

(2000) 08 KAR CK 0066
In the Karnataka High Court
Case No : Writ Petition No. 37375 of 1998

Dr. C.T. Manjunath

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 227
Penal Code, 1860 (IPC) — Section 202, 302, 404

Citation : (2000) ILR (Kar) 3088 : (2001) 3 KarLJ 58 : (2000) 4 KCCR 272 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri. M.T. Nanaiah, for the Appellant; Sri Udayashankar, Government Advocate and Sri S. Shekar Shetty, for the Respondent

Judgement

1. In this petition filed under Article 226 of the Constitution of India, petitioner-Dr. C.T. Manjunath, a resident of Chikmagalur Town seeks payment of Rs. 25,00,000/- (Rupees Twenty-five lakhs only) towards compensation for alleged violation of his fundamental rights by respondent-police authorities by arresting him on 2-7-1995, and detaining him in the police and judicial custody till 24-8-1995 and thereafter, filing a charge-sheet before the Jurisdictional Magistrate, for offences punishable under Sections 302, 202 and 404 of the Indian Penal Code. The other incidental relief sought in the petition is to direct the State Government to frame guidelines for registering and investigating cases by the police authorities by incorporating safeguards in favour of the citizens and further laying down "principles of Accountability" against Police Officers, who wantonly and deliberately abuse their police powers.

2. Petitioner is a qualified medical practitioner, having his private clinic at Chikmagalur Town. He was the accused in a criminal case filed before the Chief Judicial Magistrate, Chikmagalur, by the respondent-Police Officers. First respondent is the State Government. Petitioner seeks only a formal relief against them. Second respondent was the Additional Director General of Police of the

Corps of Detectives ("COD" for short), which is the premier Investigating Agency of the State at the relevant point of time. The entire accusation in this petition seems to be against this respondent alone. The third respondent was Inspector of Police attached to COD and was the Investigating Officer, after the transfer and entrustment of the investigation of Crime No. 38 of 1995 from local police to the COD by the State Government by its order dated 5-4-1995. The fourth respondent was working as Assistant Commissioner of Police attached to COD, who continued with the investigation of the crime, after third respondent was transferred from COD to Bangalore City Police by the Director General of Police and Inspector General of Police by notification dated 12-6-1995.

3. In support of the reliefs sought in the petition, petitioner states that his wife Smt. Aruna was done to death under mysterious circumstances by unknown persons on 7-3-1995 in their residence at Chikmagalur Town. Petitioner's nearest relative had lodged a complaint with Basavanahalli Police Station, Chikmagalur District, who registered the FIR in Crime No. 38 of 1995 against unknown persons under Sections 302 and 392 of the Indian Penal Code. The local police commenced their investigation by conducting spot mahazars and by interrogating several witnesses. Since local police were tardy in apprehending the accused persons in the crime, the investigation of the matter was transferred and entrusted to COD by issuing an appropriate notification dated 5-4-1995 for further investigation of the crime. At that point of time, the second respondent was the Additional Director General of Police and was the Controlling Authority of the COD, Bangalore.

4. Petitioner further states that the second respondent with his team of Police Officers, visited Chikmagalur Town on 14th May, 1995, and started suspecting the involvement of the petitioner in the crime, on the ground that just before his wife's death, he had ill-treated and humiliated her without any reasonable cause or justification. It is also stated that the respondent-Police Officers in the guise of investigation of the crime had paraded the petitioner near the banks, where he had his bank accounts and also near the public places. Petitioner states that by these illegal and unlawful actions, respondent-Police Officers had humiliated him and this has effected his professional career and social status and prestige in the society. Petitioner also alleges in the petition that during investigation, the second respondent had told him that he cannot be a better person than any ordinary criminal and the circumstantial evidence gathered would clearly demonstrate that he is the culprit and has committed the murder of his wife. It is also asserted that on the specific direction of the second respondent, the third and fourth respondents took steps to arrest the petitioner on 2-7-1995, though they were fully convinced after the investigation that petitioner was innocent and he had no role to play in the murder of his wife. After his arrest, it is stated, that the respondent-Police Officers took unusual interest in obtaining initially an order of remand to police custody and thereafter, to judicial custody from the learned Chief Judicial Magistrate, Chikmagalur, from 2-7-1995 till he was released on bail by an order dated 24-8-1995. Significantly, petitioner does not allege any

incidence of torture and violation of human rights or any third degree methods adopted by the respondent-Police Officers, while he was arrested and detained in the police custody during the course of investigation with a view to secure evidence or confession to the crime.

5. Petitioner further states that the fourth respondent at the instance and direction of the second respondent had filed a charge-sheet, falsely implicating the petitioner of "committing the murder of his wife Smt. Aruna. The only allegation against the third respondent in the entire petition is that he had filed several remand applications before the learned Magistrate seeking permission of the Court to detain petitioner initially in police custody and thereafter in judicial custody and the other allegation is that he had recorded false statement of the witnesses to suit to the whims and fancies of the second respondent to implicate the petitioner in the crime though he was fully convinced that petitioner was innocent. Insofar as the fourth respondent is concerned, the allegation against him is that he failed to perform his duties honestly and has misused his office by implicating an innocent person by filing a false charge-sheet before the learned Magistrate to please the second respondent. Though he was innocent, he was made to face trial before Sessions Court in view of the charge-sheet filed by the fourth respondent is the prime accusation against this respondent.

6. The learned Chief Judicial Magistrate, on the submission of the charge-sheet before him by the fourth respondent committed the case for trial by Sessions Court in C.C. No. 94 of 1996 for the offences punishable under Sections 302, 201 and 404 of the Indian Penal Code. After the appearance of the accused before the Court and at the stage of hearing before the charge, on an application filed by the learned Counsel for the accused u/s 227 of the Code of Criminal Procedure, for discharge of the accused, the learned Sessions Judge, by his order dated 13-1-1998 has discharged the accused of the offences alleged in the charge-sheet.

7. After his discharge from the criminal case, petitioner had approached the Hon"ble Supreme Court in a Writ Petition CrI. No. 173 of 1998 for the very same relief sought in this petition and at a later stage, the same was withdrawn by his learned Counsel with permission to agitate his grievance before an appropriate forum. That is how the petitioner is before this Court in this petition filed under Article 226 of the Constitution for the reliefs indicated by me earlier for the alleged violation of his fundamental rights under Articles 14, 19 and 21 of the Constitution of India.

8. The State Government, first respondent in the petition has thought fit not to file their objections statement. It has left it to its officers to defend themselves. It is unfortunate, less said the better. Respondents 2 to 4 have filed their lengthy statement of objections refuting the accusations made against them in the petition and further justifying their action in arresting, detaining and filing charge-sheet against the petitioner in Crime No. 38 of 1995. They also oppose the relief sought in the writ petition. I will refer to their stand point of view a little later,

while discussing the legal issues canvassed by the petitioner's learned Counsel.

9. The learned Counsel Sri M.T. Nanaiah for petitioner reiterates the grounds urged in the petition at the time of hearing of the case and further submits that the respondents 2 to 4, who are holding public office have not acted diligently and honestly while discharging their official duties and responsibilities and without there being sufficient grounds and reasons have illegally arrested, detained and filed a false charge-sheet against the petitioner and thereby have violated the fundamental rights of the petitioner and therefore, petitioner deserves to be compensated by directing the respondents to pay a sum of Rs. 25 lakhs by way of compensation. Secondly, submits that since there are no proper guidelines which requires to be followed by the investigating agency in cases of arrest and detention of persons accused of criminal offence, this Court in exercise of its extraordinary jurisdiction should command the State Government to frame guidelines for registration and investigation of cases by the Police Officers and their accountability, if they misuse their powers. Luckily, learned Counsel has not placed any reliance on any case-laws and citations.

10. Having heard the learned Counsels for the parties to the Us and the second respondent in person, and having bestowed my anxious consideration to the facts and legal issues canvassed. In my opinion, petitioner has not made out a case for grant of reliefs sought in the writ petition.

11. Let me first take up the minor second relief sought for by the petitioner. In my opinion, in view of the law declared and directions issued by Apex Court in the case of D.K. Basu v. State of West Bengal, which was reiterated while considering the Miscellaneous Application filed in O.K. Basu's case reported in (1997)6 SCC 646, directing the State Government to issue the "requirements" formulated by them in all cases of arrest or detention till legal provisions are made in that behalf, it may not be necessary at this stage to direct once over again to frame guidelines to the Investigating Agency, which requires to be followed by them in all cases of arrest or detention of persons involved in criminal offences and the remedy suggested in cases of illegal detention, which infringes the fundamental right to life of a person. Therefore, second prayer sought in the petition is rejected as unnecessary for the present.

12. The learned Counsels for respondents 3 and 4 and the second respondent, who appeared before me without the assistance of a learned Counsel, by way of preliminary objection, contends that claim for compensation made by the petitioner for alleged violation of his fundamental rights cannot be entertained in a proceeding under Article 226 of the Constitution for claiming damages from respondents 2 to 4-Police Officers and the petitioner should approach the Civil Court for claiming compensation, so that all the disputed questions of facts could be considered on the basis of evidence adduced by the parties to record a finding whether respondents 2 to 4 have exceeded their powers provided to them under the provisions of Code of Criminal Procedure, the Police Act and the Manual and whether they have infringed any one of the fundamental rights guaranteed to the

petitioner under the Constitution, so as to be entitled to the relief of damages.

13. In my opinion, even this issue is no more debatable in view of the law declared by Apex Court in the case of Chairman, Railway Board and Others v Mrs. Cnanarima Das and Others . The Apex Court while considering more or less similar issue, was pleased to observe:

"7. The distinction between "Public Law" and "Private Law" was considered by a three-Judge Bench of this Court in "Common Cause", a Registered Society v Union of India, in which it was, inter alia, observed as under (paras 38 and 39 of AIR):

"Under Article 226 of the Constitution, the High Court has been given the power and jurisdiction to issue appropriate writs in the nature of Mandamus, Certiorari, Prohibition, Quo Warranto and Habeas Corpus for the enforcement of Fundamental Rights or for any other purpose. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of Fundamental Rights but also for "any other purpose" which would include the enforcement of public duties by public bodies. So also the Supreme Court under Article 32 has the jurisdiction to issue prerogative writs for the enforcement of Fundamental Rights guaranteed to a citizen under the Constitution.

Essentially, under public law, it is the dispute between the citizen or a group of citizen on the one hand and the State or other public bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies from acting in an arbitrary manner or in violation of that rule. The exercise of constitutional powers by the High Court and the Supreme Court under Article 226 or 32 has been categorised as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to juridical scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Article 14 read with other Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, including Instrumentalities of the Government or those which can be legally treated as "Authority" within the meaning of Article 12, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of this Court under Article 32 or the High Courts under Article 226 and can be validly scrutinised on the touchstone of the Constitutional mandates".

14. The Supreme Court in the aforesaid decision, while concluding on this issue was pleased to observe:

"Where public functionaries are involved and the matter relates to violation of fundamental rights or enforcement of public duties, the remedy would still be available under public law notwithstanding that a suit could be filed for damages under private law".

15. In view of this settled legal position the preliminary objection canvassed by respondents" learned Counsel requires to be rejected and the matter requires to be examined on the merits of the case as contended in the petition and canvassed by learned Counsel for petitioner.

16. Article 20 of the Constitution guarantees right to protection in respect of conviction of offences. Article 21 guarantees right to life and personal liberty, while Article 22 guarantees right to protection against arbitrary arrest and detention. Individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by the Constitution to the citizens of the country. If that right is invaded excepting strictly in accordance with law, the aggrieved party is entitled to approach this Court for appropriate reliefs. The Supreme Court in the case of *Moti Lal Jain v State of Bihar and Others*, was pleased to observe:

"Articles 21 and 22 confer a fundamental right and constitute a fundamental guarantee. It is the duty of the Court to see that the right is kept fundamental and that the fullest scope is given to the guarantee. It is the duty of the Court to ensure that the right and the guarantee are not rendered illusory".

17. Clause (1) of Article 17 of the International Covenant on Civil and Political Rights as framed by the World Community under the auspices of the United Nations and adopted by its General Assembly in 1966 lays down inter alia that no one shall be subjected to unlawful attacks on his honour and reputation. Clause (2) of Article 17 of the same provides that everyone has the right to protection of the law against such attacks.

18. The Apex Court in India has also recognised that every individual has a right to protect his life and also a right to protect his reputation. The right to the enjoyment of a private reputation unassailed by malicious slander is of ancient origin and is necessary to human society. The Supreme Court in *Institute of Chartered Accountants of India v L.K. Ratna and Others*, observes:

"To many a man his professional reputation is his most valuable possession. It affects his dignity and standing among his fellow members in the profession and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride".

19. Article 8 in the European Convention of Human Rights, which has been used as the basis of the Human Rights Act, 1998, states:

I. Everyone has the right to respect for his private and family life.

II. There shall be no interference by a public authority with the exercise of this right except such as, in accordance with law and is necessary in a democratic society, in the interests of national security, public safety or the economic well-

being of the country, for prevention of disorder or crime, for the protection of health or morals or for the protection of the right and freedom of others.

20. The right to respect for the individual right is enshrined in the Constitution. It is the duty both of the Center and the State to ensure that private life is protected. Where a member of a highly respected and publicly trusted profession is accused of a heinous crime purported to have been committed by him on his wife, the damage to his professional reputation is immediate. It may jeopardise some of the finer graces of human civilisation which makes life worth living. Such a person may be deprived of practising the profession of his choice, robbed of his means of livelihood, stripped of the name and honour earned by him in the past. But at the same time, it requires to be noted that the reputation or livelihood of a person can be put in jeopardy only by law which inheres fair procedure. This view flows from Article 21 of the Constitution of India, which enshrines that no man shall be deprived of his life or personal liberty except according to the fair procedure established by law. The emphasis being on a fair procedure, any action which is not taken after following the fair procedure cannot be upheld and has to be struck down as violative of Articles 14 and 21 of the Constitution.

21. Article 22(1) of the Constitution lays down the procedure to be followed when a person is arrested. They ensure four things:

- (i) a right to be informed regarding the grounds of arrest;
- (ii) a right to consult and to be defended by a legal Counsel;
- (iii) right to be produced before a Magistrate within 24 hours; and
- (iv) freedom from detention beyond the said period except by the order of Magistrate.

22. The rule of criminal jurisprudence that the guilt of accused person must be proved beyond a reasonable doubt cannot be imported into the law of detention. Justification for such detention is suspicion or reasonable probability and not a criminal conviction, which can only be warranted by legal evidence. Since in an order of arrest, the action is taken on good suspicion, the satisfaction of the concerned authority is purely subjective, based on cumulative effect of different actions. The authority, who arrests the person must be reasonably satisfied that the person arrested is likely to have committed the offence. Whether the reason for such arrest are sufficient or not is not within the ambit of the discretion of the Court and it is the subjective satisfaction of the authority, who has arrested the person. It may not be open to the Courts to examine the sufficiency of the material before the arresting authority at the time it took action to arrest. The arresting authority can definitely act on the basis of suspicion. Its power to take action is not restricted to cases, where material before it amounts to complete and competent evidence as could be adduced in a Court of law. The only restriction is that, this power should not be exercised in bad faith or in an arbitrary manner or for collateral purpose. Bad faith on the part of the officer

being a very serious charge, the same cannot be decided in a vacuum. Necessarily, it has got to be decided with reference to the merits of the action taken, the grounds and facts which form its basis. A mere allegation that the arrest is mala fide is not enough. The person arrested will have to prove mala fides. Secondly, mere allegation of animosity, anger or grudge of the arresting authority against a person arrested will not necessarily lead to a conclusion that the power of arrest has been exercised in bad faith. Most of the safeguards embodied in Article 22(1) and (2) of the Constitution are found in the Code of Criminal Procedure.

23. The Supreme Court while explaining the dynamics of misuse of police power of arrest in *Joginder Kumar v State of Uttar Pradesh and Others*, was pleased to observe:

"No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. No arrest should be made without a reasonable satisfaction reached after some investigation as to genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even as to the need to effect arrest. Denying a person of his liberty is a serious matter".

24. It is further observed in the said decision:

"In tune with the constitutional guarantee, a number of statutory provisions also seek to protect personal liberty, dignity and basic rights of the citizens. Chapter V of the Criminal Procedure Code, 1973, deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the arrested person. Section 41 of the Cr. P.C. confers powers on any Police Officer to arrest a person under the circumstances specified therein without any order or a warrant of arrest from a Magistrate. Section 46 provides the manner and method of arrest. Under this Section, no formality is necessary while arresting a person. u/s 49, the police is not permitted to use more restraint than is necessary to prevent the escape of the person. Section 50 enjoins every Police Officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The Police Officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence. Section 56 contains a mandatory provision requiring the Police Officer making an arrest without warrant to produce the arrested person before a Magistrate without unnecessary delay and Section 57 echoes clause (2) of Article 22 of the Constitution of India. There are some other provisions also like Sections 53, 54 and 167 which are aimed at affording procedural safeguards to a person arrested by the police".

25. Further, the Supreme Court in the aforesaid decision has observed as under:

"Does a citizen shed off his, fundamental right to life, the moment policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest?

These questions touch the spinal cord of human right's jurisprudence. The answer, indeed, has to be an emphatic "No". The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody except according to the procedure established by law by placing such reasonable restrictions as are permitted by law".

26. The Supreme Court recognises the legal duty and legitimate right of the police to arrest a criminal in cases which involve a grave offence like murder, dacoity, robbery, rape etc., to infuse confidence among the terror-stricken victims, in cases where the accused is likely to abscond and evade the process of law, etc., and interrogate him during the investigation of an offence, but the same requires to be done in accordance-with law and accepted and established fair procedure.

27. The power to file charge-sheet against the accused person is entrusted to Police Officers under Chapter XVII of the Code of Criminal Procedure. A charge-sheet is a written notice of the precise and specific accusation against the accused person, which the prosecution intends to prove against him and which he would have to clear himself. It is not an accusation in abstract but a concrete accusation of offence alleged to have been committed by a person. It is an essential prerequisite that the officer had applied his mind to the question of existence of sufficient grounds, whether the person should be charge-sheeted or not. When the power is given to an authority to act on certain facts and if that authority acts on those relevant facts and arrives at a decision to file the charge-sheet against the accused person which is neither irrational nor unreasonable, then it cannot be said, mere filing of the charge-sheet has infringed the fundamental rights of the accused person in any manner whatsoever.

28. Keeping in view this well-accepted principle of law, let me now consider the fact situation in the present case. The accusation made against the respondent-Police Officers by the petitioner is that they have abused their police power not only in arresting him on a false charge but also have filed a false charge-sheet before the Jurisdictional Magistrate, and thereby have violated the fundamental rights of the petitioner guaranteed under Articles 14, 19 and 21 of the Constitution of India. It is not the case of the petitioner, nor Ms learned Counsel that petitioner was tortured by the respondents after his arrest and third degree methods were resorted in the guise of investigation.

29. Police is under legal duty and has legitimate right to arrest a person and to interrogate him during the investigation of an offence with a view to solve the crime. In the present case, facts would disclose that petitioner's wife Smt. Aruna was murdered in their house in Chik-magalur Town on 7-3-1995. Petitioner's nearest relative, one Sri Prasanna Kumar of Talagodu village had lodged a complaint in the Basavanahalli Police Station, Chikmagalur. The local police had registered the FIR in Crime No. 38 of 1995 for an offence under Sections 302 and 392 of the Indian Penal Code against an unknown accused person. The matter

was investigated by the local police by drawing up the spot mahazar and by interrogating many witnesses and recording their statement u/s 162 of the Code of Criminal Procedure. Since the progress of the investigation was moving in a snail's pace and since the local police were unable to apprehend the person, who had committed the crime, the State Government in the public interest and safety, had transferred and entrusted the case to the Corps of Detectives, which is the premier investigating agency of the State, for further investigation on 5-4-1995. The further investigation was taken up by the third respondent, who was a Police Inspector in the COD, pursuant to the orders issued by his higher officers. During the investigation of the case, the investigating officer suspecting that four representatives of Eureka Forbes in charge of Chikmagalur District might have been responsible for the murder of petitioner's wife, the fingerprints of those persons were secured and compared with the chance prints found on the glasses kept in a tray in the house of the deceased. It did not yield any results. The Investigating Officer had also subjected petitioner and other suspects in the case to lie detector test in Bangalore with the assistance of Assistant Director, Forensic Psychology in the Forensic Science laboratory at Ahmedabad. In the report furnished by the Assistant Director, the three persons, who were suspected by the petitioner did not show the signs of deception, while the petitioner and his clinic attendant showed signs of deception. The investigation conducted by the third respondent is recorded in his case diaries maintained as required under the Police Act and Manual. The Investigating Officer has recorded in detail the various items of circumstantial evidence pointing an accusing finger at the petitioner. Keeping in view the report of the Assistant Director, Forensic Psychology, Ahmedabad, and other circumstantial evidence, which he had noted in his case diary, the Investigating Officer in exercise of his powers u/s 41 of the Code of Criminal Procedure took decision to arrest the petitioner and arrested him on 2-7-1995 in Begar village in Thirthahalli Taluk, Shimoga District, since he entertained a reasonable suspicion about the involvement of the petitioner in crime. The reasons for arrest and the fact of arrest of the petitioner is available in the case diaries maintained by him dated 1-7-1995 and 2-7-1995. Immediately after his arrest, petitioner was produced before the Chief Judicial Magistrate, Chikmagalur at 5.40 p.m. on 2-7-1995 and an application was also filed seeking remand of the petitioner to Police custody for a period of 5 days i.e., till 6-7-1995 for the reasons stated in the remand application. A perusal of remand application would disclose that he had brought to the notice of the learned Magistrate the fact disclosed in the investigation and the reasons for which the petitioner was required in the Police custody. The learned Magistrate, after being satisfied that there are reasonable grounds for remanding the petitioner to Police custody, passed an order, remanding the petitioner for Police custody up to 6th July, 1995 and subsequently, to the judicial custody.

30. The Apex Court in the case of D.K. Basu, *supra*, while recognising the third report of the National Police Commission in India, had suggested that an arrest during the investigation of a cognizable case may be justified in one or the other

following circumstances, namely:

I. The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

II. The accused is likely to abscond and evade the process of law.

III. The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

IV. The accused is a habitual offender and unless kept in custody, he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for marking the arrest thereby clarifying his conformity to the specified guidelines.

31. The case on hand involves grave offence of murder. It was necessary to arrest the accused to infuse public confidence. Before the arrest of the suspect, the Investigating Officer makes thorough investigation by keeping all options open. The Investigating Officer, keeping in view the report of the Assistant Director of Forensic Laboratory, Ahmedabad, the circumstantial evidence which pointed a reasonable suspicion of the involvement of the petitioner in the heinous crime, arrested the petitioner in exercise of his powers u/s 41 of the Code of Criminal Procedure after recording in his case diary for making the arrest. The arrest was made with the sole object of preventing the suspect from destroying evidence and interfering with witnesses. The case records produced before me and the orders made by Chief Judicial Magistrate would clearly demonstrate that the Investigating Officer after the arrest of the suspect has strictly followed the procedure prescribed under Chapter V of the Code of Criminal Procedure. The detention of the petitioner after his arrest on 2-7-1995 till he was released on bail on 24-8-1995 was under the authority of an order made by a learned Judicial Magistrate. Even in the order enlarging the petitioner on bail, the learned Magistrate observes that the circumstances pointed out by the Investigating Officer, when scrutinised carefully does create a doubt regarding the involvement of the petitioner in the crime, but states that to substantiate and to come to a conclusion, further more enquiries and investigation is required. Since the third respondent had arrested the petitioner after being satisfied that he is likely to have committed the offence and not in bad faith, or in an arbitrary manner or for any collateral purpose, and after following the procedure prescribed in the Code, it cannot be said that by arresting the petitioner, the third respondent has infringed the fundamental rights of the petitioner.

32. Petitioner asserts in the petition that the second respondent had instructed the third respondent to implicate the petitioner in the crime and arrest him. This accusation has no basis whatsoever. The same is denied by second and third respondents in their objections statement filed before this Court. It is difficult even to presume that such a thing could have happened in the instant case for

the reason, firstly, the case was a sensational murder of the wife of professional Doctor. The citizens of the locality were paniostricken. The State Government had thought it fit to entrust the investigation to COD, since local police were unable to apprehend the persons involved in the crime. To earn kudos and better promotional prospects, an upright Police Officer would involve himself in the case and make his best efforts to arrest the suspect likely to have committed the offence. For this purpose, he does not require any goading from his higher officers. It is no doubt true that at the relevant point of time the second respondent was the Additional Director General of Police and was head of COD and took keen interest in the investigation of crime entrusted to his establishment by the State Government by giving tips and directions and minute details that requires to be investigated by the Investigating Officer. That by itself cannot lead to a conclusion that he was instrumental in getting petitioner arrested through the third respondent. Petitioner does not allege any mala fides against this respondent. He only says that this respondent took active interest in the investigation of the crime. For having sincerely discharged his duties and responsibilities true to his uniform, it cannot be said, he has infringed the fundamental rights of the petitioner. The allegation made by the petitioner has no basis whatsoever.

33. After petitioner's release on bail by virtue of an order made by a competent Criminal Court, the records produced before me reveals that the third respondent had sought permission to file the charge-sheet against the petitioner with the available evidence on record and the request was rejected by the second respondent, since he was of the opinion that further investigation in the case requires to be done. In fact, the records reveal that further investigation was conducted by the 4th respondent, who had replaced the third respondent after his transfer out of COD. During this investigation, he had subjected the petitioner to lie detector test for the second time. After securing their report and after completion of the investigation by filing his report before the second respondent had sought permission to file charge-sheet before the Jurisdictional Magistrate. The procedure in the department seems to be that the opinion of the Legal Adviser of the COD requires to be obtained before granting permission to the Investigating Officer to file charge-sheet against the accused person. In the present case, such an opinion was obtained from the Legal Advisor of COD, who had opined that suspicious circumstances goes against the accused petitioner and therefore, it can be established that the petitioner alone is responsible for the offence and he had also observed in his opinion that the evidence collected by the Investigating Officers in the case is sufficient to charge and prosecute the accused petitioner for the offences under Sections 302, 201 and 404 of the Indian Penal Code. The reports and opinion furnished by Investigating Officers and the learned Counsel for COD was further processed by Supervisory Officers and it is only thereafter taking into consideration the reports, opinion and the remarks of the Supervisory Officers and further being convinced that charge-sheet can be filed against the petitioner, the second respondent had granted

permission to the fourth respondent to file the charge-sheet against the petitioner for the offences under Sections 302, 201 and 404 of the Indian Penal Code. In my opinion, the respondents have taken all possible care and caution before filing the charge-sheet against the petitioner on the reasonable suspicion that he was alone responsible for the murder of his wife Smt. Aruna. I am fully convinced that their action does not smack of mala fides or with any arbitrariness and at the most it can only be an error of judgment. By their actions in my opinion, they have not deprived the liberty and fundamental rights of the petitioner in an illegal or highhanded manner.

34. On the submission of the charge-sheet before the learned Chief Judicial Magistrate, Chikmagalur, by the fourth respondent, the learned Judge has committed the case for trial by Sessions Court in C.C. No. 94 of 1996 for the offences punishable under Sections 302, 201 and 404 of the Indian Penal Code. After the appearance of the accused before the Court and at the stage of hearing before charge, it appears, the learned Counsel for the accused had filed application for discharge of the accused u/s 227 of the Code of Criminal Procedure on the ground that the Investigating Agency has filed another charge-sheet against the real accused persons, who have confessed to have committed the murder of petitioner's wife on 7-3-1995 and that case is pending against those accused persons on the file of District and Sessions Judge in S.C. No. 13 of 1997 in respect of the same incident and therefore, there is no material to frame charge against petitioner and is liable to be discharged. On the instructions issued by the State Government in their Official Communication dated 30-4-1997, the learned Public Prosecution did not choose to oppose the application. The learned District and Sessions Judge, while allowing the application and discharging the accused petitioner observes that "when the Investigating Agency itself filed a second charge-sheet against three accused persons in S.C. No. 13 of 1997, that itself shows that the materials collected by COD against petitioner in S.C. No. 82 of 1996 are insufficient and hence there are no sufficient grounds to proceed against the petitioner". In my considered opinion, the mere fact that the criminal case had to be dropped against the accused person because the investigation could not procure sufficient evidence to sustain conviction would not be sufficient to hold that the arrest, detention and filing of the charge-sheet against the accused is mala fide, which has infringed the liberty and fundamental rights of the petitioner. In my opinion, since the action taken by respondents 2 to 4 is in accordance with the provisions of the Criminal Procedure Code, petitioner is not entitled to the relief sought in this writ petition.

35. Lastly, it is distressing to note that many unscrupulous litigants in order to please their political masters, adopt dubious methods to harass the honest and sincere Police Officers. The threat of litigation against them before various forums would demoralise the honest and sincere officers. In my, opinion, second respondent is justified when he states in his objection statement that "if a person is charged with a crime and subsequently discharged or acquitted is enabled to

file a writ petition of this nature, no Police Officer or Law enforcement agency can function effectively in this country". In my opinion, such tendency deserves not only to be condemned but also curbed by passing appropriate orders by imposing exemplary costs for filing petitions with the main objective of harassing the Officers of Investigating Agency.

36. In the result, petition is dismissed. Rule discharged. For unnecessarily harassing respondents 2 to 4, they are entitled to the costs and the same is quantified at Rs. 15,000/- payable to the respondents by the petitioner. Ordered accordingly.