
(2013) 06 MAD CK 0200

In the Madras High Court

Case No : Writ Petition (MD) No. 903 of 2013 and M.P. (MD) No. 1 of 2013

Silambarasan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-06-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 294(b), 323, 379, 427, 452

Citation : (2013) 06 MAD CK 0200

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : S. Balamurugan, for the Appellant; A. Muthu Karuppan, Addl. Govt. Pleader for R1 to R5 and Mr. D. Sivaraman for R6 and R7, for the Respondent

Final Decision : Dismissed

Judgement

N. Kirubakaran, J.—A person, who has been enquired by the police on suspicion regarding a decoity involving huge quantity of 37 Kilograms of Gold in M/s. Muthoot Finance Company, is before this Court seeking a compensation of Rs. 5,00,000/- (Rupees Five Lakhs only) for the illegal detention and injuries suffered by him at the hands of the respondents 6 and 7 and for a consequential direction to initiate the departmental action against those Constables. The case of the petitioner is that he is the son of Special Sub-Inspector of Police, South Gate Police Station and he is doing water business and residing in Kudal Pudur area. On 08.10.2012, at about 12.30 a.m., the respondents 6 and 7 along with other police persons insisted the Special Police Team to implicate him as if the petitioner was involved in Muthoot Finance Company theft case as there was a previous enmity between the petitioner and the respondents 6 and 7. On that day, when he was sleeping in his house along with his friend Vimal, the sixth respondent had trespassed the house without showing any warrant, beaten up the petitioner and his friend and snatched Rs. 2,100/-(Rupees Two Thousand One Hundred only) from his pocket and Rs. 1,100/-(Rupees One Thousand One Hundred only) from his friend's packet without the knowledge of the higher

officials. Thereafter, they went to the petitioner's house and brought the key from his mother and made a search of the rental house and they took the petitioner and his friend to the police station.

2. Due to previous enmity only, the respondents 6 and 7 beat up the petitioner with lathi and after that, under the instruction of the Deputy Commissioner of Police (Crime), they stopped beating the petitioner as they are innocents. Thereafter, on 09.10.2012, they also went to the petitioner's house at 04.45 a.m. in the guise of further enquiry and broke open the bureaus and took away the salary of his father Rs. 17,300/- (Rupees Seventeen Thousand Three Hundred only) and 3 sovereigns of gold chain without the knowledge of the petitioner's family members.

3. On 09.10.2012, the petitioner's father came to the Deputy Commissioner of Police Office who informed the petitioner's father that they were only enquired and they were found to be not involved in the case and only on wrong information, they detained them. Thereafter, the petitioner and his friend were released. This, according to the petitioner, amounts to illegal detention and torture.

4. The petitioner contends that because of the injuries sustained by the petitioner, the petitioner is unable to walk and both of his hands got swelled and therefore, he took treatment in Vadamalayan Hospital and it was found that the bone of his right hand thumb was broken and he is taking treatment. He continued that the petitioner is innocent and due to previous enmity only, the respondents 6 and 7 detained the petitioner with mala fide intention and tortured him and therefore, he sought for compensation.

5. Heard Mr. S. Balamurugan, learned Counsel appearing for the petitioner and Mr. A. Muthukaruppan learned Additional Government Pleader appearing for the respondents 1 to 5 and Mr. D. Sivaraman, learned Counsel for the respondents 6 and 7.

6. Mr. S. Balamurugan, learned Counsel for the petitioner would submit that if really the petitioner was involved in any crime, F.I.R would have been registered against him. Even after knowing that the petitioner's father is a Special Sub-Inspector of Police, it is only to wreck vengeance, the petitioner and his friend were detained and tortured by R6 and R7 and therefore, the writ petition is maintainable under Article 226 of the Constitution of India, claiming for compensation.

7. Mr. D. Sivaraman, learned Counsel appearing for the respondents 6 and 7 would submit that only under the suspicion, the petitioner and his friend were taken for enquiry and they were not tortured at any point of time. He would further submit that based on the information given by one Shyam, owner of the Phoenix Automobiles Workshop that the petitioner is owning a Maruti Omni Van starting with Registration No. TN-67, the petitioner was enquired, as the Car involved in the decoity is also Maruti Omni Van starting with Registration No.

TN-67. Only based on the information provided by the Shyam with regard to the Car, the petitioner and his friend were taken for enquiry. The police became more suspicious after finding the petitioner sleeping inside the Indica Car. Moreover, colour of the Maruti Omni changed and subsequently, was sold and these are all the suspicious circumstances under which the petitioner was taken for enquiry. He further denied that no torture was given to the petitioner. It is contended that the petitioner has already filed a complaint against the officials before the State Human Rights Commission and the said complaint was taken on file and F.I.R was registered. Moreover, the Commissioner enquired about the matter. Many proceedings were initiated and the filing of the writ petition is nothing but abuse of the process of law. He also added that pendency of the petition before the Human Rights Commission is suppressed. He relied upon the judgments of the Honourable Supreme Court in Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, and in the case of Kishore Samrite Vs. State of U.P. and Others, to contend that the filing of the cases after cases would amount to abuse of the process of law. He further relied upon the judgment of the Honourable Supreme Court in the matter of Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, to state that when disputed questions of facts are involved the writ petition is not maintainable.

8. Mr. A. Muthukaruppan, learned Additional Government Pleader appearing for the respondents 1 to 5 would submit that the case has been registered based on the petitioner's complaint and the same is under the investigation and the petitioner and his friend were not tortured as contended by the learned Counsel for the petitioner and therefore the writ is not maintainable.

9. Heard the learned Counsel for the parties and perused the materials available on records.

10. The decoity committed in the Muthoot Finance Limited, is only the basic cause for the present case. One Shyam who is a automobile workshop owner informed the police, during the enquiry that the petitioner is having a Maruti Omni Van with the Registration Number starting with TN-67. Only based on that, the petitioner was called for enquiry, as contended by the respondents 6 and 7. The relevant portion is stated in the counter affidavit in paragraphs 7 & 8, which reads as follows:

7) I submit that Four teams headed by 4 Assistant Commissioner of Police with hand picked officers and men were formed under the supervision of the Deputy Commissioner of Police, Crime and Law & Order, Madurai City to investigate the case and the special investigation teams were functioning with headquarters at Karimedu Police Station. Myself and the 7th respondent were formed part of the special team headed by the Assistant Commissioner of Police, Anna Nagar. During the discrete enquiry it was brought to the notice that the petitioner was using a green colour Maruti van with Regn. no. TN-67 and he repainted the same with white colour recently. Since the vehicle used by the culprits also was a

Maruti van starting with Regn. No. TN-67 and they were changing the colour of the vehicle frequently, immediately the said fact was informed to the Assistant Commissioner of Police, Anna Nagar on whose instructions a secret surveillance was arranged. The information about the using of Maruti Van by the petitioner was received from the owner of the Phoenix Automobiles one Mr. Shyam.

8)I submit that on 08.10.2012 at about 23.00 Hours, the Assistant Commissioner of Police (Law & Order) Anna Nagar Madurai and the Team consisting of Respondents 6, 7 and another constable and one S.S.I named Mr. Selvaraj visited the house of the petitioner at the Koodal Pudur Housing Board Colony. At about 11.30 PM when we reached the petitioner's house and enquired about him to his mother, she refused to reveal his whereabouts. It was found that the writ petitioner and his friend one Vimal were hiding inside a locked Tata Indica Car parked in front of his house which created more suspicion. When the father of the writ petitioner owns two houses one in the Housing Board Colony and another in the police quarters at Viswanathapuram and the writ petitioner has rented out another house at Koodal Pudur area, there was no necessity for the writ petitioner and his friend to sleep inside the locked car. Therefore, both of them were taken to Karimedu police station by the Assistant Commissioner of Police (Law and Order) Anna Nagar for enquiry. During the enquiry, it was found that the writ petitioner had possessed a bunch of keys relates to the house he has taken on rent at Koodal Pudur. The team consisting of 3 Assistant Commissioners, 3 Inspectors and 2 Special teams totally 40 police personnel proceeded to that house and conducted a search. It was found that the house was almost empty except some bunch of cello tapes, some physical exercise equipments, some ration card copies and passport size photographs and a steel bureau. The presence of cello tapes raised more suspicion on the writ petitioner since the Muthoot Finance Branch Manager was abducted mouth gagged by using cello tapes. The bureau could not be opened since no key was matching the lock of the bureau, therefore, the entire team left the house.

11. When a decoity was committed involving 37 Kgs of gold jewellery worth about Rupees Eight Crores, the crime has to be viewed very seriously and the inputs given to the police should be meticulously and thoroughly followed up. It is understood from the counter affidavit filed by the respondents 6 and 7 that the information regarding the Car which is a similar Car used by the decoits which is found to be owned by the petitioner. Only as a follow up action, the petitioner was sought to be questioned and he was taken for enquiry. That apart, the allegations made that the petitioner and his friend, were found to be sleeping in the Indica Car especially when the petitioner's father is having a house and a quarters and the petitioner is himself residing in a rental house, is a suspicious circumstance and it would have made the police to take the petitioner to the police station.

12. It is also admitted by the petitioner himself that after the enquiry, petitioner and his friend were released. The only contention is that the offence was not

committed by them and in the guise of enquiry, the petitioner and his friend were tortured, as a result of which he suffered injury. The line of enquiry itself as reflected, would show that the enquiry is found to be very fair for the fact that the petitioner and his friend were released as soon as they were found to be innocent and not involved in the crime. If really, as contended by the petitioner, due to animosity only the respondents 6 & 7 illegally detained and tortured the petitioner is true, definitely, the petitioner would have been implicated and the non-implication of the petitioner in that case, would show that the investigation has been conducted fairly and properly. Therefore, the detention of the petitioner for the purpose of enquiry, cannot be called as illegal.

13. As far as the alleged torture is concerned, the petitioner contends that he suffered fracture in the right hand thumb. However, no document has been filed to prove that he suffered fracture. Even the medical bills produced before this Court, go to show that he was treated as out-patient and only consultation fee receipts are filed. Neither he was admitted in the hospital nor any surgery was performed. If really, there was any injury, definitely, there could be Doctor's report or scan report available. Even though the petitioner contended in paragraph "9" of the affidavit it is averred that his parents took him to Vadamalayan Hospital, where it was advised to take scan and after seeing the scan report, the Doctor found that the bone of the right hand thumb was broken. Hence, nothing prevented the petitioner to file the scan report. No such report is available itself would show that the petitioner's contention is wrong. Therefore, the alleged injury and torture said to have been committed on the petitioner cannot be believed.

14. That apart, the petition is also liable to be thrown out, as the petitioner deliberately suppressed the complaint before the Human Rights Commission for the compensation against the respondents 6 and 7. In this writ petition he also sought for compensation for the injuries suffered by the petitioner at the hands of the respondents 6 and 7 only. In any event, the petitioner should have disclosed the fact of the complaint filed before the Human Rights Commission.

15. The petitioner already filed a complaint against the respondents 6 and 7 and the same has been registered in Crime No. 464 of 2012 under Sections 452, 427, 323, 294(b) and 379 IPC. In the said case, 15 witnesses were enquired and their statements were obtained. Therefore, the petitioner's complaint has also been also looked into and appropriate action is being taken based on the complaint.

16. The petitioner has been filing the cases one after another for the reasons best known to him and it is an abuse of process of law as held by the Honourable Apex Court in Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, . Para 16 is usefully extracted.

16.A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and

over again which amounts to abuse of the process of law. In Advocate General, State of Bihar -vs.- M.P. Khair Industries this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.

For the reasons stated above, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous petition is also dismissed.