
(2004) 10 MAD CK 0019

In the Madras High Court

Case No : Criminal Original Petition No. 17026 of 2004 and Criminal M.P. No's. 6083 and 6367 of 2004

Mrs. Nagarathinam

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Citation : (2004) 2 LW(Cri) 807

Hon'ble Judges : N. Kannadasan, J

Bench : Single Bench

Advocate : V. Sitharanjan Dass, for the Appellant; C. Ramesh, Govt, Advocate (Crl.side) for Respondent-1 and V. Gopinath, for B. Kumarasamy, for Respondents 2 to 6, for the Respondent

Final Decision : Dismissed

Judgement

N. Kannadasan, J.—The above criminal original petition is filed to order for retrial in S.C. No. 39 of 2001 on the file of the learned I

Additional District Judge, Trichy after further investigation by the Respondent.

2. To appreciate the rival contentions of the parties, the undisputed facts are set out as hereunder:

Initially three accused are charge sheeted for the alleged offence as stated therein. The date of occurrence was 7.7.1998, on which date, one

Vijayalayan was murdered and the Airport Police Station, Trichy has registered a case in Crime No. 151 of 1998. On 14.6.2000, the Inspector of

Police, Airport Police Station has filed the first chargesheet implicating three persons as accused. The said chargesheet was taken on file by the

learned Judicial Magistrate No. 4, Trichy on 17.7.2000 and the same was committed to the Principal District Judge, Trichy on 22.2.2001.

Immediately after the date of occurrence, on 14.7.1998 itself one Swaminathan who was holding the post of Inspector on incharge basis took up investigation. Subsequently, when regular inspector was posted to the Airport Police Station by name Kanagaraj, he has proceeded with further investigation. Subsequently, due to the transfer of the abovesaid Inspector, on 3.6.1999 one Selvaraj continued with investigation who made the arrest of the three accused on 27.4.2000 and filed the chargesheet as stated supra. Subsequently, the Commissioner of Police, Trichy District passed an Administrative order on 21.3.2001 and directed one K. Veerasamy, Inspector of Police for further investigation. The abovesaid Investigating Officer for the first time has attributed motive for the murder due to the eve teasing of one Durga who was employed as a Warden in the working women hostel. The said Investigating Officer has chosen to file Criminal M.P. No. 3541 of 2001 for further investigation before the court below, but the same was later on dismissed as not pressed.

3. By order dated 8.8.2001, the Director General of Police, Chennai has passed an Administrative order transferring the case to CBCID and thereby the Inspector of CBCID, Pudukottai continued with the further investigation. The said officer has filed petition in Criminal M.P. No. 366 of 2001 on 17.9.2001, seeking permission for further investigation and the learned II Additional District Judge, Trichy has passed an order dated 1.11.2001 by granting one month's time. Subsequently, the said Investigating Officer has filed an another application seeking extension of time and the said petition was ordered on 4.12.2001 by the court below granting a further time of two months. Thereafter, when the case was posted on 7.2.2002 and 15.2.2002 for filing the chargesheet, the same was not filed. When the matter was again listed on 28.3.2002 for filing the chargesheet, the prosecution has again filed a petition, seeking further time which was dismissed by the court below and the case was posted for trial and it was also ordered to issue summons to all the witnesses and the date was fixed as 18.4.2002. There was no progress on 18.4.2002 and again the case was posted to 19.4.2002. In the meanwhile, the prosecution has filed a petition before the High Court in Crl.O.P. No. 7276 of 2002 as against the refusal of court below in granting further time to complete the investigation. On 19.11.2002, the Government Advocate

appearing on behalf of the prosecution undertook to complete the further investigation and to file a fresh report by the end of December 2002,

which fact was recorded and the petition was disposed of without any further orders.

4. In the meanwhile, the Additional Director General of Police, CBCID, Chennai by order dated 7.11.2002, has transferred the investigation from

the Inspector of Police to the Deputy Superintendent of Police, CBCID, Trichy, who pursued the investigation with effect from 9.11.2002. He has

filed an another petition before the High Court in CrI.O.P. No. 63 of 2003, seeking permission for further investigation and the High Court has

granted time till August 2003. It is only on 30.6.2003, the Deputy Superintendent of Police, CBCID has filed amended chargesheet and final

report after further investigation. In the said chargesheet accused 1 and 2 were added in pursuance of the investigation conducted by him.

5. Even though the High Court as early as on 19.11.2002 itself has disposed of the criminal O.P. No. 7276 of 2002, by recording the undertaking

that the fresh final report would be filed by the end of December 2002, the case was posted for trial on 19.4.2004 and subsequently on 20.4.2004

and questioning u/s 313 Code of Criminal Procedure was completed on 22.4.2004. When the matter was posted for further trial on 26.4.2004,

the learned Public Prosecutor was not ready and accordingly, the case was adjourned to 28.4.2004 for arguments. At that stage, the prosecution

has filed three petitions in CrI.M.P. Nos. 230, 231 and 232 of 2004 before the court below to reopen, to recall the witness and to adjourn the

matter and all the petitions are allowed on the same date. The above petitions came to be filed on the ground that the prosecution intended to

examine one new witness viz., by name Mohan, S/o. Arunachalam. Even though summons was issued to produce the said Mohan, the prosecution

has not made him available for examination and he could not be examined by one way or other. Once again, the prosecution has filed an another

criminal M.P. No. 238 of 2004 on the file of the learned I Additional District Judge, Trichy for further investigation which was dismissed on

5.5.2004. The prosecution has not challenged the said order before this Court.

6. The above petition is filed for ordering retrial after further investigation contending that there is defect in the investigation and frequent change of

Investigating Officers; and that even though one Mohan was named new witness, he was not examined; and that several witnesses have turned hostile; that when the final report was filed on 30.6.2003, pursuant to the investigation done by the Deputy Superintendent of Police, CBC1D, a new motive was found out viz., due to the illicit relationship of the deceased with one Sujatha who is stated to be the second wife of the first accused and the said Sujatha was not shown as one of the witnesses and even though the prosecution itself-has filed an application before the court below for further investigation u/s 173 (8) Cr.P.C, which was dismissed; and that no further action was initiated by approaching this Court as against the said order of rejection.

7. The learned Counsel for the Petitioner contended that for the reasons stated supra, the present petition which is filed by the mother of the deceased should be allowed. According to the learned Counsel for the Petitioner, the main grievances of the Petitioner is only as against the prosecution which has committed serious error and as such, contended that retrial should be ordered after further investigation.

8. Per contra, the learned Senior Counsel Mr. V. Gopinath appearing for Respondents 2 to 6/accused contended that the occurrence took place as early as in the year 1998 and the sessions case was taken on in the year 2001 and the entire case is based on circumstantial evidence and no direct evidence is involved and as such, the present petition which is filed nearly after a period of six years, should not be entertained, as it would affect their fundamental right of speedy trial. The learned senior counsel would further contend that all the witnesses were examined and the trial was completed and when the matter was posted for final arguments, the present petition is filed. The learned senior counsel would also contend that even though the Petitioner herein was examined as P.W. 3 and her daughter was examined as P.W. 4, there was no whisper at all in their evidence about any manipulation in the FIR or any defect in the investigation. According to the learned senior counsel, the above petition is filed with an ulterior motive and after such a long time, if retrial is ordered, it would adversely affect the right of the accused to have a speedy trial.

9. The learned Government Advocate (Criminal Side) was heard on all these points. The averments made in the counter-affidavit filed by the first

Respondent is also considered.

10. As regards the contention of the learned Counsel for the Petitioner that due to frequent change of Investigating Officer, the investigation was

not conducted properly and there is a defect in the investigation, it is not disputed that the first Investigating Officer, viz., one Swaminathan was

holding the post of Inspector only on the incharge basis, who was examined as one of the witnesses. Subsequently, one Kanagaraj took over the

investigation, since he happened to be a regular Inspector of Police, who was also examined as one of the witnesses. Subsequently, on 3.6.1999

an another Inspector of Police by name one- Selvaraj continued with the investigation. Since the Airport Police Station was originally under the

control of Ponmalai Police Station and later on it was made as a separate Police Station under the control of one Inspector of Police, the above

mentioned Selvaraj took charge and continued with the investigation. Immediately, after the abovesaid Selvaraj took over investigation, he has

arrested three accused on 27.4.2000 itself and filed first chargesheet on 14.6.2000, wherein the three individuals are shown as accused.

Subsequently, the Commissioner of Police, Trichy passed an Administrative order on 21.3.2001, directing that the case to be handed over to one

K. Veerasamy, Inspector of Police for further investigation. Since no further progress was made, the higher authorities viz., the Director General of

Police, Chennai has passed an order dated 8.8.2001, transferring the case to CBCID and the Inspector of Police, CBCID, Puduk-ottai was put

to incharge for further investigation. From 8.8.2001 till 7.11.2002, the very same Investigating Officer viz., Inspector of Police, CBCID was

continued with the investigation. In the meanwhile, though several opportunity was given to the prosecution, enabling it to file further chargesheet, it

was not done. In fact, even though the High Court has also granted time from 19.11.2002 till the end of December 2002 to complete the

investigation and to file fresh report, no progress was made. Probably that would have made the authorities to hand over the investigation to higher

officer viz., in the rank of Deputy Superintendent of Police, CBCID, Trichy, who has been directed to pursue the matter as per the order dated

7.11.2002 of Additional Director General of Police, CBCID, Chennai. It is only on further investigation, an amended chargesheet and final report

was filed on 30.6.2003, impleading two more accused viz., accused 1 and 2. Narration of sequence as set out supra discloses that there is no

frequent change of Investigating Officers at the level of Inspector of Police of the very same Department. Since the Officer who has commenced

the investigation initially by name Swaminathan was holding the post as incharge of Inspector, he has to necessarily hand over the charges to the

regular inspector by name Kanagaraj. Subsequently, the abovesaid Kanagaraj came to be transferred consequent to the fact that separate

Inspector of Police was posted in the Airport Police Station, which was till then under the control of Ponmalai Police Station. Only under the said

circumstances, the new officer by name Selvaraj took over as Inspector of Police in the Airport Police Station, who has continued with the

investigation. Thereafter, the appointment of Inspector of Police by name Veerasamy to pursue the investigation was ordered for administrative

reasons. Thereafter, the investigation was transferred to another Department by name CBCID, with a view to give special attention to the case.

The very same Department viz., CBCID, was permitted to continue with the investigation, but however, a higher ranking officer was appointed in

the rank of Deputy Superintendent of Police with effect from 7.11.2002. All these facts would only suggest that to strengthen the investigation, it

was transferred to a separate agency viz., CBCID and after the said transfer, though initially the matter was pursued with by one Inspector of

Police, subsequently, it was taken over by a higher official in the rank of Deputy Superintendent of Police. The change of Investigating Officers

under the abovesaid circumstances cannot be found fault with.

11. As regards the allegation that there is defect in the investigation is concerned, the said averment is not substantiated by materials except by

referring to the fact that the illicit relationship of the deceased with one Sujatha, who is stated to be the second wife of the first accused, could be

the motive for murder and even though such a motive was attributed, she was not cited as one of the witnesses. Further, one Mohan was also cited

as one of the witnesses, was not examined. As regard to the above submission, it is not disputed by the learned Counsel for the Petitioner that the

said Sujatha was examined by the Investigating Officer, but however, she was not cited as a witness. Merely because, in the course of

investigation, certain motive was attributed to the above mentioned Sujatha and though she was examined, the fact that she was not cited as a witness, cannot be construed as a serious defect in the investigation. Further, the non examination of the another witness by name one Mohan is concerned, it is only the prosecution which has filed three petitions at the last moment viz., on 28.4.2004, when the case was actually posted for final arguments and even though the said petitions were allowed, the said Mohan could not be examined due to the fact that he was not available in the address as mentioned in the summons. Subsequently, the prosecution has chosen to file another petition seeking permission to hold further investigation on the ground that the said Mohan was originally at Madras and later on available at Trichy and again available at Bangalore. No detail is available about the purpose for which the examination of the said Mohan is necessary. In the absence of any specific details, it cannot be suggested that the non-examination of witnesses, that too after the completion of the entire trial, could be considered as a defective investigation.

12. As regards the further averment to the effect that the trial has to be reopened and further investigation is required on the ground that several witnesses turned hostile, that cannot be a ground for reopening the trial. In the absence of any lapse on the part of investigation, retrial cannot be ordered. Even though it was further contended that the failure on the part of the prosecution to take up the matter to the High Court, by challenging an order dated 5.5.2004 in CrI.M.P. No. 238 of 2004, amounts to serious lapse on the part of the prosecution concerned, in my opinion that cannot be construed as a serious lapse. Admittedly, the prosecution only have filed number of petitions on several occasions,, seeking permission for further investigation, either before the court below or in the High Court. One cannot expect the prosecution to file endless petitions, seeking permission for further investigation. Merely because the order of the court below was not challenged, that cannot be construed as a serious defect in the investigation.

13. The learned Counsel for the Petitioner placed reliance upon the decision of the Apex Court in Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others, and contended that retrial has to be ordered after further investigation. In the said decision, the Apex Court has taken note of the fact

that a report was submitted by the Director General of Police, Gujarat consequent to a direction given by the Court, wherein it is stated that

deletion of Section 120-B IPC was not correct. The Apex Court has ordered for further investigation by considering the abovesaid lapse in the

investigation and as such, the said decision has no application to the present case.

14. Similarly, the learned Counsel for the Petitioner placed reliance upon a decision of this Court in *P. Alagarsamy Vs. State of Tamil Nadu* and

four others,). That is the case wherein a specific information was received to the effect that an offence was committed as per the provisions of the

Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 and in the said case, and there was a serious violation of rules framed

under the said Act, which was taken note of by the court and accordingly, a fresh investigation was ordered. The above mentioned decision does

not have any application to the case on hand.

15. As rightly contended by the learned senior counsel for Respondents 2 to 6, the occurrence took place as early as in the year 1998 and the

sessions case is of the year 2001 and the trial was progressed and completed and as many as 28 witnesses on the side of prosecution viz., P. Ws.

1 to 28 were examined and Exs.P. 1 to P. 30 were marked and M Os. 1 to 17 were also produced and the prosecution witness was closed as early

as on 20.4.2004 and the accused, were questioned u/s 313 Cr.P.C, and the case was posted on 26.4.2004 for defence witnesses and thereafter

when the matter was posted for arguments, the prosecution has filed Crl.M.P. Nos. 230, 231 and 232 of 2004 on 28.4.2004 to recall, reopen

and adjournment of the trial which were also ordered. But however, there was no further progress and at that stage, an another petition was filed

on 30.4.2004 in Crl.M.P. No. 238 of 2004, seeking permission to hold further investigation and to submit a final report which was negatived by

the court below.

16. In the light of the above facts and circumstances, I do not see any reason to grant the relief as prayed for in the above petition. Accordingly,

the above petition is dismissed as devoid of merits. Consequently, connected Crl.M. Ps are also dismissed.