
(2014) 01 MAD CK 0010
In the Madras High Court
Case No : Writ Petition No. 496 of 2014

R. Santhosh Kumar

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Evidence Act, 1872 — Section 78(2) 81
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3) 482

Citation : (2014) 2 CTC 1 : (2014) 1 MLJ 769

Hon'ble Judges : R.K. Agrawal, C.J;M. Sathyanarayanan, J

Bench : Division Bench

Advocate : R. Krishnamurthy, for the Appellant;

Final Decision : Dismissed

Judgement

1. The writ petitioner claiming to be a Social Worker, has filed this writ petition, styling it as a Public Interest Litigation, praying for issuance of a writ of mandamus directing the first respondent to transfer the investigation in Crime Nos. 2652/2011, 586/2010 and 1303/2013, pending on the file of the respondents 2, 3 and 4 respectively, to the file of the fifth respondent viz. CB CID, for free, fair and impartial investigation on the basis of a newspaper report dated 6.12.2012, published in an English Daily viz. "Deccan Chronicle". The petitioner in the affidavit filed in support of the writ petition, averred among other things, that an Advocate E.T. Rajavel, who is practising in Coimbatore, has murdered his client viz. Ammasi, with the help of others and thereafter, took the body to his native place and informed the neighbours, relatives and friends as if his wife Mohana has died and also obtained a false and bogus Death Certificate from one Dr. Kanagaraj and cremated the body of Ammasi as if the body of his wife Mohana and also the said act was done by E.T. Rajavel as his wife was involved in a multilevel marketing scam in Odissa and in order to escape from the criminal prosecution, it has been done by him.

2. The petitioner would further state that though the father-in-law and mother-in-law of the above said accused, the Doctor and others had also played their part in the commission of the heinous offence, the police so far, have not arrayed them as accused and further, since E.T. Rajavel is a practising Lawyer in Coimbatore City, he has developed a good rapport with the local Police Officials and can influence the course of investigation.

3. It is further stated by the petitioner that the above said Advocate is also involved in one more murder case in Crime No. 586/2010 and no progress has been shown in the investigation conducted by the respondents 2 to 4, who had registered the above said respective cases.

4. It is also stated by the petitioner that though the Advocate E.T. Rajavel by committing the above said illegal acts, has brought disgrace to the noble profession of the Advocate, the Bar Council of Tamil Nadu and Puducherry have not so far come forward to take any action and the misdeeds committed by the above said person and his wife, had also been published in Deccan Chronicle dated 6.12.2012, and therefore, he came forward to file this writ petition.

5. The learned Counsel appearing for the petitioner, made his submissions based on the averments made in the affidavit filed in support of the petition, and would further submit that since the prime accused is a Lawyer, the concerned Police Officials are not taking any proper and effective steps to conduct the investigation in a fair and proper manner and interest of justice requires that the cases, in which, the above said Advocate and others are involved, have to be transferred to the file of the Crime Branch Criminal Investigation Department (CB CID).

6. The petitioner has filed this writ petition based on the newspaper report.

7. The primordial question that arises for consideration, is whether the newspaper reports can be acted upon in a public interest litigation.

8. In Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , the Hon"ble Supreme Court observed as follows:

A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible.

9. In yet another decision reported in Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, , the Hon"ble Supreme Court opined as follows:

...We cannot take judicial notice, of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the

documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached u/s 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.

10. In *Quamarul Islam Vs. S.K. Kanta and others*, , the question that arose for consideration before the Hon'ble Supreme Court, was as to whether mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein and the Hon'ble Supreme Court of India in paragraph No. 48, has held as follows:

Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, P.W.4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act....

11. Admittedly, the public interest litigation came to be filed solely on the news item published in *Deccan Chronicle*, an English Daily, dated 6.12.2012, and the instant question that arises for consideration, is whether the petitioner has satisfied the test of furnishing legally acceptable evidence and materials so as to attract the public interest litigation, a weapon, which has to be used with great care and circumspection. In the considered opinion of the Court, the petitioner has miserably failed to do so and as per the ratio laid down in the above cited decisions, the reports in newspaper, are only hearsay evidence and the reporter, who sent the report, has neither filed the affidavit nor his report. As per Section 81 of the Indian Evidence Act, the presumption of genuineness cannot be treated as proved of the facts reported in a newspaper.

12. The petitioner on the basis of the newspaper report, prays for transfer of investigation and this Court is of the view that it cannot be done for the following reasons.

13. It is a settled position of law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India or u/s 482 of the Code of Criminal Procedure, 1973, should not interfere in the investigation at an initial stage.

14. Section 156(3) of the Code of Criminal Procedure, 1973, provides for a check by jurisdictional Magistrate on the police performing their duties, and where the jurisdictional Magistrate finds that the police have not done their duty or done their investigation satisfactorily, he/she can direct the police to carry out the investigation properly and can monitor the same.

15. No doubt, if the Court feels that the investigation by the Police Authorities is

not proceeding in the proper direction and in order to do complete justice and where the facts of the case demand so, it is always open to the Court to transfer the investigation to a specialised agency.

16. In the considered opinion of the Court, the investigation is at the threshold and the accused were also arrested and therefore, it is pre-mature to transfer the investigation to a specialised agency viz. CB CID. In the light of the reasons assigned above, this writ petition is dismissed at the admission stage itself. No costs.