

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

W.P.No.5027 of 2022

ORDER:

This writ petition is filed questioning the action of the respondents in not tracing the accused, who caused the accident and the death of the petitioner's husband in a fatal road accident.

According to the learned counsel for the petitioner, Crime No.268 of 2017 is registered after the death of petitioner's husband was noticed. The case was registered under 174 Cr.P.C and altered to 304-A IPC after passage of time. The alteration was filed in the Court of VII Additional First Class Magistrate, Rajamahendravaram on 19.12.2017. Thereafter, the investigation did not progress and as per the petitioner's counsel, Police did not take any steps to trace the real offender. Surprisingly, the section of law was again reverted back from the 304-A to 174 Cr.P.C. Ultimately, on 07.02.2022 respondent No.5 served a notice on the complainant-writ petitioner stating that the case is undetectable and to present his objections, if any to the Mandal Executive Magistrate. Learned counsel for the petitioner points out that apart from lack of proper investigation, the issuance of the present memo asking the petitioner to submit his objections to the Mandal Executive Magistrate is totally opposed to law. He relies upon the case law including judgment of Madras High Court in ***Manohari v. The District Superintendent of Police and others***¹, wherein the learned single Judge gave directions as to how the investigation has to be commenced and completed from the date of registration of the FIR till the final report is filed. In that case,

¹ 2018-2-LW(Crl)522

learned single Judge clearly held that the closure or final report should only be filed before the Jurisdictional Magistrate and not before the Executive Magistrate. Therefore, learned counsel submits that there is a grave violation of law right from the beginning till the end.

Learned Government Pleader for Home appears and argues the matter on the basis of his written instructions. The copy of the written instructions are on file. According to the instructions, after coming to conclusion that there is no incriminating material to show that the death of the petitioner's husband by homicide, they decided the case is “undetectable”. He requested his Superior Officer to give permission to close the case as undetectable and accordingly, permission was granted. However, as per the instructions, the final report was filed before the Mandal Executive Magistrate, Rajamahendravaram. The copy of the same is also enclosed to the instructions. Thereupon a notice was issued to the complainant to file his objections, if any, before the Mandal Executive Magistrate.

This Court at this stage is of the opinion that there is a patent error which has committed in this case. A final report or a closure report in the opinion of this Court should only be filed before the Jurisdictional Magistrate and not before the Executive Magistrate. The law is very clear on this aspect. The Executive Magistrate’s powers are extremely limited and do not extend to deciding the issues that may arise in case like this. Only the Jurisdictional Magistrate should go into the issues raised and decide the matter. This is the reason why notice is issued to the petitioner in case of closure to enable them to file protest petition. Thereafter, the Jurisdictional Magistrate shall decide the matter in accordance with law. In view of the clear legal position and also in view of the judgment relied upon

by the learned counsel for the petitioner, this Court is of the opinion that filing of the closure report immediately before the VII Additional Junior First Class Magistrate, Rajamahendravaram. On such report being filed, the VII Additional Judicial First Class, Magistrate, Rajamahendravaram shall issue the notice as warranted by law to the petitioner who can raise her objections, if any. The same will then be decided in accordance with law. The entire action should be completed within a period of two months from the date of receipt of a copy of this order. Time limits are fixed in view of the grievance of the petitioner that proper investigation is not done in a case of the year 2017. No opinion is expressed on the merits of the case.

With these observations, the writ petition is disposed of. No order as to costs.

As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date : 12.04.2022
KLP