

(1995) 02 MAD CK 0053
In the Madras High Court
Case No : Writ Petition No. 14949 of 1992

A. Nallasivan

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Arms Act, 1959 — Section 35

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 154(3), 156, 160

Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (1995) CriLJ 2754

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Judgement

1. This writ petition by a RAJYA SABHA MEMBER and Secretary of the Tamil Nadu State Committee of the Communist Party of India

(Marxist), filed as a public interest litigation, is against respondents 1 and 2, who are State of Tamil Nadu, represented by two different

Secretaries, 3rd respondent, who is the District Forest Officer, Harur Division, Dharmapuri District, 4th respondent, who is Revenue Divisional

Officer, Dharmapuri District and the 5th respondent, who is the Deputy Superintendent of Police, Harur. It prays for a Mandamus to direct the

respondents to hold an enquiry into the happenings, commencing from 20-6-1992 and the consequent suffering undergone by the Villagers of

Vachathi, a small Tribal Village in the abovesaid Harur Taluk. It also prays that upon considering the abovesaid enquiry report, for taking

appropriate penal action against the delinquent personnel and for compensating the victims. It also prays for an enquiry being held on the wider

question of smuggling in sandal wood in the abovesaid area to eliminate the nexus between the culprits, politicians and officials of the

administration. This public interest litigation is launched on the footing that the abovesaid villagers, on their own, are in no position to pursue their grievances.

2. The allegations in the petitioner's affidavit dated 20-8-1992 in support of the writ petition may be summarised as follows :- The people of

Vachathi had been victims of brutal attacks by the Forest and Police personnel, for about three days since 20-6-1992. The village has become

totally deserted and the immediate requirement is to enable the inhabitants to come back and settle in the village. The village has about 200 small

houses and the people are engaged in agriculture, poultry, bee-keeping and cattle rearing. On 17-7-1992, the petitioner came to know through P.

Shanmugam, the Secretary of the Tamilnadu Tribals Association, who had visited Vachathi on 14-7-1992, about the abovesaid attack and the fact

that 200 men and women had been arrested and remanded to judicial custody. After gathering all details, the petitioner wrote a letter to the Chief

Minister of Tamil Nadu on 18-7-1992, demanding judicial enquiry into the incident of violence on 20-6-1992 at Vachathi and demanding action

against the Officials, who had committed offences of looting the houses and raping women and also demanding compensation for the loss, suffered

by the said villagers. The abovesaid Shanmugam also sent similar representation to the Chief Minister. But, there was no reply to either of the

representations. The abovesaid villagers also represented to the District Collector and Tahsildar of Harur on 14-7-1992. The first official response

from the State Government was the statement by the Minister of Forests on 21-7-1992, in which he defended the officials, saying that they had

acted to curb smuggling activity by the abovesaid villagers. The petitioner along with other leaders of his party visited Vachathi on 31-7-1992,

which is 13 kilometres from Harur at the foot hills of Sitheri Range, which is considered to be rich in sandal wood. Then, the houses therein appear

to have suffered great damages. Food grains were also strewn around with broken pieces of mud vessels and roof tiles, etc. Ration Cards, School

Certificates and pattas were torn and were found scattered all over. The terror let loose on 20-6-1992 had put the entire population on the run,

seeking shelter in nearby forest. The facts gathered by the petitioner's team, after personal investigation with some of the villagers, are as follows :

About 45 Forest Officials headed by Singaravelu Assistant Conservator of Forests and Ganesan, Forest Ranger, along with Foresters and others

reached Vachathi in the morning of 20-6-1992. They had found sandalwood buried in the dry river bed near Vachathi. They called a villager,

Perumal, who was working in his field nearby and asked him to tell them to whom the sandalwood belonged. When Perumal pleaded ignorance,

the Forest personnel beat him up. On hearing about this incident, the villagers gathered and accosted the forest officials. An altercation led to a

clash in which Selvaraj, a Forester was injured. The villagers gave him first aid and arranged for taking him to the nearby hospital. Around 2.00

p.m. on the same day, about 600 Forest and Police personnel, including about 80 women constables, along with few officials, including

respondents 3 to 5 descended on the village, rounded up and attacked the villagers, more with a view to avenge the injuries suffered by Selvaraj.

The houses were ransacked by the personnel of respondents 3 and 5 and power connections were cut off. Some young women were picked out

and taken to the dry river bed on the pretext of unearthing the sandalwood, where they were sexually assaulted. Some of them were raped by the

forest personnel. Later in the evening on 20-6-1992, 95 men, 94 women along with 28 children were arrested by the forest and police officials and

were taken to 3rd respondent's Office. All the women were illegally detained at the Forest Office, Harur on the night of 20-6-1992. Some young

women were taken inside the room, stripped, molested and raped. The women were also forced to strip each other and beat each other with

brooms. They suffered the gravest humiliation, when the Oor Gounder, the most respected person of the village, was forced to undress the

women, who in turn were forced to beat him with brooms. The women were subjected to sexual harassment by men of respondents 3 and 5. On

21-6-1992, the abovesaid 95 men and 94 women and 28 children were remanded to judicial custody at the Sub Jail and Central Jail in Salem.

The Forest and Police personnel in the next three days looted away everything including goats and chicken of the villagers. The wells in the village

have been contaminated with goat skins and diesel. There is no drinking water available in the village. On 31-7-1992, the Tribals were still unable

to come back to the village, fearing another attack, and also because they had no means of cooking, no drinking water, no change of clothing and

no shelter. Though the 4th respondent was asked by the District Collector to conduct an enquiry into the incident, he visited the village for the first time only on 26-7-1992. The petitioner learnt from Annamalai, a former Member of the Legislative Assembly of Tamil Nadu from Harur constituency, who was present along with the 4th respondent during his visit to Vachathi on 26-7-1992 that the 4th respondent, after going round the village, assured the Tribals that justice would be done and he would provide interim measures to enable the villagers to come back and live in the village. But, the villagers were unable to come back till date. The abovesaid persons, who were arrested and remanded to judicial custody, languished jails for more than a month, after subjected to a brutal attack by the personnel of respondents 3 and 5. Indirani, as young women, who was in remand, had delivered a child in the Sub Jail, Salem. Most of them were let out on bail after more than five weeks in remand. On 28-7-1992, the said villagers sent a representation to the Honourable Chief Justice of this Court, seeking justice. The findings of the team led by the abovesaid Shanmugam and of a team of the Members of People Union of Civil Liberties, Tamil Nadu Unit, which visited the village from 25-7-1992 to 30-7-1992, have confirmed the allegations made by the villagers. The issue was raised by the petitioner in the RAJYA SABHA on 5-8-1992. A report has been submitted by Mrs. Bamathy, Director, SC & ST Commission, Tamil Nadu to the Central Government on the incidents that occurred in Vachathi on 20-6-1992 and subsequently. Smuggling of sandalwood had been going on unchecked with the connivance of officials of the respondents and powerful politicians. People in and around Sitheri Range had given several representations to the authorities. But, no action had been taken to nab the real culprits. Shifting the blame for smuggling on the poor villiagers is designed to shield the culprits. According to the respondents 55 tonnes of sandalwood were unearthed in the abovesaid village, following the raid on 20-6-1992. It cannot be believed that so much of sandalwood could be felled, brought down the hills in a ready-to-sell condition and buried in the village without the knowledge of the forest officials. On 11-8-1992, the 4th respondent had tried to get the signatures of three girls (who had been victims of rape) on blank papers. They had however refused to sign the papers. 189 men and women have been charged with offences under Secs. 147, 148, 323, 324 and 307,

I.P.C., in Crime No. 970 of 1992, registered in Harur Police Station. They have also been charged with offences under S. 21(d), (e), (f), 41 and

51 of the Tamil Nadu Forest Act. On 30-7-1992, the abovesaid Shanmugam presented a petition to the Honourable Judge in charge of public

interest litigation cell of this Court seeking justice. A video recording of the destruction of the village and of the statements given by some victims

are available to the petitioner. Photographs taken on 1-8-1992 are also available and some of the said photographs have been filed. After all those

who were remanded had come out on bail, 18 women have given a complaint to the Sub-Inspector of Police, Harur Police Station on 22-8-1992.

They have complained that they were raped by the Forest Officials in Harur Forest Office and that their houses have been ransacked and looted.

Their complaint has been registered, but no action has been taken. The Tribals who were on conditional bail suffered great humiliations at the

hands of police and forest officials, when they signed their registers every day at their offices. W.P. No. 670 of 1992 was filed before the Supreme

Court. On 8-9-1992, the Supreme Court was pleased to pass an order, transferring the said writ petition to this Court, stating that the said writ

petition should be heard as early as possible. The villagers have been deprived of their food, shelter and clothing and they have to take shelter

in the nearby forest as fugitive from terror unleashed. The plea of curbing smuggling in sandalwood cannot provide licence for indiscriminate assault

on the person and means of livelihood of the entire village. Bus service and basic amenities such as drinking water, electric power, etc., have not

been restored. Immediate steps must be taken to mitigate the hardship and also to take long term measures to rehabilitate the inhabitants of the

village and bring to book the culprits.

3. As against the allegations in the affidavit in support of the writ petition, the respondents have filed counter affidavit dt. 12-1-1993, sworn to by

R. Baskaran, Deputy Secretary to Government, Environment and Forest Department, Madras-9. The allegations in the said counter affidavit are

briefly as follows :- Vachathi village consists of 160 houses and the total population will be about 750, both male and female. The total number of

females in the village are about 188, all being tribal people. There was a specific information about large scale illicit cutting and transporting of

sandalwood trees from certain reserve forest in Harur and Shervaroys North Ranges with the help of notorious persons of Vachathi and other villages. The said villages were also said to be aiding smuggling of sandalwood to Madras, Kerala and Karnataka. As early as 30-12-1991, a raid was organised on a small scale to detect such sandlwood smuggling activities in and around Vachathi village. There was stiff resistance from the said villagers. The raid party was attacked by the said villagers. In April, 1992, a similar raid was organised by the Shervaroys North Range. Again the Vachathi villagers resorted to attacking the forest staff, preventing the discharge of their legitimate Government duties. This act of the villagers showed that they had criminal intention and they had their lure to earn money through sandalwood smuggling, since information was available about large scale illegal possession of huge quantity of sandalwood concealed in and around Vachathi village, a raid was organised by the District Forest Officer by consulting the Collector and Superintendent of Police, Dharmapuri. In futherance of the decision taken, the combing party led by the Assistant Conservator of Forests, commenced its combing operations on 20-6-1992. It gathered information about the huge quantity of sandalwood buried in the Vachathi river bed and as the party was engaged in collecting the buried sandalwood, the villagers of Vachathi numbering about 300 came fully armed with deadly weapons such as guns, knives, spear sticks, etc., and started attacking the forest staff, without any provocation. In that process, Selvaraj, the forester received head injuries along with other forest staff. The villagers took all the staff into their village and held as hostage and threatened them of deadly consequences. It is denied by the respondents that the people of Vachathi had been victims of brutal attack by forest and police personnel. When the District Forest Officer, Harur, received the message of attack of the party led by the Assistant Conservator of Forests, he rushed to the scene with full strength of forest staff, numbering about 150 and of police force of 122. The revenue staff numbering six raided the area to seize the buried sandalwood from the lands of the villagers. In the operation raid there were women constables present. During such raids on 21-6-1992 and 22-6-1992, 181 persons, comprising of 84 men and 97 women were arrested and also 62.7 tonnes of sandalwood seized. Arrests were made under S. 21(a) and (e) of the Tamil Nadu Forest Act, 1882 and Rules 3 and 7 of the

Sandalwood Possession Rules, 1970. The wood was seized under the Sandalwood Possession Rules. In view of the attack on the abovesaid

Selvaraj, T. Singavarelu, The Assistant Conservator of Forests gave a complaint to the Inspector of Police, Harur at about 4.15 p.m. on 20-6-

1992 and it was registered in Crime No. 970 of 1992 under Ss. 147, 148, 332, 323, 324, 307 and 506(ii), Indian Penal Code read with S. 35(i)

(a) of the Arms Act. As per the complaint, Perumal and about 500 persons were sited as accused in Crime No. 970 of 1992 on the file of the

Inspector of Police, Harur Police Station. The above persons were arrested and remanded before the Judicial Magistrate, Harur between 21-6-

1992 and 23-6-1992 and all of them were subsequently released on conditional bail. All the accused were treated in proper manner and

remanded before the Judicial Magistrate between 21-6-1992 and 23-6-1992. Women police also accompanied the accused. In support of the

version of the forest and police officials, Bharathi Elaignar Mandram, and Nehru Yuvakendra had described the report of the alleged rape and

illtreatment of the Vachathi villagers, as false. During the first week of Aug. 1992, certain false news items started appearing in some local

newspapers alleging that there had been rape of 18 women accused in Vachathi village. Based on these reports, the petitioner has made the

allegation that 18 women have been so raped. The allegation is totally false. The fact that this allegation is made after a lapse of 45 days, clearly

shows that it is only an after thought. Neither during the time of arrest of women accused, nor at the time of remand by the Judicial Magistrate, they

have complained about any sexual assault or bodily attack. The District Collector ordered enquiry by the Revenue Divisional Officer, Dharmapuri

and who in his report dt. 10-8-1992, has stated that on 20-6-1992, when the forest officials raided the village, only old women and old men were

present in the village and all the other persons fled away from the scene of occurrence. The report also discloses that in the several raids

undertaken, sandalwood weighing 3,400 kilograms were seized. The Revenue Divisional Officer had inspected the said village on 26-7-1992 and

found that 49 Mangalore tiled houses were damaged and the remaining 80 tiled houses and 88 thatched huts were intact. The said report also says

that the abovesaid villagers were indulging in cutting sandalwood during nights and that is why stringent steps were taken by the forest officials,

which resulted in enmity between the forest officials and the said villagers. The said report says that during the raid 13 women police constables were also there. The report also says that the total weight of the sandal wood seized is about 57,610.7 kilo grams. Apart from the abovesaid Selvaraj, who sustained head injuries and now convalescing, there were 44 other persons who were attacked by the villagers and 21 of them were treated as out - patients and the rest as in - patients. The averment that the villagers gave first aid, is totally false. Perumal was not attacked by the forest personnel. The houses were not ransacked, nor the women were sexually assaulted. The women were not illegally detained in the forest office, nor were they stripped, molested or raped. The Collector of Dharmapuri visited the spot to ascertain the facts regarding the basic amenities and conditions of life prevailing in Vachathi village. This Court, by order dt. 4-11-1992, had directed the District Collector to visit the village and see problem of the villagers with regard to the basic necessities. This Court also called another report from Mrs. Bamathi, Director, Scheduled Caste and Scheduled Tribes Commission, Tamil Nadu with regard to the prevailing condition of the village and the problems of the local villagers. As per the order of this Court, the District Collector visited the village on 12-11-1992. The report of the Collector also stated that all the basic amenities like water supply, electricity supply, road and bus facility and supply of essential commodities through fair price shops are maintained. The District Collector had also passed orders, so that the District Supply Officer, Dharmapuri camped in the village on 13-11-1992 along with other officers and distributed new family cards, for the persons who have lost the ration cards. Orders were also issued for the issue of pattas for 28 persons and the Tahsildar distributed the same on 13-11-1992. There is one elementary school maintained by Adi Dravidar Welfare Department, where free boarding and lodging is provided to the children of the village. There is one child welfare centre for children maintained by the Social Welfare Department in this village and 60 children are fed thereby. It is also proposed to sanction 14 loans under Intergrated Rural Development Programme to the tune of Rs. 87,500/- with 50% subsidy. The allegation that smuggling activities have been going on unchecked is denied. The petitioner had chosen to defend the actual smugglers, while shifting the blame to the police and forest officials, Since there are no

damages alleged in the affidavit and in view of the report of the Collector, there is no need for payment of money compensation. As on date, the village enjoys all the basic amenities.

4. In the light of the above referred to rival averments in the affidavit, initially I heard oral arguments by learned counsel for the petitioner as well as

the learned Additional Government Pleader, representing the respondents. Learned counsel for the petitioner also relied on a number of decisions.

Finally I had also directed them to file their written submissions. Accordingly they also filed their written submissions. There is no necessity for me

to set out the said written submission as part of this judgment since those submission are in writing, forming part of the records. Therefore, I may

straightway begin discussing the said submissions in the light of the abovesaid averments in the affidvits, the abovesaid reports of Mrs. Bamathi, of

the Revenue Divisional Officer and the Collector, which were referred to above and in the light of the decisions cited by learned counsel for the

petitioner.

5. First of all, I may State that though generally disputed facts cannot be investigated in proceedings under Art. 226 of the Constitution of India, it

is only a rule of discretion and not of exclusion of jurisdiction and the Court is not, if a breach of a fundamental right has been prima facie

established, incompetent to decide issue of fact, which can be determined from the materials on record.

6. With the above preface, I may begin my discussion. After going through the affidavit and counter affidavit filed in this writ petition, I find that the

respondents have no doubt denied many of the factual allegations in the affidavit in support of the writ petition. That is why, probably in the written

submission of the petitioner even at the outset, it is mentioned that it is obvious from the counter that the deponent has denied the petitioner's

averments only for the sake of denial, No doubt, the above referred to two reports that have been filed by the abovesaid Mrs. Bamathi and the

above referred to reports of the Revenue Divisional Officer and Collector may give some guidance for me to come to some conclusions even on

disputed questions of facts.

7. In so far as the allged sexual assaults and rapes committed by forest and police officials, the counter affidavit no doubt states that only based on

certain false news items appearing in some local newspapers, the allegation was made by the petitioner that there had been rape of 18 women

accused in Vachathi village, but that the allegation is totally false and that the fact this allegation is made after a lapse of 45 days, clearly shows that

it is only an after thought and that neither during the time of arrest of women accused, nor at the time of remand by the Judicial Magistrate, they

have complained any sexual assault. Further, the allegation in the counter affidavit is that the women were not sexually assaulted, nor were they

illegally detained in the forest office, nor stripped, molested or raped.

8. But the allegations that only after 45 days, the abovesaid complaint has been made may not be correct, because even from the abovesaid report

of the Revenue Divisional Officer dt. 10-8-1992, it can be gathered that such a complaint has been made even after 15 days. Then, generally,

regarding the abovesaid averments in the counter, it must be stated that in paragraph 23 of the affidavit in support of the writ petitioner itself, it has

been averred that all those who were remanded had come out on bail and 18 women had given a complaint to the Sub Inspector of Police, Harur

Police Station on 22-8-1992 and that they have complained that they were raped by the officials in the Harur Forest Office. Further, in the said

affidavit it is also averred in paragraph 19 thereof as follows :-

On 11-8-1992, the 4th respondent (Revenue Divisional Officer) had tried to get the signatures of three girls (who had been victims of rape) on

blank papers. They had, however, refused to sign the papers"". There is no denial to this allegations in the counter affidavit. Further, though the

counter affidavit says in paragraph 9 that Bharathi Elaignar Mandram and Nehru Yuvakendra had described the report of the alleged rape and

illtreatment of Vachathi villagers in Dharmapuri District as fabricated and false, no scrap of paper has been filed by the respondents, showing any

such opinion of the abovesaid Mandram and Yuvakendra.

9. Then, before trying to see what has happened to the abovesaid complaint by 18 women, I would also like to point out one of the opinions in the

abovesaid report dt. 19-8-1992 of Mrs. Bamathi, regarding this allegations of rape :-

As also only few women were available in the village for enquiries and others are still in the jail and as the statements made by villagers and

officials are quite contradictory, it is felt that a thorough probe should be ordered to find out the fact".

She also points out in her report that one woman constable who accompanied the team, which made the raid on 20-6-1992 at 2 p.m. by name

Kannammal, has, inter alia, informed her that "the forest officials asked some young boys and girls to accompany them to the forest to dig out the

sandalwood and 30 girls and 10 boys went with them, but women constables had not accompanied them".

Further, the said Kannammal, reported that later "at about 8.00 p.m., on 20-6-1992, all of them were taken to Harur and the Women constables

were instructed to report at Harur Police Station at 5.00 p.m.

Likewise, the version of another woman constable Vijaya is almost in a similar vein. She is reported to have stated that the forest officials took

some 5 boys and 15 girls to lift sandalwood, but no women police constables accompanied them, that at or about 8.00 p.m. they were brought to

Harur Forest Office, that the District Forest Officer and the Deputy Superintendent of Police, Harur were present in the office, then and that the

women police constables left the place around 10.00 p.m. The abovesaid versions given by the two women police constables were specifically

pointed out by learned counsel for the petitioner.

10. Now, coming to the abovesaid complaint dt. 22-8-1992, made by 18 women, alleging rape, etc. I find from page 13 of the typed set, filed by

the respondents, a letter dt. 12-3-1993 from the Deputy Superintendent of police, Harur to the District Forest Officer, Harur. After stating that no

petition or complaint was received during the incident period, it is stated therein, that only one complaint petition was received at Harur Police

Station on 22-8-1992 at 21.30 hours by one Jaya and 17 others and that in that complaint it was alleged that on 20-6-1992, the forest officials

with the assistance of the police, ransacked the house, household articles and cattles at Vachathi and also molested and raped the women of

Vachathi at Forest Office, Harur. Then regarding the question how the said complaint was disposed of, the said letter says as follows :

As the petition contained allegations against police officials including his higher officials, the S.I. Harur advised and directed the petitioner to seek

remedy through an Executive Magistrate.

11. Learned counsel for the petitioner points out that there was no justification at all for the abovesaid Sub-Inspector of Police, Harur in not having registered the case on the information received, of the abovesaid cognisable offences, pursuant to S. 154 of the C.P.C., and in not having taken all necessary action thereon as per law and that the abovesaid statement in the abovesaid letter dt. 12-3-1993 by a high official of the police department, viz., the Deputy Superintendent of Police, despite the inaction of the said Sub-Inspector of Police, is totally unwarranted and very much surprising. She also argues that the police and other officials cannot in the guise of discharge of official function, commit crimes and claim any protection against investigation and prosecution. In this context she also relies on certain observations in Bakhshish Singh Brar Vs. Gurmej Kaur and Another, and State of Punjab Vs. Raj Kumar, .

11-.A. As against these submissions of learned counsel for the petitioner, learned Additional Government Pleader submits that under Order 145 of the Police Standing Orders, a Sub-Inspector of Police cannot investigate the alleged offences in question and he has only to direct the complainants to seek remedy through the Executive Magistrate and that the Revenue Divisional Officer did enquire and file report, as stated above.

12. I have considered these rival submissions. S. 154 of the Criminal P.C. reads as follows :-

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant and every such information whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in forms as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such

information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any

police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the

police station in relation to that offence.

According to the abovesaid letter dt. 12-3-1993 in the abovesaid complaint by 18 women it is alleged. ""On 20-6-1992 Forest Officials and men

with the assistance of Police ransacked the house, house-hold articles, Cattles at Vachathy and also molested and raped the Women of Vachathy

at Forest Office, Harur."" Thus, the complaint is about the commission of cognizable offences. If so, even when the information is against the police

officials, including the said Sub-Inspector's own higher officials it is the duty of the officer in charge of the police station, viz., the abovesaid Sub-

Inspector of Police, Harur, to register the case, in other words he should have reduced the abovesaid information to writing read it over to the

informant, get their signatures to it and enter the substances thereof in the A Diary kept in the police station and also gave the information so

recorded free of cost to the informants. No Police Standing Order prevents him from doing so. Police Standing Order 145 only deals with

investigation and not with registering the case, as stated above. The said Standing Order 145 says, dealing with cases in the mofussil, in Clause (1)

(b) therein that when information of the commission of any such offence is received by a Police Officer below the rank of Assistant or Deputy

Superintendent of Police, he should not make any regular investigation himself but should at once report the case to the Revenue Divisional Officer

and the Assistant or Deputy Superintendent of Police to whom he is subordinate and send a copy of such report to the Superintendent of Police

direct.

12-A. Further the Superme Court has also held in The State of Andhra Pradesh Vs. N. Venugopal and Others, , that this police Standing Order

No. 145 is nothing more than administrative instructions by the Government and has no force of law. Following the said Supreme Court decision,

this Court (Arunachalam, J.) has also in George, N. v. Krishnaswami, R., 1990 Mad LW (Cri) 525, that non compliance of the said Standing

Order 145 ""cannot cast any illegality"". While so, what the Sub-Inspector of

Police, Harur has done in the above case is totally unjustified and it is surprising indeed that even the abovesaid Deputy Superintendent of Police, the higher officials impliedly approved the said action of the Sub-Inspector and has written the abovesaid letter dt. 12-3-1993 to the District Forest Officer, Harur. It is significant that in his said letter, the subject matter is stated as follows :-

Sub : Writ petition No. 14949/92 High Court, Madras filed by Thiru A. Nallasivam M.P. Particulars of petitions received by Police from the Public of Vachathy. Particulars furnished.

Thus, it appears that particulars were called for from him in relation to the present writ petition, and, yet without necessary seriousness, he purports

to even impliedly approve the action of the Sub-Inspector of Police. It is not clear on what basis, the Sub-Inspector of Police, Harur thought it fit

to direct the informants to seek remedy through an Executive Magistrate. The said direction is certainly unwarranted. No doubt, when the

abovesaid Sub-Inspector of Police did not entertain the complaint, the abovesaid 18 women complainants could have resorted to the course

referred to in S. 154(3) of the Criminal P.C., which says that any person aggrieved by a refusal on the part of an Officer in charge of a police

station to record the information referred to in Sub-section (1) may send the substance of such information in writing and by post to the

Superintendent of Police concerned. But simply because they have not done so, the duty cast on the officer in charge of a police station under S.

154(1) is in no way relieved.

13. In the light of the above features, the abovesaid report of the Revenue Divisional Officer dt. 10-8-1992 stating that the alleged rape incident

cannot be believed, cannot be said to be an unbiased report, particularly when the said Revenue Divisional Officer has not even stated that he

interviewed any in the village on the date of his visit to the village on 26-7-1992 regarding what happened to the villagers on 20-6-1992 and on the

subsequent date. It also appears from his report that he paid the abovesaid visit to the village pursuant to the letter of 29-6-1992 of the Collector

of the district. But, it is not known why even though the Collector's letter to him is on 29-6-1992, it is only on 26-7-1992 that is about a month

later, he visited the village. Further, even when he went there for submitting an

objective and independent report, he ought to have interviewed at least some of the villagers, selecting at random and also some of the Government officials and servants who went there for raid and gathered the version of all the person concerned as to what had happened. But, he has not done so. He simply says that he came to know that such thing happened during the course of the raid. How actually he came to know so has not been stated at all in his report. Further, his version that the villagers themselves damaged their houses, etc. in order to put the blame on the forest and police officials is highly difficult to believe.

14. All these features will easily lead to the conclusion that the police is trying to burke or evade investigation of the alleged offences set out in the abovesaid complaint of 18 women. This is very much to be condemned. Taking all these into consideration, I feel that this is a fit case, where Central Bureau of Investigation should tep in and do investigation in relation to the abovesaid complaint by 18 women and do the needful in accordance with law.

15. I also find that in the judgment dt 18-5-1993 in Syed Kaleenullah v. The Appraising Officer, Special Investigation Branch, Customs House, Madras - 1 Crl. O.P. No. 5540 of 1993, in a similar situation this Court directed investigation by the Central Bureau of Investigation and the relevant observation therein is as follows :-

To my mind, it appears that an effective and impartial investigation is totally necessary. No useful purpose will be served by allowing the customs officials to investigate the matter any further. Therefore, I am firmly of the view that further investigation must be conducted by the CBI quickly and effectively, to find out all those involved in this crime of very great magnitude and place them before the Judicial authority for trial. In State of West Bengal and Others Vs. Sampat Lal and Others, , the Supreme Court has held that when a direction is issued by the Court to the CBI to conduct investigation in the crime, sanction u/s 6 of the Delhi Special Police Establishment Act was not necessary.

Likewise in Inder Singh v. State of Punjab, , the Supreme Court has ordered investigation by directing, the Central Bureau of Investigation, when the allegation was abduction of seven persons ranging in age from 85 to 14 years by a senior police officer and some policemen, using official

machinery for the purpose and when the Court found that the State police was acting leisurely and in irresponsible manner.

16. Now, I may also deal with the abovesaid two Supreme Court decisions cited by learned counsel for the petitioner Bakhshish Singh Brar Vs.

Gurmej Kaur and Another, , was regarding the applicability of S. 197 of the Criminal P.C., to the facts of that case. The relevant portion of S. 197

of the Criminal P.C. says that where a public servant of the State Government is accused of any offence alleged to have been committed while

acting or purporting to act in the discharge of his official duty no Court shall take cognizance of such offence except with the previous sanction of

the State Government. On going through the said S. 197, I find that the said (Section 197) has no application to the present case, since it only says

that no Court shall take cognizance except with the previous sanction mentioned therein. In other words, S. 197 is directed only against the Court

taking cognizance, and not against a police officer investigating a cognizable offence. Under Ss. 154 and 156 of the Criminal P.C. the police have a

statutory right to investigate a cognizable offence without the sanction of the Government. (Vide AIR 1945 18 (Privy Council) . Thus Bakhshish

Singh Brar Vs. Gurmej Kaur and Another, may not strictly apply to the present case. Further, an act of rape by police or other officers will be

unconnected : Jagannath Sadangi Vs. Smt. Sambari Sourani and Another, with the discharge of their official duties. (Vide Jagannath Sadangi v.

Sambari Sourani, 1989 Cri LJ 624. So also S. 197 will have no application to the present case.

17. Then, in the other decision viz. State of Punjab Vs. Raj Kumar, , no doubt it was indicated that there was no different procedure for the

investigation and prosecution of offence committed by police officers in connection with their relations with the public. Para 17 is incomplete.

18. Then regarding the complaint of withdrawal of many basic amenities to the abovesaid village, I find the following allegations in the counter

affidavit.

..... as per the order of this Honourable Court, the District Collector visited Vachathi village in Harur Taluk on 12-11-1992. The report of the

Collector had also stated that all the basic amenities like water supply, electricity supply, road and bus facility and supply of essential commodities

through fair rice shop are maintained. The District Collector had also passed orders so that the District Supply Officer, Dharmapuri camped in the

village on 13-11-1992 along with other officers and distributed new family cards to 26 eligible persons on 13-11-1992. Further for the persons

who have lost the ration cards, new cards have been issued for the supply of essential commodities.

It is further submitted that orders were passed for 28 persons for the issue of patta and the Tahsildar, Harur prepared copies and distributed the

same on 13-11-1992. There is one residential elementary school with the strength of 107 students maintained by Adi Dravidar Welfare

Department, In Vachathi village, where free boarding and lodging is provided to the children of the village without any problem. There is one child

welfare centre for children between the age group two to four (2 to 4) maintained by the School Welfare Department in this village and 60 children

are fed in this village. It is proposed to sanction 14 loans under Integrated Rural Development Programme to the tune of Rs. 87,500/- with 50%

subsidy as on date the village enjoys all basic amenities and hence there can be no allegation that anything is lacking in this circumstances.

These allegations have not been controverted by the petitioner by filing any reply affidavit. So, nothing further need to be done in this regard.

19. Then, regarding the abovesaid damage caused to houses, articles, cattle, etc of the villagers of Vachathi during the course of the abovesaid

raid, the second report dt. 11-12-1992 of the abovesaid Mrs. Bamathi may be seen. The relevant portion thereof is as follows :-

"Damages :

Houses :

During my last visit, all the pucca house privately owned and almost all the thatched houses and a majority of the Government - constructed houses

were severely damaged. But, this time, the broken tiles have been replaced and thatched houses also were reconstructed. A report relating to

damage caused to the pucca houses submitted by Block Development Officer and Panchayat Engineer to the Revenue Divisional Officer has been

enclosed as Annexure-III. Few more cases were listed during my visit (Annexure-IV). A. uniform scale of compensation could be similarly

worked out to those who have reconstructed their thatched houses.

Damages yet to be assessed :

So far, the District Administration has not assessed damage done to many of the wells, pump-sets and other movable property like cycles, cattle

etc. During my last visit, I had inspected 3 wells which had been rendered unfit for both drinking and irrigation as pump-sets containing oil had

been pushed into the wells. All these 3 wells were inaccessible today because of the intervening lake area. But, villagers reported that they have

now been cleaned at their own costs. However, the pumps are severely damaged and cannot be used. Four other wells have been visited now.

Wells of Shri. Marappan, S/o. Kuppan; Perumal S/o. Mari; Ramasamy S/o. Chinna Mari; and Devan S/o. Saddyan, were visited.

New pump sets have been fitted in 2 of these 4 wells and old ones were kept near the well in a damaged condition. 2 cycles in damaged condition,

taken out of the well, belonging to Perumal were also inspected.

Similarly, damage caused to cattle, which is a major source of grievance amongst majority of the villagers also remain to be assessed. The villagers

informed that the cattle was purchased under loan-cum-subsidy programmes, of Government and, hence, they are now not in a position to make

any repayments to the bank or other lending agencies. This is a genuine problem and the damage wherever done, deserves to be assessed and

compensation worked out with full knowledge and in coordination with the lending institutions"".

20. The abovesaid damage caused is also indicated in the abovesaid complaint of the abovesaid 18 women to the Sub-Inspector of Police, Harur.

Therefore, here again, the Central Bureau of Investigation, pursuant to the said complaint, should investigate and do the needful for prosecuting the

concerned Government servants, if they are responsible for the damage caused. Whatever the Central Bureau of Investigation finds on

investigation, it shall also report to this Court. Then, this Court would consider giving compensation to the victims, whose properties have been

damaged.

21. Next, the written submission of learned counsel for the petitioner also points out that in paragraph 7 of the counter affidavit it is admitted that

181 persons, comprising of 84 men and 97 women were arrested but in paragraph 8 of the counter affidavit, it is stated that 300 persons were

arrested, while Shri Nathan, District Forest Officer, Harur has, in his statement to the abovesaid Bamethi said that 166 women, 30 men and 28 it

children were arrested. It is further submitted that no records have been produced before the Court to justify the arrest of almost half of the

population of the village or as to why they were kept in custody for about 4 to 5 weeks. Further, according to learned counsel for the petitioner the

version regarding the number of persons arrested is kept on changing.

22. But, I find that Mrs. Bamathi, in her report dt. 19-8-1992 only states as follows :-

He (Shri Nathan, District Forest Officer, Harur) told that 90 women, 15 men and 28 children were held on 20-6-1992 night and were kept at the

Range Office for enquiries. 76 women and 15 men were arrested on 21-6-1992 morning and produced before Magistrate, They were remanded

and taken to Salem Central Jail on 21-6-1992 evening.

But, this does not mean that 90 + 76, that is 166 women and 15 + 15, that is 30 men were arrested. Presumably, out of the abovesaid 90 women

and 15 men, 76 women and 15 men were arrested. No doubt, it is submitted that no records have been produced before the Court to justify

arrest. But, it should be noted that there is no reply affidavit to the counter filed by the respondents. Unless there is any specific denial regarding the

arrest made, there is no necessity to produce any records to justify the arrest. Further regarding the abovesaid 300, it must be noted that the

counter only states that 300 persons were cited as accused in Crime 970/92.

23. Nextly it is not correct to say that the arrested persons were kept in unauthorised custody for 4 to 5 weeks. They were only remanded to

custody by the Magistrate's order, even though they might have been let on bail, after five weeks in remand.

24. Then, regarding the illegal detention of certain men and women of the abovesaid village at the office of the District Forest Officer, the

abovesaid report of Bamathi itself says that they were kept at the Range Office for enquiry. In this connection, learned counsel for the petitioner

points out that the proviso to S. 160 of the Criminal P.C. has not been complied with. S. 160 of the Criminal P.C. deals with Police Officers

powers to require attendance of witnesses and the proviso therein says that no male person under the age of 15 years or women shall be required

to attend any place other than the place in which such male person or women reside. In the present case, I also find from the abovesaid Mrs.

Bamathi's report dt. 19-8-1992, as follows :-

The detained persons including 90 women and 28 children were kept in the Forest Ranger's Office, Harur on 20-6-92 night. They were illegally

detained and only on 21-6-92 morning 76 women and 15 men were arrested and remanded"".

To this report, the respondents have not taken exception either in the counter affidavit dt. 12-1-1993 or by any separate objection to the said

report. Taking into account the abovesaid proviso to S. 160 of the Criminal P.C. the abovesaid detention of 90 women and 28 children at the

Forest Ranger's Office, Harur on 20-6-1992, appears to be illegal, offending their fundamental rights. If so, the Officials, responsible for the same

should be punished and the victims should be compensated. In Haladhar Bhumij v. Sub-Inspector of Police (1905) 2 Cri. L.J. 51 also, it was

pointed out that it was improper that the police should take a number of women away from their village to the Police Station on the pretext that

they wished to examine them. In Nandini Satpathy Vs. P.L. Dani and Another, also, the Supreme Court has pointed out, regarding the above and

proviso to S. 160 of the Criminal P.C. thus :-

There is public policy, not complimentary to the police personnel, behind this legislative proscription which keeps juveniles and females from

police company except at the former's safe residence"".

The Court further added that if a police officer acted contrary to the proviso to S. 160(1) of the Criminal P.C. such deviation must be visited with

prompt punishment since policemen may not be a law unto themselves expecting others to obey the law.

25. In this connection, learned counsel for the petitioner also relies on the decision in Joginder Kumar Vs. State of U.P. and others, where the

relevant observations are as follows :

Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants

of the fundamental right to personal liberty and freedom"".

Learned counsel for the petitioner also drew my attention to Bhuvneshwar Singh Vs. Union of India (UOI) and Others, where it has been held that

the High Court, in exercise of its power of judicial review, competent to award compensation for such illegal detentions. Further, she also drew my

attention to Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , where it has also been held thus :-

It may be mentioned straightway that award of compensation in a proceeding under Art. 32 by this court or by the High Court under Art. 226 of

the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of

sovereign immunity does not ""apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction

between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings"".

25-A. Learned counsel also relied on Khedat Mazdoor Chetna Sangath Vs. State of M.P. and others, , where the Supreme Court directed CBI

enquiry in the context of police atrocity by torture and hand-cuffing of members of Association fighting for rights of Tribals. So, according to

learned counsel for the petitioner, CBI enquiry must be ordered in this case also.

26. Further, the final conclusion reached by Mrs. Bamathi in her report dt. 19-8-1992 is as follows :

It may be true that some Vachathi villagers were involved in the sandalwood smuggling, but even they were used by master operators. The

villagers were only a conduit for the smuggling and they were exploited by the powerful operators. The economic status of the village is generally

poor and hence the villagers may not be the real sandalwood traders/brokers. Unless, the master operators are brought to books, there is no point

in punishing the villagers alone for the illegal trade.

27. In the light of all these features, I direct the Central Bureau of Investigation to hold investigation on (1) the complaint given by the abovesaid 18

women of Vachathi village to the Sub Inspector of Police, Harur, referred to in the abovesaid letter dt. 12-3-1993 of the Deputy Superintendent of

Police, Harur to the District Forest Officer, Harur and (2) the abovesaid detention in the forest range office, Harur on 20-6-1992 of the above said

90 women and 28 children of Vachathi village. In such an investigation, the Central Bureau of Investigation has to find out all those involved in the

relevant crimes and place them before the Judicial Authority for trial. The Central

Bureau of Investigation is also directed to submit a report to this court as to what it has done in the matter, within two months from the date of receipt of copy of this order. Post this writ petition on the reopening date after summer vacation.

28. Order accordingly.