

(2010) 07 MAD CK 0315

In the Madras High Court

Case No : Criminal Original Petition (MD) No. 7607 of 2010

Balasubramani

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 174
Penal Code, 1860 (IPC) — Section 294, 447, 506H

Citation : (2010) 1 LW(Cri) 1436

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : R. Alagumani, for the Appellant; S. Muthu Venkatesan, G.A., (Crl. Side), for the Respondent

Judgement

R. Mala, J.—The Petitioner approaches this Court with a prayer to direct the Respondent No. 2 to withdraw the case in crime No. 143/2009 on the file of the Respondent No. 5 and handed over the same to the Respondent No. 3 for investigation and file the charge sheet before the Jurisdictional Magistrate within the time stipulated by this Court.

2. The Petitioner belonging to Hindu Scheduled Caste Kuravar community and he is living with his son Manikandan and daughters Malathi and Manimegalai. One Palanisamy and Ilangovan often jointly sexually harassed the Petitioner wife and threatened her. On 18.09.2009 at about 5.30 p.m., when he returned back from agricultural work, he witnesses his wife laid down on the floor covered by a saree and the children were crying around her. When he made an enquiry, the children intimated that his wife was consumed poison and immediately, he taken her to hospital, where she was declared dead and then, the Petitioner has given a complaint before the 5th Respondent police and the same has been registered in crime No. 143 of 2009 for the offence u/s 174 of Code of Criminal Procedure.

3. Thereafter, after 3 days from the occurrence, during the funeral ceremony, the

relatives of the Petitioner enquired the children of the Petitioner, who stated that on 18.09.2009 when he came to the house from the school, one Palanisamy and Elangovan fastly came through Kenimettu and he saw his mother Tamilarasi laid on floor without wear any dress in semi conscious stage and then, he covered a saree to his mother and enquired her, she told that the said Palanisamy and Elangovan forcefully committing rape against her when she was alone in the house and she forced to take the poison and she further told him to vacate the village along with family members, otherwise the said persons would endanger the life of her family members. Thereafter, the Petitioner went to the police stated and informed the truth to the Respondent police, but, the investigation agency has not taken any steps and hence, the Petitioner has come forward with this application to transfer the investigation to the 3rd Respondent. To substantiate his argument, he relied on the decisions of the Apex Court.

4. The learned Government Advocate would contend that a complaint has been given on 18.09.2009 and the same was registered on 19.04.2009 for the offence u/s 174 of Code of Criminal Procedure and the same has been referred as "Further Action Dropped" on 12.01.2010 and hence, he prayed for the dismissal of the application.

5. Heard the learned Counsel appearing for the Petitioner as well as the learned Government Advocate (criminal side) and perused the entire material records available on record.

6. Considering the rival submissions made by either side, it reveal that on the basis of the complaint given by the Petitioner herein, a case has been registered in crime No. 143 of 2009 on 19.09.2009 for the offence u/s 174 Code of Criminal Procedure.

7. The learned Counsel appearing for the Petitioner would submit that when the Petitioner returned back from the agricultural field on 18.09.2009, at 5.30 p.m., his wife Tamilarasi laid down on the floor in his house covered by a saree and his children were crying around her and when he enquired them they informed that their mother consumed poison and immediately the Petitioner taken her to the Government Hospital, where she was declared dead and immediately he has given a complaint, which was registered in crime No. 143 of 2009 for the offence u/s 174 of Code of Criminal Procedure.

8. The learned Counsel appearing for the Petitioner would further submit that after three days only, the relatives of the Petitioner came to know that what was happened to the Petitioner's wife from her son Manikandan that since one Palanisamy and Ilangovan have raped Tamilarasi, so she consumed poison and hence, the relatives of the Petitioner went to the house of said Palanisamy and seek justice, but they preferred a false case against the brothers-in-law of the Petitioner, which has also been registered in crime No. 148 of 2009 for the offence u/s 294(b), 447, 506(H) of I.P.C and they remanded into judicial custody.

9. The learned Counsel appearing for the Petitioner would further submit that the

Petitioner on 24.04.2009 narrated the facts and preferred a detailed representation before the Respondents No. 1,2,4 and 5 for initiating action against the said Palanisamy and Elangovan, but, till date, the 5th Respondent did not record the statement of his relatives.

10. Perusal of the case diary which was produced before this Court would reveal that the occurrence has been taken place on 18.09.2010 at 17.30 p.m., and the complaint has been given on 19.09.2009 at 8.00 a.m., and the case has been registered on 19.09.2009 u/s 174 of Code of Criminal Procedure It would also reveal that the Petitioner was examined on 19.09.2009 and his daughter Manimegalai was also examined on 19.09.2009 and one Kulandaiappa gounder, Subramani, K.P. Shanmugam were also examined on 19.09.2009. The further statements of the Petitioner has also been recorded on the same day, i.e. on 19.09.2009, wherein, he has stated that the incident taken place on 11.09.2009 that one Ilangovan and Palanisamy have attempted to rape her wife. The statements of Ilangovan and Palanisamy were also obtained on 20.09.2009.

11. Perusal of the postmortem certificate would also reveal that there was no evidence to say that she was subjected to rape and there was no external injuries on the body of the said Tamarasi. But, perusal of the 161(3) of Code of Criminal Procedure Statements, it is clearly revealed that after recording the further 161(3) of Code of Criminal Procedure Of the Petitioner only, the investigation officer examined the witnesses Palanisamy and Ilangovan, since the Petitioner has made a suspicious on them. Even after the examination of Manikandan, who is the son of the Petitioner on 21.09.2009, the investigation office has not taken any step to interrogate the said Palanisamy and Ilangovan into this matter.

12. The learned Government Advocate (criminal side) would submit that since the case has been registered for the offence u/s 174 of Code of Criminal Procedure, the S.I. of Police taken the investigation. But, it is the duty of the investigation agency to place the matter before the competent authority, after recording the further 161(3) of Code of Criminal Procedure statement of the Petitioner on 19.09.2009 and the statement of Manikandan on 21.09.2009. But, the Sub Inspector of Police did not do so. Even after the statement of the Manikandan recorded on 21.09.2009, the Sub Inspector did not take any steps to place matter before the competent authority viz., the Deputy Superintendent of Police. Per contra, the Sub Inspector of Police examined the witnesses Palanisamy and Ilangovan and recorded their statements and come to the conclusion that the Petitioner's wife consumed poison and died and dropped the further action on 12.01.2010.

13. In such circumstances, since the Petitioner is the depressed class people, we must give some importance to the statements of the Petitioner and his son Manikandan. "It is one of the salutary principles of the administration of justice that justice should not only be done but it should be seen to be done". But, here, even though on 19.09.2009, the Petitioner suspected the two persons, the

investigation officer has not taken the same in accordance with law.

14. The learned Counsel appearing for the Petitioner relied on the decision in *Rubabbudin Sheik v. State of Gujarat and Ors.* reported in 2010 CIJ 167 SC(1) : 2010 2 L.W.(CrL.) 1057 and submits that the Court has powers to transfer the investigation even after filing the final report. But, here, even though the investigating agency has not considered the statements of the Petitioner and his son recorded on 19.09.2009 and 21.09.2009 respectively, the case has been closed as "Further Action Dropped" on 12.01.2010 and he prayed for the transfer the investigation.

15. In such circumstances, I am of the opinion that even the case has been closed as "Further Action Dropped", this Court has powers to transfer the investigation and to order for reinvestigate the matter. In this case, the Petitioner has sought for the transfer of the case to C.B.C.I.D, since the Petitioner is belonging to the depressed caste and he has narrated the facts prior to the incident that happened on 18.09.2009, and the investigation officer has not taken steps to place the matter before the competent authority. Now, it is appropriate to consider the decision relied on by the Petitioner's counsel in *Punjab and Haryana High Court Bar Association, Chandigarh through its Secretary Vs. State of Punjab and others*, , wherein, the Apex Court has held as follows:

In the instant case, it was alleged that a practicing lawyer, his wife and child were abducted and murdered. The lawyers fraternity were not satisfied with the police investigation and demanded judicial enquiry. The investigating having been completed by the police and charge sheet submitted to the court, it is not for Supreme Court, ordinarily to re-open the investigation. Nevertheless, in the facts and circumstances of the instant case, to do complete justice in the matter and to instil confidence in the public mind it is necessary to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI), CBI was directed to take up the investigation of the case.

16. In *Kishan Lal Vs. Dharmendra Bafna and Another*, , the Apex Court has held as follows:

The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new of further materials came to his notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary.

17. In *Paramjit Kaur (Mrs) Vs. State of Punjab and Others*, , the Apex Court has

held as follows:

Mr. M.L. Sarin, learned Advocate General, Punjab has very fairly stated that keeping in view the serious allegations levelled by the Petitioner against the officers/officials of the Punjab Police, it would be in the interest of justice that the investigation in this matter be handed over to an independent authority. Even otherwise, in order to instil confidence in the public mind and to do justice to the Petitioner and his family it would be proper to withdraw the investigation from Punjab Police in this case. We, therefore, direct the Director, Central Bureau of Investigation to appoint an investigation team headed by a responsible officer to hold investigation in the kidnapping and whereabouts of Khalra. We further direct the Director General of Police, Punjab, all Punjab Police Officers concerned, Home Secretary and Chief Secretary Punjab to render all assistance and help to the CBI in the investigation.

18. In *Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others*, , wherein, the Apex Court has held as follows:

"If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the relatives or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law."

19. In *Babubhai Jamnadas Patel Vs. State of Gujarat and Others*, , wherein, this Court has held as follows:

The Various decisions cited by Mr. Dave endorse the view that when required not only could the High Court or this Court direct the investigating agencies to conduct the investigation in a fair and unbiased manner, but that in exercise of its powers under Article 142 of the Constitution, the Supreme Court could also issue directions for enforcement of fundamental rights and to ensure that complete justice was done to the parties.

20. Considering the above said citations, a fair and proper investigation is necessary, even though a case has been registered u/s 174 of Code of Criminal Procedure, on the basis of the complaint given by the Petitioner, as per the further statement of the Petitioner and the statement of his son Manikandan, the persons Palanichamy and Ilangovan were implicated in this case, but the 3rd Respondent has not taken any steps to investigate the matter in accordance with law.

21. Hence, I am of the considered opinion that merely because of the Petitioner is belonging to Narikurava community and no one has supported him, I am of the opinion that to meet the ends of justice and to instil confidence in the public mind it is necessary to have fresh investigation in this case, the investigation shall be conducted by any one of the Deputy Superintendent of Police and the investigation should be monitored by the Superintendent of Police, Dindigul Street and filed final report in accordance with law.

22. In fine, this criminal original petition is disposed of with the following direction:

The 4th Respondent, the Superintendent of Police, Dindigul District is directed to depute a Deputy Superintendent of Police, to investigate the matter in accordance with law and he is also directed to supervise the investigation conducted by the Deputy Superintendent of police in the matter and file a final report in accordance with law as expeditiously as possible.