

(2012) 02 MAD CK 0072
In the Madras High Court
Case No : Writ Petition No. 28453 of 2011

Rajamanickam

APPELLANT

Vs

State of Tamil Nadu and Others.

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 294, 325, 506
Police Act, 1861 — Section 29

Citation : (2012) 02 MAD CK 0072

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : M. Gnanasekar, for the Appellant; R. Ravichandran Addl. Govt. Pleader for R1 to R7 and Mr. Raja Kalifullah for R8, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma

1. The petitioner has moved this petition with the following prayer:

To direct the 4th respondent to take action against the 8th respondent departmentally for his involvement in FIR No. 534/11 dated 16.10.2011 on

the file of the thittakudi Police Station Cuddalore District and further direct the respondent 1 and 2 to pay the Rs. 10,00,000/-(Rupees Ten Lakhs

Only) towards compensation to the petitioner for the custodial violence done to the petitioner by the 8th respondent on 23.07.2011 at Thittakudi

Police Station resulting him permanent hearing disability.

The petitioner belongs to Scheduled Caste community, and was President of a committee constituted by the villagers for proper maintenance of the

funds of Mariyamman Temple of his village.

2. Some of the persons, who had received the money on loan from the Temple, failed to repay, therefore, the petitioner issued a legal notice on

07.07.2008, which resulted in ex-communication of his brother Chinnadurai and his uncle's son Vasudevan.

3. Surprisingly, those two persons have not chosen to challenge the order, alleged to have been passed against them.

4. In the month of August 2011, a decision was taken to conduct Temple festival by collecting money from the village Rs. The petitioner objected

to such collection. The case of the petitioner is that on account of this, a false complaint was filed against him with the Police Station.

5. The petitioner was called to Thittakudi Police Station on 23.07.2011, where respondent No. 8 severely attacked the petitioner, and caused

damage to his ear membrane, which occurred on account of excessive bleeding from the ear.

6. The petitioner was directed to come to the Police Station again on 25.07.2011. The petitioner took treatment in private hospital, namely, TRK

Hospital, where the doctor advised the petitioner to take treatment in the Government Hospital, and the petitioner took treatment from

Government hospital from 25.07.2011 to 28.07.2011.

7. On 23.07.2011, the 7th respondent recorded the statement of the petitioner, but no case was registered against respondent No. 8. The

petitioner thereafter approached the learned Chief Judicial Magistrate, Cuddalore, by filing a criminal complaint u/s 156(3) Cr.P.C. on

07.10.2011. Learned Magistrate, instead of proceeding with the case in Court, directed registration of FIR, which was accordingly registered on

16.10.2011 under Sections 294(b), 325 and 506(ii) IPC.

8. It is the submission of the petitioner that registration of FIR was a formality, as the 8th respondent was neither placed under suspension nor

arrested or transferred to ensure free and fair investigation. The petitioner, therefore, made a number of representations to the respondents for

taking action against respondent No. 8, and the Station House Officer, Thittakudi Police Station.

9. The petitioner claims that he is taking treatment for brutal violence and attack by the 8th respondent, which impaired the hearing capacity

resulting in hearing disability, which cannot be compensated in terms of money.

10. The respondent nos. 1 to 3, being head of the State, are said to be vicariously liable for the action of 8th respondent.

11. It is not understood in absence of facts being admitted, how the claim of compensation is maintainable, and as to why the petitioner has not chosen to avail the remedy of Civil suit to claim damages.

12. The grievance of the petitioner is that, the respondent No. 8 is being allowed to continue in the same Police Station, and is threatening the petitioner to withdraw the complaint.

13. It is also the case of the petitioner that respondent No. 8 is liable to be punished u/s 29 of the Police Act, 1861, which reads as under:

Section 29 Penalties for neglect of duty, etc - Every Police Officer who shall be guilty of any violation of duty or willful breach or neglect of any

rule or regulation of lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without

having given previous notice for the period of two months, (or who, being absent on leave shall fail, without reasonable cause, to report himself for

duty on the expiration of such level) or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of

cowardice, or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate,

to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to

both.

14. The reading of Section shows that jurisdiction to deal u/s 29 is with the Magistrate, that too, on the proved charges. It is not understood how

the petitioner has chosen to approach this Court.

15. The submission of the petitioner is that respondent No. 8 should have filed FIR u/s 29 of Police Act apart from initiating disciplinary action. It is

surprising, that the petitioner wants respondent No. 8 to file complaint against himself, and also take disciplinary action.

16. Counter has been filed on behalf of 7th respondent and 8th respondent. The respondent No. 8 has denied allegations levelled against him. The

stand of respondent No. 8 is that in order to cover up his own illegalities, the petitioner has chosen to file a false case, without any basis, on vague

allegations. The petitioner was never in the custody of respondent No. 8,

therefore, question of custodial torture does not arise.

17. It is not necessary to take note of the counter of respondent No. 8, as admittedly, FIR is being investigated by respondent No. 7.

18. The objection raised by the 7th respondent is that the writ, as framed, is not competent, as the petitioner is seeking transfer of respondent No.

8 as also for directing departmental action. He is also seeking compensation from the State. It has been stated by the respondent No. 7, that no

complaint has yet been received with regard to mismanagement of funds of the committee by the petitioner.

19. The stand of respondent No. 7 is that necessity of police complaint arose, in view of the trouble between the villagers and petitioner, with

regard to collection of funds for conducting Temple festival.

20. In the complaint, the petitioner insisted on recovery of borrowed money from the borrowers in order to conduct Temple festival. This

complaint itself is misuse of process of Court by the petitioner, as the Police has no jurisdiction to effect recovery of amount from defaulting party.

21. The respondent No. 7 also submits that investigation revealed that witnesses, who were said to be present with petitioner at the time

of enquiry conducted by the 8th respondent, have stated that Sub-Inspector of Police, conducted enquiry about handling of Temple fund, to which

the petitioner failed to reply properly. The witnesses have denied that any untoward incident happened inside the Police Station.

22. The respondent No. 7 also submits that very fact that the petitioner went to a private hospital, instead of Government Hospital, shows that

petitioner has filed a false complaint with ulterior motive, to cover up his own illegalities.

23. It is also pointed out in the counter, that when examined by the Medical Officer about the assault, the petitioner had replied that he had

sustained injury on assault by some unknown persons.

24. The name of respondent No. 8 was not stated.

25. The petitioner thereafter absconded from the hospital on 28.07.2011, without undergoing any medical test. The respondent No. 7 on the basis

of investigation has denied the averments of the petitioner.

26. Though the prayer made in the petition is to issue a writ in the nature of Mandamus, directing the 4th respondent to take action against the 8th

respondent and for payment of compensation, but at the same time of admission, the petitioner sought interim injunction for a period of one week.

The interim injunction was for stopping further investigation.

27. On consideration, I find that this writ petition is not maintainable. It is not for the petitioner to direct the respondent nos.1 to 4 to conduct

departmental proceedings, as it is for the department to take appropriate action in the event of conviction of respondent No. 8.

28. This writ petition seems to be an attempt to pressurise investigation for some ulterior motive, as the petitioner is aware that the material

collected during investigation does not support the case of the petitioner.

29. The petitioner also failed to disclose as to why he could not move the Magistrate, as it was on the direction of learned Magistrate that the FIR was registered.

30. The petitioner, by seeking injunction against investigation, has attempted to delay the investigation.

31. The report of the investigating officer is to be submitted before the Court. If aggrieved, the petitioner has remedy to seek further investigation.

32. It is also not understood how on disputed facts, the petitioner is claiming compensation.

33. On being questioned about the maintainability of the writ petition, in the form as framed, learned counsel for the petitioner relied on a judgment

of this Court in Mr.Henri Tiphagne vs. State of Tamilnadu passed in Crl.O.P.3715 of 2004, decided on 06.09.2008, wherein on the basis of

prima facie material available on record, proving with factum of civil custodial torture and violence at the hands of Police Officials and also keeping

in view the fact that the Tamilnadu State Commission for Women also found a prima facie case of custodial violence, recommended compensation

of Rs. 2,00,000/-(Rupees Two Lakhs only) to the family, a direction issued by this Court in the said case reads as under:

25.To sum up, the conclusions of this court are as follows:

[1]The Additional Director General of Police, CBCID, is directed to nominate a competent police official in the rank of Deputy Superintendent of

Police, assisted by a team of police officials to investigate into the matter and the Deputy Superintendent of Police, Paramakudi, who has filed the

counter before this Court is hereby directed to collect all the records available in

respect of this case and to hand over the same to the officer

nominated by the Additional Director General of Police, CBCID, Chennai. The police official who has been nominated by the Additional Director

General of Police, CBCID, Chennai shall conduct investigation as expeditiously as possible and to file the final report within a period of six months

from the date of receipt of a copy of this order.

[2] All further proceedings pending in S.C.No. 105/2007 on the file of the learned Additional Sessions Judge, Fast Track Court,

Ramanathapuram, is hereby stayed pending investigation by the Deputy Superintendent of Police, C.B.C.I.D., Chennai.

[3] The State Government is directed to pay an amount of Rs. 3 lakhs including Rs. 1 lakh already awarded by the order of the State Government

dated 1.03.2006 to the family of the victim. It is further directed that out of Rs. 3 lakhs, Rs. 2 lakhs should be paid to Sonai, the husband of the

victim Karuppee and Rs. 1 lakh to Balammal, the daughter of the victim who is the wife of Sonaimuthu, who are residing at Kattuparamakudi

Village, Paramakudi Taluk, Ramanathapuram District within a period of four weeks from the date of receipt of a copy of this order.

34. This judgment is again not in exercise of writ jurisdiction. It is not understood how this judgment can be of any help to the petitioner, as there is no proved or admitted facts in this case, showing custodial torture.

35. It is not even case of the petitioner that he was arrested by the Police, therefore, there arises no question of custodial torture, as submitted by the petitioner.

36. In any case, once the subject matter is investigated by the Police and the report of investigation is to be filed before the learned Magistrate, this writ petition, therefore prima facie is not competent, but is nothing but misuse of process of Court.

37. Consequently, this writ petition is ordered to be dismissed. No costs. Connected miscellaneous petitions are closed. However, keeping in view the principles of law, that justice should not be done, but seems to be done, respondent No. 4 is directed to supervise the investigation conducted by the respondent No. 7, in view of the fact that respondent No. 8 is working in the same Police Station, where the Investigating Officer is posted.