
(2013) 03 MAD CK 0072
In the Madras High Court
Case No : Writ Petition No. 22021 of 2012

K. Kalaivanan

APPELLANT

Vs

The Superintendent of Police Thiruvarur

RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Penal Code, 1860 (IPC) — Section 120(b), 143, 147, 148, 188

Citation : (2013) 3 MLJ 486

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : G. Sankaran, for the Appellant; V. Jayaprakash Narayanan, Special Government Pleader, for the Respondent

Judgement

D. Hariparanthaman, J.—The issue that arises for consideration is as to whether the petitioner is entitled for a direction to provide him

adequate police protection to save his life and to discharge his duties without fear as Ward Member of District Panchayat of Thiruvarur District on

payment of necessary charges. The petitioner belongs to the present opposition party viz. Dravida Munnetra Kazhagam (Shortly "DMK"). The

petitioner is the Thiruvarur District Secretary of D.M.K. party from the year 2009. According to him, after his political party lost power in the

General Assembly Election that was held during May 2011, he was subjected to innumerable hardships and sufferings in order to tarnish his image

and the police protection given to him was also withdrawn. Further, he was detained under the Goondas Act by the District Collector, Thiruvarur

and the order of detention was set aside by this Court vide order dated 23.11.2011 passed in H.C.P. No. 1027 of 2011. It was done to prevent

him from contesting the Local Body Election that was held in October 2011. However, he contested in the Local Body Election that was held in

October 2011 for a Member, in Ward No. 6, Tiruvarur District Panchayat and was declared elected on 21.10.2011.

2. The brother of the petitioner, by name Poondi. K. Kalaiselvan, was brutally murdered, by throwing bombs on 17.11.2007, in front of the

petitioner. At that time, he was the Thiruvarur District Secretary of the D.M.K. party. The murder of his brother was made out of political rivalry

and a criminal case is still pending in the Bomb Blast Court, Poonamallee. After the murder of his brother, the petitioner and his family members

were given police protection and the same was withdrawn subsequently, after his political party lost power. The petitioner apprehends that the

persons who have murdered his brother have planned to kill him and his family members through henchmen and hirelings and that there is a

constant threat to his safety everyday. Hence, he made representations dated 06.04.2012 and 07.08.2012 to the respondent requesting to provide

police protection.

3. In these circumstances, the petitioner has filed the present writ petition seeking direction to the respondent to consider his representations dated

06.04.2012 and 07.08.2012 seeking adequate police protection.

4. This Court, by an order dated 17.08.2012, granted interim direction to the respondent to give police protection to the petitioner from

18.08.2012 to 23.08.2012 and the same was extended periodically by various orders.

5. The respondent filed counter affidavit and additional affidavit. It is averred therein that the petitioner is the Thiruvarur District Secretary of a

recognised political party and he is involved in many criminal cases. The list of the criminal cases pending against the petitioner is also furnished. It

is stated that a rowdy history sheet No. 567/2011 was opened in Koradachery Police Station on 08.12.2011, as the petitioner involved in many

criminal cases. It is also stated that his brother was murdered on 17.11.2007 and a case was registered in Koradachery Police Station and the

same is pending trial at Special Court, Poonamallee. Further, it is stated that the petitioner was detained under the Goondas Act, by the District

Collector, Thiruvarur, by an order dated 04.08.2011. It is also stated that Police

patrols and day beat and night beat are provided in the area, where the petitioner resides with his family members. Thus, the respondent sought for passing of appropriate orders.

6. Heard the submissions made on either side.

7. The learned counsel for the petitioner vehemently contended that one Mr. V.K. Senthilkumar, President of Koradachery Town Panchayat and

Joint Secretary of A.I.A.D.M.K. and M.G.R. Youth Wing, Thiruvarur District, was the first accused in the petitioner's brother's murder case and

he was granted police protection by this Court by an order dated 08.03.2012 in W.P. No. 4476 of 2012. He further submitted that one close

associate of the petitioner by name Muthu Rajendran of Melaiyur Village was brutally murdered by using bombs and in fact, the target was the

petitioner and since he was given police protection as directed by the interim order of this Court, he escaped from the criminal assault. The

petitioner was democratically elected to the Local Body and he is a much respected person and therefore, he should be granted police protection

as given to Mr. V.K. Senthilkumar.

8. The learned Special Government Pleader stoutly opposed the prayer seeking police protection to the petitioner. He submitted that the petitioner

has involved in various criminal cases and he operates as a Leader to one Gang and if police protection is given to the petitioner, he will use the

same for his criminal activities and therefore, the same cannot be granted.

9. The learned Special Government Pleader strenuously contended that the submission of the learned counsel for the petitioner that the petitioner is

an elected Member of Local Body has no substance, since the petitioner has involved in a lot of criminal cases, referred to in the counter affidavit

and a rowdy history sheet was also opened against him in Koradachery Police Station.

10. The learned Special Government Pleader submitted that criminals have now entered into politics and criminalization of politics is taken note of

by the Honourable Supreme Court in its judgment in Union of India (UOI) Vs. Association for Democratic Reforms and Another, .

11. The learned Special Government Pleader also relied on a judgment of the Bombay High Court in Arun Gulab Gavli Vs. The State of

Maharashtra and Others, . He submitted that the Bombay High Court has

categorically held that a person is not entitled to police protection, if he has criminal background and leads a criminal gang against another gang. Giving police protection to such a person would only put him in a better position as against the another criminal gang. It was submitted that if the petitioner makes out a specific case of genuine and imminent risk of his life, the State would not refuse to grant armed police protection, for a particular occasion or a particular place, but a person with a criminal record cannot seek police protection round the clock.

12. I have considered the submissions made on either side and perused the materials available on record.

13. Para 6.2 of the Vohra Committee of the Government of India, Ministry of Home Affairs, that has been extracted in para 2 of the judgment of the Supreme Court referred to above is extracted hereunder, wherein the Supreme Court has recorded about the criminalization of politics and that law makers have become law breakers.

2..... The petitioner has also referred para 6.2 of the report of the Vohra Committee of the Government of India, Ministry of Home Affairs, which reads as follows:

6.2. Like the Director CBI, DIB has also stated that there has been a rapid spread and growth of criminal gangs, armed senas, drug mafias, smuggling gangs, drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-State sector.

Some of these syndicates also have international linkages, including the foreign intelligence agencies. In this context DIB has given the following examples:

(i) In certain States like Bihar, Haryana and U.P., these gangs enjoy the patronage of local-level politicians, cutting across party lines and the protection of governmental functionaries. Some political leaders become the leaders of these gangs, armed senas and over the years get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardising the smooth functioning of the administration and the safety of life and property of the common man causing a sense of

despair and alienation among the people.

(ii) The big smuggling syndicates having international linkages have spread into and infected the various economic and financial activities, including

hawala transactions, circulation of black money and operations of a vicious parallel economy causing serious damage to the economic fibre of the

country. These syndicates have acquired substantial financial and muscle power and social respectability and have successfully corrupted the

government machinery at all levels and yield enough influence to make the task of investigating and prosecuting agencies extremely difficult; even

the members of the judicial system have not escaped the embrace of the mafia.

(iii) Certain elements of the mafia have shifted to narcotics, drugs and weapon-smuggling and established narco-terrorism networks specially in the

States of J & K, Punjab, Gujarat and Maharashtra. The cost of contesting elections has thrown the politician into the lap of these elements

and led to a grave compromise by officials of the preventive/detective systems. The virus has spread to almost all the centres in the country, the

coastal and the border States have been particularly affected.

(iv) The Bombay bomb blast case and the communal riots in Surat and Ahmedabad have demonstrated how the Indian underworld has been

exploited by the Pak ISI and the latter's network in UAE to cause sabotage, subversion and communal tension in various parts of the country. The

investigations into the Bombay bomb blast cases have revealed extensive linkages of the underworld in the various governmental agencies, political

circles, business sector and the film world.

14. The Supreme Court noted that the Vohra Committee found that in States like Bihar, Haryana and Uttar Pradesh, the criminal gangs enjoy the

patronage of local level politicians, cutting across party lines and these political leaders have become the leaders of the criminal gangs and over the

years, get themselves elected to local bodies.

15. The facts of the case reveal that it seems that Tamil Nadu also joined the band wagon of those States. The petitioner herein, who is the District

Secretary of D.M.K. Party, Thiruvavur and an elected Member to the Thiruvavur Town Panchayat, is credited with his involvement in the following

criminal cases:-

S.No. Police Station Crime No. of Section of Law and the rank Total number of the accused petitioner

1 Koradachery 14 302/04 u/s.147, 148, 341, A12

302 r/w. 120(b) IPC

2 Koradachery 17 284/11 u/s. 188, 143, 268 A1

and 506(ii) IPC

3 Thiruthuraipoondi 08 758/11 u/s. 147, 148, 506(ii)A1

and

3(1) PPDL Act r/w 7(1)(a)

CLA Act

4 Thiruthuraipoondi 13/11 u/s. 147, 148, 447, A1

379, 380, 506 (ii) and

120(b) IPC r/w 3(1) of

PPDL Act

5 K.K.Nagar 04 K.K.Nagar, Trichy City, A2

96/12 u/s. 147, 294(b), 353,

332, 307 and

506(ii) IPC

16. It is true that this Court set aside the detention order issued by the District Collector, Thiruvarur, under Goondas Act, in H.C.P. No. 1027 of

2011 on 23.11.2011. But the fact is that the petitioner is involved in large number of criminal cases and a rowdy sheet is also opened in rowdy

sheet No. 567/2011 on 08.12.2011 in Koradachery Police Station. He had no difficulty in getting police protection, when his party was in power.

Later, the same was withdrawn, when his party lost power.

17. The maternal uncle of V.K. Senthilkumar, by name Ko. Vi. Sampath, was murdered on 22.08.2004, for which, a criminal case was registered

against several persons, in Crime No. 302/2004, on the file of Koradachery Police Station. The petitioner and his brother Poondi. K. Kalaiselvan

are accused in the said case. At that time, his brother Poondi K. Kalaiselvan was the District Secretary of D.M.K. Party, Thiruvarur. It seems that

as a retaliation, the brother of the petitioner was murdered on 17.11.2007, by

the criminal gang, lead by V.K. Senthilkumar, belonging to the present Ruling party. A criminal case was registered for the said murder and V.K. Senthilkumar is an accused in the said case. Mr. V.K. Senhil Kumar was also detained under the Goondas Act.

18. The judgment of the Bombay High Court, relied on by the learned Special Government Pleader relates to police protection sought by two criminals, who are leading two criminal gangs. In the said judgment, the Bombay High Court has held that the criminals have no right under Article 226 of the Constitution of India to seek armed police protection round the clock. In this regard, para 42 of the said judgment is extracted hereunder:

42. Applying the ratio of the above decision to the pleadings of the two cases, one of Arun Gavli and the other of Ramesh Sharma, there is no doubt in our minds that they are involved in a number of serious crimes; the trials are pending and they belong to a rival criminal gang. Though Arun Gavli denies this allegation, Ramesh Sharma specifically admits his being involved with one gang or the other. The affidavit-in-reply by A.C.P. Kulkarni in Arun Gavli's case makes it abundantly clear that he is operating a rival criminal gang. We have broadly indicated the modus operandi of the criminal gangs operating in this city in the present days of advance and sophisticated telecommunication systems. We have no hesitation in coming to the conclusion that, in the first place, the petitioner has no right at all flowing from Article 21, to claim that the State must afford armed police protection to him round the clock. Even assuming that the petitioner had any such right, if the authorities come to the conclusion that the armed police protection round the clock was likely to be misused to the detriment of the society at large and would be a cover to perpetuate criminal activities, they would undoubtedly be justified in refusing to grant armed police protection to the petitioner round the clock. At any rate, the question which we must consider, as was done by the Apex Court in the case of "X" is whether this Court should grant assistance to the petitioner in a writ petition under Article 226, which can be only for the enforcement of the fundamental rights guaranteed under Part III or for enforcement of any other legal right. Our answer is clearly in the negative for the reasons aforesaid. In this view of the matter, we have no hesitation in coming to

the conclusion that the protection of life and personal liberty guaranteed by Article 21 of the Constitution does not include a right in favour of

persons like the petitioner to claim that the State must afford them armed police protection round the clock.

19. The Bombay High Court has also held that a distinction shall be made between the law abiding persons seeking police protection and a person

having a criminal background, that too leading a gang. Ultimately, the Bombay High Court has held in para 68 that even a person having criminal

background could be given police protection, for a particular occasion or at a place, when there is a genuine and imminent threat to the life of such

person. But the criminal cannot seek the aid of police round the clock to have advantage over the other gang. In this regard, para 68 of the said

judgment is extracted hereunder:

68. In view of the aforesaid conclusions, our answers to the three questions mentioned at the outset (in para 3) are as under:-

(i) The protection of life and personal liberty guaranteed under Article 21 of the Constitution does not include a right in favour of a person like the

petitioner to claim that the State must afford him armed police protection for 24 hours a day, everyday, that is to say, round the clock.

(ii) In the absence of any such right flowing from the mandate of Article 21, as indicated in our answer to Question (i) the State can, by an

executive fiat, like the Circular dt. 9th August, 1990, as amended on 12th May, 1997, distinguish between law-abiding person on the one hand

and a person having a criminal background on the other for the purpose of deciding whether armed police protection round the clock is to be

granted or not.

(iii) Despite the above, however, if a person like the petitioner, makes out a specific case of a genuine and imminent threat to his life on a particular

occasion or at a particular place, the State Government would not be justified in refusing to grant armed police protection to him qua that particular

occasion or place. This would, however, be subject to occasional review by the Threat Perception Committee constituted by the State

Government.

20. In this case, the petitioner was given police protection after his brother's murder on 17.11.2007. After the murder of his brother, he became

the Thiruvarur District Secretary of the DMK Party. After his party lost power in the State, police protection given to him and his family members

was withdrawn. Subsequently, one of his associates was also murdered on 11.09.2012, by the other gang. According to the petitioner, he escaped

from the said criminal assault, due to the police protection given to him, pursuant to the order of this Court in this case.

21. While V.K. Senthilkumar moved this Court by filing writ petition in W.P. No. 4476 of 2012, for a similar prayer, like this writ petition, to

consider his representation, seeking police protection, the learned Government Advocate readily came forward to provide police protection as

sought for by him and this Court disposed the said writ petition on 08.03.2012, granting police protection. In this regard, paras 2, 3 and 4 of the

judgment in W.P. No. 4476 of 2012 are extracted hereunder:

2. The case of the petitioner as given in the affidavit is that he is duly elected President of Town Panchayat, Koradachery. He assumed office on

25.10.2011. He is also a primary member of AIADMK and M.G.R. Youth Wing, Joint Secretary of Thiruvarur District. He is public person

working all the time for the cause of public, particularly the people of Koradachery Panchayat. Due to political rivalry his maternal uncle Ko. Vi.

Sampath was murdered and at that time his friend Somsudhin aged about 80 years old was in the place of occurrence and he was also a Union

Secretary of AIADMK, Koradachery Union. The said murder was conspired and executed by Poondi Kalai Selvan and his brother Poondi

Kalaivanan and Kalaiarasan. The District Secretary of DMK, Thiruvarur District and he is a powerful man. The said Poondi Kalaiselvan was

murdered by unknown persons during year 2007. But the petitioner was implicated and booked under Tamil Nadu Act 14/82. During the said

period his house was demolished with JCB and therefore he lodged a complaint before the concerned police station but it was of no avail. The

complaint was registered only on the direction issued by this Court in favour of the petitioner. In the bargain the petitioner could not enter into his

village for four years. Since he has got constant threat and his life is in danger, he requested the respondents to provide him adequate police

protection. The same was considered and police protection was granted. After four years when he entered his village and contested in the local

body election and got elected as President, Town Panchayat, Koradachery, he has been again facing threat and disturbances. Therefore he sought

for police protection to safeguard himself from the enemies. The respondents provided adequate police protection of four armed policemen round

the clock from 04.12.2011. But on 11.01.2012 out of four armed policemen two were withdrawn by the respondents and only two policemen are

now providing protection to the petitioner. Because of the increased threat and the danger faced by the petitioner, he has requested the respondent

police to provide four persons as before so that his life will be safe and secured. But the same has not been considered. Hence, the above writ

petition has been filed for the aforesaid prayer.

3. The learned Government Advocate on instruction from the Inspector of Police would submit that they are prepared to provide two more men, if

the petitioner is prepared to pay the cost as per the Government Orders and the same has to be paid by the petitioner in the office of

Superintendent of Police.

4. In view of the submission made by the learned Government Advocate, the Superintendent of Police/the second respondent is hereby directed to

consider the application submitted by the petitioner on 24.01.2012 and pass appropriate orders providing two more armed policemen, with the

existing two men to the petitioner for his protection with the condition that the petitioner should pay the necessary fees as per the Government

Orders. On getting appropriate orders from the Superintendent of Police or the other competent authority, the petitioner shall remit necessary

charges to the office of the Superintendent of Police to get two more men. This exercise shall be completed immediately by the respondents as the

petitioner apprehends danger to his life and property every day.

22. But the same yardstick is not applied in this case. The submissions of the learned Special Government Pleader that are advanced meticulously

in this case should have also been advanced in W.P. No. 4476 of 2012. However, that was not done in the said case. Had it been opposed, I am

of the view that this Court could have taken a different view in that case. Since the State came forward to provide police protection in W.P. No.

4476 of 2012, this Court disposed the said writ petition giving police protection to V.K. Senthilkumar. But, in the present case on hand, the

learned Special Government Pleader has expressed serious concern about criminalization of politics and opposed granting of police protection to

petitioner, but there is no answer from him for the silence of the State in W.P. No. 4476 of 2012. Had there not been such an order dated

08.03.2012, in W.P. No. 4476 of 2012 giving police protection to Mr. Senthil Kumar, who is leading another criminal gang, I have no hesitation

to reject this writ petition, in the light of the judgment of the Supreme Court (cited supra) and the Bombay High Court referred to above. A person

with a criminal background cannot have an advantage, because of his political power, over another person/gang. Hence, I am inclined to issue a

similar direction, as in the case of V.K. Senthilkumar, in W.P. No. 4476 of 2012 dated 08.03.2012.

23. Accordingly, the writ petition is disposed of in terms of the order dated 08.03.2012 passed by this Court in W.P. No. 4476 of 2012.

However, a direction is issued to the State Government to take a decision on these matters as to giving of police protection round the clock to a

person, with criminal background, whether such a person is holding an office in a political party or elected to Local Body or the Assembly or for

Parliament, in the light of the observations made in the judgment and the judgment of the Honourable Apex Court and the judgment of the Bombay

High Court referred to above. No costs. The Registry is directed to mark a copy of this order to the Chief Secretary of the Government of Tamil

Nadu, as well as the Home Secretary, to take suitable action relating to giving of police protection to the petitioner herein, as well as V.K.

Senthilkumar, in the light of the observations made above.