
(2014) 09 MAD CK 0244

In the Madras High Court

Case No : H.C.P. (MD) Nos. 1270 of 2013, 34 and 1095 of 2014

N. Subetha Begum

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0244

Hon'ble Judges : V.S. Ravi, J;S. Manikumar, J

Bench : Division Bench

Judgement

S. Manikumar, J.—On 10.09.2014, we passed the following order:-

1. In most of the Habeas Corpus Petitions status reports are being filed by the concerned Investigating Officers stating that they have travelled to many places to secure the alleged detainees/missing persons. We find that there is no coordination between the Investigating Officers where the crime is reported and the police officers within whose jurisdiction, the missing persons/detenues are reported to have been seen. Though technology is advanced enabling the Investigating Officers to transmit all the details of the missing persons, with photographs and other details, still, the Investigating Officers file Status reports stating that the investigating Officer or the special team constituted, travel long distance, and by that time, there is every possibility of the accused or the missing person to switch over his place of residence to avoid enquiry or his presence cannot be secured.

2. Mr. Kaliannan, Inspector of Police, Mangalam Police Station, Tiruppur District, has stated that sufficient training is being given to the Investigating Officers in the rank of Inspectors and Deputy Superintendents of Police in transmitting information. When the Investigating Officer in Crime No. 500 of 2011 is aware of the procedure to be followed, we do not know as to why he has not requested the concerned to transmit all the information to his counter part at Vaigaikulam, Tirunelveli District, to trace out the detenue, instead of sending a Head Constable of Tiruppur Police to Tirunelveli District and by the time, there is every possibility

of the alleged detenu changing his place.

3. Therefore, we would like to know from the Director General of Police, State of Tamil Nadu, to furnish the details as to how the officers are being trained in the light of the advancement of technology.

4. The learned Additional Public Prosecutor is directed to send a copy of this order to the Director General of Police, State of Tamil Nadu, Chennai, and get all the details and file a report on 23.09.2014.

Post on 23.09.2014.?

2. By further observing that information can be transmitted to their counterparts, in other places, by E-mails, for early tracking of missing persons, we requested the Director General of Police, State of Tamil Nadu, to furnish the details, as to how the police officers are being trained, in the light of advancement of technology.

3. Responding to the same, the Director General of Police, State of Tamil Nadu, has submitted that with regard to investigation of missing persons and other related criminal investigation, using Modern Technologies, such as, Mobile Phones, E-Mail, Whatsapp, Workshops/Seminars for one or two days duration, and short term courses upto 5 days duration, are being regularly conducted for the police officers, in the rank of ACPs/DSPs/Inspectors/Sub Inspectors at the Police Training College, Chennai. Experienced faculties in the field of Mobile application, Bank/ATM frauds and Scientific Officers from TNFSL are being invited to make presentations, on new technologies and its application in Crime Investigation to the above police officers.

4. He has also stated that with the help of new technology, officers are being trained in the use of Mobile Forensics, in grave crime investigation, Anti Human Trafficking, Prevention and Control of Human Trafficking, scene of crime investigation and crime against women. He has also stated that courses have been designed and that the participating investigating officers are periodically trained, regarding professional application in the abovesaid areas, to avoid delay in investigation and speedy communication of information obtained, during the course of investigation, to their counterparts to verify such information, for example, SMSs, Whatsapp and E-mail.

5. The Director General of Police, Tamil Nadu, has further submitted that there are 13 In-service training centres (IS TCS) throughout the State, at the Headquarters of each police range, imparting in service training to local police personnel from the level of Inspectors of Police to Constables, to upgrade their knowledge and investigation skills, with the help of modern technologies.

6. While dealing with Habeas Corpus Petitions, we have noticed that CD files do not disclose of parting of information by the Investigating Officers, to their counterparts nor there is any effective co-ordination with the District Crime Record Bureau, in case of missing persons. It is not out of place to mention that

unidentified bodies are also reported. We are of the view that there should be an effective co-ordination, involving Anti Human Trafficking, District Crime Record Bureau and State Crime Record Bureau, in the matter of investigation of crime, particularly, involving women and children. More number of police personnel should be trained.

7. From our experience, in dealing with Habeas Corpus Petitions, we have to say that many CD files perused by us, do not indicate that the investigating officers have ever shared or furnished the information to their counterparts, where the missing person is reported to have been seen.

8. Despite print and visual media, advertisements, circulation of pamphlets in the nearby areas and by other modes, many cases of missing persons are still pending. Missing of children could be due to lack of parental care, poverty, estranged relationship in the family, forced labour in some other places (Bonded Labour) and the above reasons are only illustrative. Missing of adolescent boys and girls are mainly due to relationship, they develop. In the case of married people, sometimes, it is reported that relationships are extra marital. Some people abandon their families.

9. It is reported that persons, who are of unsound mind, irrespective of age and unable to identify themselves, are left near some temples. Attention of this Court was also invited to cases, where homes and other institutions, are keeping there persons of unsound mind, under their care and treatment, but their identities are not known. Taking note of the number of cases of missing persons, in different age groups, abled or disabled, we requested Dr. C. Ramasubramaniam, State Nodal Authority for Mental Health Programmes and the Commissioner of Police, Madurai City, Madurai, the latter is one of the respondents, to submit their views and suggestions, as to how, the missing persons could be tracked, as expeditiously as possible.

10. Both the Commissioner of Police, Madurai City, Madurai, and Dr. C. Ramasubramaniam, State Nodal Authority for Mental Health Programmes, have given their valuable suggestions, which we wish to record, at the appropriate place in this order.

11. However, the Commissioner of Police, Madurai City, has also expressed certain difficulties in the case of tracing out persons, who are of unsound mind stating that "when a person of unsound mind goes missing, his/her parents/relatives furnish photograph of the missing person, in the police station, which is always found to be old/outdated and unfit for circulation. Further, they do not furnish the exact description of the missing persons, like height, weight, complexion, hair, identifying marks, clothes last worn, spectacles, footwear, girth any other special features, etc., and due to such unclear data or hazy details, Police Personnel, who are assigned the task of tracking such person, remain confused and have to wander aimlessly, without any result. Unless exact descriptive particulars are given, the possibility of tracing out unsound mind

persons, would always remain elusive.?

12. Earlier, during the course of hearing of one of the Habeas Corpus Petitions, the Commissioner of Police, Madurai City, Madurai, has also submitted that recently, Southern Railways has collected details of the unidentified bodies and furnished a database to the Tamil Nadu Police department and those details are available in the Official Website of the Police Department.

13. At this juncture, it should be noted that all the Kith and Kin of the missing persons, may not be aware of the existence of such Official Website. Chances of the unclaimed/unidentified bodies, being disposed of, after a considerable period, as per law, is also there. Chances of Human Trafficking of children and being exploited to work, as bonded labourers in quarry sites, are also there. Physical exploitation can be otherwise also. There are instances, where missing persons are reported to be killed and their bodies disposed of by criminals. There may be instances, where the bodies could be transported and thrown outside the territory of Tamil Nadu and in such cases, Tamil Nadu State Police may not have any record of such unidentified bodies, in their Official Website, but there may chances of the District Crime Record Bureau or the State Crime Record Bureau of other States, to have notified, in their Official Websites, about such unidentified bodies, found within their territories.

14. Considering the material on record placed before us, by the Commissioner of Police, Madurai City, Madurai and Dr. C. Ramasubramaniam, State Nodal Authority for Mental Health Programmes and the need to have effective co-ordination, involving various State and National authorities, in Crime detection, particularly, Human Trafficking, offences against women and children, tracing out missing of persons of unsound mind and adolescents, particularly, girl children, we deem it fit to issue following guidelines:-

(a) Whenever any information about a missing person is received in a police station, photograph and other identification details of the missing person should be collected from his relatives/friends. Based on this information, the police shall publish the photograph of the missing person in the newspapers, give wide publicity in local TV and other TV channels and radio, publish and distribute pamphlets, among the public, giving description of the missing person. The uploading should be in Tamil Nadu Police website.

(b) Photographs and personal details of the missing persons should be uploaded and maintained in the DCRB, State Crime Record Bureau, State Anti-Trafficking Unit, National Crime Record Bureau Websites and it should be made accessible to all the members of the public.

(c) In order to monitor the cases, registered in connection with missing persons, a dedicated Police Officer, in the rank of Deputy Superintendent of Police, be appointed in each sub-division. He should be assigned a specific task of collecting all the materials, within the sub-divisional jurisdiction and co-ordinate with local police.

(d) Particulars uploaded should also include the contact details of the respective police stations, officer in charge of the investigation and the complainant.

(e) As all the persons may not have computers or knowledge to have access to the official websites, a register shall be maintained at the District Head Quarters, viz., Directorate of State Crime Record Bureau and State Headquarters, Chennai.

(f) A nation wide database of all the missing persons may be posted in a separate website, with all the available details such as, photographs, finger prints, identification marks, voters I.D. details, Passport details, Driving Licence details, Aadhar Card Details, etc. Immediately, on registering an FIR, the details of the missing person should be uploaded in the database. A wide publicity may be given in the media/news papers to the public, to utilize the database and inform the police, if any persons, figuring in the database are found in streets, roads and other places.

(g) For prevention of crime, photographs of known delinquents are displayed in public places, like Railway Stations, Bus Stands and Cinema Theatres. Likewise, for detection, photographs and other details of the missing persons, may also be notified in such public places.

(h) Visual media is more effective than print media. The Licensing Authority for a Cinema Theatre is the Commissioner of Police or the District Collector, as the case may be. The said authorities may explore the possibility of issuing directions to the Theatre Owners to post the photographs and other details of the missing persons, within his jurisdiction, before screening the movie, or the Secretary to the Government, Home (Cinema), Government of Tamil Nadu, may issue necessary directions. Directions can be issued under the Cinematograph Act, 1952 and the Rules framed thereunder. Directions to be issued to the Theatre Owners, is in public interest. Therefore, the Theatre Owners may be directed to strictly follow the same.

(i) A State Level Officer in the rank of Inspector General of Police and a Special Team, duly assisted by Officers, in different capacities, be constituted in the department of State CB CID Headquarters, with a specific nomenclature and the said Bureau, shall be the Apex body in charge of all the cases relating to missing persons of unidentified bodies.

(j) A Deputy Superintendent of Police, be appointed as a Nodal Officer. He shall collect all the information from the Police Stations, throughout the State and a State Level Data Base, be maintained. Such database should also be maintained at the District Crime Record Bureau and updated, on day-to-day basis, by the Superintendent of Police, in the respective districts.

(m) Apart from the District Superintendents of Police, within whose jurisdiction, crime is registered, the Special Bureau shall report to the Additional Director General of Police, CBCID and the Director General of Police, State of Tamil Nadu.

15. The Director General of Police/CBCID, State of Tamil Nadu is directed to

instruct the Director State Crime Record Bureau, to forward the details of the missing persons to their counter parts in other States. Dedicated officers may be directed to visit other states, to secure them, if any complaint is received.

16. Tamil Nadu Police website, particularly, Crime Record Bureau, be linked with websites of other States, so that whenever a person is reported to be missing, it would enable the Tamil Nadu SCRB or CBCID, to verify and cross-check with the details of the photographs and other particulars of the missing person, in other States.

17. Details collected by the State Authorities and kept as a permanent record, while issuing Aadhar Cards to the citizens be verified, by the Police Authorities, to find out as to whether the missing person has shifted his residence. A request can be made by the Secretary to the Government, Home Department, Government of Tamil Nadu or the Director General of Police, State of Tamil Nadu, to the competent authority, Government of India, viz., Director General and Mission Director, UID Authority of India, to link Aadhar details with the Tamil Nadu Police Server.

18. Election Voter ID particulars be directed to be verified to find out, as to whether, the missing person has obtained any voter I.D., in some other place. Details in the Public Distribution Ration Cards be directed to be verified by the investigating Officers. The official websites of the Election Commission of India and the Civil Supplies Department, State of Tamil Nadu, be linked with the server of Police Department. State Registration Department Website, be linked with the police server to find out as to whether the missing person has purchased any property, within Tamil Nadu.

19. State Transport Authority Website containing driving licensing particulars, be linked to the police server to find out, as to whether, the missing person has obtained, driving licence from any other place, other than his ordinary place of residence.

20. Details of investigation collected by the investigating officer, as to the whereabouts of the missing persons, likelihood of their movements in the area, other than the place, from where they were reported to be missing, are to be forwarded immediately, to the District Superintendent of Police, who shall immediately link it, with the District Crime Branch Record Bureau, Anti-Trafficking Unit and State CBCID, so that, all the agencies can effectively co-ordinate and speed up the investigation.

21. There is no accountability, if the investigating officer, has not shared the information to their counterparts. Some investigation requires confidentiality. But the investigation of missing persons, can be shared.

22. Matching of photograph of the missing person with the unclaimed bodies is not done, in many cases. The Investigating Officer should be instructed to match the photographs immediately and periodically. If a missing person's body is

notified in the police website, the body can be secured immediately by the Investigation Officer, before whom any crime is reported. Ordinarily these unidentified bodies are disposed of, after conducting a post-mortem. Not to undermine the sincerity of the Medical Officer, who conducts the autopsy, but unless it is a case of mysterious death, chances of the cause of death, being undetected, are there.

23. The Investigating Officer be directed to make a note in the CD file that he has verified the details hosted in the Police Website.

24. The suggestions given by Dr. C. Ramasubramanian, State Nodal Authority for Mental Health Programmes are also useful and they are as follows:

?A Committee can be formed under the Chairmanship of the Commissioner of Police or the District Collector to streamline the activities of such shelter homes in the district. The following Officials can be member of the committee

? District Mental Health Authority

? The Joint Director of Medical and Rural Health Services

? The Deputy Director of Public and Preventive Medicines

? The District Welfare Officer for the Differently Abled

? The District Social Welfare Officer

? Representative from the Judicial Department

? Representative from the Police Department and Revenue Department

The Committee can meet once in a three months to review the situation of the shelter homes.

At first, they should identify such shelter homes in the district and unlicensed home should be closed immediately.

They should create a data base regarding the number of homes, details about the inmates, infrastructure facilities and medical facilities.

Sensitise the police officials and other important stake holders like the owners of the homes regarding the importance of adhering to the rules and regulation of Tamil Nadu Mental Health Rules.

With regard to the persons with homeless mentally ill, the concerned should inform the local police department within 24 hours or any member of the proposed advisory committee.?

25. Detection of missing/unsound mind persons by an individual should be recognised by giving cash awards, which can be met by the kith and kin. A reasonable amount can be fixed by the respective Superintendents of Police or by the Regional Inspectors General of Police. Details of the informers be kept secret.

Certificate of appreciation can be given by the Police Department, to those, who assist the Police. Considering the gravity of medical illness and particularly the mindset of such mentally unsound persons to leave the house/clinic/residential area, the Secretary to the Government Health Department, may explore the possibilities of providing an advance telemetry system, like neck band transmitter or wrist band transmitter, which according to the Commissioner of Police, Madurai City, would hardly weigh few grams, with a battery life time of 3 or more years and that the same can be tied to the wrist or in some other safe place, which would enable the police, to track their whereabouts, easily, through satellite. The said instrument may be provided to the patients by the Government, at a low cost and be supplied to private hospitals/clinics also, on humanitarian grounds. Suggestions made by the Commissioner of Police, Madurai City, is appreciable, considering the human values and protection to be given to have-nots and crime detection.

26. As regards missing of unsound is concerned, the complainant may furnish clear details of the missing unsound person, the places of treatment of any clinic/hospital, home or asylum, where he was taking treatment. For proper investigation, the complainant may furnish the photograph of the person, height, weight and other identifiable marks. On receipt of the same, all the government homes, institutions recognised by the Government or such other institutions, be immediately addressed through E-mails to respond, within a specific time a limit, so as to ascertain as to whether, such person, was ever treated, continued to be treated and discharged, etc.

27. An exclusive, dedicated help line, be created and linked to DCRB, SCRB and National data base, for lodging complaints about missing persons. On receipt of any information about the missing persons, through the help line, information be broadcasted/telecasted, in the visual media, without delay.

28. Details of the missing/mentally unsound persons, be collected, periodically and uploaded in Tamil Nadu Police Web-site. Homes/care centres be directed to prepare a data base and whenever the jurisdictional police officer or any other higher officer, seeks for information of any person of unsound mind, the same should be furnished immediately. It is to be borne in mind, right of privacy, be maintained. The information required should be only with reference to a crime.

29. The places, where unsound persons are left in lurch or handed over to somebody's care, be identified and the concerned jurisdictional officer in the rank of Inspectors be directed to collect the details of the inmates, from the centres, asylums or other places. A database with photographs, identification marks be uploaded in the State Police Website of Missing Persons. There is no separate head for unsound persons. A separate head in the website be created.

30. Statistics have been furnished showing the number of persons trained for the period between 2012-2014. But from the materials placed before us, and considering the number of police stations, across the length and breadth of the

State, number of police personnel, particularly, in the rank of Inspectors and above, we are of the view that more and more higher police officials should be involved and given the training, as it would not be possible for them, to monitor as to whether the subordinate police personnel are applying the technology to the best of their ability.

31. Training should be given to the officers to study the details of a missing person about the use of social net working sites, such as, facebook or Orkut, etc. However, we wish to state that right of privacy should be maintained.

32. Training should be given to all the investigation officers, in the latest technologies, such as, Cyber Crime and other subjects, stated supra and should be made compulsory. The appointing authorities, while making appraisal of their performance of subordinate police officer, for promotion shall make a specific note regarding the knowledge and application of the latest technology in investigation.

33. The District Superintendents of Police shall be directed to conduct quarterly training in the latest technologies, in investigation and a training schedule for the same, should be devised, centrally, by the training branch of the Police Department. The Schedule should include training on mobile phone technology, GPS system, tracking through social networking sites and other programmes.

34. In the interest of speedy investigation, it is desirable that each service provider, offending mobile connections, to provide access to the Commissioners of Police, in Cities and Superintendents of Police in other areas, a separate ID and Password. The mobile numbers, for which call details record, is collected, be entered in a separate register and communicated to the service provider, then and there. Access by the Commissioners of Police or the Superintendent of Police, as the case may be, be automatically recorded in the Office of the Service Provider, simultaneously, by use of any software programme.

35. It is said that feasibility of the exact location of an individual could be provided by the service providers, in addition to tower location if sought for. ? During the course of discussion, with the officials and the learned Public Prosecutors, it is brought to the notice of this Court that certain mobile service providers would provide paid service to monitor, the exact location of their employees, using technology called ?Work Force Tracking System?. Workability of this system in tracking the missing persons could be explored. If the whereabouts of the employees could be located, by installing a suitable software, in the phones used by the employees, for the purpose of detection of crime, Police authorities are directed to explore the possibilities of seeking the assistance of such service providers, in operating GPS tracking.

36. One of the difficulties expressed by the Investigating Officers is that the service providers do not extend their assistance, if any request is made during night hours. As per the procedural Code, service provider/anybody can be examined for detention of crime and it is the duty of the service provider to

assist the investigation, whenever evidence is sought for. Judicial Notice can be taken that usage of networking and mobiles during night time, by the general public is more. Criminals would make use of the above facility, more during night time. As reiterated, procedural code mandates assistance in investigation. Therefore, the Director General of Police, State of Tamil Nadu may request the service providers to render all necessary assistance in the matter of investigation of a crime and provide the call details immediately, whenever sought for, by the concerned, whether it is night or day. For the service providers, it is view of this Court, whatever is required by the Investigating Officer, it is for investigation of a crime reported and it is their duty to provide the same. Right of privacy is not applicable to detect a crime.

37. Service providers may also be addressed to post a responsible person in the respective offices, to respond to the request of the concerned police officers, to furnish the call details immediately, irrespective of time. It is sincerely hoped that service providers would respond to such request, with a pragmatic and positive approach, that crimes should be, at the earliest. Prompt reply from the service providers would prevent recurrence also. Action under the procedural Code, can be taken, if required.

38. The crime registered shall be brought to the notice of the competent Court immediately and a Register be maintained, as to the details of call details sought for, from the service providers. The details shall be periodically sent to the District Superintendents of Police.

39. Whenever offences are committed, public transport vehicles are also used. Criminals avoid their own vehicles. In the case of public transport vehicles, installation of GPS be made compulsory. Suitable directions may be issued by the Director General of Police, State of Tamil Nadu. The Commissioner of Transports, Chennai, may also issue appropriate directions. However, this should be done only in the case of public transport passenger vehicles or goods carrying vehicles.

40. Issuance of smart cards, for public transport vehicles, carrying passengers or goods, with details of the owners of the vehicles be explored and the possibility of installation of suitable equipments, at the toll gates, be considered, so that if any public transport vehicle is involved, in any offence or required to be tracked or the details collected at the tolls, be directed to be linked with the District Record Bureau, and consequently, to SCRB and NCRB, as the case may be. It is said that in some toll gates, CC TVs are installed. The same may be made compulsory in all toll gates. The details collected at the toll gates may be linked to the Police Server, regularly.

41. Often it is reported that children from Southern districts are sent to State of Kerala, Madhya Pradesh, Orissa and Rajasthan by middlemen/brokers, so that they could be engaged in some small jobs/petty shops, manufacturing snacks/sales. In one of the Habeas Corpus Petition, two minor children were secured from the State of Kerala and they submitted that many children are working in

the area, from where they were secured. Therefore, in that case, we directed the Investigating Officer to enquire into the matter and collect all the details from the alleged middlemen and submit the same to the Commissioner of Police, Madurai City, Madurai. He is directed to forward the details to the Head of the Department.

42. Government Hospitals be directed to take photographs of the unclaimed/unidentified bodies, with visible identification marks and a detailed database be maintained. The name and particulars of the Doctor, who conducted the autopsy, the details of the police officer, who made the request for Autopsy, crime numbers registered on the file of the respective police stations, be maintained.

43. The said data base, be linked with the police server. Services of Friends of Police and Youth Brigade, be utilised to trace out the missing persons.

44. Education Department not only provides education, it inculcates discipline and moulds the children to lead a proper life. In some private higher educational institutions, strict discipline is maintained not to use mobile phones. Nowadays, it is not uncommon that children below the age of 18 years are also using mobile phones. Usage of mobile phones in schools and colleges be restricted/prohibited. Slide shows and other visual programmes be conducted in the schools/colleges on the aspect of vulnerability of crimes, relating to children, particularly, female children. Directorates of School and Collegiate Education, may issue appropriate instructions to the Schools/Colleges that such programmes should be conducted atleast once in a month. Educational authorities to ensure strict compliance with the instructions.

45. Government recognized NGOs., be involved in explaining the effects of certain acts, affecting culture, tradition and values. State Social Defence Department, particularly, women and children department, be directed to work, in coordination with the Education Department for conducting programmes. Newspapers, conduct programmes and publish materials, during examination. They may also be involved to conduct programmes in the School, relating to crime.

46. We place on record our appreciation to Mr. Sanjai Mathur, IPS, Commissioner of Police, Madurai City, Madurai and Dr. C. Ramasubramanian, MD. DPM., State Nodal Officer, Mental and Health Programme, Tamil Nadu, who have given their valuable suggestions for proper investigation of the crimes relating to missing persons.

47. We have issued the above directions, with a fond hope and expectation that the Secretaries to the Government, Home, Health, Education and Transport Departments and the Heads of the Departments, viz., the Director General of Police, State Transport Commissioners, Directorates of School/Collegiate Education and such other state authorities, would issue appropriate directions, taking into consideration the public interest involved, in rendering their assistance, to the Police, investigating not only in crimes, but also in prevention.

The abovesaid authorities are directed to submit a report, on the implementation of the directions issued within four weeks from the date of receipt of a copy of this order. We direct all the Writ of Habeas Corpus Petitions to be posted after two weeks, with necessary status reports.