

Madhu Vs. the Inspector General of Police, Cbcid, Chennai and Three Others

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Court : Chennai

Decided On : Jan-08-1998

Reported in : 1998(3)CTC42

Judge : E. Padmanabhan, J.

Acts : Constitution of India, Article 226; [Code of Criminal Procedure \(CrPC\) , 1973](#)
-- Sections 155; Indina Penal Code (IPC), 1860 -- Sections 201, 302 and 364;
Tamil Nadu Encroachment Act, 1905 -- Sections 7; Terrorist And Disruptive
Activities (Prevention) Act, 1985 -- Sections 3, 4 and 5

Appeal No. : W.P. No.17790 of 1997 and W.M.P. No.28144 of 1997

Appellant : Madhu

Respondent : The Inspector General of Police, Cbcid, Chennai and Three Others

Advocate for Def. : The Public Prosecutor

Advocate for Pet/Ap. : Mr. J. Saravanavel, Adv.

Judgement :

ORDER

1. The petitioner prays for the issue of a writ of mandamus directing the CBI or CBCID to investigate into the Crime No.30 of 1997 on the file of the second respondent and proceed as per law.

2. This Court on 27.11.1997 called upon the Public Prosecutor to take notice and to get instructions. The Public Prosecutor also had entered appearance on behalf of respondents and a counter affidavit has also been filed by the second respondent on 5.12.1997. The writ petition itself was taken up for final disposal with the consent of counsel appearing for either side.

3. The petitioner states that Cr.No.30 of 1997 on the file of Mettur Police Station was registered for offence under Section 302 of Indian Penal Code with respect to the murder of one Papathi of Massilapalayam village, Mettur Taluk, Salem District, that the deceased is the wife of Perumal, who is the petitioner's uncle and that the petitioner was brought up by the deceased Papathi since he was two years old.

4. The petitioner further states that he is an ITI certificate holder and is working at Mettur, that the enmity arose, when the petitioner had declined to marry the daughter of Perumal and the petitioner left their house and set up a separate family in the same village, that Perumal had been frequently quarrelling with the deceased, that Papathi the deceased had not been treated properly, it led to several suicide attempts by the deceased, that Perumal had broken the right hand of the deceased prior to the incident and that the deceased went away from the village, but she was being harassed by Perumal with intention of selling her properties, which were inherited by her and acquired out of her earnings.

5. The petitioner further states that the properties of the deceased being three houses, and five acres of wet lands, that all those properties have been sold away by Perumal and finally Papathi the deceased was left penniless and was living in the village Panchayat TV House, that Perumal was leading a very vagabond, wayward life and he never took care of his wife, and that Perumal had tortured his wife the deceased, as he did not like her questioning with regard to his vices.

6. The petitioner also states that Perumal had become a Councilor in the recent election to the local bodies, that the deceased was driven out of the TV Room at the instance of Perumal, that the deceased approached several district leaders in Kollathur by name Mr.K.P.Mahesheswaran and Mr.Nagaraj and also one Sathiyaseelan, who belong to Tamil Manila Congress, to which the said Perumal also belongs, that being aggrieved by such an approach of the deceased, Perumal

had openly beaten the deceased, as according to him, she defamed him at the instance of the petitioner herein, and that on a particular date, Perumal brought the Forest Ranger Madasamy and Forester Subramanifrom the Mettur Forest Office and threatened the petitioner as if the petitioner had encroached the forest lands.

7. The petitioner also states that the deceased interfered at the time and told them that her husband Perumal was making false allegations due to personal vengeance, that for such disclosure by the deceased, the said Perumal attempted to chop her with Koduval and fearing for her life, the deceased ran away and was working at Hotel Kamatchi Karumbuthidal, Mettur, and that however, later on, Perumal with the assistance of one Kuppusamy approached the deceased and cajoled to return to the village on 1.2.1997.

8. The petitioner further states that on 2.2.1997, the said Papathi was murdered, that even before the murder of the deceased, Perumal had mentioned to the said Kuppusamy that the petitioner is likely to go to jail shortly, that even on the night of 2.2.1997, the petitioner was informed that he is being implicated by Perumal, that at the instance of Perumal, the second respondent registered crime, who claims that he discovered the body of the deceased and that the second respondent took up the investigation.

9. The petitioner further states that the second respondent conducted an investigation in a blatantly slipshod manner rejecting the various clues and evidence, which indicated otherwise, that the second respondent was very much aware that the petitioner is not involved in the crime, but they plead helplessness in the light of the clout wielded by the said Perumal, and that the petitioner had given representations to the Chief Minister, The Secretary to the Home Department, The Human -Rights Commission at Chennai, The Deputy Superintendent of Police, Mettur, The Director General of Police, The Prime Minister, The Honourable Chief Justice of Madras High Court and The Superintendent of Police, Salem as well as to the first respondent herein, Legal Aid Board, Chennai, The District Collector, Salem and the Governor of Tamil Nadu.

10. The petitioner also states that in all those representations, it is claimed that the petitioner had narrated the facts in detail and requested a thorough investigation by the CBCID and to bring the real culprits to book, that the Special Cell in the Chief Minister's office had directed the Deputy Superintendent of Police, Salem to investigate and report, but no action has been taken, that the petitions submitted to the Director General of Police was forwarded to the Superintendent of Police, who in turn forwarded the same to the Deputy Superintendent of Police at Mettur and that the latter had also submitted a report to the third respondent herein recommending the case may be transferred to CBCID for proper investigation.

11. The petitioner further states that the representation forwarded to the Home Secretary, was forwarded to the third respondent for necessary action, which was also handed over to the third respondent, but no action has been taken, that subsequent representation to the Home Secretary on 24.10.1997 was forwarded to the Deputy Inspector General of Police, Vellore Range for necessary action, but there has been no response, that on the representations submitted to the Honourable Chief Justice of Madras High Court, the same has been forwarded to the Tamil Nadu State Legal Advice Board on 23.6.1997, which in turn forwarded the same to the Legal Aid Board, Mettur and that the Legal Aid Board Mettur entrusted the matter to an advocate Mr.M.Shanmugam, who conducted an elaborate enquiry, recorded statements of eighteen persons and had sent his report to the President of the Taluk Committee of Legal Aid and Advice wherein it has been reported that the petitioner had been implicated falsely and it was further suggested that action may be taken to quash the investigation and entrusting the investigation to other appropriate authorities.

12. The petitioner further states that finding that no action has been taken by other respondents, the petitioner had come before this Court praying for the issue of a writ of mandamus to entrust the investigation with respect to Cr.No.30 of 1997 to the CBCID, Madras.

13. The petitioner also states that he had been implicated falsely and the committal proceedings in PRC No.7 of 1997 is pending on the file of the Judicial Magistrate, Salem.

14. The second respondent has filed a counter affidavit. According to the second respondent, Perumal Son of Raman, appeared before the Mettur Police Station and had given a complaint on 3.2.1997 at 9.00 hours slating that his wife Papathi's dead body was found lying at Chedikadu near Muluvaikadu and the petitioner herein murdered his wife Papathi with stones, that Cr.No.30 of 1997 was registered for an offence under Section 302 of Indian Penal Code and taken up for investigation, that the investigation discloses that there was previous enmity between the petitioner and Perumal and his wife Papathi since Perumal contested in the local body's election much to the disliking of the petitioner herein and that Perumal informed the Forest Officer, one week prior to the occurrence stating that the forest woods were kept in the petitioner's land.

15. The second respondent further states that there was no witness to the occurrence, that investigation reveals that two persons Rathnavel and Koundayee whose statements have been recorded on 5.2.1997 and on 3.2.1997 respectively, which would show that they had seen the deceased being followed by the accused proceeding towards the scene of occurrence, that three witnesses, namely Karupannan, Madhan and Annadurai, whose statements have been recorded during the investigation, have stated that they had seen the accused coming from the scene of occurrence at about 6.30 p.m. on the fateful day and that the petitioner was arrested on 4.2.1997 and his confession let to the scene of occurrence as well as recovery of the stones which have been used for murdering the deceased.

16. The second respondent further states that after examination of nearly 22 witnesses, the charge sheet was laid on 30.7.1997 against the accused in PRC No.7 of 1997 before the learned Judicial Magistrate I, Mettur and the committal proceedings are pending, that to avoid the committal proceedings and as a counter blast, the petitioner had come before this Court with false averments, which are not supported by any materials and that during the investigation, nothing has come to light as has been alleged by the petitioner.

17. The second respondent denies the allegation that the investigation was conducted in a blatantly slipshod manner rejecting various clues and evidence.

The second respondent further states that it is not true to say that the second respondent knew that the petitioner was not involved in the crime, that it is also not true to say that the petitioner was falsely implicated in this case, that as the investigation has been completed and charge sheet has been filed, the transfer of investigation to some other agency may not be necessary at this stage and that the writ petition has been filed with malafide intention of protracting the committal proceedings.

18. In the counter affidavit, excepting a bare denial, there has been no reference to the subsequent investigation by other officers on the complaint given by the petitioner to the Secretary to the Government, Home Department, Director General of Police as well as other authorities. The second respondent has also failed to produce the case diary and post-mortem report before this Court.

19. On the other hand, the learned counsel for the petitioner had produced the file from the President, Taluk Legal Aid and Advice Committee, Mettur wherein statement of 18 persons have been recorded and the opinion of the penal lawyer, who has been entrusted with the matter, which had been forwarded to the President, Taluk Legal Aid and Advice Committee.

20. In the present case, it is alleged that the occurrence had taken place on 2.2.1997, but the first information report has been registered on 3.2.1997 around 9.00 a.m. though the distance between the place of occurrence and the police station is just five kilometres. It is only Perumal, husband of the deceased, had given the first information. Even in the first information report, Perumal had implicated the writ petitioner herein.

21. As seen from the first information report, after referring to the earlier enmity, Perumal stated that his wife Papathi went to the river on 2.2.1997 to take bath and to wash her clothes. Even after late night, she had not returned. During the night, Perumal and other villagers went to the river and searched in vain. Once again on 3.2.1997, Perumal and others went to the river and traced the body of the deceased. In the first information report, the complainant Perumal included that Madhu the writ petitioner was following the deceased to the river, which had been seen by Rathinavel, his son-in-law's friend and therefore Perumal requested for a

complaint being registered against the petitioner herein.

22. The second respondent stated in the counter that he recorded statements of Rathinavel and Koundayee respectively on 5.2.1997 and 3.2.1997, who are the two persons who have seen the petitioner following the deceased to the river. It is further stated that Karupannan, Madhan and Annadurai were also examined and their statements have been recorded and the latter three persons have stated that they saw the writ petitioner Madhu returning back from the scene of occurrence around 6.30 p.m. on 3.2.1997.

23. It is further alleged that the petitioner had given confession statement and also had shown the stones, which have been used for murdering the deceased. While in the statement recorded at the instance of the President, Taluk Legal Aid and Advice Committee eighteen persons have deposed that during the relevant time the petitioner was witnessing television. It is alleged that the occurrence took place on 2.2.1997 between 4.30 p.m. and 7.30 p.m. It is further noticed that on 3.2.1997 the persons, who went in search of Papathi, the deceased, did not find her body. It has been further recorded that Papathi, the deceased, was beaten and driven from house by Perumal and she had to seek employment in an ill-famous hotel at Mettur, which had also irritated the said Perumal. There are other statements, which have been recorded by Mr. Shanmugam to show that the petitioner was at his residence on 2.2.1997 from 4.30 p.m. onwards throughout the night and it may not be true that the petitioner had followed the deceased to the river on 2.2.1997.

24. In fact, Koundayee stated that she did not know anything about the murder. It is to be pointed out that no one had seen the petitioner following the deceased and murdered her. Thus, there is a controversy, which had not been gone into in detail by the second respondent.

25. On the other hand, the second respondent had, without a proper investigation implicated the writ petitioner. This Court is not expressing anything about the investigation undertaken by the second respondent at this stage. All that this Court desires to point is that real culprits should not be left out.

26. Had the complaint by the petitioner been investigated as was ordered by the Home Secretary and the Director General of Police, this Court may not be inclined to entertain this writ petition. In the nature of the first information report, nature of statements and in the light of allegations and counter allegations, the case should have been investigated by an independent agency other than the second respondent.

27. The petitioner had been taking steps for a thorough investigation by an independent agency and all his efforts have failed and he had come before this Court finally.

28. Much could be said against the investigation already undertaken by the second respondent, but it may not be proper for this Court to go into the matter at this stage. Even if investigation has been completed, thorough and proper investigation by an independent agency is desirable on the facts of the case. Impartial investigation is also an element, which has to be taken into consideration in respect of criminal complaints.

29. According to the petitioner, the second respondent had not undertaken investigation impartially and he had lost his credibility. The petitioner had been sending complaints after complaints, but no one had taken steps to order or look into the investigation. Even according to the petitioner, other officers had summoned the petitioner and recorded his statements, but none of the records have been placed before this Court.

30. The report of the Deputy Superintendent of Police had not been placed before this Court by the Superintendent of Police so also the other reports. The Superintendent of Police had not filed a counter, as he is the immediate District Level Authority, who had received number of complaints submitted to him directly and also other complaints submitted to the other authorities and which complaints were forwarded for investigation.

31. In *Ramanathan v. State, rep. by Inspector of Police, etc. and another*, 1995 (1) LW CrL 272, it has been held thus:

When an unnatural death occurs or prima facie case of the commission of a cognizable offence is brought to the notice of the police authorities, it is their duty to conduct investigation, ascertain the actual cause of death and giving an impression that just action has been taken without inordinate delay or serious lapses. Although the petitioner has been running from pillar to post seeking for an honest investigation of his serious grievance, wherein the police and Revenue Offices of the State of Tamil Nadu are accused, the police must be still more vigilant. The circumstances show that the State Police acted leisurely and in an irresponsible manner. The complaint was lodged on 24.3.1993 and it was not registered for eight months. Though list of witnesses were given, they were not examined in the manner required and there is a wrong recording of the statement of the son of the deceased. After direction by this Court, some of the witnesses were examined to suit the convenience. The learned Public Prosecutor was unable to show the order of eviction passed under the Tamil Nadu Land Encroachment Act 3 of 1905. Under the said Act, before an order of eviction, a notice has to be given providing an opportunity of being heard to the unauthorised occupants under Section 7 of the Act. This was not strictly followed and there was no order evicting the deceased from the premises in question. In the absence of an order, forcible eviction was unwarranted and even a rank trespasser is entitled to be heard before dispossession. Having exceeded their powers and acted arbitrarily and in high-handed manner that too without an order of eviction, an impression has been created in the mind of the petitioner that investigation in the hands of the local police will not be fair and the local police may shield the officials of the State Police and the Revenue Department. The lapse in investigation seem to lend credence to the grievance of the petitioner. In a situation where prima facie, the police have not acted in a forthright manner in investigating the case registered on the complaint and wherever effort had been made to protect and shield the guilty officers, Courts have directed investigation by an independent agency. Ref. Kashmeri Devi v. Delhi Administration, : 1988 CriLJ1800 . The Supreme Court further held that when the investigation was already completed ordinarily it should not be reopened but in order to do justice between the parties and to instil confidence in the public mind, directed investigation by the Central Bureau of Investigation. Ref. Gudalure M.J.Chcrian v. Union of India, 1992 MLJ

508. In another case, in order to uphold human values and to protect the rights guaranteed under the Constitution, directions issued that CBI should investigate and register cases and prosecute the officers however high or low. Ref. Khedat Mazdoor Chetna Sangath v. State of MP, 1994 SCC 1643. Whenever investigation by the State Police is lacking credibility, investigation by independent agency is always desirable and in such situation CBI was directed to investigate. Ref. R.S.Sodhi v. State of U.P. : 1994 CriLJ1111 . '

32. Though this is not a case where the officials have been implicated, but it is essential that investigation is being conducted in a fair and a forthright manner on the complaint. In the present case, as already been pointed out, the investigation has not been conducted in a proper and independent manner by the Investigating Officer.

33. Learned counsel for the petitioner refers to the judgment of Jagadeesan, J. reported in Madras High Court Advocates' Association etc. v. State of Tamil Nadu etc., 1995 WLR 441 and also a Division Bench judgment of this Court in W.A.No.249 of 1995.

34. In Punjab and Haryana High Court Bar Association v. State of Punjab, : 1994 CriLJ1368 , it has been held that on facts and circumstances and to do complete justice and to instil confidence in public mind, Courts could order fresh investigation even if investigation is completed. It has been further held thus:

'We are conscious that the investigation having been completed by the police and charge-sheet submitted to the Court, it is not for this Court, ordinarily, to reopen the investigation. Nevertheless, in the facts and circumstances of the present case, to do complete justice in the matter and to instil confidence in the public mind, it is necessary, in our view, to have fresh investigation in this case through a specialised agency like the Central Bureau of Investigation (CBI)-

We, therefore, direct the CBI to take up the investigation of the case FIR No.10 dated 8.10.1993 under Sections 364/302/201, IPC and 3/4/5 under TADA (P) Act, Police Station Rupnagar, District Ropar with immediate effect. We further direct the Senior Superintendent of Police, Ropar and the Station House Officer, Police

Station Rupnagar to assist the CBI in conducting the investigation. The CBI shall exercise all the powers available to it under the Criminal Procedure Code and any other provision of law. The State of Punjab through its Home Secretary is further directed to provide all assistance to the CBI in this respect.'

35. It is not necessary to refer to any other authority. This Court is inclined to grant the relief to the petitioner, as the investigation by the second respondent is not in the manner or standards expected. The Second respondent, Inspector of Police, excepting his assertion, had failed to produce other materials, namely, the case diary, the post mortem report, the wound certificate and other connected papers so that this Court could have satisfied itself. No motive had been suggested for murder of Papathi.

36. Further, the Superintendent of Police had not placed the report of other agencies, namely, the Deputy Superintendent of Police and other District level. Officers, who had occasion to investigate on the representation submitted by the petitioner and the Superintendent of Police had kept those representations with him without placing them before this Court.

37. In the circumstances, this Court is inclined to hold that though it is claimed that the second respondent had completed the investigation, this Court orders investigation by the CBCID, Madras-2 and directs that the investigation in Cr.No.30 of 1997 on the file of Mettur Police Station be taken up for investigation by the CBCID, Madras-2 under the control of Inspector General of Police by deputing a competent person to investigate and proceed further according to law.

38. Merely because this Court has directed handing over of investigation to CBCID, as well as the various observations, if any, made by this Court or its expressions or opinions on merits are not to be treated as final and not to be taken as implicating any one or more of the parties. Whatever observation that has been made is only for the purpose of deciding the writ petition and not on merits. It is for the independent agency to proceed further and thereafter take appropriate action according to law, namely Code of Criminal Procedure. It is for the said Agency to decide the course of action that has to be taken after completion of investigation.

39. For a period of three months, the proceedings in PRC No.7 of 1997 on the file of the Judicial Magistrate, Mettur shall be deferred and the CBCID shall take up the matter, continue the investigation afresh, if necessary file a fresh information report and proceed independently. The new investigating agency is at liberty to decide the course of action. Such investigation and course of action shall be completed by the CBCID within three months from the date of communication of this order.

40. The writ petition is allowed. No costs. WMP No.28144 of 1997 is dismissed.

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