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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.O.P. (MD) Nos.1720,1784, 1807, 1810, 1812,1813,1825,1846, 1864 and 1881
of 2015 (10 cases)

MARUTHIAH @ MARUTHAPPAPILLAI ... Petitioner in CRL OP(MD). 1720/ 2015

1 A. KUMAR

2 ANDICHI ... Petitioners in CRL OP(MD). 1784/ 2015

R. ESWARAN ... Petitioner in CRL OP(MD). 1807/ 2015

1 TAMILSELVI

2 KUMAR

3 MURUGESHWARI

4 MUTHUKARUPPAN

5 MUTHU PRAKASH

6 PREMKUMAR ... Petitioners in CRL OP(MD). 1810/ 2015

M. ASHOK KUMAR ... Petitioner in CRL OP(MD). 1812/ 2015

1 V. DURAI

2 V. GANESAN ... Petitioners in CRL OP(MD). 1813/ 2015

BALAMURUGAN ... Petitioner in CRL OP(MD). 1825/ 2015

S.PARASURAMAN ... Petitioner in CRL OP(MD). 1846/ 2015

K.MEERAN MOHIDEEN ... Petitioner in CRL OP(MD). 1864/ 2015

P.UCHIMAKALI ... Petitioner in CRL OP(MD). 1881/ 2015

- Vs. -

1 THE SUPERINTENDENT OF POLICE, TIRUNELVELI DISTRICT, TIRUNELVELI.

2 THE DEPUTY SUPERINTENDENT OF POLICE, AMBASAMUDRAM SUB DIVISION,
TIRUNELVELI DISTRICT.

3 THE INSPECTOR OF POLICE, KADAYAM POLICE STATION, TIRUNELVELI DISTRICT.
... Respondents in CRL OP(MD). 1720/ 2015

1 THE SUPERINTENDENT OF POLICE, SIVAGANGAI DISTRICT, SIVAGANGAI

2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, MANAMADURAI,
SIVAGANGAI DT.

3 THE INSPECTOR OF POLICE, THIRUPPUVANAM POLICE STATION, SIVAGANGAI DT.

4 THE INSPECTOR OF POLICE, THIRUPPACHETHI POLICE STATION, SIVAGANGAI DT.

<https://hcservices.ecourts.gov.in/hcservices/> ... Respondents in CRL OP(MD). 1784/ 2015



1 THE SUPERINTENDENT OF POLICE, THENI DISTRICT
2 THE INSPECTOR OF POLICE, ODAIPATTI POLICE STATION, THENI DT.
... Respondents in CRL OP(MD). 1807/ 2015

1 THE SUPERINTENDENT OF POLICE, OFFICE OF THE SUPERINTENDENT OF POLICE,
THENI DT.
2 THE SUB INSPECTOR OF POLICE, ODAIPATTI POLICE STATION,
ODAIPATTI, THENI DT.
... Respondents in CRL OP(MD). 1810/ 2015

1 THE SUPERINTENDENT OF POLICE, SIVAGANGAI DISTRICT, SIVAGANGAI
2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, MANAMADURAI,
SIVAGANGAI DT.
... Respondents in CRL OP(MD). 1812/ 2015

1 THE SUPERINTENDENT OF POLICE, DISTRICT POLICE OFFICE,
SUBRAMANIYAPURAM, TRICHY 621 020
2 THE INSPECTOR OF POLICE, MANACHANALLUR POLICE STATION,
MANACHANALLUR, TRICHY 621 005
... Respondents in CRL OP(MD). 1813/ 2015

1 THE SUPERINTENDENT OF POLICE, VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR
2 THE INSPECTOR OF POLICE, KEEZHARAJAGULARAMAN POLICE STATION,
VIRUDHUNAGAR DT.
... Respondents in CRL OP(MD). 1825/ 2015

1 THE SUPERINTENDENT OF POLICE, TRICHY, TRICHY DISTRICT.
2 THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH, TRICHY-20.
... Respondents in CRL OP(MD). 1846/ 2015

1 THE COMMISSIONER OF POLICE, TIRUNELVELI CITY, TIRUNELVELI.
2 THE DEPUTY COMMISSIONER OF POLICE, TIRUNELVELI, TIRUNELVELI DISTRICT.
3 THE INSPECTOR OF POLICE, PERUMALPURAM POLICE STATION, TIRUNELVELI.
... Respondents in CRL OP(MD). 1864/ 2015

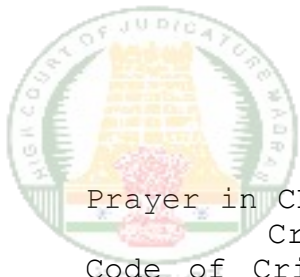
1 THE SUPERINTENDENT OF POLICE, TIRUNELVELI, TIRUNELVELI DISTRICT.
2 THE DEPUTY SUPERINTENDENT OF POLICE, VALLIYUR SUB-DIVISION, VALLIYUR,
TIRUNELVELI.
3 THE INSPECTOR OF POLICE, PANAKUDI POLICE STATION, TIRUNELVELI DISTRICT.
... Respondents in CRL OP(MD). 1881/ 2015

Prayer in CRL OP(MD). 1720/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the Inspector of Police, Kadayam Police Station, the 3rd respondent herein not to harass the petitioner under the grab of conducting an enquiry in connection with the complaint lodged by one Rajappa S/o. Madasamy Asari.

Prayer in CRL OP(MD). 1784/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to directing the respondents 2 to 4 not to harass the petitioners under the guise of enquiry without following the due process of law



Prayer in CRL OP(MD). 1807/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the respondents not to harass the petitioner by interfering the civil dispute between the parties

Prayer in CRL OP(MD). 1810/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the 2nd respondent not to harass the petitioners by way of in the guise of enquiry

Prayer in CRL OP(MD). 1812/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the second respondent not to harass the petitioners under the guise of enquiry

Prayer in CRL OP(MD). 1813/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the 2nd respondent not to harass by the way of enquiry the petitioners and his family members in the event of petition enquiry

Prayer in CRL OP(MD). 1825/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the respondents not to harass the petitioners

Prayer in CRL OP(MD). 1846/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the respondents not to harass the petitioner and his family members.

Prayer in CRL OP(MD). 1864/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the respondents not to harass the petitioner under the guise of enquiry based on the false complaint given by one Chandrasekar and Mohamed Ismail.

Prayer in CRL OP(MD). 1881/ 2015 :

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to direct the 2nd and 3rd respondents not to harass the petitioner, without following due process of law.

For Petitioner/Petitioners

- : Mr.P.Gunasekaran in Crl.O.P.No.1720/2015
- : Mr.V.P.Rajan in Crl.O.P.No.1784/2015
- : Mr.S.Kameswaran in Crl.O.P.No.1807/2015
- : Mr.M.Mohammed Ajeesdeen in Crl.O.P.No.1810/2015
- : Mr.S.M.Mohan Gandhi in Crl.O.P.No.1812/2015
- : Mr.R.Rajaraman in Crl.O.P.No.1813/2015
- : Mr.K.Vinayagan in Crl.O.P.No.1825/2015
- : Mr.S.Karthik in Crl.O.P.No.1846/2015
- : Mr.K.Mahendran in Crl.O.P.No.1864/2015
- : Mr.M.Subash Babu in Crl.O.P.No.1881/2015



For Respondents in all Crl.O.Ps.

: Mr.K.V.Rajarajan
Government Advocate (Crl.side)

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COMMON ORDER

All the petitioners seek directions to the respective respondents not to harass the petitioners and their family members under the guise of enquiry.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side).

3. The petitioners in all these petitions alleged harassment at the hands of the respective police/respondent. Given the guidelines of the Apex Court in Lalita Kumari vs. Government of U.P. and others reported in 2013 (4) Crimes 243 (SC) and in Arnesh Kumar vs. State of Bihar and Another reported in (2014) 3 MLJ (Crl) (SC), these petitions may be disposed of on the following lines:

In the normal course, the respondent police shall not require the presence of the petitioners before them. In an exceptional case, the respondent police may upon receipt of complaints, require the persons/accused to appear before them for the purpose of enquiry. Such enquiry shall not extend beyond the period of one week. In the event of respondent police registering cases for offences punishable with imprisonment up to 7 years, both respondent police as well as the concerned jurisdictional Magistrate before whom accused persons are produced for the purpose of remand strictly shall follow the dictate of Supreme Court in Arnesh Kumar vs. State of Bihar and Another reported in (2014) 3 MLJ (Crl) (SC), paragraph Nos.9, 14 and 15 whereof state as follows:

"9. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will



achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.

14. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

•(1)

All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C;

•(2)

All police officers be provided with a check list containing specified sub-clauses under Section 41(1) (b) (ii);

•(3)

The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

•(4)

The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

•(5)

The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

•(6)

Notice of appearance in terms of Section 41A of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

•(7)

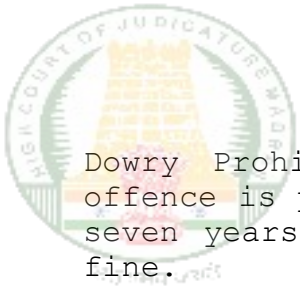
Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

•(8)

Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

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15. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the



Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

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4. These Criminal Original Petitions are ordered accordingly.

Sd/-

Assistant Registrar(Per Admn)

/True Copy/

Sub Assistant Registrar

To

1. THE SUPERINTENDENT OF POLICE
TIRUNELVELI DISTRICT, TIRUNELVELI.

2. THE DEPUTY SUPERINTENDENT OF POLICE,
AMBASAMUDRAM SUB DIVISION, TIRUNELVELI DISTRICT.

3. THE INSPECTOR OF POLICE
KADAYAM POLICE STATION, TIRUNELVELI DISTRICT.

4. THE SUPERINTENDENT OF POLICE
SIVAGANGAI DISTRICT, SIVAGANGAI

5. THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, MANAMADURAI, SIVAGANGAI

6. THE INSPECTOR OF POLICE
THIRUPPUVANAM POLICE STATION, SIVAGANGAI DISTRICT

7. THE INSPECTOR OF POLICE
THIRUPPACHETHI POLICE STATION, SIVAGANGAI

8. THE SUPERINTENDENT OF POLICE
THENI DISTRICT

9. THE INSPECTOR OF POLICE
ODAIPATTI POLICE STATION, THENI DISTRICT

10. THE SUB INSPECTOR OF POLICE
ODAIPATTI POLICE STATION, ODAIPATTI, THENI DISTRICT

11. THE SUPERINTENDENT OF POLICE
DISTRICT POLICE OFFICE, SUBRAMANİYAPURAM, TRICHY -621020

12. THE INSPECTOR OF POLICE
MANACHANALLUR POLICE STATION, MANACHANALLUR, TRICHY



13. THE SUPERINTENDENT OF POLICE
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR

14. THE INSPECTOR OF POLICE
KEEZHARAJAGULARMANA POLICE STATION, VIRUDHUNAGAR

15. THE SUPERINTENDENT OF POLICE
TRICHY

16. THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, TRICHY

17. THE COMMISSIONER OF POLICE
TIRUNELVELI CITY, TIRUNELVELI

18. THE DEPUTY COMMISSIONER OF POLICE,
TIRUNELVELI , TIRUNELVELI DISTRICT

19. THE INSPECTOR OF POLICE
PERUMALPURAM POLICE STATION, TIRUNELVELI

20. THE DEPUTY SUPERINTENDENT OF POLICE,
VALLIYUR SUB DIVISION, VALLIYUR, TIRUNELVELI

21. THE INSPECTOR OF POLICE,
PANAKUDI POLICE STATION, TIRUNELVELI DISTRICT

22. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr.P.Gunasekaran, Advocate Sr.No.8842
+1cc to Mr.S.Kameswaran, Advocate Sr.No.8777
+1cc to Mr.M.Mohammed Ajeesdheen, Advocate Sr.No.8637
+1cc to Mr.S.M.Mohan Gandhi, Advocate Sr.No.8293
+1cc to Mr.R.Rajaraman, Advocate Sr.No.8180
+1cc to Mr.K.Vinayagan, Advocate Sr.No.8173
+1cc to Mr.S.Karthik, Advocate Sr.No.8143
+1cc to Mr.K.Mahendran, Advocate Sr.No.8163
+1cc to Mr.M.Subash Babu, Advocate Sr.No. 8635

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AA/10.03.2015/6p- 32c/

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