

(2014) 12 MAD CK 0397

Madras High Court

Case No: Crl. O.P. No. 15838 of 2011

M. Balu

APPELLANT

Vs

The Additional Director General
of PoliceRESPONDENT

Date of Decision: Dec. 16, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 357A, 357C, 482
- Penal Code, 1860 (IPC) - Section 302

Citation: (2015) 1 MLJ(Cri) 411**Hon'ble Judges:** S. Nagamuthu, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

The petitioner is the husband of one Mrs. Shenbagavalli. Admittedly, she was murdered in a gruesome manner by unknown persons on the early hours of 08.10.1999. The petitioner was not at his house at the time of occurrence. There is no eye witness to the occurrence also. On the information laid by the petitioner, the Sub Inspector of Police, Vikravandi Police Station registered a case in Crime No. 623 of 1999 on 08.10.1999 under Section 302 IPC. Since movable properties had also been stolen away, the case was registered as one of murder for gain. The investigation was initially taken up by one Mr. Syed Ibrahim, Inspector of Police attached to Vikravandi Circle. But no progress could be made in the investigation and the culprits could not be identified and nabbed. The petitioner thereafter filed Crl.M.P.No. 635 of 2000 before this Court seeking a direction to have expeditious investigation of the case. This Court issued an interim order on 05.06.2000 directing CBCID police to investigate the matter and file final report within a period of three months. It was reported to the Court on 08.02.2002 that investigation had been

transferred to the CBCID. Even thereafter, there was no progress made. The Inspector of Police, CBCID requested for six months time to complete the investigation. Accordingly, the said petition was disposed of by this Court by order dated 08.02.2022 directing the Inspector of Police, CBCID, Kancheepuram to file final report positively before 30.06.2002. Even thereafter, there was no progress made. The petitioner, thereafter, filed a petition for contempt in Contempt Petition No. 464 of 2002 against Mr.T.Ganthaswaroopan, Inspector of Police, CBCID, Chengalpattu Range. The said petition was closed on 30.08.2002 since this Court found that the investigation was seriously done. Again, the petitioner has now come up with this petition seeking transfer of the investigation on the ground that culprits have not been nabbed so far and final report has not been filed.

2. I have heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondents and also perused the records carefully.

3. A detailed status report has been filed by one Mrs.A.Bakkiya Parimala, the Additional Superintendent of Police, CBCID, Villupuram Range. In the said status report, she has stated that the investigation was thereafter held by many officers. In the report, she has given the following details of the officers who had investigated the case:

1. Mr.Syed Ibrahim, Inspector of Police, Vikravandi Police Station
2. Mr.Chandrakumar Thomas, Inspector of Police, Vikravandi Police Station
3. Mr.Harikrishnan, Inspector of Police, CBCID, Villupuram
4. Mr.Kanthasoruban, Inspector of Police, CBCID, Kancheepuram
5. Mr.Vijayan, Inspector of Police, CBCID, Villupuram
6. Mr.Mohammed Basheer, Deputy Superintendent of Police, CBCID, Villupuram
7. Mr.Kanthasoruban, Inspector of Police, CBCID, Kancheepuram
8. Mr.Vijayan, Inspector of Police, CBCID, Villupuram
9. Mr.K.S.Madhavan, Deputy Superintendent of Police, CBCID, Chengalpet Range
10. Mr.Vijayan, Inspector of Police, CBCID, Villupuram
11. Mr.Sathiyamarayanan, Deputy Superintendent of Police, OCU (Organised Crime Unit), Chennai
12. Mr.Prabakaran, Deputy Superintendent of Police, OCU (Organised Crime Unit) Head Quarters, Chennai
13. Mr.Jagadheesan, Deputy Superintendent of Police, OCU (Organised Crime Unit) Head Quarters, Chennai

14. Mr.Ramar, Deputy Superintendent of Police, OCU (Organised Crime Unit), Chennai

15. Mr.Vijayakumar, Deputy Superintendent of Police, OCU (Organised Crime Unit), Chennai

16. Mr.Parthasarathy, Deputy Superintendent of Police, OCU (Organised Crime Unit) II, Chennai and finally

17. Mrs.A.Bakkiya Parimala, Additional Superintendent of Police, CBCID, Villupuram.

4. It is further stated that thus totally 17 officers from various branches in succession have investigated the matter but the culprits could not be traced or identified. A total number of 454 witnesses have already been examined but of no avail. In para 41 of the status report, the Additional Superintendent of Police has submitted as follows: "It is further submitted that only due to the non-cooperation of the petitioner/de facto complainant, the investigating agency could not proceed further. Hence, for the above reasons, the above said case is still under investigation". In para 42, it is stated as follows: "It is further submitted that for last 14 years the investigation was conducted by the CBCID in a fair, free and impartial manner in accordance with law".

5. The learned counsel for the petitioner would submit that since 17 officers drawn from various branches of Tamil Nadu Police could not unearth the truth and trace the accused, it is not worthwhile to allow the investigation to be in the hands of the local police. The learned counsel would submit that the murder is gruesome for gain and therefore, the investigation should be transferred to Central Bureau of Investigation.

6. The learned Public Prosecutor would submit that despite sincere efforts taken and thorough investigation done, the culprits could not be identified and traced. Thus, no progress could be made in the investigation.

7. I have considered the above submissions.

8. It is unfortunate that 17 officers of higher rank in the Tamil Nadu Police drawn from various specialised units could not make any progress in the investigation to trace the culprits, though it is a very serious and sensational gruesome murder. The petitioner has waited for an unduly long period of 14 years. We cannot afford to make the petitioner to wait for justice when the investigation could not make any progress by the State police. It needs to be mentioned that the investigation skill of the officers is at stake now. Therefore, in my considered opinion, it is absolutely necessary for this Court to transfer the investigation to Central Bureau of Investigation.

9. The investigation done so far has established that the wife of the petitioner was murdered in a gruesome manner. There is no doubt about that. But the State, which

has got constitutional obligation to ensure safety of the citizens and which has got the further obligation to ensure that the real perpetrators of the crime are traced, tried before the Courts of law and punished according to law, could not effectively discharge the above obligations in the present case. The petitioner is the victim and thus she is entitled to be compensated by the State. Though compensation has not been asked for in the petition, I am of the view that this is a fit case where this Court should exercise its suo motu power under Section 482 Cr.P.C. to order payment of compensation by the State. In this regard, I may refer to Sections 357-A and 357-C of Code of Criminal Procedure, which were introduced by the Amendment Act 5 of 2009 with effect from 31.12.2009. According to sub section 4 of Section 357-A Cr.P.C., where the offender is not traced or identified but the victim is identified and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation under the Victim Compensation Scheme. In the case on hand, I do not deem it necessary to refer the petitioner to claim compensation under the said scheme through the Legal Services Authority. It is informed to this Court that as per the Tamil Nadu Victim Compensation Scheme, 2013 issued under Section 357-A of Cr.P.C., Victim Compensation Fund has been created and as of now, in the said fund, a sum of Rs.1,70,00,000/- has been allocated to the Unit Officers under the control of the Director General of Police and a sum of Rs.30 lakhs has been kept as Reserve Fund.

10. In my considered opinion, going by the facts and circumstances of the case, it would be appropriate for this Court to issue a direction to the Director General of Police to pay a sum of Rs.3 lakhs to the petitioner out of the said Reserve Fund. As per the Schedule appended to the Scheme for "loss of life", a sum of Rs.3 lakhs can be awarded. Though for making a claim under the said scheme, statutorily it may be required that the petitioner should approach the Legal Services Authority, in this case, I am not inclined to direct the petitioner at this length of time i.e. after 14 years to approach the Legal Services Authority to make a claim. I am inclined to issue a direction to the Director General of Police to pay the compensation in exercise of the inherent powers of this Court under Section 482 Cr.P.C.

11. In the result, the Criminal Original Petition is allowed in the following terms:

1. The investigation of the case in Crime No. 623 of 1999 on the file of the Sub Inspector of Police, Vikravandi Police Station is transferred from the file of the Additional Superintendent of Police, CBCID, Villupuram to the file of the Central Bureau of Investigation, Chennai. The Additional Superintendent of Police, CBCID, Villupuram shall hand over the case records to the Additional Director, Central Bureau of Investigation, Chennai, who shall entrust the investigation to an officer of Central Bureau of Investigation, not below the rank of Deputy Superintendent of Police for continuing the investigation.

2. The Director General of Police is directed to pay a total sum of Rs.3 lakhs to the petitioner and other legal heirs of the deceased, who shall share it in equal moieties,

as compensation from out of the reserve fund of Rs.30 lakhs lying with him as per the Tamil Nadu Victim Compensation Scheme, 2013 within a period of four months from the date of receipt of a copy of this order.