
(2015) 10 KL CK 0103
In the High Court Of Kerala
Case No : W.P.(C). No. 13667 of 2013 (G)

P.K. Mohandas Panikkar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174

Evidence Act, 1872 — Section 114A

Penal Code, 1860 (IPC) — Section 107, 306, 34, 498(A), 498A

Citation : (2015) 10 KL CK 0103

Hon'ble Judges : Alexander Thomas, J.

Bench : Single Bench

Advocate : Siby Mathew and Philip J. Vettickattu, Advocates, for the Appellant;
P. Vijayaraghavan, State Attorney, for the Respondent

Final Decision : Disposed Off

Judgement

Alexander Thomas, J.—The prayers in this W.P.(C) are as follows:

"i) Issue a writ of Mandamus or any other appropriate writ, order, or direction directing the 1st respondent to conduct further investigation into the cause of death of petitioner's daughter, Smitha by Crime Branch or a Special Investigation team constituted under a senior Police Officer; And

ii) To grant such other reliefs as this Hon'ble Court may deem just and fit in the circumstances of the case."

2. Heard Sri. Philip J. Vettickattu, learned counsel appearing for the petitioner, the learned State Attorney appearing for respondents 1 to 4 and Sri. Renjith Thampan learned Senior counsel instructed by Smt. P.R. Reena learned counsel appearing for contesting respondents 5 to 7.

3. The official respondent had filed a statement dated 07/06/2013 through the Sub Inspector of Police, Kasaba Police Station, Palakkad in compliance of the directions issued by this Court on 04/06/2013. It is stated therein that the

petitioner's daughter Smt. Smitha had committed suicide by burning herself using Kerosene on 16/11/2011 at 17 hrs. and that the incident occurred at her husband's house, 7 months after her marriage on 28/03/2011. That crime No. 680/2011 was registered at Palakkad Kasaba Police Station, under Section 174 of Cr.P.C. on the basis of the statement given by the petitioner. That due intimation in that regard was given to the Revenue Divisional Officer/Sub Divisional Magistrate, Palakkad and accordingly inquest was conducted by the Executive Magistrate and Tahsildar, Palakkad at Government Hospital, Palakkad. That thereafter autopsy was conducted by the police surgeon concerned and the body was released to the relatives. That at that time, none of the relatives of the deceased complained about any suspicion either to the police or to the Executive Magistrate who conducted the inquest. The investigation was initially conducted by the then Sub Inspector of Police, Kasaba and that during the course of the investigation none of the family members of the deceased raised any complaints. That the postmortem certificate revealed that the deceased died due to burns. Accordingly on completion of investigation, a final report was submitted to the Sub Divisional Magistrate, Palakkad on 24/12/2011 by the then Sub Inspector of Police, through superior officers that the case may be closed as it is one involving suicide. After the submission of the final report, the petitioner lodged complaint before the State Police Chief alleging that the death of his daughter was suspicious, pursuant to which State Police Chief ordered that the case be reopened and investigated. As per order of the Inspector General of Police, the Deputy Superintendent of Police, Palakkad took over the investigation on 05/09/2012 and during such further investigation, the case has been altered to Section 498A of the IPC and the case was accordingly transferred to the Judicial First Class Magistrate's Court-I, Palakkad from the Sub Divisional Magistrate's Court, Palakkad. It is stated in paragraph No. 5 of said statement that the petitioner had alleged that the death of his daughter was suspicious and that her husband Sri. Prasanna Kumar, husband's brother Sri. Krishna Kumar and their father Sri. Rajan had harassed her frequently and that none of them had visited when she was hospitalized and the mother of the deceased had also given similar statement before the Investigating Officer. That during the investigation it was revealed that on 28/03/2011, the first accused Prasanna Kumar married the petitioner's daughter Smitha and after marriage she was staying with her husband in their house with his family and it was disclosed that all the three accused persons harassed her regarding her mental illness and epilepsy and that none of the accused persons visited the deceased when she was undergoing treatment at Dr. Salim's Centre for Neuro Psychiatry, Perinthalmanna and that after such treatment she was returned to the residence of her husband. It is thereafter that on 16/11/2011 she committed suicide etc. It is further stated in paragraph 6 of the said statement that the investigation of the crime had completed and the final report/charge sheet was filed before the Judicial First Class Magistrate Court No. I, Palakkad on 21/12/2012 and that the Investigating Officer has conducted a proper, fair and impartial investigation into the crime and that final report/charge sheet has also been filed and that the case is pending

trial as C.C. No. 55/2013 on the file of Judicial First Class Magistrate Court No. I, Palakkad etc. Thereafter this Court on consideration of the materials on record, had passed interim order dated 14/11/2014 in this Writ Petition, which reads as follows:

"The petitioner herein is the father of a woman, who committed suicide, allegedly due to the mental and physical harassment at the hands of her husband. The police proceeded with investigation under Section 498A of Indian Penal Code. Finding that investigation is not on the right track, the petitioner brought this petition for a direction for proper investigation, or for further investigation on the ground that at least the offence punishable under Section 306 of I.P.C. is well made out. The report submitted by the Sub Inspector of Police, Kasaba shows that the final report is under Section 498A of I.P.C., on the basis of definite materials showing that the deceased had been subjected to mental and physical harassment during the matrimony. It is submitted that the death occurred within seven months from the date of marriage. If so, the presumption under Section 114A of the Evidence Act will have to be applied. The police will have to understand the difference between abetment defined under Section 107 of Indian Penal Code, and the elements and application of abetment meant under Section 306 I.P.C. The officer who submitted final report will explain how the final report happened to be submitted only under Section 498A of I.P.C. The respondents will also report whether further investigation in the crime, in view of the above observations, is possible.

File report within two weeks. Post on 4.12.2014.

The contesting respondents 5 to 7 (who are accused in the crime) had also filed a counter affidavit dated 14/08/2014.

4. The petitioner thereafter filed affidavit dated 23/09/2015 in support of IA No. 13814/2015 for production of additional documents. Various factual averments are made therein. Paragraphs 9 and 12 of the said affidavit reads as follows.

"9. It is pertinent to notice at this point that I have specifically told the Dy. S.P. that I have come to know that Dr. Salim did not give any statement to the police as claimed by the police in Ext.P1. It is submitted that as soon as I came to know about Ext.P1 final report and the reference of the opinion of Dr. Salim in the final report, I have obtained a copy of the said statement under the Right to Information Act. I have personally met Dr. Salim with that Statement and enquired whether Dr. Salim had given any such statement or was he approached by the police in connection with the unnatural death of my daughter. Dr. Salim had categorically stated that he was never approached by any police officers nor had he given any such statement. I have specifically informed these information to the Dy. S.P. However, the second report was also filed by simply incorporating the same statement, which is alleged to have been given by Dr. Salim. A true copy of the statement alleged to have been given by Dr. Salim, which was incorporated along with Exts.P1 and P2 reports is produced herewith and marked

as Ext.P4. It is based on the statement of Dr. Salim, that the investigating officers have concluded that my daughter was mentally ill and was having a tendency of committing suicide and have committed suicide because of the said illness."

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12. It is submitted that later, a Sub Inspector of Police, viz. Mr. Baby has come to my home and taken a statement from my wife. A statement has also taken from my son. It is submitted that the police has, then, gone to my wife's house at Nilambur and taken statement from my wife's brother. The police has taken statement from my sister's husband through telephone. The police had also taken statements from one Mr. Shoukathali Thayyil, who had accompanied us on the day on which my daughter died. It is submitted that all these persons have given statement supporting the suspicion expressed by myself and my wife regarding the death of my daughter."

5. In regard to the said averments made by the petitioner in the aforesaid additional affidavit, the official respondents through the Deputy Superintendent of Police, Crime Branch has filed a statement/report dated 03/10/2015 denying such allegations. Paragraphs 8 to 13 of the said statement dated 03/10/2015 filed by the Investigating Agency reads as follows:

"8. It is respectfully submitted that the investigation team had collected evidences by questioning 22 witnesses including the complainant, relatives of the deceased Smitha, neighbours of Mr. Prasanna Kumar, Dr. Salim, Psychiatrist Centre for Nureo, Psychiatry, Perinthalmanna. Dr. Salim was questioned on 24.11.2011 and 29.12.2014 and his statement was recorded. True copy of the statement dated 24.11.2011 and 29.12.2014 are produced herewith and marked as Annexure-III & IV respectively. Statement dated 24.11.2011 was produced along with Final Report but statement dated 29.12.2014 was not produced since he did not state anything further in his statement dated 29.12.2014 than what had been stated by him in his earlier statement dated 24.11.2011.

9. It is humbly submitted that in the statements, Dr. Salim had categorically stated that the deceased was a psychiatric patient suffering from mental depression and the tendency of committing suicide by such patients could not be ruled out. That part in the FI statement given by the petitioner herein during investigation he had specifically admitted that deceased was an epilepsy patient and that she had some mental illness for which she was being treated by Dr. Salim at Perinthalmanna, etc. Other witness one Mr. Sadanandan & Mr. Dharmadas, who are the brothers-in-law of the petitioner had given statement stating that the deceased was a mental patient even before her marriage and had undergone treatment. True copy of the statement dated 23/01/2015 given by Mr. Dharmadas and Mr. Sadanandan are produced herewith and marked as Annexure-V and VI respectively. The statement of the petitioner and his wife are recorded on 15.12.2014 and 29.12.2014 respectively. The statement of the

petitioner, his wife, brother-in-law Sadanandan, were produced along with the charge. The statements of Mr. Dharmadas and petitioner's sister husband Mr. Prem Panicker were not produced along with the Final Report because, nothing new was disclosed by them apart from what has been stated by other witness viz. Mr. Sadanandan. Statement of Mr. Shoukath Ali Thayyil was not recorded because he was not questioned by the police during investigation. As stated earlier the statement of the son of the petitioner was also not recorded because he was mentally not fit enough to give a proper statement.

10. It is respectfully submitted that the allegations of the petitioner that the DYSP, Palakkad had taken a stringent approach for settling the matter between the parties and when objected he had stated that he would simply wrap up the case by adding an offence under Section 498A IPC is also false and hence denied. No such incident had ever taken place.

11. It is submitted that further allegation that no statement or material evidence to substantiate and support Section 498A were submitted along with Ext.P2 final report is also false and hence denied. There is sufficient materials collected during investigation to establish the offence under Section 498A IPC. It is respectfully submitted that the allegation of the petitioner that Dr. Salim didn't give any statement nor he was approached by the police in connection with the investigation of the case and that Dr. Salim had informed that he had never give any statement to the police is false and hence denied. In fact Dr. Salim was questioned by the police in connection with the unnatural death of petitioner's daughter and he had given statement also. The signed statement obtained from Dr. Salim on 1.10.2015 is produced herewith and marked as Annexure-VII.

12. It is submitted that the entire investigation procedure has been supervised by the Deputy Supdt. of Police District Crime Branch in time. After investigation a charge sheet was prepared and forwarded to SI of Police Kasaba on 28/03/2015 for filing the charge sheet before the Hon"ble Court. Accordingly charge sheet was filed before the Hon"ble JFCM Court No. 1 Palakkad on 05.05.2015 u/s.498A, 306 r/w 34 IPC against three accused persons. The above case is now pending before the Hon"ble Additional Sessions Court, Palakkad as SC No. 555/15.

13. It is humbly submitted that a just, fair, proper and impartial investigation has been conducted in the above case and the accused persons were charge sheeted. In the circumstances, it is humbly submitted that the above writ petition may kindly be dismissed."

6. Now it has come out that the supplemental/additional final report/charge sheet has been duly filed in the aforesaid crime before the Jurisdictional Magistrate Court concerned on 05/05/2015 and offence under Section 306 of the IPC r/w Section 34 of the IPC has also been added. Now the offences charged in the said additional final report/charge sheet are those under Sections 498A, 306 r/w Section 34 of the IPC against the three accused persons (contesting

respondents 5 to 7). It is also pointed out that the case is now pending before the Additional Sessions Court, Palakkad as Sessions Case S.C. No. 555/2015.

7. On a perusal of the pleadings and materials on record, and also taking into account the fact that after the filing of the initial final report, the investigating agency has filed a additional final report/charge sheet for offences under Sections 498(A), 306 r/w Section 34 of the IPC pursuant to the directions issued by this Court and as the matter is now pending for trial before the Sessions Court concerned, it is not proper to make any interference in the facts and circumstances of this case.

8. However it is made clear in the interest of justice that none of the observations of this Court in this proceedings shall in any way trammel or influence the Sessions Court concerned in the further proceedings before that court.

Accordingly, the Writ Petition (civil) stands disposed of as above.