



CRL.O.P.(MD)No.4839 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2023

PRONOUNCED ON : 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.O.P.(MD)No.4839 of 2021

R.Prema

... Petitioner

-Vs-

- 1.The Director General of Police,
Govt. of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600004.
- 2.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram-623 501.
- 3.The State Represented by
The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram. (Crime No.512 of 2020)



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4.The Central Bureau of Investigation,
Plot No.5-B, 6th Floor, CGO Complex,
Lodhi Road, Jawaharlal Stadium Marg,
New Delhi-110003.

5.The Superintendent of Police,
CB CID, Madurai-625002.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying this Court to direct the 1st respondent to transfer the investigation to the 4th respondent CBI or the 5th respondent CB CID, Madurai in Cr.No.512 of 2020 on the file of the Kenikkarai Police Station, Ramanathapuram.

For Petitioner : Mr.L.Rajiah
For R1 to R3 : Mr.M.Muthumanikkam,
& R5 Government Advocate(Criminal side)
For R4 : Mr.N.Mohideen Basha,
Special Public Prosecutor for CBI

ORDER

The petitioner / defacto complainant in Crime No.512 of 2020 on the file of the 3rd respondent, has filed this Criminal Original Petition to transfer the investigation to some other agency.

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2.The learned counsel appearing for the petitioner submitted that her daughter got married one Ilambaruthi in spite of the opposition from the defacto complainant and they are living separately at Thayumanaswamy Kovil Street, Ramanathapuram. When the matter stood thus, on 06.08.2020 one Kalidoss, who is the neighbour of the deceased, gave a death information of the deceased to the defacto complainant. The deceased sustained electrical burn injury and also some other injuries in the neck.

3.He further submitted that the respondent Police, though there are abundant available evidence for registering a case for other offence, registered a case under Section 174 Cr.P.C., and the investigation has not been conducted in a proper line. Hence, the defacto complainant filed CRL.O.P.(MD)No.13591 of 2020 before this Court, seeking transfer of the case to some other agency, wherein this Court, after recording the submissions made by the learned Additional Public Prosecutor for the respondent and hearing the learned counsel appearing for the petitioner, passed the following order:-



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“6.After going through the status report filed by the 3rd respondent, this Court is satisfied that the investigation in this case is going on the right direction. But considering the anguish expressed by the petitioner due to the death of her daughter, ends of justice would be met by directing the 2nd respondent / Deputy Superintendent of Police, Ramanathapuram District, to monitor the investigation. Accordingly, there shall be a direction to the Deputy Superintendent of Police, Ramanathapuram District, to monitor the investigation in Crime No. 512 of 2020 conducted by the 3rd respondent/police and the 3rd respondent/police shall complete the investigation and file the final report before the court concerned within a period of three months from the date of receipt of a copy of this order.”

4.In spite of the order, the investigation is not conducted in a fair manner. Hence, the petitioner has filed this Criminal Original Petition to transfer the investigation to some other agency by reiterating the same allegations.

5.Per contra, the learned Government Advocate(Criminal side) appearing for the respondents 1 to 3 and 5 would submit that the investigation is completed and a negative report has also been filed and the same was intimated to



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the defacto complainant. In the negative report, the Investigation Officer has stated a reason that on seeing the deceased, who committed suicide by hanging, the said Ilambaruthi, who is the husband of the deceased, released her from hanging and applied electric shock to her with electrical wire. In the said process, she sustained electrical injuries and there was no signature of committing murder by the said Ilambaruthi. Therefore, they closed the investigation by stating that the deceased for some other reason committed suicide by hanging and there was no material to lay a final report either altering the offence into any other penal provisions or investigating the matter in some other way by implicating the accused Ilambaruthi as an accused.

6.Assailing the said final report, the learned counsel appearing for the petitioner submitted that great injustice was caused to the petitioner and the investigation is not conducted in a proper manner and in order to safeguard the said Ilambaruthi, final report was filed without examining the said Kalidoss and the house owner of the deceased. Further, among 25 witnesses examined by the Investigation Officer, most of them are the friends of the said Ilambaruthi. Hence, he seeks for transfer of investigation, even though the final report was filed.



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7.He would further submit that even the final report was filed before the Court concerned, this Court has power to invoke the jurisdiction under Section 482 Cr.P.C., to transfer the investigation, considering the above intentional lapses on the part of the Investigation Officer.

8.This Court has perused the records available on record and the CD file, which was produced before this Court by the Investigation Officer at the time of hearing, wherein, the Doctor opined as follows:-

“The deceased Death Due to Cardiopummonary arrest apyxia due to hanging & multiple electrical burn marks over (Rt) upper LMB & left upper chest.”

9.The Investigation Officer, after examining the number of witnesses, came to a conclusion that the deceased committed suicide by hanging for some other reason and there was no report regarding the dowry demand and other cruelty on the part of the said Ilambaruthi. In such circumstances, the Investigation Officer has filed the said negative report before the Jurisdictional Court concerned.



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10.At this stage, this Court has no jurisdiction to invoke Section 173(8) Cr.P.C., to order for further investigation by transferring the case from the respondent Police to some other Police without any materials for doing the said cause.

11.At this juncture, it is relevant to note that the Hon'ble Supreme Court of India in the case of ***Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another*** reported in ***AIR 2019 SCC 5233***, stated as follows:-

“38. There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent



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judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpatory or exculpatory certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than



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avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled.”

12.In view of the above, the petitioner has remedy to approach the concerned Court and file a petition under Section 173(8) Cr.P.C., to conduct further investigation. Therefore, this Criminal Original Petition stands disposed of with liberty to the petitioner either to file a petition seeking relief of further investigation under Section 173(8) of Cr.P.C., or to file protest petition and proceed in accordance with law before the concerned Jurisdictional Court, if she advises so.

28.04.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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To:

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Govt. of Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600004.
- 2.The Superintendent of Police,
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- 4.The Superintendent of Police,
CB CID, Madurai-625002.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN, J

MYR

Order made in
CRL.O.P.(MD)No.4839 of 2021

Dated:

28.04.2023