

A. Sadasivam Vs. the Director General of Police, Chennai and Others

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Court : Chennai

Decided On : Aug-29-2000

Reported in : 2000(4)CTC163

Judge : B. Akbar Basha Khadiri, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 -- Sections 173(8) and 482;
[Indian Penal Code \(IPC\), 1860](#) -- Sections 302, 323, 304-B and 498-A

Appeal No. : CrI.O.P.No. 3978 of 2000

Appellant : A. Sadasivam

Respondent : The Director General of Police, Chennai and Others

Advocate for Def. : Mr. M. Babu Muthu Meeran Government Adv.

Advocate for Pet/Ap. : Mr. M. Ajmal Khan

Judgement :

ORDER

1. This criminal original petition under Section 482 of the Code of Criminal Procedure is to direct the first respondent to order re-investigation of the Crime No.39 of 1999 on the file of the Dindigul Taluk Police Station, by an Officer not below the rank of the Superintendent of Police.

2. The case of the petitioner is thus:-

The petitioner Sadasivam is working as Supervisor in I.I.T. He had three daughters, of whom, one Poonkodi was the eldest. Poonkodi was given in marriage to Thangapandi, who is working as Head Constable in Armed Reserve Police Force, Dindigul. The marriage was held on 20.1.1997. Later, the matrimonial life of Poonkodi was not happy. Thangapandi, his sister Pattu Pandeewari and his mother Mala and his brother-in-law Pandidurai were demanding dowry. In fact, they demanded a motor cycle, a colour Television and Rs.20,000 from Poonkodi toward dowry. On 5.4.1998, a child was born to Poonkodi in the lawful wedlock. But her husband Thangapandi refused to come and see the child. Later, at the instance of Panchayat, he took his wife and the child to his house in Ayyampalayam on 26.9.1998. Later, Poonkodi and Thangapandi were living in the Police Quarters at Dindigul. Dowry demand continued.

3. The petitioner received a message on 8.1.1999 at about 11.00 a.m. that Poonkodi had suffered burn injuries and hospitalized. He went to the hospital and saw Poonkodi. The petitioner took custody of Poonkodi's child. Before the petitioner's arrival, a dying declaration was obtained from Poonkodi. After the child was handed over to the petitioner, Poonkodi informed her father that her husband, his sister and his brother-in-law set fire to her by pouring kerosene on her and after admitting into the hospital, she was threatened by her husband that if she reveals the truth, her child will be killed and that apprehending danger to her child's life, she had given a dying declaration as per the wish of her husband that while she poured kerosene in the stove and attempted to lit the stove, the burning match-stick fell on her clothes and thus, she suffered injuries due to the accidental fire. After the petitioner had taken the custody of the child, she told her father that her husband, her sister-in-law and her sister-in-law's husband poured kerosene on her and set fire to her. She said so when the apprehension of the life of her child vanished as the child came into the custody of her father. The petitioner requested the Deputy Superintendent of Police to record a second dying declaration from Poonkodi, but he was threatened that he would be included as an accused. At last, Poonkodi died on 13.1.1999 at 7.30 P.M. The post-mortem certificate revealed that she had sustained 90% burns.

4. According to the petitioner, regarding the incident, a case in crime No.39 of 1999 was registered by the Dindigul Taluk Police, which, was investigated by the Deputy Superintendent of Police. The petitioner was running from pillar to post to have the investigation transferred to some other agency. According to him, the third accused Pandidurai is a practising Advocate. One Subramaniam, who happened to be the son of the Superintendent of Police of Dindigul District, was the junior of the Pandidurai and therefore, the petitioner apprehended that investigation may end in a fiasco. He moved the Government for the transfer of the investigation. The Government passed orders on 22.6.1999 directing the C.B..C.I.D. to investigate the matter. The petitioner wanted to know the Designation of the Officer, who was investigating the Crime. On 19.7.1999, he received a letter from the Deputy Inspector General of Police to the effect that C.B..C.I.D. Police have taken up the further investigation. While so, the third respondent had hurriedly closed the investigation on 15.5.1999 and filed chargesheet against Thangapandi, his sister Pandeewari and his brother-in-law Pandidurai for the offences under Section 498-A, I.P.C.

5. Poonkodi died within two years of the marriage, and therefore, Revenue Divisional Officer conducted an enquiry. His report is to the effect that there had been dowry harassment and it is doubtful whether the death is an accidental death or homicidal death camouflaged as accidental death. The investigating officer has abused the process of law in filing the chargesheet for the offence under Section 498-A, I.P.C. Only, when the investigating officer had come to the conclusion that there had been dowry harassment and when it is clear that Poonkodi died within two years of marriage, the offence under Section 304-B, I.P.C. is attracted. The failure on the part of the investigating officer to register the case under Section 304-B, I.P.C. and investigate the same amounted to perfunctory investigation. According to the petitioner, even the C.B..C.I.D. has not investigated the matter though the Deputy General of Police written to him that further investigation is carried on by the C.B..C.I.D. The C.B..C.I.D. has simply closed the investigation on the ground that chargesheet has been filed into the Court by the third respondent herein. The petitioner seeks re-investigation.

6. Heard both the sides. It is admitted that Thangapandi. married Poonkodi on 20.1.1997. It is also admitted that Poonkodi had suffered burn injuries on 8.1.1999 and she died on 13.1.1999 as a result of the injuries. She died within two years of the marriage. Even the Revenue Divisional Officer has stated in his report that there had been dowry harassment. Even the investigating officer has satisfied that there had been dowry harassment and that is why the case under Section 498-A, I.P.C. had been registered.

7. Section 304-B, I.P.C. would read as under:-

'304-B. Dowry Death:- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death.'

8. It is therefore crystal clear that either the investigating officer was slack or he had wantonly omitted to register a case under Section 304-B, I.P.C. and investigate the same. According to the petitioner, such omission is wanton. It is quite curious that a police officer in the rank of the Deputy Superintendent of Police was not aware of the provisions of Section 304-B, I.P.C. The petitioner has contended that the third accused Pandidurai is a practising advocate at Dindigul, and the son of the Superintendent of Police, Dindigul, who is also an advocate, is the junior of the third accused. Further, the first accused Thangapandi himself is a Head Constable in the Armed Reserve Police at Dindigul.

9. In *Kashmeri Devi v. Delhi Administration*, : 1988 CriLJ1800 , where there was an allegation of deceased dying in police custody owing to the injuries caused due to beating by police, that the investigating officer converted the case from Section 302, I.P.C. to Section 304, I.P.C. within the hours of registration of the case even without waiting for the post-mortem report, later while the writ petition and special leave petition for transfer of investigation to C.B.I. were pending, the case was further converted to Section 323 read with 34, I.P.C. and chargesheet was also submitted on that basis. Their Lordships of the Apex Court have held that the

appellant, the wife of the deceased, has been crying hoarse to get the investigation done by an independent authority but none responded to her complaint. Considering the peculiar circumstances, their Lordships have held that even though the chargesheet had already been submitted to the concerned Magistrate, direction can be issued to the trial Court, before whom the chargesheet has been filed, to exercise its power under Section 173(8) of Criminal Procedure Code to direct the C.B.I. for proper and thorough investigation of the case and accordingly, such direction was issued in that case.

10. In *Ramanathan v. State Rep. by Inspector of Police and another*, 1995 (1) L.W. (Cri.) 272 when an allegation was put forth that the police was hand in glove with Revenue Officials and highhandedly removed the roof of the deceased's house and instigated the deceased to pour kerosene on herself and set fire, and there had been a delay in investigation, it was pointed out that under the circumstances, irresistible inference had to be drawn that the Police is desultory, lackadaisical and shielding officers, and direction can be issued that the investigation is to be made by the C.B.I. police.

11. In the instant case, the Deputy Superintendent of Police, Dindigul Town Sub Division had been investigating. The first accused is his subordinate. The third accused is a senior of the investigating officer's superior's son. Under those circumstances, it is not as if the petitioner's apprehension was unfounded. Further, the chargesheet says that all the accused are absconding. It is ludicrous that the investigating officer could not lay his hand on a person who is working as Head-Constable in the Armed Reserve Police and on another person who is practising as an Advocate at Dindigul itself. It cannot be said that they are absconding or that the investigating officer could not trace them. It is quite unfortunate that when the case was transferred to the C.B..C.I.D. Police, they have not even moved their little finger towards investigation. They have been simply sitting with their fingers crossed, stating that final report had already been filed. It appears, even the concerned Judicial Magistrate had not looked into the provisions of the law, but simply took cognizance of an offence under Section 498-A, I.P.C. in C.C.No.478 of 1999. I feel, to do justice between the parties and to instil confidence in the public mind, the further investigation is to be ordered in this case. The learned Judicial

Magistrate No.II, Dindigul is directed to exercise his powers under Section 173(8) of the Code of Criminal Procedure to direct the Deputy Superintendent of Police, C.B.,C.I.D. to hold further investigation and submit final report in three months. This petition is ordered accordingly.

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