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Crl.O.P.(MD)No.14437, 14439 and 21176 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03/01/2024

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

Crl.OP(MD)Nos.14437, 14439 and 21176 of 2023

and

Crl.MP(MD)Nos.14354 and 14356 of 2023

Crl.OP(MD)No.14437 of 2023:-

Vignesh : Petitioner/De-facto
Complainant

Vs.

- 1.The Superintendent of Police,
Crime-Branch Investigation Department
(CBCID or CB-CID),
CBCID Office,
Chennai.
- 2.The Superintendent of Police,
Sivagangai,
Sivagangai District.
- 3.The State rep. by the Inspector of Police,
DCB, Sivagangai,
Sivagangai District.
(Crime No.19 of 2021) : Respondents/Complainants

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to transfer the investigation pending before the Inspector of Police, District Crime Branch, Sivagangai District, in Crime No.19 of 2021 on the file of the 1st respondent CB-CD or any other competent agency and pass any other order, such orders.



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CrI.O.P.(MD)No.14437, 14439 and 21176 of 2023

For Petitioner : Mr.S.Suresh
For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)
For Intervenor : Mr.N.Anandha Padmanabhan

2.CrI.OP(MD)No.14439 of 2023:-

Vignesh : Petitioner/De-facto
Complainant
Vs.

- 1.The Superintendent of Police,
Crime-Branch Investigation Department
(CBCID or CB-CID),
CBCID Office,
Chennai.
- 2.The Commissioner of Police,
Madurai City,
Madurai.
- 3.The State rep. by the Inspector of Police,
South Gate Police Station,
Madurai City.
(Crime No.314 of 2023) : Respondents

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to transfer the investigation pending before the Inspector of Police, South Gate Police Station, Madurai City in Crime No.314 of 2023 to the 1st respondent police CB-CID or any other competent agency and pass any other order, such orders.

For Petitioner : Mr.S.Suresh
For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)
For Intervenor : Mr.N.Anandha Padmanabhan



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3.Crl.OP (MD)No.21176 of 2023:-

Vignesh

: Petitioner/De-facto
Complainant

Vs.

State rep. by Inspector of Police,
Thirupuvanam Police Station,
Sivagangai District.
(Crime No.254 of 2022)

: Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.69 of 2023 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirubuvanam, Sivagangai District and set aside the same and consequently direct the respondent to conduct further investigation in CC No.69 of 2023 pending on the file of the respondent herein and file a final report afresh within period stipulated by this court or pass any other order, such orders.

For Petitioner : Mr.S.Suresh

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

COMMON ORDER

Crl.OP (MD) Nos.14437 and 14439 of 2023 have been filed seeking for transfer of the investigation in respect of Crime No.19 of 2021 on the file of the Inspector of Police, District Crime Branch, Sivagangai District; and in Crime No.314 of 2023 on the file of the



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Inspector of Police, South Gate Police Station, Madurai City to the CB-CID, whereas Crl.OP(MD)No.21176 of 2023 has been filed seeking quashment of the CC No.69 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Thiruppuvanam, Sivagangai District and consequently, direct the respondent to conduct further investigation in CC No.89 of 2023 pending on its file and file a final report afresh within the period that may be stipulated by this court.

2.The facts in brief:-

The petitioner, in all cases, as de-facto complainant lodged a complaint, setting out the following facts:-

(i)His grand-father Veerabathira Pillai was having lands in Manamadurai Taluk, Maranaddu Village in various survey numbers in various extents. In respect of the above said properties, a suit in O.S No.265 of 1989 was pending between the above said Veerabathira Pillai and six other persons. In that suit, title of the Veerabathira Pillai was declared. EP was filed and properties were settled by Veerabathira Pillai. Later, patta was transferred in his name. Veerabathira Pillai executed a settlement deed in favour of the de-facto



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complainant namely Senthivel, on 03/07/2014. Patta was mutated in his name and he was in possession. In the above said circumstances, one Vignesh, S/o.Sakthivel, who is noway connected with the property, executed a false document in favour of one Kumar, S/o.Pitchai. It is a sale deed. Later, Kumar executed another sale deed in favour of his own brother namely Ilayaraja. Ilayaraja in turn sold the property in favour of Sathish Kumar. He also created a forged document in respect of the remaining portion in favour of his own brother and another portion in favour of his wife.

(ii) Seeking action against eight persons namely Vignesh, Kumar, Elayaraja, Sathish Kumar, Meenal, Nanthini, Chandrasekar, Chithirasenan and others stating that they conspired and created all the forged documents, a complaint was filed. On the basis of the complaint, a case in Crime No.19 of 2021 was registered for the offences under sections 417, 419, 468 471, 420 and 120-B of IPC.

(iii) In pursuance of the above said registration of the case, enmity arose between the accused and the de-facto complainant. On the petition filed by the de-facto complainant, the sale deeds were cancelled, but the



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enquiry was conducted, on 30/08/2022 by the Sub Registrar, Thirupuvanam. So on that date, the father of Vignesh namely Senthilvel attended the enquiry. At about 04.00 pm, the accused namely Kumar, Ilayaraja and Chandrasekar abused in filthy language and assaulted him with knife on the neck and left cheek region. When the neighbours intervened, all the accused persons fled away from that place, making criminal intimidation. On the basis of the complaint given by the father of Vignesh namely Senthilvel, a case in Crime No.254 of 2022 was registered for the offences under sections 294(b), 324 and 506(2) of IPC against three persons namely Kumar, Ilayaraja and Chandrasekar.

(iv)Non stopping or satisfying with the gruesome attack on the life of the father of Vignesh, it appears that the accused decided to do away Senthilvel. Apart from that, a suit in O.S No.125 of 2021 was filed by the accused against Senthilvel and others. The suit was about to be heard, on 12/07/2023. On the evening on 11/07/2023 at about 08.45 pm, when Senthilvel along with his family members was sitting in the varanda portion, at that time, the accused Kumar, Muthukumar and others trespassed into the house, caused assault with sword and aruval. Manimaran, who is the son-in-law of Senthilvel



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intervened, he was also assaulted. She sustained grievous injuries. They fled away from that place, when neighbours gathered. Upon the occurrence, a case in Crime No.254 of 2022 was registered for the offences under sections 294(b), 324 and 506(ii) of IPC. After completing the investigation, charge sheet was filed and it was taken by the trial court in CC No.69 of the 2023 for the offences under section 294(b), 324 and 506(ii) of IPC.

3.Heard both sides.

4.As mentioned in the preamble portion of the order, it all started over the filing of the complaint in Crime No.19 of 2021. In respect of this matter, the grievance of the petitioner is that originally, complaint was given by the petitioner, on 17/06/2021, the then Inspector of Police, Thirupachethy police station closed the complaint as civil nature. Upon the effort made by him by filing a complaint to the Superintendent of Police, the case was registered. In the complaint itself, he has made specific allegation against one Elamaaran and Usha. But however, the case has been registered only against other accused persons.



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5.In response to the specific allegation, the Inspector of Police, District Crime Branch, Sivagangai District filed a status report stating that final report was filed, taken cognizance in CC No.485 of 2023. Since the final report is filed and taken cognizance also, now the prayer sought for has become infructuous.

6.As mentioned above, the grievance of the petitioner is that Elamaaran and Usha have not arrayed as accused in this matter. But reading of the complaint does not indicate allegation against the Elamaaran and Usha.

7.Even the petition filed by the petitioner seeking cancellation of the disputed document does not indicate that Elamaaran and Usha are the persons behind the entire issue, even before the appellate authority, no such allegation is made against them. How Elamaaran and Usha are involved in the alleged fabrication of records is not mentioned by the petitioner. Simply because, they are working in the Government Department, it appears that in the absence of any specific allegation against them, now the request made by the petitioner seeking of the investigation does not lie at all. More-over, since the final report is filed, taken cognizance, I find no reason



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to order reinvestigation or further investigation or de nova investigation, as the case may be. So Crl.OP(MD)No.14437 of 2023 deserves no consideration and it is liable to be dismissed.

8. So far as Crl.OP(MD)No.21176 of 2023 is concerned, the grievance of the petitioner is that a murder attempt was made upon the father of this petitioner within the Sub Registrar Office, Thirupachethi, on 30/01/2022. But in spite of that, final report has been filed charging the accused for the offences under section 294(b), 324 and 506(ii) of IPC.

9. The learned counsel appearing for the petitioner has also produced the photographs as well as the medical records showing the nature of the injuries sustained by his father.

10. CD file in this matter is also called for and perused.

11. In the complaint, it has been stated that by the father of the petitioner that he sustained injuries on various parts of the body as indicated in the postmortem report. Accident Registrar and Wound Certificate are



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collected and the Doctor, who examined, opined that all injuries are simple in nature. But the Doctor, who treated the injured was neither examined, nor opinion was sought for from him. On the basis of the opinion given by the Doctor Dr.Kanmani, final report has been filed as if section 324 of IPC only attracted. Even 5 injuries are simple in nature, but as indicated above, in various parts of the body, stab injuries were made. Even the neck was not spared, the cheek was injured. This clearly indicate the intention on the part of the accused. The intention can also be verified by the subsequent murder of Sakthivel, naturally, the offence under section 307 of IPC is attracted. But without concentrating on the intention of the accused and the nature of injuries sustained, final report is filed. So considering the factual situation and the intention on the part of the accused, the manner in which, the injuries were inflicted and subsequent events, the grievance expressed by the petitioner appears to be genuine and reasonable.

12.A question to be answered by this court is whether after filing the final report, taken cognizance, further investigation can be ordered.

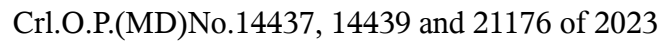


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13.For that purpose, the learned counsel appearing for the petitioner would rely upon the of the Hon'ble Supreme Court reported in the case **Anant Thanur Karmuse Vs. State of Maharashtra and others (2023 SCC OnLine SC 180)**. In para 44, it has been held as follows:-

"44.Applying the law laid down by this Court in the case of Dharam Pal (supra) and Bharati Tamang (supra) and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation/re-investigation/de novo investigation even after the charge sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the charge sheet is filed and the charges are framed, there may not be any order for further investigation/re-investigation/de novo investigation is accepted. In that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice."

14.Reading of the above said observation of the Hon'ble Supreme Court indicates that filing of the final report is not a bar for ordering further investigation,



15.As mentioned above, murder attack was made for the first time to cause death to Sakthivel, but failed for some reasons. The intention was accomplished by the subsequent similar murder attack on Sakthivel. In the next attempt, the accused succeeded in their attempt.

16.As mentioned above, I am of the considered view that proper investigation was not undertaken by taking into the account factual situation. On that sole ground, **Cr1.OP(MD)No.21176 of 2023 is allowed** and further investigation is ordered to be undertaken by the Deputy Superintendent of Police, Thirupuvanam, Sivagangai District. Till then, the trial process in CC No.69 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Thirupuvanam, Sivagangai District is ordered to be kept in abeyance.

17. So far as Cr1.OP(MD)No.14439 of 2023 is concerned, investigation is still pending and counter is also filed by the respondent herein.



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18.The grievance of the petitioner, as mentioned earlier, one K.Ellamaran and Usha are the master mind behind the entire episode. According to him, they were not enquired and every attempt is made by the second respondent herein to delete them.

19.In response to the above said allegation and in the counter statement, it has been stated that he was also enquired. For the first time, this petitioner and others made allegation against I.Ellamaran and Usha. During the course of the investigation, the above said I.Ellamaran was also examined. In the statement, he has stated that he was married to one Usha in 2012. Now he is working as Grade I Police Constable at Chennai. Along with his wife and children, he is residing there and except the relationship, they are not involved in the present issue. This petitioner and other witnesses namely Manimaran have stated in their statement that the involvement of Ellamaran and Usha was informed by one Sukumar, who is the close relative of the deceased. Except the bald statement, no other materials were found during the course of investigation to implicate Elamaran and Usha. So far as the petitioner, he is working as Section Officer in the Public Department at Secretariat, Chennai and living in Chennai in the Government Quarters



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at Saidapet. He does not know anything about the issue otherwise the statement during the course of the investigation. Call details were also verified. Nothing was found to implicate them.

20.Perusal of the CD file also does not indicate the materials connecting Ellamaran and Usha. Even though. the learned Senior counsel sought to intervene in this matter on behalf of the above said Illamaran and Usha, he was told that he cannot be heard at this stage.

21.Even though, it is a calculated pre-planned and execution of the murder, implicating the other persons without any material may not be proper. As stated above, their involvement was not mentioned either by the petitioner or by Manimaran at the earliest opportunity. Simply because of close relationship, he informed the petitioner that Elamaran and Usha are behind the issue. These are not sufficient enough to implicate them.

22.At the time of argument, the learned counsel appearing for the petitioner would submit that had the police taken the immediate action on his complaint, the first attack and second murder would have been avoided. They went to the police station seeking police



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protection. That was not provided. So because of the inaction on the part of the police officials, murder took place. So according to the petitioner, the inaction on the part of the respondent herein is sufficient enough to transfer the investigation to some other agency.

23. But mere suspicion is not sufficient enough. Perusal of the CD file does not show any biased attitude on the part of the Investigation Officer. Transfer of investigation is a serious matter telling upon the integrity of the Investigating Officer. Here absolutely, no complaint was made against the Investigating Officer. Investigation is undertaken in a fair manner.

24. The grievance of the petitioner absolutely appears to be baseless. As things stand today, an undertaking was given by the Investigating Officer in the counter in para 10 run like this:-

"10. It is submitted that no material proof is disclosed during the investigation to link the above said persons with the crime as projected by the Petitioner herein. No concrete proof is also forthcoming from the Petitioner of his sister Gomathy, who is



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serving as a Police Woman Constable to array those persons indicated by them as accused."

25. So this undertaking given by the Investigating Officer does indicate that he has undertaken the investigation in a fair manner. Even the said Sukumar has stated in his statement, dated 13/08/2022, which is extracted as under:-

"இதில் மூளையாக செயல்பட்டு வருபவர்கள் குமார் அவர்களின் இளைய சகோதரி உசா அவரது கணவர் இளமாறன் மற்றும் சந்திரசேகர் என்று நிதர்சனமாக உணர்கிறேன்."

26. As mentioned above, it is mere suspicion. So I find absolutely no reason to transfer the investigation on the baseless suspicious information furnished by one Sugumaran. More over, it has been stated in the counter affidavit that final report is filed, taken cognizance by the committal court.

27. So considering the above said factual grounds, I am of the considered view that this is not a fittest case to exercise the power conferred upon by this court.



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28.Accordingly, CrI.OP(MD)No.14439 of 2023 is liable to be dismissed and it is **dismissed**.

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29.In the result, CrI.OP(MD)No.14437 and 14439 of 2023 are **dismissed**. CrI.OP(MD)No.21176 of 2023 is **allowed** as indicted above. Consequently, connected Miscellaneous Petitions are closed.

03/01/2024

Index:Yes/No
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To,

- 1.The Superintendent of Police,
Crime-Branch Investigation Department
(CBCID or CB-CID),
CBCID Office,
Chennai.
- 2.The Superintendent of Police,
Sivagangai,
Sivagangai District.
- 3.The Inspector of Police,
DCB, Sivagangai,
Sivagangai District.
- 4.The Commissioner of Police,
Madurai City,
Madurai.
- 5.The Inspector of Police,
South Gate Police Station,
Madurai City.
- 6.The Inspector of Police,
Thirupuvanam Police Station,
Sivagangai District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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