



Crl.O.P.(MD)No.676 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.09.2024

PRONOUNCED ON :13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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John Kennedy

... Petitioner

Vs.

1.The Superintendent of Police,
O/o the Superintendent of Police,
Sivagangai District.

2.The Deputy Superintendent of Police,
CBCID,
Madurai.

3.The Inspector of Police,
Devakottai Town Police Station,
Devakottai.

... Respondents

4.John Britto

... Respondent/Defacto complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, seeking to transfer the investigation in Crime No. 271/2023, on the file of the third respondent to the second respondent and direct



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the second respondent to submit a status report within a stipulated period as fixed by this Court.

For Petitioner : Ms.A.Rajini

For Respondents : Mr.P.Kottaichamy
Government Advocate (Crl.Side)
for R.1 to R.3

ORDER

The petitioner has filed the above petition invoking Section 482 Cr.P.c., to transfer the investigation in Cr.No.271 of 2023, pending on the file of the third respondent to the second respondent.

2. On the basis of the complaint lodged by the petitioner's brother John Britto, F.I.R., came to be registered in Cr.No.271 of 2023 on 04.11.2023 for the offence under Section 289 I.P.C. It is also not in dispute that since the defacto complainant's brother succumbed to the injuries on 08.11.2023, the case was altered under Section 174 Cr.P.C.

3. The case of the petitioner's is that the petitioner's brother Amalanathan was having coffee at Ayyankar Bakery near Thai Mahal, Ram Nagar, Devakottai along with his friends on 03.11.2023 and at that time he was murdered around



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8.30p.m., and his body was found on the back of Ayyankar Bakery, that the petitioner's elder brother John Britto was forced by the respondent police to lodge a complaint as if it was due to the unmanned street buffalos piercing into the stomach of the deceased and F.I.R., in Cr.No.271 of 2023 was registered under Section 289 I.P.C., without proper investigation, that the petitioner's brother John Britto did not lay any written complaint, that the third respondent police obtained signatuers in the empty papers and filled it up with the fabricated version as if it was due to the mischief caused by buffalos, that the deceased was admitted in Devakottai Hospital around 09.00p.m., and was transferred to Sivagangai Hospital at 10.45p.m., that the deceased was alive in the hospital for nearly 3 days and at that time, the third respondent police has not taken any steps for recording dying declaration, but on the other hand had taken signatures in the blank papers from the defacto complainant, that after conducting surgery in Sivagangai Government Hospital, he was transferred to Madurai Government Rajaji Hospital next day, that again another surgery was performed and after that the deceased was able to talk clearly, but even then the third respondent police has not taken any steps to record the dying declaration or his statement, that the defacto complainant disclosed that three persons came in a car and stabbed the petitioner's brother, that the occurrence had taken place on 03.11.2023 and the



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deceased was alive till 07.11.2023, but the respondent police did not bother to conduct proper investigation and secure the accused, that there was a stab injury in the abdomen, but the police did not bother to register the case under Section 302 I.P.C., and under the provisions of SC/ST Act, that the petitioner's cousin Xavier was stabbed by one Vinoth who belongs to dominant caste community of Devakottai locality and he suffered a deep stabbed injury but the respondent police favouring caste Hindu, registered a case under Section 324 I.P.C., in Cr.No.236 of 2023 and thereafter the present murder had occurred, that though there was a series of heinous crimes had taken place, the respondent police is closing the cases without any proper investigation favouring the caste Hindu accused, that the petitioner and the deceased family will not find justice, if the respondent police proceeds with the investigation of the case and that therefore, the petitioner was constrained to file the above petition seeking transfer of the investigation.

4. In pursuance of the directions of this Court, the third respondent has filed a status report wherein they have stated that the deceased Amalanathan belonged to Christian Parayar community doing painting job-coolie and was accustomed to drinking habit, that the deceased was the youngest of the defacto



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complainant's brethren of seven and out of whom, the deceased was living along with the defacto complainant and another brother John Kennedy, that on 03.11.2023 at about 20.30 hours, the deceased went to the backside of Iyengar Bakery located in front of Thai Mahal to attend nature's call and he was in an inebriated state and probably fell on one of the animals, where stray cattle were resting and out of fear / retaliation, one animal is alleged to have attacked the deceased, who sustained abdominal injuries apart from other multiple injuries and fell down, that the deceased was accidentally spotted by one Manickandan, who was working in a nearby shop and he alerted the others and the injured was sent in 108 Ambulance for treatment to Devakottai Government Hospital at 21.45 hours and after giving first-aid, he was referred to Government Medical College Hospital, Sivagangai, that the third respondent along with the Sub-Inspector of Police went to Government Hospital, Sivagangai and since the medical condition of the deceased was not so convincing, the third respondent enquired the deceased about the occurrence and the entire set of questions and responses were video-graphed by the Sub-Inspector of Police – J.Namachivayam on 04.11.2023, that the brother of the injured John Britto was present during the video recordings, that subsequently, the injured was referred to Government Rajaji Hospital, Madurai for further treatment and was admitted 04.11.2023 and that



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the health of the injured got deteriorated and succumbed to the injuries on 07.11.2023.

5. It is the further case of the prosecution that after registering the F.I.R., the respondent police visited the scene of occurrence, prepared rough sketch and observation mahazar and enquired 11 witnesses and recorded their statements, that investigation had revealed that the deceased had died due to abdominal injuries caused by stray cattle attack and its complications thereof, that the medical opinion also confirmed that the injuries found on the body of the deceased could have been caused by cattle attack and that after completing the investigation, the third respondent had laid the final report on 12.08.2024 before the Devakottai Town Police Station as “Further Action Dropped) and that RCS notice was also served on the defacto complainant.

6. It is pertinent to note that the brother of the deceased John Britto in his complaint itself has stated that he was informed that his brother was lying with abdominal injuries on the back side of Iyengar Bakery and he was informed by the deceased brother that in a drunken stage, he had fallen on the cattles and he was not aware as to what had happened subsequently and that only on that basis



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of the said complaint, F.I.R., came to be registered under Section 289 I.P.C., which deals with negligent conduct towards animals.

7. Section 289 I.P.C., states that someone knowingly or negligently fails to take necessary steps to protect people or others from the harm caused by the animals in their possession, they can be punished.

8. The learned Counsel for the petitioner would submit that the defacto complainant has not at all given any written complaint, but the third respondent police had obtained signatures in empty papers and created the complaint with their fabricated version of the incident.

9. As already pointed out, F.I.R., came to be registered on 04.11.2023 itself and the injured despite treatment succumbed to the injuries on 07.11.2023 at about 12.15 hours. It is not the case of the petitioner that after coming to know about F.I.R., version, they have preferred any complaint before the higher police officials before the death of the injured or subsequently informing that the actual occurrence was not recorded in the F.I.R., but the fabricated version of the police.



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10. The petitioner has produced a copy of the letter sent by the petitioner herein to the Sub-Inspector of Police, Town Police Station, Devakottai on 13.11.2023 stating that he was informed by a person working in car wash that 3 unknown persons had stabbed the petitioner's brother and fled away and that some unknown persons have been following him and hence, he was fearing for his life and that therefore, requesting them to take action and to secure the accused involved in this case. But the petitioner has not produced any materials or records to show that the complaint dated 13.11.2023 was given to the third respondent or to the higher police officials as they have not produced postal receipt or postal acknowledgment.

11. As rightly pointed out by the learned Government Advocate (Crl.Side), even in the said complaint, he has not referred the name of the persons, who had informed him about the so-called incident of murder and he has only mentioned as a person working in a car wah. It is pertinent to note that in the direction petition filed before this Court also, he has not whispered anything about the said person.



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12. No doubt, in the petition he has stated that cousin Xavier was stabbed by one Vinoth, who belonged to dominant caste community of Devakottai locality. The learned Government Advocate (Crl.Side) would submit that the police had also enquired the said suspect Vinoth Kumar and they have come to know that he had been involved in a different case ie., in Cr.No.236 of 2023 on the file of the Devakottai Town Police Station for the offences under Sections 294(b), 323 and 506(ii) I.P.C., for the occurrence held on 04.10.2023 and he had been absconding from the third respondent police and was away at Chennai from the date of the said occurrence in Cr.No.236 of 2023 and had returned to Devakottai on 10.11.2023 to produce the sureties before the Court of the Judicial Magistrate, Devakottai and that they have raised CDR request for the suspect mobile number and received report confirming the suspect's statement recorded under Section 161(3) Cr.P.C.

13. No doubt, the learned Counsel for the petitioner would point out the injuries sustained by the deceased in the incident, referring the postmortem report. The Medical Officers, who conducted the postmortem report, had noticed 10 external injuries and according to them, the deceased would appear to have died of abdominal injuries and its complications thereof.



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14. The learned Government Advocate (Crl.Side) would submit that the Investigating Officers examined 21 witnesses including the complainant apart from the Medical Officer and the Investigating Officers and they have recorded their statements under Section 161(3) Cr.P.C., and the witnesses have only reiterated the version of the prosecution.

15. Though the defacto complainant and the petitioner have suspected the involvement of Vinoth Kumar, as already pointed out, they have conducted enquiry with regard to the alleged involvement of Vinoth Kumar and found that he was not at all available in the town at that time, as he was apprehending arrest by the respondent police in connection with the other case. Except the said Vinoth Kumar, the defacto complainant and the petitioner herein have not informed that they were suspecting some other persons allegedly involved in the incident. According to the prosecution, the examination of the deceased by the Inspector of Police was video-graphed by the Sub-Inspector of Police and that the same was reduced in the form of DVD and the same came to be submitted before the jurisdictional Court along with the certificate as contemplated under Section 65(B) of the Indian Evidence Act on 12.08.2024 itself.



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16, The learned Government Advocate (Crl.Side) would submit that though they have not taken steps to get the dying declaration of the deceased recorded, the video recordings taken by the third respondent police are equivalent to the dying declaration and hence the main complaint of the petitioner that the dying declaration was not taken, cannot be accepted.

17. No doubt, as rightly contended by the learned Counsel for the petitioner, since the deceased was taking inpatient treatment for 3 days, the third respondent police should have taken steps to get the dying declaration of the deceased. But at the same time, in view of the availability of the video recordings, that by itself is not a ground to doubt the prosecution case.

18. The learned Government Advocate (Crl.Side) would submit that the third respondent, after investigation, has filed the final report as Further Action Dropped and he has also produced the copy of the final report.

19. It is pertinent to note that the Investigating Officer, after considering the entire materials gathered and the statements recorded from the witnesses, has



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come to a decision that the deceased while going behind the Iyengar Bakery in a drunken stage to attend nature's call, had fallen on the stray cattle resting there and was injured on being attacked by the stray cattle. As rightly contended by the learned Government Advocate (Crl.Side), the petitioner has not shown any other circumstances nor materials to take a different stand than that of the prosecution. Hence, this Court concludes that the transfer of investigation is not warranted and as such, the petition is liable to be dismissed.

20. In the result, the Criminal Original Petition is dismissed. The petitioner is at liberty to file a protest petition before the jurisdictional Magistrate, if so advised.

13.09.2024

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

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To
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- 1.The Superintendent of Police,
O/o the Superintendent of Police,
Sivagangai District.
- 2.The Deputy Superintendent of Police,
CBCID,
Madurai.
- 3.The Inspector of Police,
Devakottai Town Police Station,
Devakottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-Delivery order made in

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