
(2005) 09 MAD CK 0120

In the Madras High Court

Case No : Habeas Corpus Petition (MD) No. 56 of 2005

Alagammal

APPELLANT

Vs

Inspector of Police and Others

RESPONDENT

Date of Decision : 09-09-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 419

Citation : (2005) 2 LW(Cri) 916

Hon'ble Judges : S. Sarder Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Prakash for A. Rahul, for the Appellant; K. Chellapandian, Additional P.P., for the Respondent

Final Decision : Dismissed

Judgement

S. Sarder Zackria Hussain, J.—This Habeas Corpus Petition has been filed by the petitioner, who is mother of the detenus Arul Balamurugari, Siva alias Sivarman, to direct the fifth respondent to investigate into illegal detention in police custody, custodial torture of her two sons/ detenus and one Adhisayaraj, who has been kept in Central Prison, Trichirappalli and with respect to illegal seizure of money belonging to her daughter-in-law Kasthuri, to entrust the investigation pending on the file of the first respondent/the Inspector of Police, Devakottal Taluk Police Station, Sivanganga District in Crime No. 26 of 2005 to the fifth respondent/the Joint Director of C.B.I., Chennai,

2. It is stated that Arul Balamurugan and Siva alias Sivaraman, who are sons of the petitioner were doing dry fish and timber transport business at Tuticorn and Arul Balamurugan purchased a trailer lorry bearing Regn. No. TN 69H 3690 in the name of his wife Kasthuri by obtaining a loan for a sum of Rs. 8.60 lakhs from M/s. Sriram Investments and a sum of Rs. 5 lakhs from LIC of India. Her daughter-in-law, Kasthuri is also an assessee under the Income Tax Act. The said vehicle was bought in July 2003 for a total sum of Rs. 14.10 lakhs. The lorry was utilised in the business for transporting various materials including timber from

Tuticorin Harbour to other places. Her sons were paying EMI to the tune of Rs. 31,299 and 5,475/- to M/s. Sriram Investments and LIC of India towards the cost of the said vehicle. Since her sons suffered a loss, they sold the vehicle to a private party for a sum of Rs. 11,60,000/- in November, 2003. Out of which Rs. 6,34,000/- was paid to M/s. Sriram Investments and the balance sum of Rs. 4,15,000/- was in possession of her daughter-in-law Kasthuri and Rs. 4,00,000/- was deposited in her bank account on 13-1-2005. Later, it was withdrawn and deposited with one Michael alias Arul residing at Mathakoil Street, Tuticorin, who had engaged a private money lending business and he is also her family friend. While so, the Deputy Superintendent of Police Swaminathan, Karaikudi along with 15 policemen and one Paul Raj, Inspector of Police, S. P. Mangalam Police Station, Sivaganga District, Kannan, S.I. of Police, Rakkan of Devakkottai Police Station, Rajaiah of Tuticorin Police Station came to her house at Door No. 4/107, Komespuram, Mapillaiyoorani, Tuticorin-2 on 15-2-2005 and they took both the sons of the petitioner viz., Arul Balamurugan and Siva alias Sivaraman, in their tempo-police van Regn. No. TN 63 G 167. They were kept in Hotel Sugam at Tuticorin for about 3 hours for interrogation and thereafter, they took them to Sivaganga District. The petitioner came to know that her sons were kept in illegal custody at Aravayal Police Station, Sivaganga District from 15-2-2005 at 3,00 p.m. onwards. Neither the petitioner nor the family members of the detenus were informed of the reasons for the arrest of Arul Balamurugan and Siva alias Sivaraman and they were assaulted in front of the petitioner and also threatened to kill if they would not go with them. Both were kept in illegal detention nearly for 10 days at Aravayal Police Station and in Amaravath Pudur Police Station along with one Athisayaraj, who is the petitioner's relative. The respondents 1 to 4 seized a sum of Rs. 4,00,000/- from the said money lender" Michael alias Arul - which belongs to her daughter-in-law being : the sale proceeds of the lorry sold. The petitioner gave a detailed complaint to the Inspector General of Police in Southern Region, Madurai on 21-2-2005 and also sent a detailed telegram to the DGP, Tamil Nadu, the Superintendent of Police of Sivaganga and Tuticorin Districts and also to this Court. Thereafter, both the sons of the petitioner viz., Arul Balamurugan and Siva alias Sivaraman were remanded to judicial custody on 26-2-2005 before the Judicial Magistrate, Devakottal in connection with a case of Dacoity pending in Crime No. 26 of 2005 on the file of the first respondent.

3. The petitioner's another son, Bala-saravanan went to Central Prison, Trichy, where Arul Balamurugan and Siva alias Sivaraman were kept on 28-2-2005 and they informed him of what had happened on 15-2-2005 from 3.00 p.m. onwards viz., they were kept, in illegal detention for 12 days at Aravayal Police Station and that they were brutally tortured in illegal detention by Kannan (Grime S.I.), Ramamoorthy (Special Branch S.I.), Constables Rakkan, Rajendran, Mahendran (D.S.P.), Swamynathan (D.S.P.), who were under the command and control of Jaychandra Bose (Additional Deputy Superintendent of Police, Sivaganga) and S.P. of Sivaganga District. The detenus had sustained injuries and scares. Arul

Balamurugan sustained injuries on his wrist, left hand, left leg, buttocks; similarly, another prisoner, Athisayaraj sustained injuries on his left hand, right hand, left shoulders and buttocks. The petitioner has further stated that her sons Anal Balamurugan " and Siva alias Sivaraman (sic) nothing to do with the crime within the jurisdiction of the first respondent/the Inspector of Police, Devakottal Taluk Police Station and the petitioner came to know that the sum of Rs. 1 l.00.000/- belonging to M/s. Diamond Sea Foods was taken by their staff on 2-2-2005 in the lorry. As per the complaint, it is alleged that a group of persons intercepted the said lorry near Kalaiyarkovil-Thondy road claiming themselves as customs officials and committed the offence of dacoity. The petitioner also learnt that her sons/ detenus were forced to affix their signatures In blank papers and an extra-judicial confession was obtained from the said Athisayaraj. The petitioner has further stated that her sons were kept in illegal detention for about 12 days and subjected to custodial torture and the police also seized the sum of Rs. 4,00,000/- belonging to her daughter-in-law Kasthuri wife of Arul Balamurugan. The directions with regard to arrest issued by the Honourable Supreme Court in the case of D.K. Basu Vs. State of West Bengal, has not been followed by the respondents 1 to 4. The petitioner has also prayed to issue interim direction to the sixth respondent to constitute a team of three senior doctors from Trichirappalli Medical College to visit Central Prison, Trichy to note down the injuries and scars found on the body of Arul Balamurugan and Siva alias Sivaraman and to provide adequate medical treatment to the detenus. Hence the Habeas Corpus Petition has been filed on 2-3-2005.

4. In the counter filed on behalf of the respondents 1 to 4, the first respondent, the Incharge of Devakottal Taluk Circle has denied that they had received a sum of Rs. 4,00,000/- belonging to the petitioner's daughter-in-law Kasthuri from the money lender Michael alias Arulraja. On the contrary, he has stated that he has investigated the case in Crime No. 26 of 2005 registered under Sections 395 and 419. IPC, The complainant in this case is one Krishnakumar working as lorry driver in Diamond Sea Food Company exporting sea food based, at Tuticorin. In his complaint dated 3-2-2005, he has stated that on 2-2-2005 when he was proceeding from Tuticorin to Manamelkudi in Diamond Sea Food Company Lorry bearing Regn. No. TN 69 J 3373 along with the Assistant Supervisor Siva alias Sivakumar with cash of Rs. 11 lakhs for purchasing sea food, the lorry intercepted by nine members gang in white colour TATA Sumo Car bearing fake Regn. No. TN 09 C 7125 impersonating as Customs Officers, and committed dacoity of Rs. 11 lakhs. However, the original Registration number of the TATA Sumo Car is TN 69 X 0374, and the RC owner is Vidhya Arul Raja w/o. Arul Raja 227, South Cotton Road, Tuticorin. Investigations revealed that Tailor Mani alias Sottai Mani alias Mani, Ramesh alias Thadia, Vein alias Velusamy, Sappani-muthu alias Muthu, Adhisayaraj alias Adhisayarn alias Md. Suhaip, Arul Balamurugan alias Arun alias Md. Appas, Sivaraman alias Siva, Balamurugan alias Abdul Rahim (Absconding), Jaiganesh and Santhanakumar (Absconding) are accused. The accused Arul Balamurugan alias Arul and Sivarman alias Siva are the petitioner's

sons. The accused Adhisayaraj was arrested in Tuticorin-Ettayapuram Main Road, near Mapillaiurani Vilakku on 21-2-2005 at about 01.00 hours in the presence of three witnesses viz., Jayavel, Jeyanathan and Hayaperumal and the accused made his confession statement. Pursuant to such confession statement, the white colour TATA Sumo Car TN 69 X 0374, which was driven by the accused-Adhisayaraj and used in the commission of offence of dacoity was seized under mahazar on 21-2-2005 at 2.40 hours in the presence of the three witnesses and a sum of Rs. 1 lakh packed in a white sheet bundle with the seal of Diamond Sea Food Company was recovered from the house of Adhisayaraj on 21-2-2005 at about 09.00 hours. Then, he was brought to Devakottal Taluk Police Station along with four other accused concerned in this case viz., Tailor Mani alias Sottai Mani alias Mani, Ramesh alias Thadia, Velu alias Velusarny and Sappanimuthu alias Muthrt, who were arrested on 20-2-2005 at 4.00 p.m. at Tuticorin, Devispuram Mukku, Mandapain Main Road and were produced before the Judicial Magistrate, Devakottal on 21-2-2005 and as per the directions of the Magistrate, they were produced on 22-2-2005 and the Magistrate remanded them to judicial custody till 8-3-2005. The accused when produced for remand before the Magistrate, did not make any complaint of torture or ill-treatment by the police and the accused also did not. make any complaint at the Central Prison, Trichy. The petitioner's sons Aral Balamurugari and Sivaraman alias Siva were arrested on 25-2-2005 at about 15.00 hours and not on 15-2-2005 as alleged by the petitioner at Tuticorin in Sipcot Bye-Pass Road near Sterlitc Company. Pursuant to the confession (admissible portion) made by them, a sum of Rs. 1.5 lakh each packed in white sheet bundle which bears the seal of Diamond Sea Food Company, share of the booty by both these accused and an absconding accused in the case and entrusted with one Michael alias Arulraja, partner of Messiah Financiers at Tuticorn, who is a close friend of Balamruga, petitioner's another son was recovered from Michael alias Arulraja. The petitioner's sons Arul Balamurugan alias Arul alias Md. Appas and Balamurugan alias Abdul Rahirn are history sheeted rowdies in History Sheet Nos. 19 and 20 of 1996 of Thalamuthu Nagar Police Station respectively involved in many previous hurt cases. Arul Balamurugan is involved in nine previous cases including attempt to murder in Tuticorin District. The absconding accused Balamurugan alias Abdul Rahim is involved in three previous cases, one in Chennai Kodungaiyur PS, one in Tirunelveli Junction P.S. and in Thalamuthu Nagar PS in Tirunelveli District. The accused Adhisayaraj is also involved in a previous case in Thalamuthu Nagar PS in Tuticorin District. The arrest of the accused-Arul Balamuragan alias Anil was duly intimated to his wife Smt. Kasthuri through telegram and the arrest of the Sivaraman alias Siva was intimated to the petitioner through telegram. It is stated that the accused were given good medical facilities. It is further stated that in the identification parade for accused 2 to 8 conducted on 2-3-2005 by the Judicial Magistrate, Karalkudi at Trichy Central Prison, the witnesses Krishnakumar, Siva alias Sivakumar and Chandramohan were present and the accused 2 to 8 were identified by the witnesses Krishnakumar and Siva alias Sivakumar and the bus driver Chandra Mohan identified accused No. 8 Jaiganesh

alone. It is denied that the accused were kept in illegal detention and tortured. The detenus did not make any complaint to the Magistrate either at the time of remand or extension of remand or to the jail authorities or at the time of identification parade by the Judicial Magistrate, Karikudi about the torture or ill-treatment caused to them. Further, it is stated in the counter-affidavit that since proper investigation has been conducted and accused concerned have been arrested in Crime No. 26 of 2005 registered under Sections 395 and 419, IPC, there is no necessity to entrust the investigation pending on the file of the first respondent/the Inspector of Police, Devakottai Taluk. Police Station, Sivanganga District to the fifth respondent/the Joint Director of C.B.I., Chennai as prayed for by the petitioner.

5. Heard the learned Senior Counsel appearing for the petitioner and also the Additional Public Prosecutor.

6. Learned senior counsel for the petitioner in support of the stand taken in the petition has submitted that in arresting the detenus, the directions issued by the Hon"ble Supreme Court in the case of D.K. Basu Vs. State of West Bengal, has not been followed and, that as has been stated in the affidavit, both the detenus/ sons of the petitioner were kept in illegal detention for 12 days and they were also subjected to torture during such illegal detention. It is also submitted that a sum of Rs. 4,00,000/-, which belongs to the petitioner's daughter-in-law, Kasthuri, was seized by the police as stated in the affidavit and the said amount does not belong to the share of the detenus as alleged by the police.

7. Learned senior counsel for the petitioner has also relied on the decisions held by the Hon"ble Supreme Court in the following judgments, In support of his argument-

1. Rudul Sah Vs. State of Bihar and Another, .
2. Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, .
3. Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others, ,
4. Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, .
5. Tirathram Saini v. State of Punjab 1994 SCC (Cri) 675.
6. Inder Singh Vs. State of Punjab and Others, .
7. D.G. and I.G. of Police and Others Vs. Prem Sagar and Another, .
8. Vinesh Pundir Vs. State of U.P. and Others,).
9. Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, .
10. Alagirisamy v. Kannan and Ors. in HCP No. 4 of 2004, dealt with by the Principal Bench at Madras High Court (Unreported judgment).

11. V. Lingasamy Vs. The Secretary to Government, Home Department and Others, dealt with by this Court.

8. In the above decisions, since the police atrocities and torture committed in illegal detention or police custody resulting in custodial death have been proved in the above cases, directions were issued for payment of adequate compensation for the ill-treatment meted out to the detenus/accused and to the family members and to approach the Magistrate for appropriate action under the Criminal Law or the Civil Law for damages or the Human Rights Commission or seek other remedies.

9. Pursuant to the directions issued by this Court, the sixth respondent/the Dean, Thiruchirappalli Medical College, Thiruchirappalli, Dr. V. Thirugnanam, Reader in Surgery, KAPV Govt. Medical College, Tri-chirappalli has visited the Central Prison, Tiruchirappalli on 10-3-2005 and examined the detenus and reported the same, the details of which are as follows :

"1. Arul Balamurugan M 40 s/o Chellasamy R.P.M. 6701. Alleged to have been assaulted by ten known persons with stick on 15-2-2005.

C/o, No specific complaints.

O/E 1. Healed abrasions Rt wrist 1/2" sq. 2. Healed " left wrist 1/2 x 3" 3. Healed " left leg 139"x 3 nos 4. Healed " left thigh 1/2" x 2" 5. Healed " Rt leg 1/2 sq.

2. Siva alias Sivaraman M 30 s/o Chellasamy R.P. 6699 alleged H/o assault on 15-2-2005 by ten persons with stick

C/o. No specific complaints at present

1. Healed abrasion left shoulder 1" x 3" 2. -do- left buttock 2" x 2" 3. -do- left thigh 1/2" x 1"

3. Adhisayam M 30 s/o Sundaram RP 6519 No specific complaints

1. Healed abrasion left shoulder 1/2" x 359"

2. -do- left deltoid thigh 1/2 x 3"

C/o. Pain Rt shoulder

advised to attend ortho Dept, AGM, Govt. Hospital."

10. Though it is alleged that the detenus/ sons of the petitioner were taken away the police on 15-2-2005 and kept in illegal detention at 3.00 p.m. onwards for 12 days and another son of the petitioner interviewed the detenus on 28-2-2005 itself about illegal detention and torture in illegal custody, the Habeas Corpus Petition has been filed only on 2-3-2005. Such illegal detention and torture in police custody alleged to have been caused to the sons of the petitioner and the allegation that the police had seized a sum of Rs. 4,00,000/- belonging to her daughter-in-law has also been denied by the respondents. According to them, as

stated in the counter-affidavit, the detenus/sons of the petitioner were involved in dacoity relating to Crime No. 26/2005 of first respondent/the Inspector of Police, Devakottai Taluk Police Station, and the arrest of them was also communicated through telegrams as stated in the counter-affidavit. As such, the allegation that arrest of the sons of the petitioner/detenu was not informed cannot be accepted. Though the petitioner herself claims that her sons were abducted on 15-2-2005 itself, it is not known as to why she kept quiet nearly for a week without making any effort either to make a complaint to the authority concerned or to file a petition before the Court. Besides, there is substance in the contention raised by the learned Additional Public Prosecutor that when the test Identification parade was conducted at Central Prison, Trichy by the Judicial Magistrate, Karaikudi, no such allegations were complained against the police before the said Judicial Magistrate. Therefore, it appears that with a view to claim compensation or to escape from the clutches of law, the present petition has been filed as if the detenus/sons of the petitioner have been abducted and kept in illegal custody seizing a sum of Rs. 4,00,000/- belonging to the petitioner's-daughter-in-law. In fact, the police have recovered only a sum of Rs. 3,00,000/- in a bundle of 1,5 lakh each packed in white sheet with the seal of Diamond Sea Food Company, being share amount of the accused pursuant to the confession statement (admissible portion) by the detenu under mahazar. The medical report also discloses that both the detenus/sons of the petitioner and also Adhisayaraj had only abrasions when they were examined at the Central Prison, Trichy pursuant to the direction of this Court to the sixth respondent/the Dean, Trichirappalli Medical College, Trichirappalli.

11. We have called for the entire records in Crime No. 26 of 2005 registered under Ss. 395 and 419, I.P.C. on the file of the Inspector of Police, Devakottai Taluk Police Station and perused the same. We find no complaints of ill-treatment or torture or illegal detention made by the detenu. The detenu, Arul Balamurugan, Siva alias Sivarman, sons of the petitioner sent the statement dated 4-3-2005 through the Additional Superintendent of Jail, Central Prison, Trichy recording confession said to have been made by them, supporting the averments made in the Habeas Corpus Petition, after the said petition filed on 2-3-2005. Though in the petition, it is stated by the petitioner that the money seized by the police from Michael alias Arul viz., 4,00,000/- belonged to the petitioner's-daughter-in-law Kasthuri wife of the detenu Arul Balamurugan, and it was deposited in a bank account on 13-1-2005, in the statement it is stated that Rs. 4,00,000/- were deposited in the Indian Overseas Bank, Mappilaiurani Branch in December, 2003 in the account of the said detenu, Arul Balamurugan.

12. In the circumstances, the petitioner has failed to establish the illegal detention or torture in the police custody caused to the detenus/sons of the petitioner and the seizure of money belonged to her daughter-in-law Kasthuri, wife of the detenu Arul Balamurugan and as such, the prayer sought for in this petition cannot be ordered. The Habeas Corpus Petition is dismissed. Consequently, H.C.M.P. (MD) No. 6 of 2005 is closed.