



Crl.O.P.(MD)No.8139 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.8139 of 2023

Mallika

... Petitioner

Vs.

1. The Superintendent of Police,
Pudukkottai, Pudukkottai District.

2. Inspector of Police,
K.Puduppatti Police Station,
K.Puduppatti, Pudukkottai District.
(Crime No.13 of 2020).

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records with record to the final report in S.T.C.No.2 of 2022 on the file of Judicial Magistrate Thirumayam, Pudukkottai District and set aside the same and direct the 2nd Respondent to conduct further investigation of the case in Cr.No.13 of 2020 on the file of the second respondent police within stipulated time as fixed by this Court.

For Petitioner : Mr.S.Sundarapandian

For Respondents : Mr.S.Ravi
Additional Public Prosecutor



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ORDER

This petition has been filed challenging the final report filed by the respondent police which has been taken on file in S.T.C.No.2 of 2022 by the learned Judicial Magistrate, Thirumayam and for a further direction to the second respondent to conduct further investigation in this case.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the respondent.

3.The main grievance that was expressed by the learned counsel for the petitioner is that the investigation has not been properly conducted in this case and that in the final report, the charge under Section 379 of IPC was dropped and that apart, the petitioner who is an important witness has not been examined by the police.

4.In the considered view of this Court, the grievance of the petitioner seems to be that her husband Manikkam, who was the defacto



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complainant died and therefore, there is no one on the side of the petitioner to adduce evidence before the Court. Since the petitioner has not been examined under Section 161(3) of Cr.P.C., the petitioner apprehends that she will not be called as a witness.

5.The trial Court has wide power under Section 311 of Cr.P.C. to call anyone as a witness who has not been examined by the police while recording the statements under Section 161(3) of Cr.P.C. Therefore, if the husband of the petitioner has died and the petitioner is competent to speak about the incident, the petitioner can always be called as a witness in this case.

6.The police have dropped the charge under Section 379 of IPC. If in the course of trial, ultimately the offence is made out, the Court can always alter the charge under Section 216 of Cr.P.C. Hence, it is not necessary for ordering further investigation for this purpose.

7.In the light of the above discussion, it is made clear that the petitioner will be called as a witness in this case since her husband



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Manikkam from whom Section 161(3) of Cr.P.C. statement was recorded died and the petitioner is the only competent witness who can speak about the incident. Insofar as altering the charges, it is always left open to the Court to deal with the same in line with Section 216 of Cr.P.C.

8.This Criminal Original Petition is disposed of in the above terms.

19.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



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WEB COPY To

1. The Superintendent of Police,
Pudukkottai, Pudukkottai District.
2. Inspector of Police,
K.Puduppatti Police Station,
K.Puduppatti, Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



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N.ANAND VENKATESH,J.

PKN

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