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W.P.No.2918 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.2918 of 2024
and W.M.P.Nos.3162 and 3163 of 2024

Kanniyammal

...Petitioner

-Vs-

1. Venkatesan
2. Siva
3. Jayakeerthi
4. Buvaaneswari

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Quo Warranto as to under what authority the third respondent was appointed by second respondent by his proceedings C.No.290/SDO-TGI/2020 dated 15.09.2021 and set aside the same as illegal and unconstitutional and subsequently to declare the alteration/deletion Section 302 IPC, dated 13.10.2021, made by 3rd respondent as null and void in respect of Crime No.1056/2020.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.R.Kishore Kumar
Government Advocate (Crl.side)

ORDER



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This Writ Petition has been filed for the issuance of Writ of Quo Warranto as to under what authority the third respondent was appointed by second respondent by his proceedings C.No.290/SDO-TGI/2020 dated 15.09.2021 and set aside the same as illegal and unconstitutional and subsequently to declare the alteration/deletion Section 302 IPC, dated 13.10.2021, made by 3rd respondent as null and void in respect of Crime No.1056/2020.

2. Heard the learned counsel on either side and perused the materials available on record.

3. On 18.07.2020, at about 7.30 p.m, there was a wordy quarrel between the petitioner's brother-in-law's son and one Chellamuthu's son. Therefore, the petitioner's husband intervened in order to pacify them. Thereafter, on 19.07.2020, once again there was a quarrel, in which the petitioner's husband intervened. At that juncture, the petitioner's husband was assaulted by the accused persons and as such, he sustained injuries. He was taken to Government Hospital, Thittagudi, Cuddalore District. Thereafter, he was shifted to Government Hospital, Perambalur and he was treated as in-patient till 24.07.2020. After recording the statement from the petitioner's husband, the



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fourth respondent closed the complaint, since there was compromise between the petitioner's husband and the said Chellamuthu. Once again, the petitioner was admitted into the Government Hospital, Trichy as in-patient from 31.07.2020 to 05.08.2020. On 05.08.2020, he died.

4. On the complaint, a case was registered under Section 174 Cr.P.C and thereafter, altered into offences under Sections 147, 148, 323, 324 and 302 IPC in Crime No.1056 of 2020, on the file of the fourth respondent. After completion of investigation, the fourth respondent filed a final report by altering the offences into Sections 147, 148 and 324 IPC before the Judicial Magistrate Court, Thittagudi.

5. On receipt of the same, the learned Judicial Magistrate issued notice to the petitioner for altering the offences and it is pending in C.M.P.No.277 of 2023. Further, the petitioner filed a petition before this Court in W.P.No.3213 of 2021 for transfer of investigation in Crime No.1056 of 2020 from the file of the fourth respondent to CBI. This Court, by an order dated 10.11.2023 dismissed the writ petition, on the ground as follows:-

“ 5. Thereafter, the postmortem was conducted and the postmortem report says that the deceased would have died of cardiomyopathy. Even after postmortem, the petitioner and her



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group of persons refused to accept the body unless a case shall be registered for the offence punishable under Section 302 of IPC. At that juncture, the third respondent was constrained to register FIR in crime No.1056 of 2020 for the offence punishable under Sections 147, 148, 323, 324 and 302 of IPC as against nine accused persons. After completion of investigation, they filed final report for the offence under Sections 147, 148, 323 and 324 of IPC as against nine accused persons on 11.03.2022, which was assigned in CMP.No.3505 of 2023 dated 19.09.2023. Insofar as the occurrence took place on 19.07.2020, another FIR was registered in crime No.1060 of 2020 for the offence under Sections 147, 148, 294(b), 324 and 506(ii) of IPC as against the 11 accused persons including the deceased. After completion of investigation, final report was filed and the same has been taken cognizance excluding the deceased person in CC.No.122 of 2023 on the file of Judicial Magistrate, Tittakudi.

6. Therefore, the learned counsel for the petitioner would submit that there are evidences to attract the offence under Section 302 of IPC as against accused person in crime No.1056 of 2020. Even then, the third respondent without adding the offence under Section 302 of IPC, mechanically filed final report only for the offence under Sections 147, 148, 323 & 324 of IPC. When there is a counter complaint, the same Deputy Superintendent of Police has to conduct investigation as per the police standing order. However, the third respondent failed to conduct any investigation.

7. On perusal of records, revealed that the third respondent was constrained to register FIR for the offence under Section 302 of IPC since the petitioner and her group of persons refused to take the body of the deceased . Only fault committed by the third respondent for the occurrence dated 19.07.2020 was that no FIR was registered though received complaint from both the groups. Therefore, disciplinary proceedings was initiated and the Inspector of Police who failed to register FIR was imposed punishment of postponement of increment for one year. Therefore, this Court finds no grounds to transfer the investigation in crime Nos.1056 and 1060 of 2020. That apart, already investigation was completed



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and in both FIR's, final report was filed. However, if any incriminating materials available during the trial before the trial court, the petitioner can very well invoke the provision under Section 216 of Cr.P.C.”

6. Now, the petitioner having been failed in the transfer of investigation petition, filed this writ petition to take action as against the second respondent, on the ground that the second respondent has no jurisdiction to hand over the investigation on the file of the third respondent. Initially, FIR was registered by the fourth respondent and the fourth respondent only filed final report. Therefore, the second respondent has nothing to do with the investigation done by the fourth respondent.

7. In view of the above dispute, the second respondent directed the fourth respondent to complete the investigation and file a final report, in view of the enquiry report of the Deputy Superintendent of Police. The second respondent, being the superior Officer of the fourth respondent, direction was issued to complete the investigation.

8. Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent and the writ petition is devoid of merits and is liable to be dismissed.



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9. Accordingly, this writ petition stands dismissed. Consequently,

connected Miscellaneous petitions are closed. No costs.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

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