
(2008) 08 MAD CK 0079

In the Madras High Court

Case No : Writ Petition (MD) No. 3939 of 2008 and M.P. (MD) . No. 1 of 2008

S. Gurusamy

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(8)
Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2008) 08 MAD CK 0079

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : D. Muruganantham, for the Appellant; D. Sasikumar, Government Advocate for R1 to R4 and R6 and Sureshkumar for R5, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The prayer of the Writ Petition is for a direction to the third respondent (Deputy Superintendent of Police CB CID), Tirunelveli to enquire into the case registered under Crime No. 255 of 2007 on the file of the Courtallam Police Station and file a final report within a time frame fixed by this Court.

2. The Writ Petition was admitted on 24.06.2008. In M.P.1 Of 2008, a direction was also issued to produce the final report submitted to Magistrate.

3. On notice from this Court, a counter affidavit dated Nil, (August, 2008) was filed by the second respondent, the Superintendent of Police. In paragraph Nos. 6 to 9, it is stated as follows:

6. I also submit that for the accident, a case in Courtallam Police Station Crime Number. 255 of 2007 u/s 304(A) IPC was registered on 17.06.2007 and during the course of investigation it was come to know that the deceased Selvam drove the motor cycle bearing registration No. TN 67-X-3249 in a rash and negligence manner and dashed against an electric post on the left side of the road on Courtallam-Old Courtallam road near Puliyaruvi diversion and died. After

completing investigation, final report treating the case as "Further action dropped" was sent to the Court of Judicial Magistrate, Shencottai on 18.07.2007. The learned Judicial Magistrate, Shencottai after perusing the final report and hearing the representation of the complaint Vanarajan, passed an order on 21.01.2008 directing the Inspector of Police, Courtallam to make re-investigation into the case and to find out as to whether the electric post was in existence in the middle of the road at the time of occurrence or not and also to file separate final report.

7. I further submit that as per the direction of learned Judicial Magistrate, Shencottai, the Inspector of Police Courtallam is conducting further investigation in the accident case in Courtallam Police Station Crime Number. 255/2007 u/s 304(A) IPC.

8. I further submit that the investigation so far done, reveals that the State Highways Authorities had completed road extension work including formation of tar road without removing already installed electric post on the side of Courtallam-Old Courtallam road resulting the electric post was found in the middle of the road. Though the deceased selvam had driven the motor-cycle in a rash and negligent manner, the fatal accident could be averred, if the electric post was removed promptly by the concerned authorities.

9. I further submit that the Inspector of Police, Courtallam has been instructed to complete investigation in this case and to lay final report early.

4. A copy of the order passed by the learned Judicial Magistrate, Shencottai in Crime No. 255 of 2007 dated 21.01.2008 has also been produced showing that the final report of the Inspector of Police, Courtallam Police Station has been rejected and that he has been directed to reinvestigate the said matter. After all this exercise, it is not clear as to why the petitioner wants a transfer of investigation by the third respondent.

5. However, the learned Counsel for the petitioner submitted that asking the very same person to conduct an enquiry will be futile and therefore, this Court must transfer the investigation to the third respondent, the Deputy Superintendent of Police, CB-CID. In support of his said submission, the petitioner has also placed reliance upon the judgment of the Division Bench of this Court in Tmt. S. Radha Mony v. The Home Secretary, Government of Tamil Nadu, Fort. St. George, Madras-9 and Ors. reported in 2007 W.L.R. 323. In that judgment, the Division Bench held that the earlier investigation conducted by the State police was in a lethargic and irresponsible manner and therefore, following the judgment of the Supreme Court in Inder Singh v. State of Punjab reported in 1994 SCC (Cri) 1653, a direction was given to entrust the investigation to be done by the CB-CID.

6. It must be noted that the Supreme Court in a recent decision in Sakiri Vasu Vs. State of U.P. and Others, held that though the High Court under Article 226 has power to order an investigation done by the Central Bureau of Investigation,

such an order can be passed only in a rare and exceptional cases. In doing so, the Supreme Court in Paragraph Nos. 15, 16 and 17, it held as follows:

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation u/s 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide *State of Bihar v. J.A.C. Saldanha* 4 (SCC : AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

7. In the light of the above legal precedents and also the fact that the learned Magistrate had ordered for reinvestigation by exercising his power under the Cr.P.C., it is not a fit case where this Court can countenance the prayer made by the petitioner. Hence, the Writ Petition stands dismissed. Consequently, connected M.P. is closed. No costs.