

(1994) 04 MAD CK 0046

In the Madras High Court

Case No : Criminal Original Petition No. 5249 of 1993

Mrs. Sandhya Sankaranarayanan

APPELLANT

Vs

Commissioner of Police, Egmore and another

RESPONDENT

Date of Decision : 26-04-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (1994) 2 ALT(Cri) 671 : (1994) CriLJ 2577

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : V.R. Venkataswamy, for the Appellant; E. Raja, Government Advocate, for the Respondent

Judgement

Pratap Singh, J.—The complainant in Crime No. 2235/92 on the file of Central Crime Branch, Madras, has filed this petition u/s 482,

Cr.P.C. for a direction for further investigation in the said case by any Inspector of Police, other than Inspector of Police, All Women Police

Station, under the supervision of the Commissioner of Police, Madras.

2. Short facts are, on the complaint given by the petitioner and registered in Crime No. 2235/92, the second respondent had investigated the case

and has filed the charge-sheet against Sankaranarayanan, for offence under sections 498-A and 406, I.P.C. alleging that the investigation made by

the second respondent viz. Inspector of Police, All Women Police Station, Madras 6, was deliberately deficient, this petition is filed for further

investigation.

3. The petitioner has filed an affidavit in support of the application. The allegations in it are briefly as follows :

The petitioner was studying in Queen Marys College in 1974. Sankaranarayanan was living in the opposite house. They loved each other and got

married and the marriage was registered in Sowcarpet Sub-Registrar's Office. Later Sankaranarayanan got a job in Civil Supplies C.I.D. Branch.

On 19-8-77, again marriage was celebrated in the presence of the relatives of both sides. After marriage, she stayed with her husband at

Thanjavur. Through lawful wedlock, she got two daughters by name Kalyani and Pallavi. Till 1985, their marriage life was normal. In 1985, her

husband joined in I.G. of Police Office, as Assistant. In 1985, one day, her husband Sankaranarayanan brought Dharmambal to the house and

introduced her, saying that she was working as a Typist in his office. Later, the petitioner came to know that her character was not good. She

requested him not to move with her. In 1989, her mother constructed her own house at K.K. Nagar. The petitioner, her husband and two

daughters moved to Saidapet. Her husband began to spend lavishly on Dharmambal. The petitioner requested him not to do so. Then he started ill-

treating her, beating her often and forced her to bring money from her mother. Jayavelu, her neighbour, was an eye-witness to this cruelty. He got

her bangles saying that he had to clear some loan. On seeing frequent beatings by her husband, her daughter Kalyani was affected psychologically.

She was treated by Dr. Jayanthini. The doctor advised her husband to behave well, at least for the sake of the child. In March, 1991, they moved

to Teynampet. In April, 1992, her husband took a Flat at Thiruvallurvar Salai and has been living with Dharmambal. In October, 1992, her

husband gave her Rs. 80/- for the whole month. She told it is very meagre. He beat her and threatened to kill her. He advised her to come and live

with Dharmambal in the same house, as he has married Dharmambal. He took away her bangles and chain. In October, 1992, she got information

that a male child was born to Dharmambal through her husband at St. Joseph's Nursing Home, Dr. Guruswamy Road, Madras 31. In November,

1992 she gave complaint to Commissioner of Police. She was called to All Women Police Station, Thousand Lights, to effect a compromise.

When she was not agreeable, she was harassed in the All Women Police Station in front of her husband. Mrs. Vasantha, Sub-Inspector of Police

made it very clear that she could not treat her husband like any other person. Since he is working in the I.G. of Police Officer. She again brought it

to the notice of Commissioner of Police, by way of a letter dated 19-11-92. That letter was registered as a case and was investigated and charge-

sheet was filed. Jayavelu, an independent eye-witness to the cruelty by her husband, was not examined or cited as a witness. Their daughter

Kalyani, who was affected emotionally, was not examined. The doctor, who treated her, was not examined. Her husband has filed an application

for discharge on the ground that there are no materials to convict him. The investigation has not been done properly. It is mala fide, since her

husband and Dharmambal are working in the I.G. of Police Office. Hence the petition.

4. The second respondent has filed counter-affidavit. In it, she has stated that she had examined Jayavelu, but had omitted to cite him in the list of

witnesses. She has also stated that Gnanasekar and Mary Patric were also examined, but were omitted to be cited as witnesses. Dr. Jayanthini

was not produced nor any particulars given by the petitioner to examine the doctor, who treated Kalyani, the child of the petitioner. The

investigation was conducted fairly and properly. Kalyani could not be examined, since she was not made available to her for examination. Even if

the petitioner's plea for further investigation is accepted, this respondent will take further investigation and file report.

5. The learned counsel for the petitioner would submit that deliberately, the second respondent had omitted to examine material witnesses and cite

them as witnesses in the memo of witness and that would give an indication of the deliberate disregard of the duty cast upon her, to do the

investigation properly and so the investigation may be entrusted to some other Inspector of Police and he may be directed to file an additional

report. I have heard the learned Additional Public Prosecutor, on the above aspects.

6. I have carefully considered the submissions made by the learned counsels. Even after final report is filed u/s 173(2), Cr.P.C. it does not

preclude further investigation, Section 173(8), Cr.P.C. reads as follows :

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been

forwarded to the Magistrate and, whereupon such investigation, the officer incharge of the police station obtains further evidence, oral or

documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed, and the provision of

sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-

section (2).

Thus, there is enabling provision to do further investigation and file additional report, in case it is found necessary.

7. In the instant case, from the affidavit filed in support of the application by the petitioner and from the counter-affidavit filed by the Inspector of

Police, All Women Police Station, Madras 6, it is seen that Jayavelu, Kalyani, daughter of the petitioner, Dr. Jayanthini, who treated Kalyani,

Gnanasekar, Mercy and Mary Patric are all material witnesses. Regarding Jayavelu, Gnanasekaran and Mary Patric, the second respondent would

state in the counter-affidavit that they were examined; but were not cited as witnesses and this omission was due to oversight. According to the

affidavit of the petitioner, her elder daughter Kalyani was affected psychologically, on seeing the frequent beatings by her husband and she was

treated by Dr. Jayanthini and Dr. Jayanthini called the petitioner's husband and advised him to behave well, at least for the sake of the child. So

both of them are material witnesses. But they were not examined by the second respondent. Neither Mercy, the friend of the petitioner, who is said

to have conveyed the information to the petitioner that a male child was born to Dharmambal, was examined. The above would give an indication

about the manner in which the second respondent has acted negligently, in the discharge of her duties, as an investigating officer in this case. So I

am inclined to accept the case of the petitioner that it was done in a mala fide manner. So I am clear that this is a case which requires further

investigation by another Inspector of Police, and filing of an additional report, which can be done u/s 173(8), Cr.P.C.

8. In view of the above, the first respondent viz., Commissioner of Police, Egmore, Madras is hereby directed to nominate an Inspector of Police,

other than the Inspector of Police, All Women Police Station and such Inspector is hereby directed to do further investigation in this case and file

an additional report before the trial Court, as per Section 173(8), Cr.P.C. Till such additional report is filed, the case in C.C. 1094/93 on the file of

Chief Metropolitan Magistrate, Egmore, Madras shall stand stayed. The Inspector of Police, appointed by the first respondent, shall file his report

before this Court, regarding the filing of additional report u/s 173(8), Cr.P.C. in C.C. 1094/93 on the file of Chief Metropolitan Magistrate,

Egmore, Madras, on 15-6-1994. Post the case on 16-6-94.

9. Order accordingly.