
(2011) 12 MAD CK 0186

In the Madras High Court

Case No : Writ Petition (MD) No. 13133 of 2011 and M.P. (MD) No. 1 of 2011

S. Girinivasa Prasad

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Penal Code, 1860 (IPC) — Section 147, 148, 294, 307, 341

Citation : (2012) 4 MLJ 514

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : S. Prabhakaran for Mr. M. Ramadhas, for the Appellant; R. Karthikeyan, Additional Government Pleader, for the Respondent

Judgement

Honourable Mr. Justice V. Ramasubramanian

1. The petitioner, who is a practising Advocate at Nagercoil, has come up with the above writ petition, seeking a Mandamus, to direct the respondents to provide police protection for his life. I have heard Mr. S. Prabhakaran, Learned Counsel for the petitioner and Mr. R. Karthikeyan, learned Additional Government Pleader for respondents.

2. The petitioner is an Advocate practising in Nagercoil for the past 10 years. According to him, he is running an organisation known as "Free Legal Aid Centre for Human Rights Violation". It is claimed by the petitioner that he has taken up the cause of many persons who suffered at the hands of the police and got reliefs for them. In the affidavit in support of the writ petition, the petitioner has claimed that on behalf of his clients, he has prosecuted several Police Officers and a former Minister, for various offences and violation of human rights. The credentials of the petitioner, if they can be called so, narrated by him in more than about 10 pages of the affidavit in support of the writ petition would show that in a few cases, the petitioner himself was the complainant, in a few cases he was a witness and in a few cases he has also been the accused. Since the details

of these cases are not very germane to the disposal of the present writ petition, I am not referring to the same.

3. But a careful perusal of the averments contained in the affidavit would show that persons who are allegedly inimically opposed to the petitioner, are not only policemen, but also politicians, other public servants such as a bus conductor as well as his own colleagues at the Bar. Some of the cases registered against the petitioner are at the behest of the members of the local Bar.

4. It appears that the Superintendent of Police, Kanyakumari District wrote a letter dated 22.12.2006 requesting the Nagercoil Bar Association to expel the petitioner from membership. As a sequel, the petitioner was expelled from the association. While the expulsion of a person from the membership of an association could be ordered in terms of its by-laws, I fail to understand how expulsion from a bar association can be ordered at the behest of the Superintendent of Police. Any way we are not concerned with it in this writ petition.

5. According to the petitioner, one Inspector of Police by name Peter Paul Thurai became inimically opposed to him. He gave a complaint against the petitioner and prepared the foundation for clamping an order as preventive detention upon the petitioner under Act 14 of 1982. But the petitioner's brother filed W.P.No. 10512 of 2011, seeking a Mandamus, to forbear the Director General of Police from passing an order of detention against the petitioner at the instance of the third respondent. A learned Judge of this Court appears to have granted a preventive order against preventive detention.

6. Thereafter, the name of the petitioner was included in the history sheet. Aggrieved by the same, he has filed a writ petition in W.P.No. 13132 of 2011 praying for removing his name from the list of history sheeters. Along with the said writ petition, he has come up with the writ petition on hand seeking police protection.

7. Though the affidavit in support of the writ petition runs to about 30 paragraphs, paragraphs 1 to 28 contain only a narration of (i) all the cases taken up by the petitioner on behalf of the victims of police harassment and (ii) all the cases filed against the petitioner either by the members of the public or by the police or by the Advocates or by public servants. It is only in two paragraphs viz., paragraphs 29 and 30 of the affidavit in support of the writ petition that the petitioner has stated that he is having a threat to his life and that therefore, he needs police protection.

8. Paragraphs 29 and 30 of the affidavit in support of the writ petition read as follows:-

29. I state that on account of the illegal entry of my name in the rowdy list, not only the Suchindram and Eraniel Police have been harassing me, with the active connivance of the said Peter Paul Thurai, in the pretext of Surveillance. In

consequence, I am apprehensive that my life is always in danger. Even I have met the third respondent in person several times and requested to provide protection. Moreover, I am not in a position to render professional service to my clients and the poor people in distress. Therefore, I have sent so many representations to the respondents requesting to provide the police protection to my life and profession. Finally on 10.10.2011, I have sent a representation to the respondents and others narrating the entire facts and requested to provide sufficient police protection to me. No action has been taken on my representation so far by the respondents. The respondents are duty bound to provide protection to my life and profession as envisaged under the Constitution of India. Therefore, I have no other option except to approach this Hon''ble Court by invoking the Special Original Jurisdiction under Article 226 of the Constitution of India. Unless, this Hon''ble Court issues a Writ of Mandamus, directing the respondents to provide the police protection to my life and profession, I will be put to irreparable loss and injury.

30. I state that I have no personal vengeance against the police personnel. I am discharging my professional duty to the poor persons who affected due to the illegal act of the police. I am filing cases against them only in accordance with law before the Court. But without understanding the legal process, the erring police personnel are having personal animosity on me. Even they have decided to book me under Goondas Act, without any material. This Hon''ble Court only saved me by passing an interim order in the writ petition filed by my brother. Due to the vengeance of the police personnel and rowdy elements, I apprehend that my life is in danger position and I am not able to do my profession freely. Unless, an interim direction is issued to the third respondent to provide police protection to my life and profession, pending disposal of the writ petition, I will be put to irreparable loss and hardship.

9. The Superintendent of Police, Kanyakumari has filed a counter affidavit. He has given a list of cases in which the petitioner is an accused. The list shows that one of those cases was filed by the Inspector of Police, were filed by Advocates and one by a Head Constable, which has been subsequently referred as mistake of fact. It is stated in the counter affidavit that the petitioner also gave a complaint against 20 named and 70 unnamed Advocates of the Nagercoil Bar Association for the alleged offences under Sections 147, 148, 341, 294(b), 307 and 379 IPC. But the case was referred as a mistake of fact. Yet another complaint was filed by the petitioner against 8 named and 70 unnamed Advocates of the Bar and the said complaint was also referred as a mistake of fact. The Superintendent of Police has stated that a history sheet has been opened against the petitioner on the file of the Eraniel Police Station. Coming to the police protection sought by the petitioner, the Superintendent of Police has stated in paragraphs 9 and 10 of the counter affidavit as follows:-

9. As regards the averments of paras 29 and 30, it is submitted, that most of them shall be proved by the petitioner. It is further submitted, that 127

Constable posts are vacant in this District and hence I am not in a position to depute Police Constables from this District and I am prepared to give police protection to the petitioner by getting Police Constables from Tamil Nadu Special Police, Manimutharu, Thirunelveli District and I have to move the Higher Authority in this regard for getting sanction.

10. It is further submitted that at least 3 Constables should be deputed for police protection to the petitioner each having 8 hours duty with their allowances and bata etc. In this regard, I submit that the petitioner shall provide better lodging facilities to the above said 3 Constables and they should be treated properly. The 12 hours bata and other allowances etc., to a Constable comes to Rs. 1,500/- and for a day, it comes to Rs. 3,000/- and for 3 Constables, the bata and other allowances etc., for a day comes to Rs. 9,000/-. It is further submitted that the petitioner shall deposit Rs. 2,70,000/- being the 30 days bata and allowances etc., in the Treasury Office, Nagercoil. It is further submitted that only after accommodating lodging facilities and depositing the above said Rs. 2,70,000/-, the petitioner shall inform to the Office of the District Superintendent of Police, Kanniyakumari District at Nagercoil. I submit that only after receiving the above said information from the petitioner with regard to above said facts, I will arrange for giving police protection to the petitioner as early as possible.

10. I have extracted the relevant portion of the affidavit of the writ petitioner to show that in the affidavit in support of the writ petition, he has not laid a very strong foundation in the form of pleadings, to support his claim that there is a threat perception to his life. After devoting 28 out of paragraphs in the affidavit in support of the writ petition, to his own achievements, in the form of criminal complaints in which he is either the counsel or the defacto complainant or the witness or the accused, the petitioner has not laid a strong factual foundation in paragraphs 29 and 30 of the affidavit, for the grant of a writ of mandamus.

11. While the pleadings of the petitioner are wanting in precision, the counter affidavit of the Superintendent of Police, is still worse. The counter affidavit does not deny the averments contained in paras 29 and 30 of the affidavit of the petitioner. In para 9 of the counter affidavit, the third respondent has merely stated with regard to the averments of the petitioner that most of them should be proved by the petitioner. There is not even a formal denial, by the Superintendent of Police, of the apprehension of threat expressed by the petitioner in his affidavit, in howsoever vague terms the petitioner had expressed it. Therefore, it is necessary to examine as to whether the petitioner is entitled to the relief prayed for in such circumstances.

12. In P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, the Supreme Court held (in paragraph 12) that "the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution". But the Court cautioned that while doing so, it could not collaterally go into that question, the determination whereof would undoubtedly be beyond its domain. In a separate

but concurring judgment, P.K. Balasubramaniam, J., pointed out that a writ of mandamus directing the police authorities to give protection to the person of a writ petitioner, can be issued, when the Court is satisfied that there is a threat to his person and the authorities have failed to perform their duties.

13. In *Howrah Mills Co. Ltd. and Another Vs. Md. Shamin and Others*, the Supreme Court issued a direction to the State of West Bengal to give necessary police protection even in respect of the property of a company which was before the BIFR, in view of the fact that the properties had to be safeguarded in the interests of 6,000 workers, creditors and others. After expressing an opinion that in the case before them, the State Government could have offered protection even without insisting on payment, the Supreme Court directed the Government to charge a reasonable amount, in view of the offer made by the company itself.

14. In *N. Jothi Vs. The Home Secretary Government of Tamil Nadu, The Director General of Police and The Commissioner of Police K. Chandru, J.*, was dealing with a case where the petitioner sought a mandamus to forbear the respondents from withdrawing the existing security cover. After referring to the two decisions of the Supreme Court cited above, the learned Judge dismissed the writ petition on the ground that a periodical review was undertaken by the Security Review Committee comprising of very senior officers belonging to the Indian Administrative Service and Indian Police Service and that when their decision was not assailed as being motivated, there is no scope for judicial review of the decision of the Committee.

15. Therefore, from the law laid down in the above decisions, it is clear

(i) that there should be a clear threat perception, to the life and property of a person, to enable him to seek police protection;

(ii) that such perception should be based on some material worth considering;

(iii) that the Superintendent of Police should examine the request for protection on an objective basis, after collecting necessary data and

(iv) that if a decision is taken by the competent authority on a scientific basis, this Court will not easily interfere with such a decision, unless the decision is tainted.

16. If the above principles are applied to the case on hand, it will be seen that the petitioner has not made a strong factual foundation for the issue of a writ of mandamus. His pleadings disclose only an apprehension. An apprehension is different from a perception. A fearful expectation or anticipation is an apprehension and it can even be born out of imagination. But perception is the faculty of understanding things through the senses or the mind. It is cognitive. Therefore, in normal circumstances, the petitioner is not entitled to the relief prayed for.

17. But unfortunately, the third respondent has not chosen even to make a

formal denial of the apprehension of the petitioner expressed in paragraphs 29 and 30 of the affidavit in support of the writ petition. The focus of the counter affidavit is only on the expenditure involved in providing security. Consequently, the third respondent has not examined the question whether there is a real threat and whether there is justification for police protection. Therefore, I am of the view that the third respondent should be directed to examine the request of the petitioner and pass appropriate orders, taking into account the above observations. Accordingly, the writ petition is disposed of, directing the third respondent to examine the request of the writ petitioner, with reference to all the attending circumstances and pass appropriate orders in accordance with law, shifting the focus from the fiscal to the physical aspects. The third respondent shall examine whether there is any threat to the life and property of the petitioner and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order. Before parting, I should also state that in the philosophical sense, no one can protect anyone. History is replete with instances where persons who had the highest degree of security cover, succumbed to terrorist attacks. There are also instances of persons who survived innumerable attacks on their lives, by sheer providence, as was projected by a Channel 4 Documentary Film telecast in the United Kingdom on 28.11.2006 with the title "638 Ways to Kill Castro", referring to the innumerable attempts to assassinate Fidel Castro, none of which could materialise. Therefore, it is a misconception to think that one can be protected by a few uniformed men accompanying him with weapons. That is why it is said from ancient times that Dharma (righteousness) protects one who protects it (Dharmo Rakshathi Rakshitah). In his classic "Ramayana", Kamban says that when Rama left Ayodhya to the forest, he was led by his fate, but was followed by his righteous conduct.

(vernacular matter deleted)

I think the petitioner who has several criminal complaints against him, filed by persons from every walk of life, like a bus conductor, policemen and advocates, should do well to remember these fundamental principles of human values and the highest degree of conduct expected of a professional. There will be no order as to costs. Consequently connected miscellaneous petition is closed.