
(2014) 12 MAD CK 0231

In the Madras High Court

Case No : Crl. OP Nos. 26847 and 26948 of 2014 and M.P. No. 1 of 2014

T.V. Velliyangiri

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 97
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20(b)(c),
50, 8(c)

Citation : (2015) CriLJ 3001 : (2015) 1 LW(Cri) 359 : (2015) 1 MLJ(Cri) 366

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—In the instant case, a young college professor with post graduate degree in Engineering and a Doctoral Degree is before this court complaining that for no fault of his, he was illegally detained by the police for a few days and then arrested and detained by registering a false case as though he was carrying 1 1/2 Kgs ganja. He seeks to quash the FIR so as to avoid further humiliation. This court, shouldering the constitutional obligation to protect and ensure the basic human rights guaranteed as fundamental rights to the citizens of this country under The Constitution of India, cannot afford to close its doors by following the orthodox long drawn procedure driving the citizen - who knocks at the doors of this court seeking justice complaining that his liberty and dignity have been seriously infringed by illegal police action - to undergo the ordeal of trial. At this stage, "How to ascertain the truth, when the investigation is still pending?" I am of the view that extraordinary situations should find extraordinary legal ways and means to ensure justice to a victim.

2. The petitioner in Crl.O.P.No. 26847 of 2014 [hereinafter referred to as "the petitioner"] has been working in a private Engineering College in Vellore District. He has been working in the said college for the past four years. The petitioner in Crl.O.P.No. 26948 of 2014 is his wife [hereinafter referred to as "the petitioner's wife"].

3. One Mr. P.M.M. Nandagopal was running several educational institutions, including an Engineering college in which the petitioner was working. Mr. P.M.M. Nandagopal died leaving behind him, three sons, by name, Saravana Sundar, Shankar and Mohana Krishnan. In respect of the administration of the educational institutions, after the demise of Mr.P.M.M.Nandagopal, there arose dispute among his sons.

4. It is alleged that, on 26.06.2014, Mr.Saravana Sundar, one of his sons, was murdered. In respect of the same, a case in Crime No. 89 of 2014 was registered by the Inspector of Police, Kandili Police Station, Tirupattur Taluk, Vellore District. During investigation, according to the police, it came to light that Mr.Mohana Krishnan (yet another son of Mr.P.M.M.Nandagopal) and six others were involved in the said crime.

5. The Inspector of Police, Mr. I. Gopala Krishnan, during investigation, took efforts to apprehend Mr.Mohana Krishnan. The Inspector of Police was perhaps under the impression that the petitioner, Prof.T.V.Valliyangiri, was aware of the whereabouts of Mr.Mohana Krishnan. It is alleged that in that process, the petitioner was illegally detained in the Police Station and finally he was arrested by registering a false case in Crime No. 240 of 2011 under Sections 8(c) read with Section 20(b)(c) of the NDPS Act, 1985.

6. According to the First Information Report, on 11.09.2014, at about 10.00 am, when the Inspector of Police, Mr.Gopala Krishnan, was in the Kandhilli Police Station, he received a secret information that between 11.00 am and 12.00 noon on the same day, a car bearing Registration No. TN23-BS- 8492 would be proceeding from Sundarampalli to Tirupattur carrying ganja. The secret information was to the further effect that in the car one single person would be travelling. According to the First Information Report, the Inspector of Police, entered the said secret information in the General Diary and immediately proceeded to Sundarampalli Railway Bridge, which is on the Sundarampalli to Tirupattur Road, and along with him, he took a Sub-Inspector of Police, by name, Mr.Murthy and a Special Sub- Inspector of Police, Mr.Rajendran. It is further stated that at about 11.30 am, the said car was proceeding towards Tirupattur. The car was intercepted by the Inspector of Police. It was found that the petitioner, Prof. T.V. Velliyangiri was alone in that car. It is also stated in the First Information Report that when he was interrogated, he told the Inspector that he was residing in the Housing Board at Tirupattur and he was working as a Director of Sri Nandhanam College of Engineering. It is further stated that after disclosing his identity, the Inspector apprised him of the secret information received by him and he also informed him that he could insist for search in the presence of a Gazetted Officer for which he was ready to take him. But, it is stated that the petitioner told him that there was no such need for him to be searched in the presence of a Gazetted Officer. Thus, after complying with the mandatory provision under Section 50 of the NDPS Act, it is alleged that the Inspector searched the Car. While doing so, it is stated that inside the car, there was a big

packet. When the petitioner was enquired, it is stated that he told that it contained clothes. Thereafter, according to the case, the Inspector wanted the petitioner to open it. Accordingly, when it was opened, it was found that it contained 1 1/2 Kilograms of ganja. It is also stated that the petitioner told the Inspector of Police that, with a view to become a rich man so soon, he purchased the contraband from an unknown person in Bangalore and he was carrying the same for the purpose of sale. It is further alleged that at 12.00 noon, the Inspector arrested him and brought him to the Police Station. Then, the above case in Crime No. 240 of 2014 was registered for the alleged offence under Sections 8(c) read with Section 20(b)(c) of the NDPS Act, 1985.

7. Thereafter, the petitioner was produced before the learned Judicial Magistrate No. III, Tirupattur, with a request for remand and accordingly, he was remanded to judicial custody. Subsequently, the petitioner filed an application for bail before the Special Court under the EC and NDPS Act at Salem, and the court granted him bail on 24.09.2014 and eventually, he was released from prison on the same day.

8. Now, the petitioner has come up seeking to quash the said case alleging that it is a false case. His wife has come up with the other petition seeking a direction to register a criminal case against the Inspector of Police Mr.Gopala Krishnan and others. These cases came up for hearing before this Court on 25.09.2014 and it was adjourned on several occasions to enable the learned Additional Public Prosecutor to get instructions. On 10.11.2014, when these matters came up before me for hearing, this Court directed the respondent - Inspector of Police, to produce the Case Diary on 12.11.2014. On 12.11.2014, the then Superintendent of Police of Thiruvannamalai District, Dr.Vijayakumar and the present Superintendent of Police, in-charge of Thiruvannamalai District, Ms.J.Mutharasi were present. Mr. I. Gopala Krishnan, Inspector of Police, was also present. This Court heard these Officers and thereafter, the matters were adjourned to 13.11.2014.

9. During the course of proceedings, it was alleged that on 05.09.2014, the petitioner was taken into illegal custody by the Inspector of Police, Kandhili Police Station. In this regard, a representation was sent to all the higher authorities complaining of the said illegal detention. But, no action was taken on the same. It was further alleged before this Court that the petitioner was kept in illegal custody until 08.00 am on 07.09.2014 and on 07.09.2014 while he was released in the morning, the Inspector of Police, Mr.Gopala Krishnan, had directed him to return to the Police Station in the evening. Accordingly, the petitioner appeared before the Inspector of Police, Kandhili Police Station, around 05.00 pm on 07.09.2014. Again, he was detained illegally in the police custody. It was further alleged that from Kandhili Police Station, he was taken to Jolarpet Police Station and Tirupattur Town Police Station for some time. In the meanwhile, on 11.09.2014, Mrs.Lokamithra, the Director cum Secretary of the Governing Council, Sri Nandhanam Educational Trust, Tirupattur, Vellore District, sent a

complaint directly to the Hon''ble Chief Justice of this Court, complaining about the illegal detention of the petitioner. The said complaint was received by the postal authorities at 04.24 pm on 10.09.2014. It also came to light that the said complaint was also sent through Fax, to the Hon''ble The Chief Justice of this Court. Even after that, the petitioner was not released from illegal detention, it was stated.

10. On 11.09.2014 at about 10.30 am, the petitioner's wife filed a petition before the learned Judicial Magistrate, Tirupattur, under Section 97 of the Criminal Procedure Code praying for issuance of a warrant of search to make a search at the police station to get the petitioner released from illegal detention of the police. It was also further alleged before this Court that thereafter, on knowing that such petition had been filed before the learned Magistrate, the above said false case was registered in Crime No. 240 of 2014 and the petitioner was produced before the learned Magistrate. Since the petitioner was produced for judicial remand, the petition under Section 97 of the Criminal Procedure Code came to be dismissed. During the course of hearing, the records pertaining to complaints sent to various authorities were produced before this Court.

11. When these matters came up for hearing on 13.11.2014, the learned Advocate General appeared for the respondents. The Inspector of Police, was given further opportunity to make his submission. Having considered the above documents and the oral submissions made on either side, since very serious allegations are made against the Inspector of Police and having regard to the complaints made against him, then and there, even before the registration of the case, this court felt that the investigation should be entrusted to a higher ranking police officer. The learned Advocate General appearing for the respondents submitted to this Court that in view of the allegations made against the Inspector of Police, the investigation could be transferred to some other State Police Agency.

12. Though the learned counsel for the petitioner submitted that investigation should be transferred to the Central Bureau of Investigation, the learned Advocate General submitted that there was no reason to transfer the investigation to Central Bureau of Investigation, instead, it could be entrusted to a higher ranking officer of the Tamil Nadu Police.

13. This Court, after having taken note of the judgment of the Hon''ble Supreme Court in the case of State of Punjab Vs. Central Bureau of Investigation and Others, , directed as follows:-

"24. It was, in those circumstances, the Hon''ble Supreme Court felt that it would not be safe to entrust the investigation to the hands of a State Police Officer and accordingly, transferred the investigation to the Central Bureau of Investigation. The Hon''ble Supreme Court has also been holding the view that Central Bureau of Investigation is a special force which has been constituted to investigate the cases of grave nature and of public importance and so transfer of the

investigation to the Central Bureau of Investigation should be done sparingly going by the absolute necessity for the same. In this case, though it is the submission of the learned counsel for the petitioner that the case should be transferred to the Central Bureau of Investigation for further investigation and though there are certain allegations against some State police officials, besides the fact that the complaints have not been investigated by the higher State Police officials, I am still inclined to entrust the investigation to Mr.M.Sudhakar, Superintendent of Police, Coimbatore-Rural with the full hope and faith that he would do the investigation dispassionately and impartially and submit an appropriate report.

25. In my considered opinion, for some excess allegedly committed by a few police officials and the indifferent attitude of a few higher police officials, the entire police force cannot be undermined. The Tamil Nadu Police is known for its investigating skill and its impartiality. I am also of the view that transferring this case to CBI for investigation would only add to the workload of the CBI. Therefore, I am in a position to accept the suggestion made by the learned Advocate General to transfer the investigation to Mr.M.Sudhakar, the Superintendent of Police, Coimbatore-Rural. I am hopeful that Mr.M.Sudhakar, the Superintendent of Police will investigate the entire episode thoroughly and expeditiously and complete it preferably before 22.12.2014.

26. In the result, the following directions are issued in these Criminal Original Petitions:-

(i) The investigation of the case in Crime No. 240/2014 on the file of the Inspector of Police, Kandili Police Station, Tirupattur Taluk, Vellore District is withdrawn and the same is entrusted to Mr.M.Sudhakar, the Superintendent of Police, Coimbatore-Rural for fresh investigation.

(ii) All the complaints made by the petitioner, his wife and his counsel shall be entrusted to Mr.M.Sudhakar for enquiry to find whether the petitioner was illegally detained as alleged by the petitioner.

(iii) Mr.M.Sudhakar, Superintendent of Police shall do the investigation of the case and enquire into the complaints expeditiously and try to complete the same before 22.12.2014 and submit a status report before this Court on 22.12.2014.

(iv) The Inspector of Police, Kandili Police Station, Tirupattur Taluk, Vellore District is directed to hand over the case diary pertaining to the case in Crime No. 240/2014 along with a copy of this order to Mr.M.Sudhakar, Superintendent of Police, Coimbatore-Rural, without delay.

(v) The Government of Tamil Nadu shall spare the services of Mr.M.Sudhakar to investigate the case in Crime No. 240/2014 as directed above, in addition to his regular work.

(vi) The presence of the police officers who are present in Court today is dispensed with for the future hearing of this case.

(vii) The stay granted earlier is hereby vacated.

(viii) The Registry shall list the criminal original petitions for further hearing on 22.12.2014."

14. When these matters came up for hearing on 22.12.2014, the Superintendent of Police, Mr.Sudhakar, who appeared before this Court filed three volumes of report, before this Court. The first volume of his report relates to the investigation of the case done by him. The second volume relates to the enquiry conducted to ascertain whether the petitioner, Prof. T.V. Velliyangiri was illegally detained as alleged by him. The third volume contains Annexures.

15. In the first volume of his report, which contains the extraction of several statement of witnesses and documents, he has concluded as follows:-

"Hence, a fresh investigation conducted in this case has revealed that the case is not true."

He has further stated that subject to the outcome of the final orders of this Court, in these petitions, final report will be submitted before the jurisdictional trial court, namely, the Special Court for Essential Commodities Act Cases, Salem.

16. In the second volume relating to the alleged illegal detention, he has stated that Prof.Velliyangiri was kept in illegal custody by the Inspector of Police between 07.09.2014 and 11.09.2014. He has further stated that since the efforts by the Investigating Officer and his team to secure the absconding accused in the murder case of Mr.Mohana Krishnan, with the help of Prof.Velliyangiri proved futile, they seemingly felt non cooperation of Prof.Velliyangiri and the filing of 97 Cr.P.C., petition before the learned Judicial Magistrate Court No. I, Tirupattur, on the morning of 11.09.2014 would have prompted the Inspector of Police, Kandhili Police Station, to register the criminal case against Prof. T.V. Velliyangiri under the NDPS Act, 1985. He has concluded that during the course of enquiry no reference was made by any Police Personnel including the Investigating Officer during their examination, about any malafide instructions given by the supervisory officers of the Sub Division or others. Thus, he has concluded that the petitioner was kept in illegal custody by Mr.Gopala Krishnan between 07.09.2014 and 11.09.2014 and the false case under the NDPS Act was registered on 11.09.2014, he was produced before the learned Magistrate for judicial remand and thus, he was kept in prison for about 15 days.

17. Today, when the matters were taken up, the learned Advocate General appeared for the State. Mr.Gopala Krishnan, the Inspector of Police, was also present. I have heard the learned counsel for both sides and perused the materials available on record carefully.

18. The learned Advocate General is not in a position to dispute the correctness of the findings of the further investigation held by Mr.Sudhakar, the Superintendent of Police. He would submit that the Government agrees with the report and therefore, the Government has got no objection for this Court to allow

the Superintendent of Police to file the final report before the jurisdictional Court or for this court to quash the case. The learned Advocate General would further submit that so far as Mr.Gopala Krishnan, the Inspector of Police is concerned, he is an young officer, who may be pardoned for the above misdeeds.

19. As a matter of fact, the learned counsel for the petitioner himself is not very particular that action should be taken against Mr.Gopala Krishnan, because according to the reliable information to him, the Inspector of Police was only a tool in the hands of some people, who are inimical towards the petitioner, which includes yet another Police Officer also.

20. In my considered opinion, the question of pardoning Mr.Gopala Krishnan is not in the hands of this Court. He is a servant of Government and therefore, it is for the Government to decide about the further course of action to be taken against him. I do not want to express any opinion on that. Having regard to all these circumstances, I leave it open for the Government to decide about the further course of action, if any, to be taken against Mr.Gopala Krishnan, the Inspector of Police. Thus, I am not inclined to issue a direction to register a case against the police officials.

21. The learned counsel for the petitioner would submit that for the mental agony caused due to false implication, illegal detention and imprisonment, the petitioner is entitled for compensation. The learned counsel for the petitioner would submit that so far as the quantum is concerned, the petitioner would be satisfied if some amount of compensation is awarded as a token, so as to send a message to the police that this kind of false implication or registration of false cases should not occur in future. The learned Advocate General would submit that if this Court is inclined to award compensation, this court may impose a minimum amount as compensation.

22. I have considered all these submissions. Having regard to all the facts and circumstances, I am inclined to direct the Government to pay the compensation, because here is a case where a Professor with Doctorate Degree, working in a college was detained in illegal custody for several days and thereafter, implicated in a case of ganja and detained in prison for about 15 days. The mental agony suffered by the petitioner is perceivable.

23. The personal liberty is sacrosanct for every citizen of this Country and the same is a basic human right. The Constitution, in no uncertain terms, guarantees the said fundamental right to every citizen of this Country. Deprivation of personal liberty can be resorted to by any authority only by following the procedure established by law. But, in the cases on hand, the personal liberty of the petitioner had been deprived of by following the procedure established by law in complete breach. False implication of a person like the petitioner in a case of ganja would have surely put his reputation also in perils.

24. It is not a case where due to inadvertence or ignorance of law, personal liberty of the petitioner has been deprived of. But, it has been deprived of

wantonly. Thus, the loss caused to the petitioner cannot be compensated by any amount of money. Life and liberty are so precious.

25. In this regard we may refer to the judgment of the Hon''ble Supreme Court in *Khatri and Others Vs. State of Bihar and Others*, wherein , the Hon''ble Supreme Court has held as follows:-

"The court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights."

26. Following the said judgment, in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , the Hon''ble Supreme Court had broadly specified the situations in which the remedy of providing compensation for violation of fundamental rights available under the domain of public law has to be invoked. In the said judgment, the Hon''ble Supreme Court has held as follows:-

"If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint and avoid circumvention of private law remedies, where more appropriate."

27. In the same judgment, the Hon''ble Supreme Court has further held as follows:-

"Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain mount of circumspection and self-restraint."

28. Having regard to the said settled position of law , I am of the view, in the instant case, since the State is not in issue that there was violation of fundamental rights of the petitioner by implicating him in a false case and by detaining him illegally, though the petitioner has got a private law remedy to claim compensation, that will not deter this court to order for payment of compensation. Though the mental agony and the sufferings of the petitioner may warrant grant of more amount of compensation, taking a lenient view and considering the submission made by the learned counsel for the petitioner, as a measure of warning to the police that there shall be no false case registered in

future, I award a token amount of compensation of Rs.1,00,000/- [Rupees One Lakh only] to the petitioner to be paid by the State. No member of the police force should forget that he represents the entire force and any misconduct on his part may cause irreparable loss of image to the entire force as it has happened in this case. With this word of caution to the police, I wish to conclude this order.

29. So far the case is concerned, as has been held by the Hon'ble Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , I am of the view that this is a fit case to quash the First Information Report, as it has been admitted by the Government that according to the further investigation done by the Superintendent of Police, the case is false.

30. In the result, these Criminal Original petitions are disposed of in the following terms:-

(i) The case in Crime No. 240 of 2014 on the file of the Inspector of Police, Kandhili Police Station, Tirupattur Taluk, Vellore District, is hereby quashed.

(ii) The Special Court for NDPS Act shall return the car involved in the case to the petitioner unconditionally.

(iii) The Government of Tamil Nadu, represented by Home Secretary, shall pay Rs.1,00,000/- as compensation to the petitioner, within a period of three months from the date of receipt of a copy of this order.

(iv) The Registry shall forward the three volumes of the report submitted by Mr.Sudhakar, the Superintendent of Police, to the Government of Tamil Nadu, through Director General of Police, for deciding about the further course of action, if any, in this matter.

(v) The Director General of Police shall forward a copy of this order to the Superintendents of Police of all Districts, so that it can be brought to the knowledge of all Officers so as to impress upon them about their responsibility as members of the Police force.

31. Before parting with these cases, I wish to record my deep appreciation for the extremely good job done by Mr.Sudhakar, the Superintendent of Police, in conducting the further investigation and also holding enquiry in a least possible time in a very detailed manner, making no stone unturned and submitting the report before this Court in a very organized manner. I am of the view that such a sincere officer needs encouragement by the Government. I am also of the view that the Government may reward him appropriately for the good services rendered by him. Consequently, the connected MPs are closed.