

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-11-2015

Coram

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

H.C.P.No.1896 of 2015

V. Sulochana

.. Petitioner

Vs.

1. Government of Tamil Nadu,
rep.by its Secretary, Home Department,
Fort St.George,
Chennai - 600 001.
2. Inspector General of Prisons,
Tower-II, No.1 Gandhi Irwin Road,
Egmore, Chennai - 8.
3. The Superintendent of Prison,
Chennai Puzhal Prison-II,
Chennai.
4. Isrel, C/o.The Superintendent of Prison,
Chennai Puzhal Prison,
Prison Officer, Chennai Puzhal
5. Radhakrishnan,
C/o.The Superintendent of Prison,
Chennai Puzhal Prison, Prison Officer,
Chennai Puzhal Prison,
Chennai.
6. Elavarasan,
C/o.The Superintendent of Prison,
Chennai Puzhal Prison,
Prison Officer,
Chennai Puzhal Prison,
Chennai.

7. Muthusamy,
C/o.The Superintendent of Prison,
Chennai Puzhal Prison,
Prison Officer, Chennai Puzhal Prison,
Chennai. .. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Habeas Corpus directing the respondents to produce the body of the 1.Marimuthy (23), S/o.Sitharaman; 2.Dinesh (23), S/o.Shankar; 3.Marudhu (23), S/o.Pazhani; 4. Anbu (24), S/o.Aiyanar; 5.Thirumalai (26), S/o.Arumugam; 6.Sarathy (28), S/o.Valmoorthy; 7.Azath (30), S/o.Krishnasamy; 8.Selvakumar, S/o.Munusamy.

For Petitioner : Mr.V.Porkodi

For Respondents : Mr.A.N.Thambi Durai,
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.N.PRAKASH, J.)

On 3.8.2015, a group of persons claiming themselves to be the students of Pachayappa's College, unlawfully gathered before a TASMAC wine shop near the Pachayappa's College and started demanding closure of the shop. It is alleged that the agitators turned unruly and they ransacked the shop and also manhandled the employees of the shop. A policeman, who was on duty nearby, was also assaulted and stones were pelted on the Police vehicles and damaged them.

2. The Police brought the situation under control and arrested 15 of them. A case in G-7 Chetpet Police Station Cr.No.1181 of 2015 under Sections 147, 148, 448, 427, 323, 324, 353, 506(i) IPC and Section 3 of TNPPD Act was registered against the accused, and they were produced before the XIV Metropolitan Magistrate, Chennai-8 for remand. At the time of remand they were represented by Mr.V.Shanmugam, Advocate. Each of the accused complained to the Magistrate that they were beaten by the Police and they sustained injuries. The learned Magistrate had meticulously recorded the complaint, and also noted that the properties were damaged, and that the staff and policeman were also attacked by the group. Learned Magistrate also made arrangements for giving treatment to the injuries sustained by the accused. Thereafter the accused were remanded to custody and were lodged in Central Prison-II, Puzhal, Chennai.

3. The petitioner V.Sulochana is the mother of one Sarathy, who was involved in the case in Cr.No.1181 of 2015 and was arrested by the Police as aforesaid. It is her grievance that her son and seven others were further subjected to torture inside the prison by the Prison Officials. On these allegations, petitioner has filed the present Habeas Corpus Petition praying for production of her son and seven others.

4. When the matter came up for hearing on 10.8.2015, the Division Bench of this Court (S.T.,J. & B.R.,J.) appointed Mr.S.Senthil Kumaresan, V Additional Judge (TADA), City Civil Court, Chennai, as Enquiry Officer to conduct an enquiry on the allegations made against the Jail Officials. Mr.S.Senthil Kumaresan examined 11 persons in Jail, perused 57 documents and has submitted a detailed report dated 14.8.2015. It may be relevant to extract paragraphs 31 to 35 from the report, which reads as under:

"31. Further, the reason for beating the three detainees in the Central Jail campus, as per the reliable evidence are that, because of the refusal of the detainees to remove their shirts when the jail officers have asked them for physical checking and also when the detainee V.Sarathi has questioned the jail officers that, whether they will ask any V.I.Ps (Ms.J.Jeyalalitha, The Chief Minister of Tamil Nadu, Mr.M.Karunanithi, The former Chief Minister of Tamil Nadu, Mr.M.K.Stalin and Hon'ble Shri A.P.J.Abdul Kalam, the former President of India) to remove their shirts in case they brought to the jail.

32. Regarding the injuries seen by the jail authorities while admitting the detainees into the jail in accordance with the remand warrant issued by the XIV Metropolitan Magistrate, Chennai, the detainees have categorically deposed that they have sustained such injuries at the place of agitation and also in G-7 Police Station after their arrest. Their statements corroborate the medical evidences. As per Doc.Nos.3, 8, 13, 18, 23, 27, 30 & 35 all the detainees have been beaten with lathi and plastic pipes and got simple injuries with pain all over the body.

33. As far as the allegations of refusal by the jail authorities to visit the detainees by their relatives and well-wishers, the visitors requisition, visitors pass and also

the visitors register have been perused. Copies of those documents were also obtained and submitted along with this report.

34. As per Doc.No.47, the mother of the detainee V.Sarathi was issued with a visitors pass on 5.8.2015 and her visit is confirmed by the visitors register as per Doc.No.48. Mr.B.Saravanan, Advocate of the detainee V.Sarathi was also permitted to visit him in the jail on a request submitted in Doc.No.49 and his visit is also confirmed by Doc.No.50 the visitors register.

35. Many political leaders as well wishers of the detainees have also visited them. As per Doc.Nos.42, 43, 44, 45 they have requested the jail authorities to have a visit on the detainees and they have been permitted and visited the detainees as per Doc.46 copy of visitors entry register. Therefore, it cannot be said that the detainees have not been allowed to be seen by their relatives and well wishers."

After having observed so, the Enquiry Officer has given the following findings:

"37. In fine, I am of considered opinion that there are prima facie evidences available to find that,

1. The detainees namely 1.S.Marimuthu, 2.S.Dinesh, 3.P.Maruthu, 4.A.thirumalai, 5.V.Sarathi, 6.K.Aasath, and 7.M.Selvakumar have been beaten at the place of agitation with hands and lathi and also at G-7 Chetpet Police Station with plastic pipes by unidentified and un-named police persons and thereby they have sustained simple injuries with pain all over the body and not sustained any bleeding or bony injuries.

2. In the incidents took place in front of the quarantine block inside the Central Jail-II, Puzhal, the detainees 1.V.Sarathi, 2.K.Aasath and 3.M.Selvakumar have been beaten by the Jail Officers namely, 1.Mr.B.Ilavarasan, Jailor, 2.Mr.A.Israel, Assistant Jailor, 3.Mr.R.Radhakrishnan, Deputy Jailor, 4.Mr.N.Muthumani, II-Grade Warden No.102, of

Central Prison-II, Puzhal, Chennai-66, with their hands and not by any weapon particularly by fibre or ordinary lathi."

5. From the records perused by this Court, we find that there are prima facie evidences to show that the agitation turned violent, and the Police had to use force to bring the situation under control. When a group attempts to take the law into their hands and create anarchy, the Police cannot remain mute and be like lame ducks. It may be apposite to quote the words of the Constitution Bench of the Supreme Court in *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (para 195),

"We must remember that the law does provide for some restrictions on "personal liberty" in the routine exercise of police powers. For instance, Cr.P.C. incorporates an elaborate scheme prescribing the powers of arrest, detention, interrogation, search and seizure. A fundamental premise of the criminal justice system is that the police and the judiciary are empowered to exercise a reasonable degree of coercive powers."

6. The allegation of the petitioner that the jail authorities had used fibre and lathi to beat the detenues, and that they were not permitted interviews have been proved to be false. It is admitted by both sides that the accused were subsequently released on bail and they are no more in detention. In our considered opinion, this is not a fit case in which any monetary compensation could be awarded to the accused in writ proceedings, and it is left open to them to work out their remedy in the manner known to law.

7. As regards the finding of the Enquiry Officer against some Jail Officials, we find that the jail authorities have not been heard by the Enquiry Officer. Under such circumstances, we direct the Superintendent of Prison, Central Prison-II, Puzhal, Chennai, to conduct an enquiry against the Jail Officials on the basis of the enquiry report submitted by Mr.S.Senthil Kumaresan, V Additional Judge (TADA), City Civil Court, Chennai, and take action in accordance with law. Registry is directed to forward a copy of the report of Mr.S.Senthil Kumaresan along with copy of this order to the Superintendent of Central Prison-II, Puzhal, Chennai, for appropriate action.

This Habeas Corpus Petition is disposed of with the above directions.

Sd/-
Assistant Registrar (CCC)

True Copy

Sub Assistant Registrar

To

1. The Secretary, Home Department, Government of Tamil Nadu, Fort St. George, Chennai - 600 001.
2. Mr. Senthil Kumaresan,
V Additional Judge, (TADA)
City Civil Court, Chennai.
3. The Inspector General of Prisons,
Tower-II, No.1 Gandhi Irwin Road,
Egmore, Chennai - 8.
4. The Superintendent of Prison,
Chennai Puzhal Prison-II,
Chennai.

*(Along with Xerox Copy of report
of Mr. S. Senthil Kumaresan,
V Additional Judge (TADA)
City Civil Court, Chennai)
5. The Public Prosecutor,
High Court,
Madras.

H.C.P.No.1856 of 2015

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srg 22/12/2015

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