

(2006) 12 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 46514 of 2006 and M.P. No. 1 of 2006

A. Nagarajan

APPELLANT

Vs

The Inspector of Police and S. Dayalan

RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 190, 482

Citation : (2007) WritLR 471

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : Vijayanarayanan for M. Md. Ibrahim Ali, for the Appellant; P. Subramanian, Government Advocate, for the Respondent

Judgement

K. Suguna, J.—This writ petition has been filed for issue of Writ of Mandamus directing the first respondent herein to make expeditious enquiry into the complaint made by the petitioner dated 13.11.2006 and acknowledged by the first respondent in his endorsement No. 502/2006 dated 13.11.2006 and take appropriate action in accordance with law and further restore the statusquo ante as on 12.11.2006 by permitting the petitioner to reside on the said land and by giving necessary protection to the petitioner.

2. According to the learned Senior Counsel appearing on behalf of the petitioner, the petitioner was forcibly dispossessed from a small hut wherein the petitioner was residing by the rowdy element engaged by the second respondent. Hence, the petitioner has lodged a complaint before the first respondent on 13.11.2006 and the same was also acknowledged by the first respondent. In spite of it, no appropriate action has been taken in accordance with law. Hence, the petitioner has filed the above said writ petition.

3. According to the learned Government Advocate appearing for the first respondent, since the relief sought for is for issue of writ of mandamus directing the first respondent to take appropriate action on the complaint made by the

petitioner on 13.11.2006, the appropriate forum is not under Article 226 of the Constitution of India but u/s 482 of Cr.P.C. But the learned Senior counsel appearing on behalf of the petitioner relied on the judgments of the Supreme Court reported in Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others, wherein it is held as follows:

25. It is no doubt true that in a criminal matter also the High court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognisance u/s 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognisance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the high court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution against a judicial officer.

A.I.R. 1992 Supreme Court 604 (State of Haryana v. Bhajan Lal) wherein it is held as follows

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

T.T. Antony Vs. State of Kerala and Others, "wherein it is held as follows:

25. Where the police transgresses its statutory power of investigation the High Court u/s 482 Cr.P.C. or Articles 226/227 of the Constitution and this Court in an appropriate case can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice.

4. Basing on these decisions, according to the learned Senior counsel, the relief sought for by the petitioner, to meet the ends of justice, can be dealt with under Article 226 of the Constitution of India.

5. In view of the decision of the Apex Court in the above said judgments, the first respondent is directed to take appropriate action in accordance with law on the complaint made by the petitioner dated 13.11.2006 forthwith.

6. The writ petition is disposed of accordingly. No costs. Consequently, connected M.P. No. 1/2006 is closed.