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Crl.O.P.(MD)No.20506 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.20506 of 2023

and

Crl.MP(MD)No.16041 of 2023

M.Selvaraj @ Varichur Selvam @
Selvam : Petitioner/Accused

Vs.

- 1.The Assistant Superintendent of Police,
Aruppukottai Sub-Division,
Virudhunagar District.
- 2.The State rep. by
The Sub Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
(Crime No.41 of 2021).
- 3.The Inspector of Police,
Thiruporur Police Station,
Chengalpattu District. : Respondents/Complainants

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to transfer the investigation in Crime No.41 of 2021 from the file of the 2nd respondent police to the file of the 3rd respondent police or to the file any other jurisdictional Police and to pass such other order or orders.

For Petitioner : Mr.M.Shreedhar

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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O R D E R

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This criminal original petition has been filed seeking transfer of the investigation in Crime No.41 of 2021 from the file of the 2nd respondent police to the file of the 3rd respondent police or to the file any other jurisdictional Police.

2.On the basis of the complaint given by the wife of the deceased, originally the case was registered in Crime No. 41 of 2021 as 'Man Missing'. During the course of the investigation, it was found that the deceased Senthil Kumar was done to death because of shooting. Body was also cut into pièce and thrown into the Thamiravarani River. So, it was altered to sections 147, 148, 364, 302, 404, 201 IPC r/w 149, 120(B) IPC and section 25(1A), 25(1B) (b) of the Arms Act, 1959.

3.Challenging the power and jurisdiction of the respondents herein to investigate the matter, this petition has been filed seeking transfer of the investigation.

4.Without going into the factual aspects involved in this matter, now let us straightaway go to the provision, which confer upon the Investigating Officer to investigate the cognizable offence.



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5.As stated above, the origin of the case is that the complaint was given by the wife of the deceased, over which, as mentioned above, the case was registered as 'Man Missing' by the 2nd respondent police. Since the origin lies within the jurisdiction of the 2nd respondent police, during the course of the investigation, according to the learned Additional Public Prosecutor, it was found that the offence travelled from Virudhunagar to Chennai and back to Thamiravarani River. According to him, the 2nd respondent police is well within its power to make the investigation, since a portion of the cause of action namely missing of person originated within the jurisdiction of the 2nd respondents herein.

6.Per contra, it is contended on the part of the petitioner that even though, the origin lies within the jurisdiction of the 2nd respondent, but so far the investigation could not find out the body of the deceased. So according to him, the very foundation of the prosecution case is faulty and so far, no materials have been collected. So according to him, basis of the prosecution case has not been *prima facie* shown, then the date and place of occurrence, the alleged killing of Senthil Kumar admittedly took place within the jurisdiction of the Chennai Police Station, the 2nd respondents has no jurisdiction.



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7.In response to the above said contention, the learned Additional Public Prosecutor would submit that this petition will not lie at the instance of the accused; the petitioner is facing various criminal cases and he is also a history sheeted person. But we need not be carried away by the antecedent of the petitioner. We will confine ourselves only to the legal point raised. For the same reason, I am not going to touch upon the factual aspects put forth on both sides as to whether Senthil Kumar is alive or done to death.

8.At the time of argument, the learned counsel appearing for the petitioner would submit that the respondents police submitted before the Principal District Judge, Srivilliputhur at the time of hearing the bail application of the co-accused in Crl.MP No.5371 of 2023 that final report is presented. But it is submitted by the learned Additional Public Prosecutor that it is a wrong statement before that court.

9.Section 154 Cr.P.C reads as under:-

"154.Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge



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of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, 2 [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, 1 [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA,



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section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned



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who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

10. Section 156 Cr.P.C reads as under:-

"156. Police officer's power to investigate cognizable case. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."



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11. Section 157 Cr.P.C reads as under:-

"157. Procedure for investigation. -

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender: Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;



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(b)if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.]

(2)In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

12.Section 156(1) Cr.P.C says that the jurisdiction or power of the Investigating Officer to investigate a



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particular cognizable offence goes with that of the jurisdiction of the court with regard to the enquiry, trial as per the provision of Chapter VII.

13.Now we will go to Chapter VIII. Section 177 Cr.P.C reads as follows:-

177.Ordinary place of inquiry and trial.—Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

14.Section 177 Cr.P.C says that where the occurrence is committed the deciding point.

15.Section 178 Cr.P.C is an exception, which reads as follows:-

"178.Place of inquiry or trial.—

(a) When it is uncertain in which of several local areas an offence was committed, or

(b)where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one,



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or (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. Coupled with 179 Cr.P.C is also relevant.

16.Section 179 Cr.P.C reads as under:-

"179.Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

17.Combined reading of those provisions makes the position very clear. As mentioned above, the origin lies within the jurisdiction of the respondents police travelled upto Chennai and back to Thamiravarani River area. Nothing more is required to be discussed in this matter. Since a portion of cause of action arose within the respondents police they are well within the power to investigate the matter.

18.Another aspect is that as mentioned above, the accused cannot make any objection over the power of the



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Investigating Officer. He can take the plea only if prejudice is caused to him. Even though the learned counsel appearing for the petitioner went to the extent of stating that the respondents police are in the habit of foisting the cases and creating evidence, I am not going, as stated above, to touch upon the point. Absolutely, baseless allegations are made by the petitioner. *Prima facie*, it does indicate that there is no prejudice caused to the petitioner and *prima facie*, it indicates that part of the cause of action arose within the jurisdiction of the respondents.

19.So, this petition is not entertained and accordingly, it is **dismissed**.

20.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

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- 1.The Assistant Superintendent of Police,
Aruppukottai Sub-Division,
Virudhunagar District.
- 2.The Sub Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
- 3.The Inspector of Police,
Thiruporur Police Station,
Chengalpattu District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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