



Crl.O.P.(MD).No.21876 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.10.2024

DELIVERED ON : 13.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.21876 of 2023

B.Ramu

... Petitioner

Vs.

- 1.The Director,
Central Bureau of Investigation,
No.6th Floor, Lodhi Road,
Plot No.5-B, Jawahalal Nehru Stadium Marg,
CGO Complex,
New Delhi – 110 003.
- 2.The Director General of Police,
Office of the Director General of Police,
Beach Road,
Chennai.
- 3.The Joint Director and Head of Zone,
Central Bureau of Investigation,
III Floor, E.V.K.Sampath Building,
College Road, Chennai – 06.
- 4.The Superintendent of Police,
Office of the Superintendent of Police,
Sivagangai District,
Sivagangai.



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5.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Sivagangai Sub-Division,
Sivagangai District.

6.The Inspector of Police,
CBCID Sivagangai,
Sivagangai District.

7.The Inspector of Police,
Ilayangudi Police Station,
Sivagangai District.
(Crime No.251 of 2014)

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to transfer the investigation by directing the Respondent No.1 further to appoint a competent police officer working under the Respondent No.3 to investigate the case in Crime No.251 of 2014 registered on the file of the respondent No.7 and subsequently investigated by the 6th respondent in Crime No.2 of 2017 and file final report before the competent Court.

For Petitioner : Mr.S.M.Malaikani

For Respondents : Mr.N.Mohideen Basha for R1 & R3
Special Public Prosecutor for CBI
Mr.R.Meenakshi Sundaram for R2, 4 to 7
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to transfer the investigation by directing the Respondent No.1 further to appoint a competent police officer working under the Respondent No.3 to investigate the case in Crime No.251 of 2014 registered on the file of the respondent No.7 and subsequently investigated by the 6th respondent in Crime No.2 of 2017 and file final report before the competent Court.

2.The facts in brief:

On 02.10.2014, around 09.00 a.m., two police constables attached to the 7th respondent police station took the son of the petitioner by name Malairaj, into their custody. When enquired the police constables, they told that they are taking him for enquiry. Thereafter, when he contacted them over phone, they informed that Malairaj will come to the house in short time. But, till 2.30 p.m., he did not return. So the petitioner went to the 7th respondent police station and made enquiry, but, again he was told that after enquiry is over, he will be sent. Again he awaited. At about 3.30 p.m. Malairaj told that 7th respondent police were registering case against him. Around 4.25 p.m., when the petitioner was



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waiting outside the police station, he heard a huge noise. When the petitioner's nephew by name Kumar tried to enter into the police station, he was prevented. In a short time, Malairaj was brought unconscious by the police constables. He was taken to Ilayangudi Government Hospital. Later to Sivagangai Medical College Hospital in Ambulance. In the Medical College Hospital, Malairaj was declared dead.

3. Condemning the attack made by the police upon Malairaj, the Villagers and General Public made protest by staging 'Dharna'. A case was registered in Crime No.251 of 2014 under Section 176 of Cr.P.C. to escape from the lawful process.

4. The petitioner and his relatives insisted upon the Superintendent of Police to register a case under Section 302 of IPC and under the relevant provisions of SC/ST (POA) Act. The Superintendent of Police informed that after the enquiry, they will alter the FIR. Later they were informed that the case was altered to Section 306 of IPC, Sections 3(2) (v) of SC/ST (POA) Act as if the Sub Inspector of Police Pandiyan, Head Constable Dharmendran, Grade I Constable, Velmurugan, abetted the



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Malairaj to commit suicide. All the three police officials were placed under suspension.

5.As promised by the Superintendent of Police, investigation was not completed. No alteration report was filed under Section 302 IPC. So the petitioner filed Crl.O.P.(MD).No.1280 of 2016, seeking direction to the Deputy Superintendent of Police to file the final report. The final report was filed, in pursuance of the order passed by this Court on 18.04.2016 in the above said original petition, before the learned Judicial Magistrate, Ilayangudi, stating that Kumar administered poison to the deceased. He was made as an accused in that case.

6.It has been stated in the final report as if Kumar gave poison to Malairaj for committing suicide. This is a new story invented by the police to escape from the charge of murder of Malairaj.

7.The filing the final report, the filing of alteration report and deletion of name of the accused and the provision of law, were not intimated to the petitioner. Proper procedure was not followed in placing



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the case file before the District Level Vigilance Committee. For altering and deleting the provisions of offence under Section under the SC/ST Act, no proper investigation was conducted. On the basis of the very same statement of the witnesses, final report has been filed.

8.Again another petition was filed by the Kumar seeking transfer of investigation to CBI. At the time of hearing, it was informed that the case was transferred to CBCID and renumbered as Crime No.2 of 2017. They conducted investigation and filed the final report, dropped further action. Again the petitioner filed protest petition before the learned Judicial Magistrate. The learned Judicial Magistrate ordered further investigation. In such circumstances, the further investigation is undertaken by the CBCID police officials namely, 6th respondent herein. But the truth will not come out. So this petition is filed seeking transfer of investigation from the file of 6th respondent to the first respondent namely the Director of CBI.

9.Heard both sides.



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10.The entire CD file pertaining to this investigation is called for, apart from the file from the concerned Judicial Magistrate, namely the learned Judicial Magistrate, Ilayangudi.

11.It is the alleged custodial death at the hands of the police officials attached to Ilayangudi police station. It is admitted by the respondent herein that the deceased at the time of death was under the custody of the 7th respondent police officials. Now according to the petitioner, it is a case of custodial torture and murder. So according to the 7th respondent, even though originally the police officials attached to his station were arrayed as accused under Section 306 of IPC and Section 3(2)(v) of SC/ST (POA) Act, but, during the course of investigation, it was found that Kumar, who is the nephew of this petitioner strenuously scolded the deceased to commit suicide, since he has brought the family to public shame because of the arrest, by giving poison. So the offence was altered to Section 306 of IPC against Kumar dropping the action against the police officials and Section 3(2)(V) of SC/ST (POA) Act. That was also challenged by Kumar by filing Crl.O.P.(MD).No.2791 of 2017, seeking transfer of investigation in Crime No.251 of 2014 from the



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file of 7th respondent to CBI and to reinvestigate the matter.

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12. When the matter was taken up for hearing, it was submitted by the learned Government Advocate that the matter was already transferred to the file of CBCID, Sivagangai, renumbered as Crime No.2 of 2017 and the investigation is underway.

13. Considering the fact that it is alleged murder under custody, this Court directed the Superintendent of Police, CBCID, South Zone, to monitor the investigation and file the final report. That order was passed on 14.03.2017.

14. Thereafter, investigation was conducted by the Inspector of Police, CBCID, Sivagangai, namely 6th respondent herein and filed a final report. When the matter was taken up for hearing the entire CD file from the CBCID was called for and the concerned file from the learned Judicial Magistrate, Ilayangudi. After perusal of the records, this Court passed the following order on 18.10.2024.

“Perusal of records shows that not even a single paper was placed before the Superintendent of Police, CBCID,



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South Zone, Chennai, in the course of investigation. So he was asked to file a status report in this regard. Report was also placed on record.

2. There shall be a direction to the Superintendent of Police, CBCID, South Zone, Chennai, to be present before this Court in person, on 29.10.2024 and report as to whether he has scrutinized all the papers during the course of investigation and at the time of filing the final report.

3. The learned Additional Public Prosecutor submitted that in the course of investigation three Superintendent of Police were transferred, one after another. Let the present Superintendent of Police, CBCID, South Zone, Chennai, be present before this Court in person on 29.10.2024.

4. List the matter on 29.10.2024 at 2.15 p.m.”

15. In pursuance of the above said direction, the Deputy Superintendent of Police, attached to CBCID, South Zone, was present before this Court in person and he made submission that monthly report was submitted by the Investigation Officer to the Superintendent of Police, CBCID, South Zone. The entire report was submitted before him. After getting his approval only final report was filed dropping further proceedings. According to him, no lapse was committed in following this



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Court's direction. Apart from that it is also submitted that as per the victim compensation scheme, the mother of the deceased received Rs.5,62,000/- as compensation and receipt also produced before this Court.

16.In the light of the records submitted before this Court the question which arises for consideration is whether further investigation required to be transferred to CBI.

17.After taking over the investigation by the Inspector of Police, CBCID, concluded that the deceased consumed poison on his own without the intervention or abetment or instigation of any one. By deleting the name of Kumar, final report was filed on 27.08.2018, before the learned Judicial Magistrate No.II, Sivagangai. The departmental proceedings were initiated against the erring people namely Dharmendran and Velmurugan for their dereliction of duty. In pursuance of the above said recommendation, Disciplinary Proceedings was also initiated against this erring police officials, similarly, for dereliction of duty Pandiyan, Dharmendran and Velmurugan. Now it is stated to be



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pending. On the basis of the final report, notice was ordered to the defacto complainant. The defacto complainant appeared before the Court and filed Crl.M.P.No.4275 of 2020. On 10.12.2021, the learned Judicial Magistrate No.II, passed an order directing the Inspector of Police, CBCID, to further investigate the matter pointing out certain defects in the final report. In pursuance of the above said order, again the investigation was taken up and defects pointed out by the Magistrate Court were rectified. Again filed the final report stating that deceased committed suicide on his own and no incriminating materials were found out during the course of investigation against any one. Report was submitted on 22.05.2022. Again notice was ordered to the defacto complainant namely the mother of the deceased. Again she filed petition in Crl.M.P.No.4926 of 2022, making objections. Now it is pending enquiry by the learned Judicial Magistrate No.II, Sivagangai. Pending enquiry this petition seems to have been filed.

18.By pointing out this development, this Court raised a question to the petitioner as to how this petition is maintainable in view of the pendency of Crl.M.P.No.4926 of 2022 before the trial Court. He would



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submit that in spite of repeated directions in further investigation, no proper investigation was undertaken by the CBCID and that is the reason for filing this petition.

19.No two simultaneous proceedings can be taken up by the petitioner for the very same cause. Either he ought to have prosecute this matter or the protest petition before the Judicial Magistrate No.II, Sivagangai. Both of them cannot continue at the same time. But, however since the petitioner wants the matter to be disposed of on merits, we would look into the documents submitted by the parties.

20.From the perusal of records submitted by the Investigating Officer, it is seen that the cause of the death of the deceased could not be ascertained due to the lapse of time. Even though investigating officer collected evidence in the form of statement of the owner of the shop where from the deceased alleged to have stolen the poison, I am not convinced the way in which he has given the statement. Except his half hearted statement, no other material is available to implicate any one. As far as documents now available before this Court, it is for the learned



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Judicial Magistrate No.II, Sivagangai, at the time of enquiry to verify all the records. If any observation is made by this Court in this petition it may affect the outcome of Crl.M.P.No.4926 of 2022. So the request made by the petitioner to transfer the investigation to CBI pending Crl.M.P.No.4926 of 2022 appears to be not proper. Depending upon the outcome of protest petition, the petitioner can workout his remedy if so aggrieved.

21.With this observation this criminal original petition stands dismissed.

13.11.2024

Index : Yes / No
Internet : Yes / No
TM

To

1.The Judicial Magistrate No.II, Sivagangai.

2.The Director,
Central Bureau of Investigation,
No.6th Floor, Lodhi Road,
Plot No.5-B, Jawahalal Nehru Stadium Marg,
CGO Complex,
New Delhi – 110 003.



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8. The Inspector of Police,
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(Crime No.251 of 2014)
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

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