
(2013) 04 MAD CK 0128
In the Madras High Court

Case No : Writ Petition (MD) No. 4985 of 2013 and M.P. (MD) No. 1 of 2013

T. Udayasankar

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2013) 04 MAD CK 0128

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : Selvaraj For Mr. N. Dilip Kumar, for the Appellant; A. Muthukaruppan, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This Writ Petition at the instance of the accused in Crime No. 868 of 2010 on the file of Kottar Police Station and

transferred to the file of CBCID Police, Nagercoil, seeks a Writ of Mandamus, directing the State of Tamil Nadu to withdraw the investigation

from the file of fifth respondent and to entrust the same to any other Inspector of Police.

FACTUAL MATRIX:

The petitioner is stated to be a Sub-Inspector of Police now posted at Karur. The petitioner earlier functioned as Sub-Inspector of Police in

Special Branch, CID, Kanyakumari District, during the year 2008. The brother of the petitioner Thiru. T. Udayakumar is a leading legal

practitioner at Nagercoil. The brother of the petitioner and late S. Sadasivam, Irulappapuram had a long standing enmity in connection with the

management and administration of NMS Kamaraj Polytechnic and Educational

College, Pazhavilai, Kanyakumari District. Thiru. Bharath Singh,

s/o. Sadasivam earlier filed a false complaint against the petitioner and the same was referred as mistake of fact by Kottar Police. Similarly, another

case in Crime No. 91 of 2009 was registered by Rajakamangalam police against the petitioner and his brother on the basis of a complaint

preferred by a close relative of Mr. Sadasivam. The said case was also closed as mistake of fact. Subsequently, another case in Crime No. 653 of

2010 was registered by Kottar Police. There was an attempt to implicate the petitioner and his brother in the said case. However, the police filed a

final report without implicating the petitioner.

2. While the matters stood thus, Thiru. Manikandan, a close relative of Sadasivam was murdered on 07 July, 2010. The deceased was an accused

in several criminal cases. The murder of Thiru. Manikandan was taken as a golden opportunity by Mr. Sadasivam to implicate the petitioner and

his brother in Crime No. 868 of 2010 before the Kottar Police Station. The Inspector of Police, Kottar conducted investigation and arrived at a

conclusion that the petitioner and his brother were falsely implicated in the said case.

3. While so, the brother of the deceased filed a Criminal Original Petition before this Court in CrI.O.P.(MD) No. 8151 of 2010 praying for

transfer of investigation from the file of Kottar Police Station. The Criminal Original Petition was allowed by this Court on 03 September, 2010

and accordingly, investigation was transferred to the CBCID Police Branch at Nagercoil. The investigation was taken up by the fifth respondent.

4. It is the grievance of the petitioner that he served as a Head Constable-cum-Station Writer under the fifth respondent and as such, he had

personal animosity towards him. The petitioner apprehends that the fifth respondent will falsely implicate him in the case. Therefore, he submitted

representations to the Superior Officers on 25 March, 2013 and 26 March, 2013. However, there was no follow-up action at the instance of the

State of Tamil Nadu and the Superintendent of Police, CBCID, Madurai to transfer the investigation to another officer. This made the petitioner to

file this Writ Petition.

5. The learned counsel for the petitioner contended that the petitioner and his brother were falsely implicated by the relatives of the deceased on

account of vengeance. According to the learned counsel, the Additional Superintendent of Police, Kanyakumari, earlier conducted a discreet

enquiry and it was found that the petitioner was not involved in the case in Crime No. 868 of 2010. Thereafter, the fifth respondent took up the

investigation and he is determined to implicate the petitioner as an accused. The learned counsel, therefore, wanted this Court to transfer the

investigation to another officer, after withdrawing the file from the fifth respondent.

6. I have earlier directed the learned Additional Government Pleader to take instructions as to whether the fifth respondent has completed the

investigation. The learned Additional Government Pleader was further directed to take instruction as to when the fifth respondent took up the

investigation of the case in Crime No. 868 of 2010. The learned Additional Government Pleader submitted that the fifth respondent has already

completed the investigation. However, he was not having the information with regard to the commencement of investigation by the fifth respondent.

Therefore, I have directed the learned Additional Government Pleader to produce the case diary on 03 April, 2013 and the matter was posted

"for orders".

7. When the Writ Petition came up for further hearing on 03 April, 2013, the learned Additional Government Pleader submitted that the fifth

respondent completed the investigation and laid the charge sheet before the jurisdictional Magistrate on 02 April, 2013. The learned Additional

Government Pleader submitted that the fifth respondent initially took up the investigation of the case in Crime No. 868 of 2010 on 13 October,

2010. He was transferred to Thirunelveli on 11.12.2010. The investigation was conducted by the Superintendent of Police till 08 July, 2011. The

fifth respondent, once again, took up the investigation on 08 July, 2011 and after completion of investigation, laid the charge sheet on 02 April,

2013. According to the learned Additional Government Pleader, the fifth respondent has nothing personal against the petitioner and he conducted

a fair investigation in accordance with the direction given by the High Court dated 03 September, 2010, in CrI.O.P(MD) No. 8151 of 2010. The

learned Additional Government Pleader further submitted that the fifth respondent was bound to file charge sheet within a period of three months,

in view of the direction given by this Court on 29 November, 2012 in CrI.O.P.(MD) No. 16554 of 2012. This only made him to file the charge

sheet immediately after concluding the investigation.

8. The learned counsel for the petitioner, by placing reliance on the judgment of a Division Bench in Sobitharaj/6 others v. State rep. by Inspector

of Police, etc., [1999 (1) LW (CrI.) 11], contended that it is the duty of the superior officers of police to ensure that a fair investigation is

conducted and to see that the innocent people are not falsely implicated in the case. The learned counsel, by placing reliance on the judgment of

Supreme Court, in Divine Retreat Centre Vs. State of Kerala and Others, , contended that the jurisdiction under Article 226 of the Constitution of

India is available to an accused to ensure that the investigation is conducted in a fair manner. The learned counsel placed reliance on the judgment

of the Supreme Court in Nirmal Singh Kahlon Vs. State of Punjab and Others, , and contended that fair investigation and fair trial are concomitant

to preservation of fundamental right of an accused under Article 21 of the Constitution of India and as such, the State has a larger obligation to

conduct a fair investigation.

DISCUSSION:

9. The petitioner is a Sub-Inspector of Police. His brother is a leading lawyer at Nagercoil. The details furnished by the petitioner in his affidavit

filed in support of the Writ Petition indicates that there was a dispute between his brother and one Sadasivam with respect to the management of a

college and a trust.

10. The murder in the subject case was on 07 July, 2010. The deceased Manikandan was murdered at about 06.30 p.m., on 07 July, 2010, and a

case in Crime No. 868 of 2010 was registered before the Kottar Police Station. The Inspector of Police, Kottar Police Station took up the

investigation of the case.

11. While so, the brother of the deceased by name G. Kutty @ Ramesh filed a Criminal Original Petition in CrI.O.P.(MD) No. 8151 of 2010,

before this Court alleging that the Inspector of Police, Kottar Police Station was in hand in glove with the petitioner and his brother Udayakumar

and as such, he was not expecting a fair investigation by the local police. The petitioner in CrI.O.P.(MD) No. 8151 of 2010 alleged that the

Inspector of Police was taking efforts to delete the name of the petitioner and Udayakumar from the array of accused and in case he is permitted

to complete the investigation, the culprits would be allowed to go scot-free.

12. The application for transfer of investigation was opposed by the Inspector of Police, Kottar Police Station by filing a detailed counter-affidavit.

Thiru. S. Charless, the investigating officer, in his counter-affidavit filed in CrI.O.P. (MD) No. 8151 of 2010, contended that he is yet to receive any

vital information about the role played by the petitioner herein and his brother Udayakumar. The Inspector of Police alleged mala fides against the

petitioner in CrI.O.P.(MD) No. 8151 of 2010, by contending that he is seeking to achieve something in the garb of Transfer Petition and his

petition is acting as a deterrent to the fair investigation. The investigating officer, therefore, wanted the High Court to dismiss the Criminal Original

Petition for transfer of investigation.

13. The learned Judge allowed the Criminal Original Petition vide order dated 03 September, 2010, and directed the investigation to be

transferred to the Inspector of Police, CBCID Branch, Nagercoil. The said order has become final.

14. The fifth respondent took up the investigation and after conducting initial investigation, he was transferred from Kanyakumari. Thereafter,

investigation was conducted by the Superintendent of Police. The fifth respondent, once again, took up the investigation on 08 July, 2011. It was

only after concluding the investigation, and during the process of filing the charge sheet, the petitioner has sent a representation for transfer of

investigation on 25 March, 2013. Thereafter, he filed this Writ Petition on 28 March, 2013, requesting transfer from the file of fifth respondent.

The petitioner, during the fag end of the investigation, wanted to take away the investigation from the file of fifth respondent. The timing of the

submission of representation and filing of Writ Petition assumes greater significance. The background facts clearly shows that the petitioner was

following the case and it was only when he was convinced that the fifth respondent is filing a charge sheet against him, he has come up with a wild

allegation against the Inspector of Police. In case he entertained a belief that the fifth respondent, on account of his alleged strained relationship, will

falsely implicate him in the case, he should have moved for transfer of

investigation immediately after taking up the investigation by the fifth respondent on 13 October, 2010. Even in the representation and the affidavit filed in support of the Writ Petition, the petitioner has no concrete instance to show as to why the fifth respondent was having an enmity with him. The affidavit is bereft of details. The petitioner made a wild allegation that the fifth respondent developed personal enmity in connection with the reports sent to the higher authorities. The nature of allegations made against the fifth respondent clearly shows that the petitioner was longing for a reason to transfer the investigation. Neither the petitioner in Crl.O.P.(MD) No. 8151 of 2010, nor the other relatives of the deceased have no grievance against the fifth respondent, in spite of the fact that the accused worked under him. This shows the integrity of the fifth respondent as a police officer.

15. The learned counsel for the petitioner contended that the fifth respondent abruptly filed the charge sheet on 02 April, 2013 with the full knowledge that the Writ Petition is coming up for consideration on 03 March, 2013. The factum of filing a charge sheet on 02 April, 2013 would not make any difference. While directing the Investigating Officer to produce the case file on 03 April, 2013, I have not passed any interim order, restraining the fifth respondent from filing the charge sheet. The fifth respondent was fully justified in filing the charge sheet immediately after concluding the investigation, in view of the stipulation of time by this Court vide order dated 29 November, 2012 in Crl.O.P.(MD) No. 16554 of 2012.

16. The learned counsel for the petitioner, by placing reliance on a report submitted by the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanyakumari District at Nagercoil to the Deputy Inspector General of Police, Tirunelveli Range, dated 11 September, 2011, contended that the Additional Superintendent of Police has given a clean report in favour of the petitioner. However, the said Additional Superintendent of Police was not examined by the Investigating Officer.

17. There are no details before me to ascertain as to what made the Additional Superintendent of Police, Nagercoil, to submit a report to the Deputy Inspector General of Police, Tirunelveli. The Additional Superintendent of Police, in his report dated 11 September, 2011, referred to the

investigation conducted by Thiru. Charles, Inspector of Police, Kottar Police Station. According to the Additional Superintendent of Police, the preliminary investigation conducted by Thiru. Charles, Inspector of Police, proved that the petitioner and his brother Udayakumar were falsely implicated in the case. The Additional Superintendent of Police, also referred to the information collected by him through his sources. The Additional Superintendent of Police, for the reasons best known to him, reported that the petitioner was not involved in the murder. It is worth mentioning here that the very same Mr. Charles filed a counter-affidavit before this Court on 03 August, 2010 in Crl. O.P.(MD) No. 8151 of 2010 and there was no reference in the said report as to whether he has conducted any such preliminary investigation and arrived at a conclusion that the petitioner and his brother were falsely implicated in the case. The so called intelligence collected by the Additional Superintendent of Police cannot be a reason to conclude that his finding has to be accepted. It is also a matter of record that only after considering the counter-affidavit filed by Thiru. Charles, Inspector of Police, Kottar Police Station including his request to dismiss the criminal original petition, the learned Judge has withdrawn the investigation from his file and entrusted the matter with the fifth respondent. The petitioner has obtained a copy of the report submitted by the Additional Superintendent of Police, dated 11 September, 2011 and now, wanted the investigation to be transferred to another officer on the basis of the said report.

18. The petitioner, who is a Sub-Inspector of Police, wanted the investigation to be conducted in accordance with his wishes. The very fact that the fifth respondent earlier functioned as his superior officer, and conducted the investigation without giving room for complaints from the relatives of the deceased clearly shows that he is an upright officer. The petitioner has come up with uncharitable remarks against his then superior officer with a view to get an order of transfer of investigation and to ensure that the investigation is conducted by an officer of his choice.

19. There is no dispute that a citizen of this country has a right to get his complaint properly investigated by the police. Similar protection is available to the accused also to ensure that the complaint against him is investigated in a fair manner. The fair investigation does not mean that it

should be an investigation at the whims and fancies of a particular person. So long as the investigation is conducted strictly in accordance with the

provisions of the Criminal Procedure Code and with a view to collect the materials in a free and fair manner, it is not open to the Court to interfere

in such investigation.

20. The Supreme Court in *Divine Retreat Centre Vs. State of Kerala and Others*,], while endorsing the view that in appropriate cases the High

Court can issue directions to the investigating officer to ensure fair investigation, observed that neither the accused nor the complainant are entitled

to choose their own investigating agency. The relevant observation reads thus:

34. In our view, the High Court in exercise of its inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any

agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions

addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the

accused nor the complainant or informant are entitled to choose their own investigating agency to investigate a crime in which they may be

interested.

35. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue

appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by

an Investigating Officer mala fide. That power is to be exercised in rarest of the rare cases where a clear case of abuse of power and non-

compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in

such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of

process as provided for in the Code.

21. The very fact that the petitioner has come up with the allegations against the fifth respondent after a period of two years and during the fag end

of the investigation clearly shows his motive. As stated earlier, it was only when he found that the fifth respondent is contemplating to file a charge

sheet against him and his brother, he has come up with such uncharitable

remarks against him. There are no merits in the contentions taken by the petitioner. In the upshot, I dismiss the Writ Petition. Consequently, the connected miscellaneous petition is also dismissed. No costs.