



WEB COPY



Crl.O.P(MD).No.4092 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.4092 of 2020

1.Vijaya Kumari

2.Babu Prasad

...Petitioners

Vs

1.The Additional Director General of Police,
CB-CID,
24, Pantheon Road, Komaleeswaranpet,
Egmore, Chennai – 600008.

2.The Director General of Police,
Chennai.

3.The Superintendent of Police,
Sivagangai.

4.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to transfer the investigation of the FIR in Crime No.541 of 2019 dated 07.10.2019 on the file of the 4th respondent to the first respondent.

For Petitioners

For Respondents

: Mr.R.M.Arun Swaminathan

: Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)



ORDER

This petition is filed to transfer the investigation of the FIR in Crime No.541 of 2019 dated 07.10.2019, from the file of the 4th respondent to the first respondent.

2.On the side of the petitioners, it is stated that there was some dispute between the deceased and his wife. The deceased died in a suspicious manner. The respondent Police closed the FIR as 'mistake of fact'. The body of the deceased was burned to ashes. But the nearby articles were not burned at all. The door of the house was not locked. The wife of the deceased was having affair with some third person. The respondent Police with an ulterior motive to help the wife, have created some documents and closed the file as 'mistake of fact'. The petitioners have filed a complaint on 11.10.2019. Even after the complaint by the petitioners, the respondent Police has not investigated the case properly. Even before the receipt of Forensic report dated 14.07.2022 and the opinion of the Forensic Department dated 02.12.2022, the respondent Police filed a counter much earlier i.e. April 2022.

3.On the side of the prosecution, it is stated that the deceased was a drink addict. On the date of occurrence, he was under the influence of alcohol. In the drunken mood, he smoked in the bed and the cigarette bud set the bed



in the fire and thereby, the deceased died due to smoke and fire. After getting the postmortem report and after getting the Forensic report, the prosecution got the final opinion of the Head of Department of the Forensic Science Medicine and that on the basis of the report and on the basis of other evidence, the case was closed as 'mistake of fact'.

4.A perusal of the CD files and a perusal of the records reveals that there was no inflammable substance found in the materials sent for the chemical examination. It is true that in the photograph, the other areas, the other articles, sofa, etc were not burnt. If at all somebody else, caused the death of the deceased by using fire, there is chance for the surrounding articles to be damaged by fire. So, this suspicion alone is not sufficient to sent the case for re-investigation. Moreover, the articles seized from the occurrence spot might have been utilized by the Forensic Department for conducting various tests. There may not be articles available for any further chemical examination.

5.In the above circumstances, transferring the investigation to some other agency will not be of much use at the present stage.



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R. THARANI,J.

Mrn

6.In view of the above circumstances, this Criminal Original Petition is dismissed and the petitioners have given liberty to file a protest petition or to file a petition for further investigation.

13.03.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Additional Director General of Police,
CB-CID,
24, Pantheon Road, Komaleeswaranpet,
Egmore, Chennai – 600008.

2.The Director General of Police,
Chennai.

3.The Superintendent of Police,
Sivagangai.

4.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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