

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

Date of Reserving the Judgment	Date of Pronouncing the Judgment
28.01.2015	06.02.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.33793 of 2014 &
M.P.Nos.1 to 3 of 2014

Poovarasu @ Poovarasan

.. Petitioner

Vs

1.State of Tamil Nadu
rep. By its Secretary, Home Department
Fort St.George, Chennai 600 009.

2.Superintendent of Police
Vellore District.

3.Kandiban, Inspector (SHO)
Kaveripakkam Police station
Arakonam Taluk, Vellore District.

4.Mohan, Special Sub Inspector
Kaveripakkam Police station
Arakonam Taluk, Vellore District.

5.Sundar, Constable (SB)
Kaveripakkam Police station
Arakonam Taluk, Vellore District.

6.Velmurugan, Constable
Kaveripakkam Police station
Arakonam Taluk, Vellore District.

7.The Superintendent

District HQ Government General Hospital
Adukkamparai, Vellore District.

8.The District Collector

Vellore District, Vellore.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus to direct the respondents 1 & 2 to register an FIR against the respondents 3 to 6 and the driver of the Police vehicle, for illegal detention, torture and causing grievous injuries to the petitioner under different provisions of the IPC, SC/ST (Prevention of Atrocities) Act, 1989 and the Protection of Human Rights Act, 1993, direct investigation of the same by a Police Officer of good reputation and unimpeachable integrity and not less than the rank of DSP of the CB-CID, award compensation of Rs.50 lakhs.

For petitioner ... V.Suresh

For Respondents ... Mr.S.Shanmugha Velayutham
(R1,R2,R7&R8) Public Prosecutor
asstd by Mr.R.Vijayakumar,
Addl.Govt.Pleader

(R3 to R6) Mr.M.Muthappan

O R D E R

Heard V.Suresh, learned counsel appearing for the petitioner, Mr.S.Shanmugha Velayutham, learned Public Prosecutor, appearing for the respondents 1, 2, 7 & 8 and Mr.M.Muthappan, learned counsel for R3 to R6.

2.The petitioner seeks for issuance of writ of mandamus to direct the State Government and the Superintendent of Police, Vellore District to register an FIR against the respondents 3 to 6, who are the Police Officers attached to Kaveripakkam Police Station and the driver of the Police vehicle, for illegal detention, torture and causing grievous injuries to the petitioner under different provisions of the IPC, SC/ST (Prevention of Atrocities) Act, 1989 and the Protection of Human Rights Act, 1993, direct investigation of the same by a Police Officer of good reputation and unimpeachable integrity and not less than rank of Deputy Superintendent of Police of CBCID and award compensation of Rs.50 lakhs.

3. The petitioner would state that he belongs to a scheduled caste community and resident of Athipattu Village in Vellore District and stated to be working as agricultural labour and staying with his parents. According to the petitioner, there are two major communities in Athipattu village and there is a communal tension between the people belonging to 'vanniar' community and the people belonging to the 'scheduled caste' community. Further, the petitioner would state that another major issue which affects the dalit people of Athipattu village is indiscriminate sand mining from the riverbed without any regard for the environmental consequences and many of the youth belonging to the scheduled caste community have been protesting against the illegal indiscriminate sand mining, which according to the petitioner is being done by people belonging to the other community.

3.1 The petitioner would state that he and his friends have been protesting to the entering of lorries into the village, which is being used as an short cut to reach the sand quarry and the lorries were making continuous trips throughout the day and night causing severe hardships to the villagers and posing danger to the lives of the villagers as the lorries were passing through the narrow streets. The petitioner would state that they came to know that the third respondent is also assisting for illegal sand mining and transport by signing lorry permits and allowing to enter through the Athipattu village and to ensure that they are not intercepted by the authorities.

3.2 Therefore, the petitioner is stated to have approached the District Revenue Officials and gave information about the illegal transportation of sand and also furnished the Registration Numbers of the lorries. This according to the petitioner earned the wrath of the Policemen and on 23.9.2014 at about 11.30 pm, he was woken up by five Policemen, who are impleaded as respondents 3 to 6 and as soon as he stepped out his house, he was severely beaten on his right jaw and shoulders and he was shouting in pain. However, not heeding to the petitioner's cry, the policemen continued to beat the petitioner and forced him to get into their vehicle and took him to the Kaveripakkam Police Station, which is said to be situated about 3 kms from the Village.

3.3 The petitioner would further state that at the Police Station, he was stripped to his underwear, his hands were tied behind his back and the Policemen continued to beat the petitioner. Further, it is stated that the fourth respondent had beaten the petitioner on the soles of his foot and shin with his lathi and he was asked to keep his hands open in front of the third respondent, who brutally caned both of his palms till it became swollen and numb. The petitioner would further state that he was brutally beaten all over the body and two lathies were forcibly thrust into his mouth and he was kicked in his chest, thigh, back with their booted foot. Further, the petitioner would state that not stopping with

the brutal beating, he was continuously abused in filthy language using his caste name.

3.4 The petitioner would further state that the vicious treatment meted out to him continued from 2.00 a.m. to 6.00 a.m. and the petitioner was in a semi conscious state and he was chained to a table with an iron chain and left in the same position till the next day morning. On 24.9.2014, at about 7.00 am, the petitioner's father, their relatives and their Lawyer reached the Police Station and found the petitioner's condition to be very bad and that he was unable to stand and he had coughed up blood. At about 11.30 am on 24.09.2014, the petitioner was produced before the District Munsif cum Judicial Magistrate No.I, Walajahpet, for remand under the charge of a Head Constable and even before leaving the Court, he is said to have been threatened not to reveal anything to the Court about the torture inflicted on him by the Policemen.

3.5. It is stated that on the date when the petitioner was arrested i.e. on 23.09.2014, there was no complaint or F.I.R. against the petitioner and the reason for arrest were not disclosed to the petitioner or to this parents and that the petitioner nor his father signed any register in confirmation of having been told the grounds of arrest, case number and other details. Therefore, the petitioner would state that he was illegally detained in the Kaveripakkam Police station during night on 23rd September 2014 and 24th September 014.

3.6. It is submitted that only after illegally arresting and the torturing the petitioner, on 24.09.2014, F.I.R. was registered in Crime No.393 of 2014, for alleged offence under section 294-A and 506(i) of IPC and the occurrence is shown to have been taken place at 11.00 a.m., on 24.09.2014 and the complainant is Sivasankaran, Sub-Inspector of Police attached to the same Police Station. In the F.I.R., in column No.6, it is stated that there is no delay in registering the F.I.R. It is further submitted that there are serious discrepancies in the F.I.R. which are not clerical or typographical mistakes, but intentionally done. Further, the petitioner would state that on the way to the Court, the Head Constable told him not to say anything to the Court about the assault.

3.7 Before the Magistrate, the petitioner is said to have narrated the entire sequence of events and the torture inflicted on him and the Judicial Magistrate directed the Policemen who brought the petitioner to the Court to take the petitioner to the Walajah Government Hospital for medical examination and he was taken to the Government Hospital in a Motor Cycle. It is stated that the Duty Doctor in the Emergency Ward did not note down the full details.

Thereafter, the petitioner's relative met the Medical Superintendent of the Hospital and insisted that the Mandatory Medico Legal Procedure should be followed with due care and the Medical Superintendent is said to have issued appropriate directions to record the necessary entries in the Accident Register at the Government Hospital, Walajah.

3.8. The petitioner would state that the Doctors noted that there appears to be at least four fractures on the second and third metacarpal of left hand. The medical opinion given by the Doctors was that the petitioner should be treated in a bigger hospital due to the extent of injuries and recommended him to be admitted in the Government District Headquarters Hospital in Vellore and the petitioner was shifted by an Ambulance.

3.9. Further it is stated that the petitioner was unable to walk and he was inside the Ambulance. At that time, the third respondent is said to have ordered the Driver to take the Ambulance away from the Court building and two escort Police Constables got into the front of the Ambulance and the petitioner and his father remained inside the Ambulance. The petitioner's father is said to have called one of his relative over phone, who was standing next to their Advocate inside the Court and the petitioner stated that he was kidnapped by the Police Inspector and his men and it is stated that the petitioner's Advocate informed the learned Judicial Magistrate and the learned Judicial Magistrate immediately issued necessary orders and contacted the Superintendent of Police and gave a report about the abduction by Kaveripakkam Police by taking away the petitioner in the Ambulance from the Court premises and thereafter suddenly the Ambulance turned and returned to the Court. It is further stated that the Judicial Magistrate admonished the Inspector of Police and gave him a stern warning. Thereafter the learned Judicial Magistrate recorded what has been stated by the petitioner, who is said to have ordered that to be placed along with the Accident Register copy, as part of the Record. Considering the petitioner's injury and the treatment he has to take, he was granted bail.

3.10. Further it was submitted that the Duty Doctor who attended the petitioner on 25.9.2014, examined him and saw the x-rays and stated that there appears to be fractures in his feet and stated that the Orthopaedic Specialist will examine him and prescribe the line of treatment. However, the Orthopaedic Surgeon stated that there are no fractures.

3.11. The petitioner has made certain allegations against the Doctors and therefore the petitioner having left with no option had discharged himself from the Hospital at about 8.30 pm after signing an 'against medical advice', since he was not confident that he would be given proper treatment in Government Hospital, Walajah.

Thereafter, the petitioner has been admitted to the 'Life Care Multi Speciality Hospital' in Kancheepuram and there the Orthopaedic Doctor confirmed that there is a fracture in his foot. It is further submitted that the petitioner was discharged on 29.09.2014, and he has spent a sum of Rs.13,300/- towards his treatment. With these facts, the learned counsel appearing for the petitioner would submit that on account of the failure on the part of the second respondent to register a case against the respondents 3 to 6 as well as the Police vehicle Driver is unconstitutional and unjust and the respondents 1 and 2 have not taken any action against the respondents 3 to 6 who are Government servants who have inflicted torture on the petitioner unlawfully detained the petitioner and committed serious offences under the provisions of SC and ST (Prevention of Atrocity) Act. Therefore, the learned counsel submits that that case has to be transferred and the entire investigation has to be handed over to an Officer in the rank of not less than DSP of CBCID and award compensation to the petitioner and register an F.I.R. against the respondents 3 to 6 under the different provision of IPC and SC and ST (Prevention of Atrocity) Act. In support of his contention, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of Lalitha Kumari vs. Government of U.P., & Ors., reported in (2014) 2 SCC 1, in the case of PUCL vs. State of Maharashtra, reported in (2014) 10 SCC 635, and the decision of the Hon'ble Division Bench of this Court in case of Anjalam vs. Superintendent of Police in Writ Appeal No.2578 of 2003, dated 18.06.2013 and the decision in the case of G.Bharathi vs. State of Tamil Nadu in W.P.NO.16352 of 2012, dated 20.09.2013.

4. The learned Public Prosecutor submitted that the case as projected by the petitioner is exaggerated. By referring to the counter affidavit filed by the second respondent, it is submitted that all the allegations made by the petitioner are not true, false and baseless. On a perusal of the counter affidavit filed by the second respondent, it is seen that the second respondent after referring to all the averments made in the affidavit filed in support of the Writ Petition has stated that all the averments are false and baseless and has denied the same. It is further submitted that Thiru.Sivasankaran, the Sub-Inspector of Police who registered the case in Crime No.393 of 2014, also belongs to a Schedule Caste Community. Further, it is submitted that a suitable reply has been given to the National Human Rights Commission to the complaint given by the petitioner. It is submitted that the prayer sought for in the Writ Petition is not maintainable.

5. During the course of hearing, It was pointed out that in paragraph 31 of the counter affidavit it was stated that the seventh respondent has filed a counter affidavit. However, no counter affidavit was filed by the seventh respondent, therefore, a

direction was issued to clarify the position. Pursuant thereto, the second respondent filed a additional affidavit dated 23.01.2015, admitting the mistake and permitting the respondent to withdraw the averments made in para 31 of his counter affidavit.

6. The seventh respondent has filed a counter affidavit inter alia contending that the writ petitioner was admitted in the hospital on 24.09.2014, proper treatment was given to his injuries and it is found that there are no bone injuries. It is further submitted that the medical report of the petitioner shows that x-ray was taken and the x-ray does not reveal any bone injury and the petitioner got himself discharged from the Government hospital on 25.09.2014, at 7.30 p.m., against medical advice.

7. When the case was heard by this Court on 28.01.2015, a Doctor attached to the seventh respondent hospital was present in Court. However, this Court did not direct the concerned Doctor to appear before the Court. It appears to be not his voluntary action, but this Court is justified in presuming that it is the respondent Police who have asked the Doctor to appear. In any event, the appearance of the Doctor without any direction from this Court, is uncalled for. In fact the said Doctor addressed the Court and stated that he had examined the petitioner when he was admitted to the hospital and there was no fracture.

8. Be that as it may, the Doctor, who treated petitioner in a private hospital opines that there was fracture. It is true that two professionals/experts may differ in their view, but it is rather surprising that the Government Doctor says that there is no fracture and no bone injury whereas the private Doctor, who treated the petitioner after 29.05.2015, much after the incident has issued a certificate dated 21.01.2015, stating that the petitioner was presented to him with back pain three months back and was diagnosed T-11gocompression fracture (stable) and the report states at present has on B/K slab for phalynx fracture (left) foot. He has also further stated that the petitioner walks with a limp, he has advised bed rest, TLSO brace for one and half months and not to do any work or lift weights for three months.

9. In the light of the above facts, it has to be seen what is the nature of relief, the petitioner is entitled to.

10. Admittedly, the allegation against the petitioner which has resulted in registering an F.I.R., in crime No.393 of 2014, is for alleged offence under Section 294 and 506 part-I IPC. It is not known under what circumstances, the petitioner was picked up from his residence on 23.09.2014, when as per the F.I.R., the incident is said to have occurred 23.09.2014 at 11.00 a.m., whereas F.I.R. has been registered only on 24.09.2014. The delay has not been

explained in the counter affidavit. The petitioner's case is that has was picked up my residence at about 11.30 p.m., on 23.09.2014, by respondents 3 to 6. The original medical records maintained by the government Hospital has been produced before this Court from which it is seen that in the admission slip issued by the Doctor, it has been written as alleged history of assault by three unknown persons, two known persons at 2.00 a.m., on 23.09.2014 using wooden stick in Kaveripakkam. From the admission slip issued by the Government Hospital, Vellore, it is seen that the petitioner had been advised admission for treatment of injuries sustained by him for assault committed on 23.09.2014 using wooden sticks. Conveniently the place where the assault took place has not been mentioned, but it has been mentioned that it took place in Kaveripakkam. Therefore, it is prima facie clear that the petitioner was picked up from his residence on 23.09.2014, but the F.I.R., was registered on 24.09.2014.

11. The further report prepared in the Hospital, which is a carbon copy appended to the case sheet records that it is history of assault by three "U-known" and two known persons at Kaveripakkam Police Station at 2.00 p.m., on 23.09.2014, with wooden rod.

12. Thus there is sufficient material to come to a prima facie conclusion that the assault committed on the petitioner was in the premises of the Kaveripakkam Police Station. This prima facie conclusion is arrived at by this Court based on the medical records which were produced before this Court by the learned Public Prosecutor. Surprisingly, the counter filed by the second respondent does not deal with these issues and it is a mere denial of all the averments made by the petitioner in his counter affidavit. The counter affidavit does not speak about the action taken on the petitioner's complaint dated 26.09.2014, which has been given to all the authorities including the second respondent.

13. Furthermore, the learned Judicial Magistrate in order dated 24.09.2014, in C.M.P.No.4490 of 2014, has pointed out that fractures and multiple injuries are noted in the medical documents, the accused is to be treated for his injuries and therefore, the Court was inclined to enlarge the accused on bail considering his injuries and treatment.

14. The moot question would be who caused the injuries, as per the medical records, the fractures/injuries was on account of assault with wooden sticks/rods on 23.09.2014, in Kaveripakkam Police Station. Therefore, it can be prima facie concluded that it should be the Police Personnel who were in the Police Station, who had inflicted the injuries on the petitioner. This Court has used expression 'prima facie', since investigation has to be done into the matter thoroughly to fix the person/persons who inflicted the

injuries on the petitioner. As pointed out earlier the appearance of the Doctor before this Court presumably on the dictates of the respondent Police is uncalled for and has raised serious doubt in the mind of this Court as regards the manner in which the case has been dealt with.

15. Interestingly, the 7th respondent also does not refer to the injuries sustained by the petitioner, though the medical records speak for itself and the learned judicial Magistrate has recorded the fact that the medical records speak about the fractures/injuries and that was one of the reason for grant of bail to the petitioner. Therefore, the counter filed by the seventh respondent stands rejected. That apart, the counter filed by the second respondent which is a mere denial of all the averments made by the petitioner is not worthy of acceptance and hence rejected.

16. In spite of the petitioner bringing the facts to the notice of the first respondent as well as the second respondent, no action has been initiated on his complaint. The Hon'ble Supreme Court in the case of PUCL (supra), by referring to the Universal Declaration of Human Rights (UDHR) pointed out that the principles framed by the UDHR are intended to guarantee independence while investigating police killings and help in preventing potential for abuse, corruption, ineffectiveness and neglect in investigation.

17. As pointed out by the Hon'ble Supreme Court in Lalitha Kumari's case if any information disclosing a cognizable offence is led before an officer incharge of a Police station satisfying the requirement of Section 154(1) CrPC., the Police Officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. It was further pointed out that the word 'shall' in Section 154(1) of CrPC., shows the legislative intend that it is mandatory to register an F.I.R. if information given to the Police discloses the commission of a cognizable offence.

18. Thus in conclusion the Hon'ble Supreme Court held that the registration of F.I.R. is mandatory under Section 154 CrPC., if the information discloses, commission of a cognizable offence and no preliminary enquiry is permissible in such a situation.

19. It is unfortunate that inspite of the petitioner's complaint, no action has been taken by the respondents 1 and 2. On a plain reading of the complaint given by the petitioner against the respondents 3 to 6, prima facie discloses, commission of a cognizable offence, this stand is fortified by the medical records and the observations made by the learned Judicial Magistrate at the time of remand and while granting bail.

20. In such circumstances, this Court is convinced that the investigation into the matter has to be entrusted to an independent agency to ensure a fair investigation and thorough probe into the matter to bring to book the offenders. The Hon'ble Supreme Court in the case of Manokar Lal Sharma vs. Principal Secretary reported in AIR 2014 SC 666, pointed out that the Courts ordinarily do not interfere in matters of investigation by Police particularly when the facts and circumstances do not indicate that the investigation is not functioning bonafide and in very exceptional cases where Court finds the Police Officer has exercised his investigatory power in breach of statutory provision putting the personal liberty and/or the property of the citizen in jeo-pardi by illegal and improper use of the power or there is abuse of the investigatory power and process by the Police Officer or the investigation by the Police is found to be not bonafide or the investigation is tainted with animosity, the Court may intervene to protect the personal and/or property rights of the citizens. The case on hand clearly falls within the exception carved out by the Hon'ble Supreme Court, the facts prima facie disclose abuse of power, tainted with animosity and putting the petitioner's personal liberty to peril.

21. The Hon'ble Supreme Court in the case of Mehmood Nayyar Azam vs. State of Chhattisgarh & Ors., reported in (2012) 8 SCC 1, held that the appellant thereon was entitled to compensation of Rs.5,00,000/- for custodial humiliation and it was pointed out that the Police Officers should have the greatest regard for personal liberty of citizens as they are the custodians of law and order and, hence, they should not flout law by stooping to bizarre act of lawlessness. It was further pointed out that if functionaries of Government become law breakers, it is bound to breed contempt for the law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchy.

22. As held by the Hon'ble Supreme Court in MCD vs. Uphaar Tragedy Victims Association, reported in (2011) 14 SCC 481, compensation that is awarded in public law is summary in nature and does not prevent the claimant from recovering full civil damages in tort for the same wrong.

23. In the light of all the above discussions, the Writ Petition is disposed of with the following directions:-

(i) the first respondent is directed to forward the complaint given by the petitioner dated 26.09.2014, (copy of which has been filed in the typed set of papers), to the Director General of Police to be entrusted to a competent Officer not below the rank of Deputy Superintendent of Police, CBCID, to forthwith take action on the same taking note of the decision of the Hon'ble Supreme Court in the case of Lalitha Kumari vs. Government of U.P., & Ors., reported in (2014) 2 SCC 1, wherein the Hon'ble Supreme Court has held that

the registration of FIR is mandatory under Section 154 of CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and the observations and taking note of the observations made in this order and proceed in accordance with law, without further loss of time.

(ii) the first respondent is directed to issue appropriate direction to transfer Crime No.393 of 2014, on the file of the Kaveripakkam Police Station, Arakonam Taluk, Vellore District, to CBCID and entrust the same to the same Officer who is to be directed to investigate the complaint given by the petitioner in terms of the direction contained in para (i) above.

(iii) The medical records maintained in the Government hospital which were produced before this Court discloses that the injuries sustained by the petitioner were inflicted on 23.09.2014, at Kaveripakkam Police Station by three unknown and two known persons with wooden stick/rod. Therefore, till the investigation is completed by CBCID and final report is filed, the petitioner is entitled for an interim compensation. Accordingly, the first respondent is directed to pay a sum of Rs.2,00,000/- to the petitioner by way of interim compensation leaving it open to the petitioner to work out his remedies after the conclusion of the proceedings as directed above.

The Original Medical records which were produced by the learned Public Prosecutor along with the counter affidavit of the second respondent, are returned to the learned Public Prosecutor to be handed over to the Officer of CBCID, who is to be nominated to carry out the directions issued by this Court.

No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rpa/pbn

WEB COPY

To

1.The Secretary
State of Tamil Nadu
Home Department
Fort St.George, Chennai 600 009.

2.The Superintendent of Police
Vellore District.

3.The Superintendent
District HQ Government General Hospital
Adukkamparai, Vellore District.

4.The District Collector
Vellore District, Vellore.

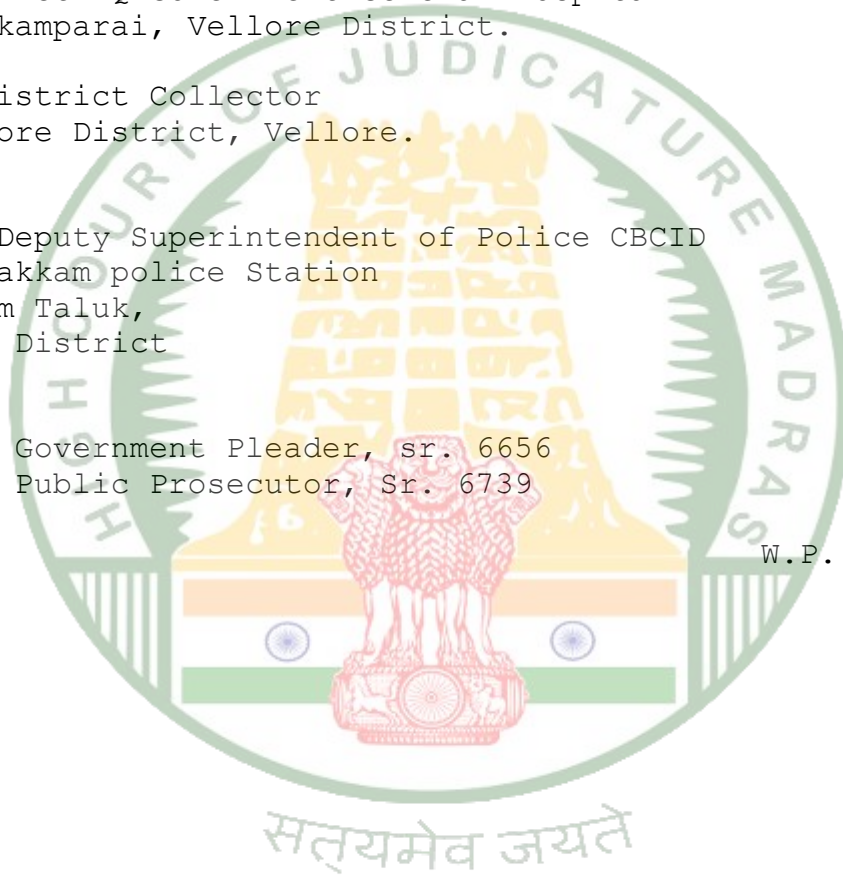
5. The Deputy Superintendent of Police CBCID
Kaveripakkam police Station
Arakonam Taluk,
Vellore District

1 cc to Government Pleader, sr. 6656

1 cc to Public Prosecutor, Sr. 6739

W.P. No.33793 of 2014

BR (CO)
kk 16/2



WEB COPY