
(2014) 07 MAD CK 0063
In the Madras High Court
Case No : Crl. O.P. No. 7108 of 2014

K. Shymala

APPELLANT

Vs

The Director General of Police

RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Foreigners Act, 1946 — Section 3(2)(e)

Penal Code, 1860 (IPC) — Section 109, 120(B), 147, 148, 149

Citation : (2014) 3 MLJ(Cri) 569

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Judgement

C.T. Selvam, J.—Petitioner seeks a direction towards registration of a case on her complaint dated 14.03.2014.

2. The petitioner informs of incidents of outraging the modesty of her mother and herself around 21.08.2010 when she was 19 years of age. She contends that when on a visit to Chennai with her parents, police officials belonging to Coimbatore, barged into a hotel room required her father to speak to the Commissioner of Police, Coimbatore over phone and of their taking away her mother, her brother and sister, aged 6 and 5 years respectively, in two Cars. She informs of her mother and herself having been molested through out the journey to Coimbatore and of the Commissioner of Police molesting her at his office in the presence of her parents. Informing of the beating and arrest of her father, of his statement under Section 164 Cr.P.C. wherein he had spoken to illegal activities of police officers having been recorded and referring to writ proceedings relating to the detention of her father at a special camp for foreigners, the petitioner has alleged inaction on her complaint dated 14.03.2014 despite observations and directions of this Court requiring that the same be properly looked into, the aforesaid direction has been sought.

3. Heard Mr. M. Sreedhar, learned counsel for petitioner and Mr. C. Emalias,

learned Public Prosecutor.

4. The details of wrong doing by police officials informed in the complaint of the petitioner dated 14.03.2014 are so severe as do not permit reproduction. Suffice it to say that if true, the acts complained of are most condemnable and would make out offences much beyond molestation. It is in a rare case that this Court would reproduce a counter statement of the respondent. However, being of the view that it would throw much light on the matter, this Court considers it appropriate to do so. The same reads as follows:

I, K. Ramanujam, IPS, S/o. Thiru. K. Kuppusamy, aged about 61 years, serving as Director General of Police, Tamil Nadu, do hereby solemnly affirm and sincerely state as follows:

2. I am the respondent herein. I humbly submit that the petition dated 14.03.2014 sent by the petitioner Shyamala was received by my office on 15.03.2014. It was sent to the Commissioner of Police, Coimbatore who in turn, instructed the Addl. Deputy Commissioner of Police PEW, Coimbatore City to conduct an enquiry in this regard. Accordingly, Tmt. Lalitha, Addl. Deputy Commissioner of Police PEW., Coimbatore City conducted an enquiry, examined and recorded the statements of the petitioner and other persons connected with the above matter and submitted a report dated 13.04.2014. The Commissioner of Police, Coimbatore submitted a report dated 15.04.2014 along with his remarks. I have perused all the connected files and I am well acquainted with the facts of the case, which form the basis for this counter.

3. It is submitted that the petitioner is put to strict proof of all the averments made by her and all the averments are denied except those that are specifically admitted herein.

4. Regarding the averments in Para 1 to 3 of the affidavit, this respondent has no remarks.

5. It is submitted that Kaurnairaj whom the petitioner claims to be her father, and his wife Macha Kanthi @ Jayanthi had been accused of cheating people on the pretext of getting them jobs in multinational companies. On the complaint given by one Joel Jayakumar, a case in Coimbatore City CCB Cr. No. 38/2010 u/s. 420 IPC was registered on 18.04.10. Then, on the complaint of another victim namely Pradeep Philipose who was induced to part with gold jewels worth Rs. 1.20 lakhs and cash of Rs. 50,000/-, by falsely promising him to secure a job in a multinational company, a case in Coimbatore City CCB Cr. No. 55/2010 u/s 420 IPC was registered on 31.05.2010. In the course of investigation, the police identified that Karunairaj @ Michael Soosai and his wife Macha Kanthi @ Jayanthi were the accused who had operated under aliases. They were traced to Aravind Residency, Ekkattuthangal, Chennai and arrested on 22.08.2010 at 08.00 A.M. by the Coimbatore Police in Coimbatore City CCB Cr. No. 55/2010. At the time of their arrest, the petitioner and two other children namely Tikka Devan (then aged 6 years) and Boomiputhri (female child then aged 5 years) were also

present. Karunairaj and Macha Kanthi represented to the police team that there was nobody to take care of the children and wanted the police team to take the children also along with them. So, in the interest of care and protection of the children, they were also taken to Coimbatore and duly produced before the Child Welfare Committee, Coimbatore, on whose orders they were kept in Don Bosco Anbu Illam and subsequently in other authorised homes at Coimbatore. The petitioner Shyamala did not make any allegation before the Child Welfare Committee against any police officers. The Inspector of Police Chandrasekar had accompanied Karunairaj @ Michael Soosai in one vehicle while a Woman Sub Inspector by name Tmt. Ezhilarasi accompanied the petitioner, her mother and the two other children in another vehicle. The petitioner was taken to the All Women Police Station, Central, Kattoor, (Gandhipuram) Coimbatore and from there to the Child Welfare Committee and then to the Don Bosco Anbu Illam, and subsequently to other authorised homes. Neither the petitioner nor her mother nor step father Karunairaj @ Michael Soosai was taken to the Police Commissioner's office or his room as alleged. Further the allegations that during the journey by road from Chennai to Coimbatore and at the office room of the Commissioner of Police, the petitioner and her mother were molested by the police are not correct.

6. Regarding the averments in Para 5 of the affidavit, it is submitted that on publication of the news item regarding the arrest of Karunairaj @ Michael Soosai and his wife Macha Kanthi @ Jayanthi, the police came to know that they were involved in a case of murder of one Malaysian national by name Subramaniam regarding which a case in Cheyyur PS (Kancheepuram district) Cr. No. 609/2004 u/s 147, 148, 364, 417, 302, 201, 120(B) IPC r/w 149 IPC had been registered. Karunairaj @ Michael Soosai and his wife Macha Kanthi @ Jayanthi were also involved in the following cases of cheating.

(i) Coimbatore CCB Cr. No. 77/2010 u/s. 420 IPC For cheating the complainant Ravichandran of a mobile phone worth Rs. 18,000/- and gold bracelet worth Rs. 20,000/- under the pretext of arranging a job abroad with high salary.

(ii) Coimbatore CCB Cr. No. 83/2010 u/s. 420 IPC @ 120(B), 420 and 109 IPC For cheating the complainant Jeyakumar of gold and silver ornaments worth Rs. 80,000/- and cash Rs. 10,000/- under the pretext of arranging a job abroad with high salary.

It is learnt that Karunairaj @ Michael Soosai is also involved in some other cases including some of Karnataka State. Karunairaj @ Michael Soosai was released from prison on 8.11.2011. Further it is not correct to state that the petitioner's step father Karunairaj @ Michael Soosai was kidnapped and detained illegally till 12.11.2011 in an undisclosed place. On the report of Q Branch Police, on 9.11.2011, the Government of Tamil Nadu passed an order in GO Rt. No. 3749 Public (Foreigners III) Department dt. 9.11.2011 u/s. 3(2)(e) of the Foreigners Act, 1946, since he happened to be a Malaysian national (a foreigner) and his continued presence has to be regulated. Further, the said order regulating his

movement was not passed by this respondent. Though the said Karunairaj filed a Writ Petition No. 27221/2011 which was allowed by this Hon"ble Court by an order dated 29.2.2012, the Government preferred a Writ Appeal in 651 of 2012 and it was heard by the First Bench of this Hon"ble High Court. The Writ Appeal was allowed and the regulatory order passed against Karunairaj was upheld and he was made to continue to stay in the Special Camp for Foreigners at Chengalpattu. The Bench did not give any direction on the allegations of molestation.

7. Regarding the averments in Para 6 of the affidavit, it is submitted that prior to initiation of any action against the police officers, the genuineness and the veracity of the allegations made in the petition have to be verified since the petitioner had mentioned about an alleged incident said to have taken place about 3= years back. But the records emphatically reveal that the police team were discharging their duties in good faith in tracing out the real culprits who are involved in many cases of cheating and a case of murder. Apart from that, Karunairaj is involved in many cases in Malaysia also according to information received from Interpol unit of Malaysia. The report of the Addl. Deputy Commissioner of Police reveals that she conducted an enquiry, examined and recorded the statements of the petitioner and other persons connected with the above matter. In the report she concluded that the independent witnesses who were present with her from the time of her father's arrest till she was kept in the home did not corroborate her version of sexual assault. The enquiry report states that all the allegations levelled against the police officers are false, malafide and motivated. Hence the contrary averments are not correct.

8. Regarding the averments in Para 7 of the affidavit, it is submitted that though the said petition is dated 14.3.2014, the petitioner has hastily rushed to this Hon"ble High Court on 18.3.2014 itself, without giving sufficient time to the respondent for verification of the genuineness of the petition. It is a motivated one and a clear case of abuse of process of law. Hence the contrary averments are not correct.

9. Regarding the averments in para 8 of the affidavit, this respondent has no remarks.

10. Further this respondent submits that the petitioner has claimed to be the daughter of G. Karunairaj. But the said Karunairaj is actually Michael Soosai who is a Malaysian fugitive wanted by the INTERPOL since 2005 for various cases of cheating, forgery, theft and criminal intimidation. Karunairaj @ Michael Soosai has many aliases in various crimes committed by him in India. He had come to India in 2003 when the petitioner was 11 years of age. He was living with Macha Kanthi @ Jayanthi who is also an accused in the murder of a Malaysian national by name Subramaniam on 12.12.2004 at Cheyyur, Kanchipuram District. It is submitted that the petitioner is the daughter of Macha Kanthi @ Jayanthi. Further even at the time of remand neither Karunairaj nor petitioner's mother Macha Kanthi @ Jayanthi made any allegation of sexual assault by any of the police

officer either against the petitioner or against Macha Kanthi @ Jayanthi, that being the first opportunity for petitioner's mother to make complaint of such assault by the police officers. Failure to do so at that time and making such allegations after a lapse of more than 3= years clearly reveals that such allegations are made as an afterthought.

11. Further, this respondent submits that Karunairaj filed HCP No. 177/2011 in which as per the direction of the Hon''ble High Court, Madras, the petitioner Shyamala and the two other children namely Tikka Devan and Boomiputhri were duly produced on 15.02.2011 before their Lordships Hon''ble Justice C. Nagappan and Hon''ble Justice M. Sathyanarayanan. Though their Lordships enquired the petitioner, her siblings and their mother Macha Kanthi @ Jayanthi also, even at that time, none of them made any allegation against any police officers. The said HCP was disposed by handing over the children to the custody of Macha Kanthi @ Jayanthi.

12. Further, the petitioner Shyamala has earlier filed HCP No. 530/2012 praying for the production of her father Karunairaj. At that time the said Karunairaj was lodged in Special Camp for Foreigners at Chengelpattu. Further the said HCP No. 530/2012 was dismissed on 28.08.2012 for non prosecution. Even in the above said HCP petition, the petitioner has not stated anything about the alleged misbehaviour by the police. This makes it clear that such allegations are an afterthought and motivated.

13. It is submitted that the petitioner Shyamala had filed a similar petition in this Hon''ble Court in HCP No. 505 of 2014 that her father Karunairaj @ Michael Soosai was administered slow poison and that he was missing from the Chengalpattu Special Camp for Foreigners and making allegations that Addl. Director General of Police Thiru. C. Sylendra Babu IPC was planning to murder her father. This Hon''ble Court ordered Michael Soosai to be produced in the court. When Michael Soosai was produced in the court on 12.2.2014 he confessed to have voluntarily taken a transfer to Trichy camp due to a skirmish with Sri Lankan inmates and that his transfer to Trichy was known to the petitioner Shyamala and her mother Macha Kanthi @ Jayanthi. The judgment of this Hon''ble Court in HCP No. 505 of 2014 would be an ample proof that the petitioner had given false information alleging that her step father was kept in Chengalpattu Medical College Hospital for 38 days as an inpatient and there he was given slow poison injection and his whereabouts are not known to anyone.

14. It is submitted that in the HCP No. 1049/2013 filed by the petitioner's mother Macha Kanthi @ Jayanthi in para 38 of the petition has gone to the extent of making allegation that I am anticipating the respondents 6 (C. Sylendra Babu, ADGP,) and 7 (C. Chandrasekar, Inspector of Police) had kidnapped her husband and killed him. So it is clear that the petitioner, her mother and step father Karunairaj @ Michael Soosai are in the habit of filing several petitions containing false information.

15. It is humbly submitted that Karunairaj @ Michael Soosai had created forged death certificate as if he died at General Hospital, Kuala Lumpur, Malaysia on 12.09.2003 in order to get discharge from the cases pending against him in the Sessions Court, Malaysia as disclosed by the Red Corner Notice dated 19.10.2005, issued by the INTERPOL, Malaysia. Then Karunairaj @ Michael Soosai illegally entered into India without any valid travel documents. The INTERPOL has warned that this criminal may be a dangerous person.

16. It is submitted that Karunairaj @ Michael Soosai had also foisted a case of rape against one Subramaniam in Malaysia with the help of a Chinese woman, whom he bribed to give a false complaint of rape against Subramaniam. During the trial, the Chinese woman confessed the truth and a warrant was issued against Karunairaj @ Michael Soosai by the Malaysian Court. This was stated by Palli Billiamal, wife of Subramaniam, in connection with the murder of her husband Subramaniam vide Cheyyur P.S. Cr. No. 609/2004 u/s. 147, 148, 364, 417, 302, 201, 120(B) r/w 149 IPC. She stated the facts in the FIR itself which was registered in Chennai Airport P.S. Cr. No. 284/2004 u/s 365 and 420 IPC on 21.12.2004. The Chennai Airport case was later clubbed with the Cheyyur case since they related to the same transaction.

17. It is submitted that Karunairaj @ Michael Soosai wanted to give a statement before the Judicial Magistrate u/s 164 Cr.P.C. and so the Judicial Magistrate, Uthiramerur recorded his statement u/s. 164 Cr.P.C. on 23.11.2010, after giving sufficient time to reflect. Even in the said 164 Cr.P.C. statement, Karunairaj @ Michael Soosai did not make any such averment regarding the alleged misbehaviour by police either at the time of arrest or during journey from Chennai to Coimbatore and till the time of remand and lodging of the children in the Don Bosco Anbu Illam and other authorised Homes. So, this makes it clear that the allegations made by the petitioner now in the present petition are motivated and made with an ulterior motive to embarrass the police officers.

18. It is submitted that to sum up,

- a) at the time of remand of her step father and mother on 23.08.2010,
- b) at the time of producing the petitioner and her siblings before the Child Welfare Committee on 23.08.2010 or on subsequent dates till they were lodged in the Don Bosco Anbu Illam and other authorised Homes,
- c) at the time of giving statement u/s 164 Cr.P.C. before the Judicial Magistrate, Uthiramerur, on 23.11.2010 by Karunairaj @ Michael Soosai,
- d) at the time of production of the petitioner and her siblings before this Hon''ble High Court, Madras on 15.02.2011 in connection with HCP No. 177/2001,
- e) in the HCP No. 530/2012 filed by the petitioner, neither the petitioner nor Karunairaj @ Michael Soosai nor her mother had stated anything about the alleged misbehaviour by the police.

19. It is further submitted that the petitioner has come forward with this libellous petition with an ulterior motive of intimidating the investigating officers and defaming them in order to escape from the cases pending against her mother Macha Kanthi @ Jayanthi and Karunairaj @ Michael Soosai.

20. It is therefore prayed that this Hon"ble Court may be pleased to dismiss the above petition as devoid of merits, with exemplary costs and thus render justice.

5. Learned counsel for petitioner submitted that challenging the order in G.O.R.T. No. 3749, Public (Foreigners III) Department, dated 09.11.2011 which directed the detention of the petitioners father in Special Camp for foreigners, he had moved W.P. No. 27221 of 2011 before this Court. While allowing such Writ Petition, a learned single Judge of this Court had made the following observations:

5. Though the petitioner has made several allegations against a particular Police Officer without even impleading him as a party, those allegations need not be enquired into, for testing the correctness of the impugned order for various reasons. First of all, the petitioner has not assailed the impugned order exactly on the ground of mala fides, though he could have done so by impleading the said Police Officer as a party. As a matter of fact, if he had done so, the said Officer would have had many things to explain to this Court, in view of the manner in which even the children of the petitioner including an adolescent daughter was dealt with by the Police, when that officer was at the helm of affairs at Coimbatore. Anyway, since the petitioner himself has spared me of the necessity to go into these allegations by not challenging the impugned order on the ground of mala fides and also not impleading that officer as a party to the writ petition, I shall leave all these allegations apart, so that the correctness of the impugned order could be tested on purely legal grounds. and directed the first respondent to look into the complaints made by the petitioner, in order to avoid an impression that serious allegations against higher officials would get wiped under the carpet.

6. Though the First Bench of this Court had allowed the appeal against such order under orders in W.A. No. 651 of 2012, it thought it proper to inform thus:

41. However, as observed by the learned Single Judge in paragraph No. 41 of the order, the first respondent, de-hors the dismissal of the writ petition, shall look into the complaints made by the writ petitioner with regard to the alleged physical abuse/torture suffered by him in the Special Camp at Chengalpattu, and pass orders as expeditiously as possible.

7. Harping on the above reproduced observations, learned counsel submitted that such observation/direction has not been complied with and the petitioners complaint dated 14.03.2014 had not been acted upon despite the same disclosing cognizable offences. Learned counsel, relying on the decision of the Apex Court in Lalita Kumari Vs. Govt. of U.P. and Others, , would contend that once the complaint informs cognizable offences, the respondent was duty bound

to register a case and cause due investigation thereupon. Learned counsel submitted that though charge sheet in Crime No. 609 of 2004 registered for offences under sections 147, 148, 364, 417, 302, 201, 120(B) r/w 149 IPC was filed in the year 2007, the case is still pending committal. Learned counsel would contend that the statement of the petitioners father recorded under section 164 Cr.P.C. on 22.11.2010 has not been produced. In explanation of the delay in preferring the complaint, the counsel has stated that the petitioner was in custody when her father had been arrested in Crime No. 55 of 2010, Coimbatore City Crime Branch and had then been produced before the Child Welfare Committee, Coimbatore and in such circumstances, she had not the courage to speak against police officials. The wrongful conduct of such officials had been informed by the petitioners father in W.P. No. 27221 of 2011 moved by him challenging G.O.R.T. No. 3749, Public (Foreigners III) Department, dated 09.11.2011. It was only now that that petitioner had courage to inform in detail the wrong doings of police officials and to seek action against them.

8. Learned Public Prosecutor submitted that the complaint of the petitioner as also the present petition were sheer acts of malice and were malafide. Emphasizing on the contentions raised in the counter filed by the respondent, learned Public Prosecutor would inform the undue haste exhibited by the petitioner in moving the present petition as proof thereof. He submitted that the petitioners complaint dated 14.03.2014 was received on 15.03.2014, Saturday and Sunday having intervened, the same was placed before the respondent/DGP on 17.03.2014. Even before an enquiry could be conducted, the petitioner has moved the present petition on 18.03.2014. A due enquiry had been conducted by a lady officer viz., the Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Coimbatore City and her report dated 13.04.2014 informed the allegations levelled by the petitioner to be false and malafide. As it has been contended by learned counsel for petitioner that the Enquiry Officer has not taken into consideration the petitioners statement, learned Public Prosecutor points out that a perusal of the report informs due consideration of the petitioners statement and rejection thereof for very valid reasons. Learned Public Prosecutor has filed a typed set of papers supporting his contentions and those found in the counter of the respondent.

9. When allegations of grave misconduct, that too, against a woman, are levelled against high ranking police officials, it is in the interest of public administration and maintaining the morale of the police force that a preliminary enquiry be conducted before deciding upon registration of a case. As informed supra, the enquiry conducted in the present case has informed the complaint of the petitioner to be an act of malice. This Court has perused the enquiry report and is satisfied that a reasoned conclusion stands arrived at. This Court is not informing reasons for stating so since this Court finds it appropriate to dismiss the present petition for other reasons. This Court while disposing of W.P. No. 27221 of 2011 has taken note of the manner in which the petitioner, an adolescent girl, was dealt with by the police, but that would not lead to the

inference that the petitioner's present allegations are true. The reasons for dismissal of the present petition are as follows:

The statement of the father of the petitioner stands recorded under section 164 Cr.P.C. pursuant to his arrest in Crime No. 609 of 2004. After grant of time for reflection on 22.11.2010, the statement was recorded on 23.11.2010 by learned Judicial Magistrate, Uthiramerur. Despite reference therein to his children being at Anbu Illam, Coimbatore, no whisper about the wrong doings presently alleged by the petitioner has been made. This is most unnatural. The petitioner's father has moved W.P. No. 27221 of 2011 challenging G.O.R.T. No. 3749, Public (Foreigners III) Department, dated 09.11.2011. It is only therein the allegations of sexual torture meted out to the petitioner and her mother stands mentioned. It is also stated therein that a representation has been made there regards to the Home Secretary on 28.01.2011. Thus, even according to the petitioner, in respect of grave misconduct by police officials committed around 21.08.2010, a representation for the first time has been made only as late as on 28.01.2011. Besides being most unnatural conduct, particularly on the part of one who is no stranger to Courts and is not unfamiliar with the police, the conduct raises the issue of danger of subjugation of the police force at the hands of wrong elements. In H.C.P. No. 177 of 2011 moved by the petitioners father on 31.01.2011, seeking a writ of Habeas Corpus for production of his children including this petitioner, danger to the children's life is spoken about but no allegations such as presently made are to be found. Therefore, there need be no doubt whatsoever that the representation informed to have been made to the Home Secretary on 28.01.2011, the allegations found in W.P. No. 27221 of 2011 and the present complaint are sheer acts of vendetta and malice.

10. This Criminal Original Petition shall stand dismissed with costs in a sum of Rs. 10,000/- payable to the Tamil Nadu State Legal Services Authority.