

(2014) 10 MAD CK 0291

In the Madras High Court

Case No : Crl. O.P. No. 7994 of 2014 and M.P. No. 1 of 2014

S. Siva

APPELLANT

Vs

The State by Inspector of Police

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 161

Penal Code, 1860 (IPC) — Section 120(B), 120B, 147, 148, 149

Citation : (2014) 4 MLJ(Cri) 445

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner is the de facto complainant in the case in Crime No. 19 of 2012 on the file of V-6, Kolathur Police Station. The said case was initially registered for the alleged offences under Sections 341 and 302 of IPC and later on, altered into one under Section 341, 302 r/w 120-B and finally, final report was laid for alleged offences under Sections 120-B, 150, 147, 148, 341 and 302 r/w 149 of IPC. On the final report submitted by the investigating officer, the learned V Metropolitan Magistrate, Egmore, Chennai, has taken cognizance of the offence in PRC No. 131 of 2012. The respondents 2 to 11 are the accused [A1 to A10] as per the final report. Now, the petitioner has come up with this petition seeking a direction for further investigation of the case.

2. I have heard the learned counsel for the petitioner and the learned State Public Prosecutor Mr. Shanmughavelayudham appearing for the State. No notice is ordered to the respondents 2 to 11 as this order would not be in any manner prejudice to them.

3. The facts of the case would be as follows:- The petitioner is the resident of Kamarajar Street, Gandhi Nagar, II Street, Vasantham Nagar, Kolathur, Chennai. He had two sons by name Maheswaran and Bhuvaneshwaran. His wife is one Mrs. Amsarani. On 10.01.2012 at about 12.15 p.m., Mr. Bhuvaneshwaran was

returning from a local school taking his brother's daughter by name Rudhra, aged about 3 years. When he was returning in a motor cycle from the school, four persons waylaid him and attacked him indiscriminately with deadly weapons. On hearing about the occurrence, the de facto complainant along with his son-Maheswaran and wife-Amsarani rushed to the place of occurrence where he found his son-Bhuvaneshwaran lying in a pool of blood with injuries all over his body. His son-Bhuvaneshwaran was, in fact, struggling for life. His son-Maheswaran rushed the deceased-Bhuvaneshwaran in an auto to a hospital. The Doctor, on examining him, found him already dead. Thereafter, the petitioner rushed to the respondent police and preferred the complaint at 12.45 p.m. on the same day. One Shri. Suresh Kumar, the then Inspector of Police of V6 Kolathur Police Station registered a case in Crime NO. 19 of 2012 under Section 341 and 302 of IPC. In the said complaint, the petitioner had stated that when he along with his son-Maheswaran and his wife-Amsarani reached the place of occurrence, he found four persons rushing from the place of occurrence armed with knives. He further stated that one former MLA by name Shri. Ranganathan had instigated his hooligans to commit murder of his son-Bhuvaneshwaran due to previous motive on account of a property dispute. The case was registered against the former MLA Shri. Ranganathan and few others.

4. A perusal of the final report submitted before the committal court would go to show that including the investigating officers, 32 witnesses have been cited on the side of the prosecution. Witness No. 1 in the charge sheet is the petitioner herein and the Witness Nos. 2 and 3 are his son-Maheswaran and wife-Amsarani. A perusal of the statements of these witnesses would go to show that they have spoken to about the suspicion against the former MLA Shri. Ranganathan and 30 of his hirelings. They have further stated that by the time when they reached the place of occurrence they found four persons rushing from the place of occurrence armed with knives. But, they did not have any occasion to identify any of the accused since there was no test identification parade conducted through court.

5. The Witness No. 4 cited in the charge sheet is one Mr. Yoga and the Witness No. 5 is one Mr. K. Azhagan. They are also not eye witnesses. They have also stated that they rushed to the place of occurrence and they have found the deceased lying in a pool of blood. They have also spoken to about the presence of Witnesses 1 to 3 and their rushing to the place of occurrence. Witness No. 6 Mr. Abdul Raheem has been cited to speak about the motive. Witness Nos. 7 to 11 have been cited to speak to the fact that on hearing the alarm raised by the deceased when they rushed to the place of occurrence from their respective house situated somewhere near the place of occurrence, they found the deceased lying in a pool of blood and that Mr. Maheswaran took him to the hospital in an auto. Witness Nos. 12 to 14 have been cited to speak about the previous motive. Witness No. 15 has been cited to speak about the fact that he informed the police after he found the deceased lying in a pool of blood. Witness Nos. 16 and 17 have been cited to speak about the observation mahazar

prepared on the spot during the course of investigation and the recoveries of certain objects such as blood stained earth, etc. from the place of occurrence. Witness Nos. 18 and 19 have been cited to speak about the arrest of the accused Balachandar, Kumar, Thanikachalam, Selvam, Senthamizh Arasan and Syed Ibraheem and to speak about the alleged confessions given to the police and the consequential recoveries of certain weapons. Witness Nos. 20 and 21 have been cited to speak about the arrest of the accused Murali and Anandan and to speak further about the alleged confessions and consequential recoveries of certain material objects. Witness Nos. 22 and 23 have been cited to speak about the arrest of the accused Sathish @ Sathishkumar and about his confession. Witness No. 24 has been cited to speak about the fact that the children of the deceased were studying in her school. She is the Principal of Danish Matriculation School, Kolathur. Witness No. 25 has been cited to speak about the fact that he saw four persons proceeding in two motor cycles at or about the time of occurrence. He has not identified any of the accused as the persons who so travelled in the motor cycles. Witness No. 26 is the Dog Handler, who brought the police sniffer dog to the place of occurrence. But, the dog did not give any clue about the involvement of any of the accused. Witness No. 27 has been cited to speak about the recovery of certain material objects from the place of occurrence. The others are all official witnesses including the doctor who conducted autopsy and the investigating officer who conducted the investigation and laid the final report.

6. Relying on these witnesses and based on the statements recorded from them under Section 161 of Cr.P.C., the investigating officer Mr. Sureshkumar laid the final report on 30.03.2012. Now there are totally 10 Accused as per the final report.

7. It is unfortunate that though in the complaint made by the petitioner, the possible involvement of one former MLA by name Shri. Ranganathan has been mentioned and though the possible involvement of his hirelings about 30 in numbers has been mentioned, as has been held by the Hon"ble Supreme Court in Bhagwant Singh Vs. Commissioner of Police and Another, , the learned Judicial Magistrate did not issue notice to the petitioner which is mandatory, notwithstanding the fact that they have been omitted in the final report. As per the said judgment, such notice should have been given to the petitioner in which case the petitioner would have filed a protest petition before the learned Metropolitan Magistrate opposing the acceptance of the above said final report. But, unfortunately, the learned Metropolitan Magistrate has failed to do so. Therefore, on this ground by itself the order taking cognizance by the learned Metropolitan Magistrate in PRC No. 131 of 2012 is liable to be set aside, which I am inclined to do. Not only on the above technical ground, but, there are few other grounds, which I presently deal with, upon which also the matter should be ordered to be investigated further.

8. Today, the then Inspector of Police V-6 Kolathur Police Station Mr. Sureshkumar, who investigated the case is present before this court along with

case diary. This court have the benefit of going through the case diary. As I have already narrated, there is no eye witnesses to the occurrence as revealed in the final report. Witness Nos. 1 to 3 namely, the petitioner, his son-Maheswaran and his wife-Amsarani and yet another witness have stated that at the place of occurrence, when they reached, they found four persons rushing from the place of occurrence. Thus, from out of the investigation, it had come to light that only four persons participated in the actual occurrence. But, no effort was taken by the investigating officer to hold test identification parade by a competent Magistrate to identify the accused. Here, the Inspector of Police was asked as to why such course was not adopted by him, he said that the witnesses were asked to identify the accused in the police station.

9. Though the final report states that on 08.01.2012, A1 to A3 had conspired to engage hirelings to kill the deceased and that the said conspiracy was hatched at the house of A1, absolutely, there is no material collected even to infer that such meeting between A1 to A3 happened and the conspiracy was hatched. When Shri. Sureshkumar, the investigating officer was asked as to how could he lay a final report alleging that there was such occurrence on 08.01.2012 in which A1 to A3 had conspired, he said tacitly that this information is available only in the confessions made by the accused to the police during the course of investigation while in custody. Apart from the said confessions of the accused viz., A1 to A3 said to have been given to the investigating officer during the course of investigation, absolutely there is no other material. This fact is admitted even by the State Public Prosecutor Mr. S. Shanmughavelayudham, who is present in the court and has got the benefit of going through the case diary. Thus, the final report has been filed alleging that earlier on 08.01.2012 there was conspiracy hatched between A1 to A3 without there being any material at all, but simply based on the confession statements said to have been given by A1 to A3.

10. Nextly, it is stated that the other Accused namely A4 to A10 are all hirelings. It is also stated that A4 was engaged to engage the rest of the accused. It is further alleged in the final report that at the house of A10, on the terrace, A1 to A3, A4 to A10 conspired together to kill the deceased as requested by A1 to A3. Thus, according to the final report, such act amounts to an offence punishable under Section 120-B of IPC. But, a perusal of the entire case diary would go to show that absolutely there is no material even to infer that there was such conspiracy hatched between these accused on the terrace of the house of A10. When this court asked Mr. Sureshkumar, the then Inspector of Police, to explain the above, he said that except the confession statements of the accused made to him during the course of investigation, no other material could be collected in order to substantiate the theory of conspiracy. The learned Public Prosecutor Mr. S. Shanmugavelayudham would also tacitly admit after having gone through the entire case diary that no other materials have been collected to substantiate the allegation of conspiracy and the charge sheet has been laid only on the basis of the inadmissible confessions said to have been made by the accused to the investigating officer during the course of investigation. Thus, the charge sheet in

respect of the offence of conspiracy between A1 to A3 and A4 to A10 has been laid only on the basis of the inadmissible confessions made by the accused to the police and there is no material even to make out a prima facie case.

11. Next comes the actual occurrence. It is alleged in the final report that there were five persons on the place of occurrence. A7 snatched the child from the motor cycle and pushed it aside. It is also stated in the final report that the deceased fell down and, thereafter, A4, A5, A6 and A8 surrounded him and all the five accused indiscriminately cut him. It is specifically stated in the final report that A4 cut the deceased Bhuvaneshwaran with Vettaruval [sickle] on left side of his head; A5 cut him with Vettaruval [sickle] on his head, but, the blow actually fell on the left hand of the deceased. It is further stated that A6 cut him with Vettaruval [sickle] on the neck of the deceased repeatedly. Thus, according to the final report, on the instigation made by A1, A2 and A3, the other accused namely A4 to A8 killed the deceased.

12. But, a perusal of the entire case diary would go to show that absolutely there is no material collected even to make out a prima facie case that A4 to A8 cut the deceased indiscriminately. It is worthwhile to mention here that the petitioner, his son-Maheshwaran and his wife Amsarani have stated in their statements under section 161 of Cr.P.C. that when they rushed to the place of occurrence they found four persons rushing from the place of occurrence armed with knives. But, the final report says that A4 to A8 cut the deceased Bhuvaneshwaran indiscriminately with long sickles. Absolutely there is no investigation to explain this contradiction in respect of the weapons. When the investigating officer was asked to explain as to what are the materials available to make out a case that A4 to A8 cut the deceased, he said that absolutely there is no material available except the statements of the witness Nos. 1 to 3 who have stated that four persons were found rushing from the place occurrence when they reached the place of occurrence. When the Investigating Officer was asked as to how he could file final report as against A4 to A8 as though they were the real assailants, he said that A4 to A8 were identified by the witnesses in the police station. I do not understand as to why the Investigating Officer did not think it fit to follow the course to request a Judicial Magistrate to conduct test identification parade at least with regard to A4 to A8.

13. Then comes the participation of A10. According to the final report A10 allowed the accused to meet on the terrace of his house and thus, he is also liable for punishment under Section 120(B) of IPC. But, a perusal of the case diary would go to show that absolutely there is no evidence even to make out a prima facie case that A10 allowed the rest of the accused to use the terrace of his house. When this was asked Mr. Suresh Kumar said that this information was also disclosed only by the accused by way of confession to him.

14. From the narration of the above facts, it is crystal clear that the investigation has not been done properly. It appears that an attempt has been made to safeguard the interest of some people who are really involved in the crime. If the

trial court is allowed to proceed with the trial in this matter, I apprehend, all these accused will certainly be acquitted the entire charge sheet has been laid only on the basis of the confessions said to have been given by these accused to the police officer during the course of investigation which are not admissible in law. Apart from that, as I have already stated, in respect of A4 to A8 though it is alleged that they were the real assailants, no witness has identified them at any point of time because there was no test identification parade conducted through court. With these infirmities if the trial is allowed to be conducted, my considered view is that it will result only in failure of justice.

15. Fair trial as guaranteed under Article 21 of the Constitution of India is not only guaranteed to the accused, but also, to the victim as well as to the society at large. This legal position has been clarified by the Hon''ble Supreme Court in a number of cases. Here in this case, the investigation has not been done fairly either to the accused or to the victim party. When the final report has been laid against these accused in the absence of any evidence collected against them, I should say that investigation was not fair towards these accused. Similarly, the petitioner has alleged the possible involvement of 30 persons including a former MLA Shri. Ranganathan. But, no effort was taken by the Inspector of Police who investigated this matter to find out the possible involvement of the named persons in the FIR. There is no evidence at all collected even to exclude the involvement of the named persons in the FIR. On the part of the committal court, as I have already pointed out, the court had committed illegality in simply accepting the final report without applying its judicial mind and without issuing notice to the de facto complainant as directed by the Hon''ble Supreme Court in *Bhagwant Singh Vs. Commissioner of Police and Another*, . Strangely, the final report has been approved by the City Public Prosecutor, which is evident from the records available along with the case diary. I do not understand as to how he was satisfied that the case could be proceeded further with this defective investigation which will only ensure acquittal of the accused.

16. Today, Mr. Manokaran, Deputy Commissioner of Police, is present in court. When this court asked him as to whether he had any occasion to go through the case diary of the said case as it is one of the very sensational cases, he said that he joined duty in the present station very recently. He further said that only two days before, he went through the case diary because when this case came up for hearing on the previous occasion, these points were raised by the learned counsel for the petitioner. He would further state that on going through the case diary, he is of the opinion that the investigation is highly defective and he himself is not satisfied with the same.

17. Now turning to the facts, though it is a very sensational case and though it is alleged that one former MLA Shri. Ranganathan is involved, no effort was taken by any of the higher level police officers to supervise the investigation. Had it been done, the above infirmities would have not come into being. I only hope that taking clue from this case, at least in future, the higher level police officers

will supervise and monitor the investigation regularly at least in respect of sensational cases and visit the courts regularly during trial of such sensational cases so as to ensure that the real culprits do not escape from the clutches of law.

18. To conclude, I have to say that there will be no purpose served if the trial of the case is allowed to be conducted with the present materials. As I have already concluded, the order of the learned Metropolitan Magistrate taking cognizance of the final report is to be set aside and the matter needs a further thorough investigation by a competent agency.

19. At this juncture learned Public Prosecutor submitted that a direction may be issued to the CB CID of the State Police to hold further investigation. But, I find, noting the way in which the case was given step motherly treatment by the higher police officers and the investigating officer, it will not be safe to have confidence and to handover the further investigation to CB CID. I am of the view that it is a fit case where the investigation should be conducted by the Central Bureau of Investigation.

20. In the result, this criminal original petition is allowed in the following terms:

(i) The order of the learned V Metropolitan Magistrate, Egmore, Chennai, taking cognizance of the offence on the final report dated 30.03.2012 submitted by the Investigating Officer in this case is hereby set aside.

(ii) The final report dated 30.03.2012 filed by the Inspector of Police, V-6, Kolathur Police Station before the learned V Metropolitan Magistrate is hereby set aside.

(iii) The Investigation of the case in Crime No. 19 of 2012 on the file of V6 Kolathur Police Station is transferred to the file of the Central Bureau of Investigation and the Joint Director, CBI, Chennai shall nominate an officer not below the rank of a Deputy Superintendent of Police/Assistant Commissioner of Police to further investigate this case and to submit a final report.

(iv) The Inspector of Police, V-6 Kolathur Police Station, Chennai, shall handover the case diary and all the other connected records to the Joint Director, CBI, Chennai, within a period of seven days from the date of receipt of a copy of this order.

(v) The Investigating Officer from CBI to whom the matter is entrusted shall do the investigation expeditiously and file final report preferably within a period of six months from the date of receipt of a copy of this order.

Consequently, connected MP is closed.