

(1988) 05 MAD CK 0004

In the Madras High Court

Case No : Writ Petition 5382 of 1986

India Match House by Propr. Ejas, by power of attorney
agent, Muralidhar, T. Balani

APPELLANT

Vs

The Commissioner of Police, Madras and The Inspector of
Police, Chintadripet Police Station

RESPONDENT

Date of Decision : 03-05-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157, 157(2)
Penal Code, 1860 (IPC) — Section 143, 147, 149, 323, 341

Citation : (1988) 05 MAD CK 0004

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

**Advocate : N.T. Vanamamalai for K.C. Jacob and Raju, K. Lukose, for the
Appellant; N. Sridhar, Gov. Advocate (Crl. side), for the Respondent**

Final Decision : Allowed

Judgement

Srinivasan, J.—The petitioner prays for the issue of a writ of Mandamus directing the respondents and their subordinates to exercise their statutory powers under the Code of Criminal Procedure and Madras City Police Act, to deal with the trespassers referred to in the affidavit filed in support of the petition and restore to the petitioner, possession of premises No. 843, Anna Salai, Madras, after removing the trespassers. The basis for the prayer as set out in the affidavit filed in support of the petition is as follows:—The petitioner was a tenant under the Tamil Nadu Handloom Weavers Co-operative Society Ltd., which is a society registered under the Co-operative Societies Act, in the premises referred to above on a rent of Rs. 157.50 per mensem. The society had filed a suit for eviction against the petitioner in the City Civil Court, and the same was pending. While so, on 20-5-1986, about 7:30 to 7:45 p.m. the President of the Society by name Anaka puthur Ramalingam who was a member of the Legislative Council, at that time, went to the shop of the petitioner with about 15 to 20 Musclemen and two constables from Chintadripet police station. While the constables stood

as guards outside the shop, the rest entered forcibly and boldly threw out the uncle of the deponent Sri Krishinchand Mirpuri and the watchman who were the only inmates of the shop at that time and locked the premises with the goods of the petitioner inside. The uncle of the deponent and the watchman went to the police station at Chintadripet, and reported orally to the Sub-Inspector of Police, who instead of reducing the complaint into writing and registering it, went out of the station immediately. After finding out that the Sub-Inspector did not go to the spot of occurrence of the offence, the deponent's uncle and watchman gave telegrams to (1) The Commissioner of Police, Madras, (2) The Chief Minister of Tamil Nadu, (3) The Director-General of Police, Madras, (4) The Special Officer, Tamil Nadu Handloom Co-operative Society and (5) The Inspector of Police, Chintadripet Police Station. On 21-5-1986, a written complaint was sent to the Commissioner of Police, Madras. A personal representation was made by the uncle of the deponent to the Commissioner of Police, who promised to take action. On the night of 22nd May, several lorries were brought and all the furniture and fans, etc., were removed. Again a written complaint was sent through a lawyer to the Director-General of Police, who promised to take suitable action in the matter. On the same day, copies of the complaint were sent by registered post to the Commissioner of Police and to the Inspector of Police, Chintadripet Police station. Finding that no action was taken and that the trespassers were making alterations to the shop to suit their needs under the protection of two police constables, the deponent's uncle accompanied by a lawyer went to the Chintadripet Police station on 24-5-1986, and gave another signed copy of the complaint dated 21-5-1986, with a covering letter to the Inspector who received the same under acknowledgement and promised to take action. The deponent gave reminder telegrams on 31-5-1986 to the Director General of Police, the Commissioner of Police and the Inspector of Police. No action was taken and thus the police officers had failed to perform the duties enjoined on them by law. The respondents should be directed by this Court to take immediate and appropriate action in the matter,

2. The writ petition was filed in this Court on 16-6-1986 and rule nisi was issued on 19-6-1986, The respondents were served on 30-6-1986. The first respondent filed a counter affidavit on behalf of both the respondents on 27-4-1988. No explanation has been attempted by the respondents for the unduly long interval between the date of service of the writ petition and the filing of the counter affidavit. This circumstance assumes considerable importance as the deponent of the counter affidavit has assumed charge as Commissioner of Police only recently and his knowledge is only from the records. The officers who were in charge at the time of the alleged occurrence and continued to be so till recently did not choose to apprise this Court with the facts within their personal knowledge in spite of the fact that the affidavit filed in support of the writ petition referred to them by their names.

3. In the counter affidavit it is stated in paragraph 2 that the petitioner had already vacated the premises and "the Co-optex have been in possession". The

following passage in that paragraph of the counter affidavit is relevant--

I submit that in this connection that on 20th May, 1986 Control Room information was received that there is some trouble in front of 843, Anna Salai and immediately two constables P.C. 4009 Arogyasami and 4106 Chinnappan were sent to see that no untoward incident took place. The information has been received that Co-optex officers are in actual physical possession at that time of the premises. The writ petitioner alleged that he was in occupation. The constables returned to the station stating that they have informed the Glamour Saree Museum Proprietor Syed-U-Mirpuri to keep the peace and they can agitate this matter in the civil court. Syed-U-Mirpuri and Muralidhar Balani are the power of attorney agents for India Watch House. On 20th May, 1986, they did not turn up before the Chintadripet Police Station. But a telegram was received only on the next day on 21st May, 1986 at 16 hours stating that Co-optex people have illegally entered into the India Watch House Premises and occupied the premises. The telegram was entered in the LBR. 89/86 of FI Chintadripet Police Station. On 21st May, 1986 itself in the morning at 10 hours, a petition from Co-optex people have been received about the same civil dispute which was given LPR No. 88/86 (Local petition register). Another petition addressed to the Commissioner of Police handed over in person was received and on perusal of the entire records available in the police station about this matter, a report was submitted to the Commissioner of Police on 29th May, 1986, that each party claim that they are in actual possession of the property in question and from the entry it is revealed that the Co-optex people are in actual possession during that time and the actual business is going on. As it is a civil dispute, the police cannot take cognizance of the matter, and, therefore, they were orally informed to seek the remedy in the civil Courts. A civil case in O.S. 174 of 1988 is still pending in v. City Civil Court.

4. In paragraph 5 of the counter, it is stated that on 21-5-1986 at 10 hours, the Special Officer, Co optex presented a petition to the police station stating that the petitioner herein was giving trouble and praying for police protection. It is further stated that the telegram given by the petitioner and the petition given by the Co-optex were both enquired by the second respondent and during the time of enquiry it was found that the Co-optex were in actual physical possession doing the business, and therefore, he instructed the parties to preserve peace and settle their dispute in a civil court. It is repeatedly asserted in the counter affidavit that the second respondent duly enquired into the complaints and submitted a report to the officers concerned that the matter was one to be decided by the civil court, and the only duty of police officers was to see that no law and order problem arose.

5. After perusing the affidavit and the counter affidavit and hearing learned Counsel on both sides, I am convinced that the respondents have failed to perform their statutory duty in this matter. The offences alleged to have taken place according to the petitioner are punishable under Ss. 143, 147, 149, 323, 341 and 447, Indian Penal Code. All of them excepting one are cognizable

offences. Ss. 154 to 157, Crl. P.C, prescribe a detailed procedure to be followed by the police officers when information relating to the commission of an offence is given to them. S. 173 sets out what the officer is required to do after completing the investigation in accordance with the sections above referred. The Supreme Court had occasion to refer in detail to the above said sections in *Bhagwant Singh Vs. Commissioner of Police and Another*, and laid down that when under S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. Earlier, this Court dealt with a similar case in *Palanisami v. The Superintendent of Police, Rural, Coimbatore and another* 1983 L.W. Cri. 34 (S.N.), V. Ramaswami, J., made a detailed reference to the relevant provisions in the Code of Criminal Procedure and the police standing order. On the facts of the case, the learned Judge held that the procedure prescribed by law was not followed and he allowed the petition for issue of a writ of mandamus.

6. In the present case, there is no evidence in support of the bald and vague claim made in the counter affidavit that an enquiry was held by the second respondent and that he submitted a report to the concerned officers. Even if the averments in the counter affidavit are accepted in toto, it is clear that there is no compliance with the provisions of S. 157(2), Crl. P.C. That itself is sufficient to make the rule nisi absolute and issue a mandamus, as prayed for by the petitioner. It is pity that high police officials in the Metropolis have paid scant regard to the salient provisions of the Code of Criminal Procedure.

7. In the result, the writ petition is allowed. Just as in the case of *Palanisami v. The Superintendent of Police, Rural, Coimbatore and another* 1983 L.W. Cri. 34 (S.N.), the investigation in this case also should be made by some authority other than the respondents. It is also made clear that no officer who had any connection with this case earlier should take part in the investigation. Accordingly, a writ of Mandamus will issue directing the Crime Branch C.I. D. to investigate the complaints of the petitioner dated 20-5-1986 and 21-5-1986 in accordance with law. The rule nisi is made absolute. There will be no order as to costs.