



W.P(MD)No.18809 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.09.2023  
PRONOUNCED ON : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD)No.18809 of 2021

S.Nagajothi

... Petitioner

Vs.

- 1.The Director General of Police,  
Office of the Director General of Police,  
Beach Road, Chennai.
- 2.The Additional Director  
General of Police [CB-CID],  
SIDCO Electronics Complex,  
Block No.3, Ist Floor,  
Guindy Industrial Estate,  
Chennai – 600 032.
- 3.The Additional Director General of Police,  
Human Rights and Social Justice Wing,  
Office of the Director General of Police,  
Beach Road, Chennai.
- 4.The Superintendent of Police,  
Office of the Superintendent of Police,  
Madurai District.



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5.The District Collector,  
Madurai District.

6.The Deputy Superintendent of Police,  
Office of the Deputy Superintendent of Police,  
Human Rights and Social Justice Wing,  
SP Office Campus,  
Madurai District.

7.The Deputy Superintendent of Police,  
Usliampatti Sub-Division,  
Madurai District.

8.The Inspector of Police,  
Checkanurani Police Station,  
Madurai District.  
[In Crime No.2058 of 2020]

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, to direct the first respondent to depute a Deputy Superintendent from respondents 2 and 3 for reinvestigation of the case in Crime No.2058 of 2020 and to file the Supplemental charge sheet before the jurisdictional Court in accordance with law within a stipulated time.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor



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## ORDER

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The petitioner/defacto complainant in Crime No.2058 of 2020 sent representations to the respondents on 31.12.2020, 19.07.2021 and 07.08.2021. Since the representations were not acted upon, the petitioner filed the above writ petition.

2.The contention of the learned counsel for the petitioner is that the petitioner, who is the wife of one Senthilkumar, who was murdered on 09.12.2020, lodged a complaint giving specific names of the conspirators and assailants for her husband's murder. The petitioner had given the names of 12 persons identifiable. Though FIR registered against 12 persons and others, while filing the final report, except for the 3 named persons, the names of 9 persons were deleted and charge sheet filed in Spl.S.C.No.22 of 2021. Further, the names of eyewitnesses hailing from the petitioner's Village, namely, Chinnathai W/o.Muthu, Viswanathan S/o.Periyakaruppan, Sudha W/o.Viswanathan, Mrs.Panju W/o.Periyasamy, Rajapandi S/o.Pandi, Jaikumar s/o.Muthu and Ananthapriya D/o.Periyasamy were given but they were not enquired, no statements recorded and they were not shown as



witnesses. The four eye witnesses projected by the prosecution in the case are relatives of the accused, hailing from the Village of the accused. Thus, even before the trial the respondent police are ensuring inherent weakness of the case, creating benefit to the accused, thereby the accused would get acquitted from the case. He would submit that the petitioner also referred to the earlier complaint given by one Palraj in Crime No.820 of 2017 which was pending before the same respondent police being the motive and reason for the subsequent act of the accused in murdering her husband. She further submitted that the petitioner belongs to Scheduled Caste Parayar Community having three children and the death of her husband, she is depending on her relatives for survival and living in fear.

3.The learned counsel for the petitioner would submit that the petitioner's husband was an Office bearer of Viduthalai Siruthaigal Katchi [VCK] and the accused persons belong to Thevar Community. On 30.11.2017, accused gathered in a group, entered into the defacto complainant's colony, attacked the people belonging to Parayar Community in which many people were injured and properties were damaged during the riot and it is an act of communal hatred towards them. The petitioner's



husband Senthilkumar stood up against the oppression and tyranny caused due to communal hatred, sent representation, made complaints against the oppressors to various authorities including Police. Since the petitioner's husband was politically very active, helping people of the marginalised community and he was gaining respectability and influence among his clan in the Village, hence the dominant community people of the Village planned to eliminate him and committed murder of her husband. On 27.11.2020, one Ramachandran, Nagaraj, Pandi, Kodipuli threatened her husband and claimed that they already paid Rs.5 lakhs and arranged hirelings to eliminate her husband. Thereafter, on 09.12.2020 when the petitioner and her husband riding in a two wheeler and reaching their colony, one Paraman waylaid them and asked her husband to sort out the issue and have a peace talk. Believing his words, the petitioner's husband after dropping her went to the junction where he was called. There the accused gathered into a gang, brutally attacked her husband with deadly weapons inflicting injuries all over his body and killed him. He would further submit that in this case, the investigation was not conducted in the manner expected, only three of the accused were initially arrested, later two more arrested and charge sheet filed without any details ensuring the acquittal of the accused. Further, no



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notice issued to the petitioner informing dropping of named accused in the FIR. Hence, on coming to know about the same, the petitioner sent representation to the Superintendent of Police on 19.07.2021 and to the authorities on 07.08.2021. He further submitted that the four eye witnesses projected in the case are not residing in her Village and they were residing in Kokulam Village and Chekanurani.. The 6<sup>th</sup> respondent failed to enquire the eye witnesses hailing from the petitioner's Village, on the contrary recorded statements of people hailing from other Village which is 4 kms away, thereby ensuring in-built weakness in the case. The petitioner's brother-in-law Jaikumar, employed as Deputy Tahsildar of Dindigul also sent representation to take action against the real culprits who have been left out. The Sub-Inspector of Police, Mr.Karuppaiah attached to the 7<sup>th</sup> respondent started giving harassment to the said Jaikumar. The said Mr.Karuppaiah is the relative of A1 and communally connected with other accused had been threatening the petitioner and her brother-in-law.

4.The learned counsel further submitted that the petitioner earlier sent a representation on 31.12.2020 about the callous manner of investigation conducted and for letting off Ganesan, Nagaraj, Kodipuli, Pandi,



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Ramachandran and Thatchampathu despite their names found in the FIR and they were roaming freely in the Village causing fear to the defacto complainant, her family members and others in the Village. From the initial stage since petitioner sent representation during February 2021 for inaction of the police, thereafter she filed a direction petition in Crl.O.P.No.3218 of 2021 by that time, the respondent police in a hurry filed the charge sheet and reported before this Court. This Court on recording the same, closed the said petition by order dated 03.03.2022, thereby not considering the petitioner's representation the investigation not properly conducted and charge sheet is incomplete in all aspects. Hence, she filed the present writ petition for issuance of writ of Mandamus, seeking direction to direct the Director General of Police to depute Deputy Superintendent of Police attached to Human Rights and Social Justice Wing or from the office of the Superintendent of Police, Madurai District to re-investigate the case in Crime No.2058 of 2020 and to file a supplementary charge sheet in Spl.S.C.No.232 of 2021.

5.In support of his contention, the learned counsel for the petitioner filed the typed set of papers and relied upon the following decisions:



(a) In ***P.Alagarsamy vs. State of Tamil Nadu rep. by Secretary, Home Department, Chennai-9 and others*** reported in ***1999 2 LW(Crl.) 871*** for the proposition that in case of materials and the proposed evidence are not adequate, the Magistrate shall order for re-investigation, the Magistrate under Section 173(2) Cr.P.C. can appreciate and order for re-investigation and also deprecate the callous manner in which the Police officials and the Court below were attempting together to give a ceremonious burial to the case by ignoring the scope and object of the SC/ST Act.

(b) In ***Mahendra Pal Sharma and others vs. State of U.P. and another*** reported in ***2003 Crl.L.J. 698***, it is held that if the named accused in the FIR were let off from the case at the time of filing the final report, it is mandatory that notice to be given to the defacto complainant/victim. But in this case, it is not followed.

(c) In ***Vinubhai Haribhai Malaviya and others vs. State of Gujarat and others*** reported in ***[2019] 17 SCC 1***, wherein it is held that Magistrate's power under Section 156(3) Cr.P.C. is very wide by virtue of Article 21 of the Constitution of India and all powers necessary which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation to the matter in the sense of



a fair and just investigation by the Police – Said power includes ordering of further investigation after submission of police report under Section 173(2) Cr.P.C. This power can be exercised even suo motu by the Magistrate himself, depending on the facts of each case and the defacto complainant's right is available even at post cognizance stage until trial commences i.e., charges are framed. In this case, the trial is yet to commence.

(d) In *Neetu Kumar Nagaiah vs. State of Rajasthan and others* reported in *[2020] 16 SCC 777*, the Apex Court held that the victim cannot be afforded to be treated as an alien or total stranger to the criminal trial. Further, not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The Investigating Agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the Court would ultimately result in failure of justice, the Court must interfere.

(e) In *Bhagwant Singh vs. Commissioner of Police and another* reported in *[1985] 2 SCC 537*, wherein it is



held that under Sections 154 and 173 Cr.P.C., persons lodging FIR entitled to hearing when on the basis of police report the Magistrate prefers to drop the proceedings instead of taking cognizance of the offence. In this case, 9 names persons in the FIR have been dropped and no notice was given to the petitioner/defacto complainant.

6.The learned Additional Public Prosecutor filed a counter and submitted that a complaint was lodged by the petitioner/defacto complainant on 9.12.2020 at about 10.30 p.m., stating that on the same day at about 4.20 p.m., when the petitioner and her husband Senthilkumar, who is the Organizing Secretary of VCK for Pannian Camp, were returning home in the two wheeler, one Paraman intercepted them and directed him to return back to Pannian Branch road after dropping his wife. When the petitioner went to the place, there were several known and unknown persons found consuming liquor. At about 4.45 p.m., his uncle informed that the petitioner husband Senthilkumar was attacked with aruval, murdered and his face was covered. Immediately, the petitioner went to the place of occurrence where she found her husband found murdered. Based on the complaint, FIR registered in Crime No.2058 of 2020 for the offence under Sections 147,



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148, 302 of IPC and Section 3(2)(v) of POA Act against 12 named persons.

The 6<sup>th</sup> respondent took up investigation, 9 witnesses examined and their statements recorded. A1/Paraman, A2/Kasiviswanathan and A3/Surendran were arrested on 11.12.2020 and confession statement recorded. A1/Paraman on his own volition tendered confession that one Ganesan stated that the deceased Senthil Kumar is involved in large scale theft by using person from outside and if he was allowed to continue, he would come to a position to challenge his authority, therefore he gathered other accused and planned to murder the said Senthil Kumar. On 09.12.2010, they saw the deceased Senthil Kumar riding a two wheeler with his wife, he was called for a peace talk and when he returned back, the accused Karthick, Sivan, Ajay, Ajithkumar, Muthumayan and Ravikumar restrained the deceased and prevented him from moving and the accused Kasi Viswanathan and Surendran by using patta knife cut the deceased on the left neck and when Senthilkumar attempted to flee, the said Kasi Viswanathan and Ajay pulled him down, Surendran on getting the knife from Kasi Viswanathan attacked the deceased on the head, front neck, back side of the neck, left side of the face and shoulder, hands and legs. While attacking the deceased, the handle of the patta knife fell on the accused Ajay causing



blood injury. On recording the confession statement, A4/Ajith Kumar, A5/Muthumayan and A6/Ravikumar were arrested on 11.12.2020, A7/Karthikeyan and A8/Sivan were arrested on 14.12.2020, A9/Ajay, who sustained injury, was arrested on 22.12.2020 in front of Rajaji Government Hospital and since he was a juvenile, he was produced before the Juvenile Board and admitted at the Children's Home. Further, A10/Kosavapatti Ganesan was arrested on PT warrant on 05.03.2021.

7.He further submitted that in total 23 witnesses examined including the petitioner, eye witnesses examined and their statements recorded. On completion of investigation, charge sheet filed on 06.03.2021 before the learned Special Judge for SC/ST Act Cases, Madurai and the same was taken on file in Spl.S.C.No.22 of 2021 on 09.03.2021. He would submit that the petitioner is not an eye witness and only a hearsay witness. He would further submit that on the basis of the confession tendered by the accused and on the examination of eye witnesses, out of 12 named accused except three accused in the FIR, others were deleted. He further submitted that the contention of the petitioner that she ought to have been informed before dropping them is not sustainable, only on the basis of the



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investigation, the names of the nine persons in the crime was deleted and persons who were actually involved were arrayed as accused. He further submitted that the settled law is that the petitioner/defacto complainant has every right and liberty to challenge the final report by submitting a protest petition by adducing material evidence, hence her grievance can be addressed before the Trial Court. Hence, he prayed for dismissal of the writ petition.

8.Learned Additional Public Prosecutor further submitted that in this case, A1 and A2, A5, A6, A7, A8 and A9 were arrested on 11.12.2020 and 12.12.2020 and produced for remand. Two more accused, namely, Sekar and Karthick were arrested on 14.12.2020 and Ajay/A10 was arrested on 22.12.2020, who is an injured accused in the occurrence, he was taking treatment at Rajaji Government Hospital arrested and since he was a juvenile, he was produced before the Juvenile Justice Court. A1 involved in a case in Crime No.1105 of 2020 in the State of Maharashtra, who was confined in Yerwarda Prison, was arrested on the strength of P.T. Warrant and he was produced in this case and remanded. Thereafter, on completion of investigation, charge sheet filed on 06.03.2021 before the PCR Court and



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the same was taken on file in Spl.S.C.No.22 of 2021 on 09.03.2021. He would further submit that for the past five months, the post of Presiding Officer is vacant and hence, the case was called before the the learned First Additional Sessions Judge, who is holding additional charge. He further submitted that since there is no Presiding Officer in the Special Court, the trial is yet to commence and progress.

9.The learned Additional Public Prosecutor further submitted that the delay was partly due to the defacto complainant who regularly send representation to the authorities and she further made a representation that a Special Prosecutor of her choice to be appointed. On her representation dated 05.10.2021, one Mr.P.Chinnaraj [Enrol. No.418/1980] was appointed as Special Prosecutor vide Na.Ka.No.3151-3/2021/C4 dated 08.12.2021. Now the petitioner cannot cast aspersion and blame the 7<sup>th</sup> respondent police and other respondents for the delay or any laxity. It is open to the petitioner to file a protest petition before the Trial Court which right still available to the defacto complainant as per the decision of the Apex Court in the case of *Abhinandan Jha and others vs. Dinesh Mishra* reported in *AIR 1968 SC 117* which is reiterated in the case of *Bhagwant Singh's* case



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and *Vinubhai Haribhai Malaviya'* s case, consistently followed by the Apex Court as well as this Court. Hence, the petitioner has got right to file a protest petition before the Trial Court.

10.Considering the submissions made and on perusal of the materials, it is seen that the petitioner/defacto complainant in Crime No.2058 of 2020, wife of deceased Senthil Kumar was done to death on 09.12.2020 in a public place with cut, stab injuries and his face was mutilated. In the complaint, the petitioner named 12 persons to be reason for her husband's death. The occurrence is said to have taken place at 4.45 p.m., thereafter the victim was rushed to the hospital and thereafter complaint lodged. Even as early as 31.12.2020, the petitioner sent representation to the Deputy Superintendent of Police about the manner in which the accused are roaming freely in the Village creating fear scenario to the victim and among others in the Village. Thereafter, her brother-in-law sent a representation, petitioner making several representations, followed with the respondent police with regard to the investigation. The petitioner informed about the eye witnesses from her Village who were present in the scene of occurrence, namely, Chinnathai W/o.Muthu, Viswanathan S/o.Periyakaruppan, Sudha



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W/o.Viswanathan, Mrs.Panju W/o.Periyasamy, Rajapandi S/o.Pandi, Jeyakumar W/o.Muthu and Ananthapriya D/o.Periyasamy, but her representation yielded no response. On the contrary, the projected eye witnesses in this case all are align to the accused. Hence, the apprehension of the defacto complainant that truth may not prevail appears reasonable. No reasons given by the respondent police, for what reason 9 named persons were let out, admittedly no notice given to the petitioner about dropping of 9 named accused from the case. The present case in Crime NO. 2058 of 2020 cannot be viewed in isolation in view of the specific complaint with regard to the running feud between both the groups who are commonly divided for quite sometime, the earlier occurrence in Crime No. 820 of 2017 on 30.10.2017 cannot be lost sight of. This incident is the triggering point which brewed enmity between both the groups and finally on 09.12.2020, it ended in murder of Senthil Kumar. Some of the accused are common in both the cases and the left out accused are found in the occurrence on 30.10.2017. In the present case, the offence of conspiracy is not considered, found missing and this aspect has to be necessarily gone into. Further the said Mr.Karuppaiah, Sub-Inspector of Police seems to act against the defacto complainant and her family members. In this case, the



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conspiracy angle has not been looked into despite there appears to be some connection between the incident on 30.10.2017 and 09.12.2020. It is to be seen that the complaint of the defacto complainant cannot be brushed aside citing that she has motive and for the reason, the defacto complainant can make her objections before the Trial Court by filing a protest petition. The scope and object of the SC/ST Act cannot be lost sight of. The rights of the victim is a recognized right and amendment brought in by Act 5 of 2009 in Cr.P.C. and Chapter IVA inserted by Act 1 of 2016 in SC/ST Act. In this background, considering the victim's plight and grievance it is seen that the representation of the petitioner cannot be brushed aside without consideration and action, thereby defeating the purpose of amendments brought in to address the victim's grievance. Admittedly the petitioner's representation never considered by the respondents. The explanation given by the respondent police that the petitioner can approach the Trial Court by filing a protest petition is not proper.

11.In view of the above, this Court appoints the Superintendent of Police, Madurai as the Investigating Officer in both cases i.e., Crime No.820 of 2017 and Crime No.2058 of 2020 which now culminated into



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Spl.S.C.No.152 of 2021 and Spl.S.C.No.22 of 2021 by invoking Section 173(8) Cr.P.C. to further investigate both the cases together in a corporate manner. The Superintendent of Police in further investigation to look into the complaint of the petitioner to investigate about any conspiracy and involvement of named accused in FIR and others and to file an additional report in both the cases, if required. The Investigating Officer as well as the Trial Court is reminded of the Acts and Rules wherein they have been assigned specific duties and responsibilities in investigating the cases and conducting trial under SC/ST Act. The investigation to be completed within a specific period and the Trial Court to dispose of the case within a stipulated period as per Sections 4, 14 and Rule 7 of SC/ST Acts and Rules. The petitioner/victim in both cases, Crime No.820 of 2017 and Crime No. 2058 of 2020 to be informed about the progress of investigation and filing of supplementary report or otherwise.

12.The vacancy of Presiding Officer in the Special Court cannot be a valid reason to keep the trial of SC/ST Act cases without progress for months and years which would only defeat the purpose of Special litigation and its object.



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13. With the above direction, this writ petition stands disposed of. No costs.

14.03.2024

Speaking Order/Non-Speaking Order

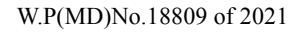
Index : Yes / No

Neutral Citation: Yes/No

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To

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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN

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