

(2011) 07 MAD CK 0381

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 3986 of 2005 and W.P. (MP) (MD) No. 4198 of 2005

M. Latha

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 12, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 319, 374(2), 386, 397, 482
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: R. Suresh Kumar, for the Appellant; D. Muruganandam, Addl. Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner has invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India, for directing transfer of investigation to Central Bureau of Investigation to re-investigate the case.

2. The Petitioner is the wife of the deceased Murugan, who is alleged to have been killed by one Mohan and Ravi. In the eyewitness accounted, specific allegations were levelled against Mohan and Ravi.
3. On the basis of the complaint by eyewitness, the First Information Report u/s 302 of Indian Penal Code stands registered against Mohan and Ravi.
4. It is stated by the learned Additional Government Pleader that after the investigation, the charge-sheet has been filed in the court.

5. The learned Counsel for the Petitioner by placing reliance on a judgement of the Honourable Supreme Court in the case of *Rubabbuddin Sheikh v. State of Gujarat and Ors.* reported in (2010) 2 SCC 1006 contends that it is open to the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, to transfer the investigation to Central Bureau of Investigation even at a stage when State Police has completed investigation and charge-sheet has been filed in court.

6. The reliance is also placed on a judgement of the Honourable Supreme Court in the case of *Popular Muthiah v. State*, represented by Inspector of Police reported in (2006) 3 SCC 245, wherein, the court while interpreting the provisions of Section 482, 374(2), 386 and 397 of Code of Criminal Procedure, was pleased to lay down that the High Court in suo-motu exercise of its inherent power, can direct further investigation of the case against persons who were not charge sheeted and were not accused at the state of trial, but where High Court felt that those person should have been included in the Challan as accused. The word of action has been added in the judgement, that High Court should exercise the inherent jurisdiction sparingly and only after applying its mind to the materials on record, so as to be satisfied itself about the existence of a strong *prima facie* case against such persons and also consider whether any useful purpose would be served by issuing such directions, particularly, after a long lapse of time.

7. The judgments relied upon by the Petitioner has No. application to the facts of the present case.

8. In the first version, only two persons were named as accused, and reinvestigation is only sought on the basis of allegation made by the wife of the deceased, said to have been given to her by a third party.

9. The judgement of the Honourable Supreme Court *Rubabbuddin Sheikh v. State of Gujarat and Ors.* (Supra) *prima facie* has No. application as in case im hand it cannot be said that the state machinery has not investigated the case properly.

10. The judgement of the Honourable Supreme Court in *Popular Muthiah v. State*, represented by Inspector of Police(Supra) also has No. application, as the exercise of power u/s 482 can be exercised on the material placed before the trial court. The trial court can invoke Section 319 of the Code of Criminal Procedure to add any accused who is suspected to be guilty of crime, but has not been charge-sheeted by the police, in case any evidence comes on record. It is only on failure of trial court that this Court can exercise jurisdiction u/s 482 of Code of Criminal Procedure

11. The learned Counsel for the Petitioner thereafter placed reliance on the judgement of the Honourable Supreme Court in the case of *Sasi Thomas v. State and Ors.* reported in (2007) 2 SCC 72, wherein, the Honorable Supreme Court reiterated its stand that the direction for further investigation after commencement of trial can be issued by the Supreme Court or High Court, in the case of failure of investigating agency to perform its duty, to do complete justice.

12. As already mentioned above, except for the statement of the wife of the deceased which is based on, there is No. material nor anything is placed on record, to show that the prosecuting agency has not acted properly while submitting the charge sheet. The jurisdiction to order reinvestigation or further investigation in exercise of jurisdiction under Article 226 or 482 of Code of Criminal Procedure cannot be exercised merely on the asking of a party, in absence of material showing that there has been failure of justice. The Petitioner in this case has alternative remedy, to move the learned trial court at appropriate stage by invoking the provisions of Section 319 of Code of Criminal Procedure, if any evidence comes before the court, showing involvement of any other person in crime. At this stage, No. case is made out to order re-investigation, of the case by the central Bureau of Investigation, as contended by the learned Counsel for the Petitioner.

13. The Writ petition being devoid of merits is dismissed. No. costs.

Consequently, connected Miscellaneous Petition is dismissed.