2. The status report has been filed by the learned Additional Public Prosecutor.

3. The contention of the petitioner is that the Police took deceased Gopal to the police station and he was in custody with the police and died on 01.10.2023. Thereafter, a case in Crime No.176 of 2013 for suspicious death was registered under Section 176(1A) of Cr.P.C. by Melpatti Police. Since it is a custodial death, the learned Judicial Magistrate No.II, Vellore conducted enquiry as per Section 176(1A) of Cr.P.C. and sent a report to the Government. The Government not satisfied with the report directed the transfer of investigation to CBCID in the year, 2017. Thereafter, there was no progress. The petitioner has also filed Crl.O.P.No.8677 of 2017 before this Court seeking a direction to transfer the investigation from CBCID to CBI. This Court, by an order dated 25.10.2019 had given certain directions which was not followed. Further submitted that in this case one Sundaram, the then Deputy Superintendent of Police is a person who laid attack on the deceased along with other accused. The petitioner on the directions of this Court dated 25.10.2019, filed a protest petition before Judicial Magistrate No.III, Vellore in Crl.M.P.No.8250 of 2021. In that proceedings too, the specific stand of CBCID is, it is not a murder but admitted that it is a custodial death. Further, they were not inclined to include Section 302 IPC in the charge sheet, further projected as though DSP-Sundaram is not an accused for the reason that he was on a casual leave for two days, i.e., on 29.09.2013 and 30.09.2013 and joined duty only on 01.10.2013.

4. Learned Additional Public Prosecutor submits that in this case now the post-mortem record in CD had been retrieved and



the same has been shown to the Doctor, Questionnaire was sent to him, who had given an opinion that the death was occurred not due to any violence, it was in the usual course and further stated that if a person is affected with heart disease such death is possible. In view of the same, Section 302 IPC could not be included. As regards DSP-Sundaram, learned Additional Public Prosecutor submits that he was on casual leave for two days, viz., 29.09.2013 and 30.09.2013 and joined duty only on 01.10.2013. He was proceeded with in departmental enquiry and departmental proceedings were proved against DSP-Sundaram. He seeks small accommodation to produce departmental proceedings.

5. For submitting the citations by the petitioner and to produce relevant files by the learned Additional Public Prosecutor, post the matter on 11.07.2023.

3.The accused persons had filed CrI.OP.No.26860 of 2022, seeking for a direction for the completion of the trial within time frame fixed by this Court. This petition came up for hearing on 24.7.2023 and this Court passed following order.

This petition has been filed for a direction to the learned Judicial Magistrate No.III, Vellore, to complete the trial in C.C.No.546 of 2019, within the time frame fixed by this Court.

2.When the matter came up for hearing on 04.07.2023, the learned Government Advocate (crl.side) brought to the notice of this Court that a further investigation was conducted in this case pursuant to the orders passed by this Court. The learned Government Advocate (crl.side) also sought for sometime to take instructions in this regard. Accordingly, the matter stood posted today.



3. When the matter was taken up for hearing today, a status report of the Additional Superintendent of Police CBCID, Villupuram Range, was filed. The copy of the further report which was filed before the Judicial Magistrate No.III, Vellore, was also filed before this Court. Pursuant to the further report, the case is now going to be tried for offence u/s 343, 346, 348, 352, 325, 203, 217 and 218 IPC r/w 34 IPC. Section 331 of IPC, is triable by a Court of Session. In view of the same, the trial has to be conducted only by a Court of Session. Accordingly, the Court below has to commit this case to the Court of Session.

4. In the light of the above development, there shall be a direction to the learned Judicial Magistrate No.III, Vellore, to commit the case to the file of the Principal District and Sessions Court, Vellore, within a period of four weeks from the date of receipt of copy of the order. The Principal District and Sessions Judge, Vellore, shall proceed further with the case and conduct the case on a day today basis by following the dictum of the Apex Court in **Vinod Kumar .v. State of Punjab** reported in **[2015 (1) MLJ (CrI) 288 SC]**. The entire proceedings shall be completed by the Court of Sessions within a period of **six months**. If any attempt is made to drag on the proceedings, it is left open to the Sessions Court to act in accordance with the judgment of the Apex Court in **STATE OF UTTAR PRADESH .Vs. SHAMBHU NATH SINGH** reported in **(JT 2001 (4) SC 3191)**.

5. This criminal original petition is disposed of with the above directions.



4.The learned counsel for the petitioner submitted that the materials placed before the Court clearly makes out a *prima facie* offence of murder and in spite of the same, the offence of murder has not been added as a charge in the further report that was filed by the CBCID and on the other hand, Section 331 of IPC alone has been added. The learned counsel for the petitioner further submitted that the involvement of DSP - Mr.Sundaram is also clear and in spite of the same, he has not been added as an accused in this case. The learned counsel submitted that the petitioner has been struggling for the last 10 years and she has lost her son due to the police brutality and even the investigation done by CBCID is not fair and this agency has also attempted to cover up the police.

5.In the considered view of this Court, the incident had taken place in the year 2013 and even the trial is yet to commence after nearly 10 years. The CBCID has not yet filed the supplementary report before the Court below and the Court below is yet to frame charges against the accused persons. In view of the same, the offence for which the charges are going to be framed is well within the jurisdiction of the Trial Court. Whether the materials available also make out an offence u/s.302 IPC, is something to be considered by the Trial Court at the time of framing of charges. Even if the Trial Court does not frame charge for offence u/s.302 IPC, the Trial Court is given absolute power u/s.216 Cr.PC., to alter the charges at any point of time till the final judgment is passed. Therefore, during the course of inquiry/trial, the materials that crop up can also lead to the alteration of charges for offence u/s.302 IPC. That apart, if the involvement of any other person in the crime



comes to the forefront during the course of inquiry/trial, such a person can be added as an accused by the Trial Court in exercise of its jurisdiction u/s.319 Cr.PC.

6.In the light of sufficient powers that are available to the Trial Court to alter the charges and to add additional accused, it is appropriate to leave it to the Trial Court to take a decision. No useful purpose will be served in once again transferring the investigation to another agency and it will only delay the process and more the proceedings are delayed, it will be difficult for the prosecution to establish the case. The delay in completion of the criminal proceedings is a major factor that has to be taken into consideration by this Court before considering the transfer of investigation. The CBCID has now placed all the materials before the Trial Court and hence, it will be more appropriate to give a free hand to the Trial Court to conduct the proceedings.

7.The above clarity given by this Court will sufficiently take care of the grievance expressed by the petitioner. This Court has already directed the Trial Court to complete the proceedings within a stipulated time frame.

8.This criminal original petition is disposed of in the above terms.

After the order was dictated, the learned counsel for the petitioner submitted that a Special Public Prosecutor may be appointed by this Court to conduct the trial in a fair manner. The case shall be conducted by the regular Public Prosecutor for



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the time being. If there is any complaint on the effectiveness in conducting the trial, it is left open to the petitioner to approach this Court seeking for appointment of Special Public Prosecutor.

05.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP



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To

1. Secretary to Government
Government of Tamil Nadu
Home Department
Fort St. George
Chennai 600 009.
2. The Inspector of Police
Melpatti Police Station
Gudiyatham Taluk
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S/o. Subramani, HC-1735
Omerabad P.S.
Vellore District.
8. Judicial Magistrate-III,
Vellore.
9. The Public Prosecutor,
High Court of Madras,
Madras.



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N. ANAND VENKATESH,, J.
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