
(1999) 02 MAD CK 0111

In the Madras High Court

Case No : Criminal O.P. No. 15488 of 1998

Boomayil

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Citation : (1999) CriLJ 2738

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : C. Duraipandian, for the Appellant; N.R. Elango, Government Advocate and M. Venkataraman, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Boomayil, the wife of one Muthuramalingam, the accused in a murder case in which one Leelavathy, Municipal Councilor of Madurai was done to death, has filed this petition, probably to ventilate the grievance of her husband Muthuramalingam, for direction from this Court to be issued to the respondents 1 to 4 to handover the case for reinvestigation by C.B.I. and to give a further direction to the C.B.I. to take up the case for reinvestigation.

2. The details which are given in the affidavit filed by the petitioner for seeking the said relief, in her own words are given hereunder :-

My husband Muthuramalingam is a member of D.M.K. Party since his childhood. He was elected as D.M.K. Secretary of 59th Ward. Tmt. Leelavathy, who belongs to Communist Party of India (Marxist) was elected as Councilor for 59th Ward on 31-10-96 defeating one Tmt. Valli, who contested on behalf of the D.M.K. Party. On 23-4-97, the said Leelavathy was murdered near her residence at Villapuram, Madurai. The Communist Party of India (Marxist) utilised the death of Leelavathy, since the deceased was the member of the said political party, in order to develop the party in the State, as they attributed motive to my husband. The

political consideration played a major role and influenced in deciding the course of investigation. The C.P.I.(M), after the occurrence made a demand for a C.B.I. enquiry in this case, since the accused including my husband Muthuramalingam were all happened to be the members of the ruling D.M.K. Party. At the time of progress in the investigation taken up by the 4th respondent, the D.M.K. Party was one of the members of the ruling coalition United Front in the centre. The C.P.I.(M) supported the said United Front then. In these circumstances, the State Government run by the D.M.K. Party implicated the accused, their own party men just to pose that the Government was acting according to law without any discrimination. Since the support of C.P.I.(M) was crucial for the United Front, the D.M.K. which was in power in the State wanted to appease the C.P.I.(M) by implicating six persons in this case without proper investigation. After the arrest of all the accused, the State Government acceded to the demand of C.B.I. enquiry. But, for the reasons best known to the State Government and to the C.B.I., the case was never investigated by the C.B.I. It is a known fact to the residents of that area, who witnessed the occurrence that the murder was committed by a single person alone. Mr. Velusamy, M.L.A., the member of that constituency, mentioned this factor in the Assembly and the same was accepted by the Hon'ble Chief Minister in answering to that by stating instead of one, five more were arrested, which is done in accordance with law. Therefore, the case must be entrusted to the C.B.I. for reinvestigation.

3. Totally there are six respondents. Respondents 1 to 5 did not choose to file any counter. But, the 6th respondent, the General Secretary, C.P.I.(M), Mr. N. Sankaraiah, has filed a counter. The gist of his contention is as follows :--

My party does not believe in utilising the death of Leelavathi to develop the party. As Communist, we take up the problem faced by the people and try to obtain justice for them. The allegations that political considerations played a major role and influenced in deciding the course of investigation and that the accused in the murder case had been falsely implicated are totally denied. It is true that my party demanded C.B.I. enquiry in this matter, soon after the occurrence. The Hon'ble Chief Minister also acceded to the demand. However, he assured that his Government would not spare the culprits, whomsoever it may be, and that the investigation would be fairly done. In such a situation. my party thought not to pursue with the demand of C.B.I. enquiry. According to my party, there has been no political consideration in the criminal investigation. The allegation that it is an admitted fact by the residents of the area who witnessed the occurrence had stated that the offence was committed by a single person alone is totally misleading and false. I learnt that Mr. Velusamy, M.L.A., who is said to have spoken of this subject in the Assembly is also counsel for some of the accused in the trial Court and as such, he has vested interest in the case and his speech has to be taken with a pinch of salt. The accused, who are unable to get bail, are trying to delay the matter by asking for reinvestigation by C.B.I., when the trial was about to commence nearly after 18 months. This petition is vexatious in nature. I seek for exemplary costs be awarded so that such types of

petition to delay justice would not be filed.

4. I heard the counsel for the parties.

5. The accusations made by the petitioner in her affidavit filed along with this petition on behalf of her husband Muthuramalingam, an accused in the murder case, who belongs to the ruling D.M.K. Party, is that the said party falsely implicated six accused in the murder case just to appease the C.P.I.(M), even though they belong to D.M.K., since the ruling coalition United Front in the Centre in which the D.M.K. was one of the prime constituents was supported by C.P.I.(M).

6. Virtually, this petition has been filed by the wife of the D.M.K. Ward Secretary accusing the State Government run by the D.M.K. Party at whose instance her husband has been falsely implicated just to satisfy the C.P.I.(M). It is mentioned in the affidavit that the local residents of the area knew that the said Leelavathy was murdered by only one person and this was brought to the notice of the Assembly by the local M.L.A. Mr. Velusamy and the same was accepted by the Hon"ble Chief Minister in the Assembly itself.

7. In order to substantiate this, the petitioner filed the Assembly proceedings along with her affidavit. The reading of the Assembly proceedings would make it clear that Mr. Velusamy, M.L.A., spoke in the Assembly that he received information that the said Leelavathy was murdered by the brother of one Valli, who got defeated in the Ward Election. In the reply given by the Hon"ble Chief Minister, he would state as follows :-

(Matter in Vernacular, omitted:- Ed.)

8. This reply does not show that the Hon"ble Chief Minister accepted the version of the said Velusamy M.L. A. that Leelavathy was murdered only by one person. In fact, he announced in clear terms in the Assembly that the Police Officers have been given free hand to arrest the real accused pointed out by the witnesses, even though they belong to the ruling party.

9. In such a situation, the averment in her affidavit filed before this Court by the petitioner, who is the wife of A2 in this murder case stating that the Chief Minister himself accepted the version of Mr. Velusamy, M.L.A. cannot be accepted.

10. In this context, it is appropriate to refer to the counter filed by Mr. Sankaraiah, the General Secretary of C.P.I.(M), in which he stated that Mr. Velusamy, M.L.A. who spoke in the Assembly is an Advocate and he appeared for some of the accused in the trial Court and as such, he has vested interest and his speech has to be taken with a pinch of salt.

11. Irrespective of the contents of the speech of the said M.L.A., who is stated to be the counsel for some of the accused, in the Assembly, this Court expresses its displeasure towards the act of the petitioner in filing this affidavit to ask for reinvestigation by the C.B.I. mainly on the basis of the Assembly speech made

by the said M.L.A. and the Hon"ble Chief Minister.

12. Furthermore, the occurrence had taken place on 23-4-1997. The charge-sheet was filed on 20-6-1997. The Assembly speech was made by the said Velusamy M.L.A. on 29-4-1997. After committal, the II Additional Sessions Judge, Madurai framed charges against all the accused and posted the matter for trial from 15-7-1998 to 17-7-1998.

13. In the meantime, one of the co-accused filed a petition before the trial Court to try him as juvenile, which was turned down. Against that order, the said co-accused Murugan alias Songu Murugan filed a revision in CrI. R.C. No. 612 of 1998 and obtained stay on 25-6-1998. That was how the trial had not proceeded from 15-7-1998 to 17-7-1998, as fixed earlier.

14. While the said stay order granted by this Court is in force, the petitioner on behalf of her husband filed this petition on 14-9-1998 before this Court.

15. If at all the petitioner and her husband, who stands as A2 in the murder case, had really aggrieved over the alleged biased investigation, they would have immediately approached the State Government through their M.L.A. who spoke for them in the Assembly and appeared for them in the trial Court seeking for the transfer of the investigation, even before the charge-sheet was filed. There is no reason as to why this was not done.

16. The petitioner, at least, would have made an attempt, if their attempt is a genuine one by filing a petition for reinvestigation before the learned Judicial Magistrate, while entertaining the charge-sheet filed by the said police. This was also not done.

17. Instead, the present petition has been filed before this Court long after committal and the case was taken on file by the II Additional Sessions Judge in S.C. No. 506 of 1997 and after framing of charges against the accused and posting the matter for trial in July, 1998.

18. The reason for the delay in filing this petition is quite obvious. In fact, this Court earlier dismissed the bail application filed by the accused in the instant case observing that they are not entitled to bail till the trial is over. Probably, as stated in the counter this had prompted the petitioner to file some application or the other to get the trial further delayed, in order to enable the accused to make another attempt for bail.

19. The most agonising feature is that in order to cause further delay in the trial of the murder case, the petitioner on behalf of her husband, who is a D.M.K. Ward Secretary, had gone to the extent of accusing her own political party stating that her husband was falsely implicated by the said party, in order to satisfy the C.P.I.(M) to ensure continued support by the C.P.I.(M) to the United Front in which the D.M.K. is one of the constituents.

20. Since I feel that this petition, being vexatious in nature, has been filed

without any valid reason. That too, belatedly, I deem it fit to impose costs on the petitioner as requested by the 6th respondent, Mr. Sankaraiah, the General Secretary, C.P.I.(M), Chennai for her act of casting aspersions on both the political parties, namely, D.M.K. and C.P.I.(M) without any basis.

21. Under these circumstances, while dismissing this petition as devoid of merits, I direct the petitioner to pay costs of Rs. 20,000/- within three months from today. The said costs must be deposited into the trial Court by the petitioner. On such deposit, the trial Court is directed to pay Rs. 10,000/- to the 6th respondent, the General Secretary, State Committee, C.P.I.(M), No. 11, Vaidyaram Street, T. Nagar, Chennai-17 and another Rs. 10,000/- to the General Secretary, D.M.K. Party, Chennai after due intimation. If the above amount is not deposited by the petitioner within the stipulated time, it is open to the parties to approach the Court for contempt.

22. With the above observations, the petition is dismissed. Consequently, Crl. M.P. No. 7137 of 1998 stands dismissed.