



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.O.P. (MD) Nos.1911,1914,1953,1981,2003,2031,2035,
2462,2471 and 2512 of 2015 (10 cases)

WEB COPY

R.SYED PAIROSE ... PETITIONER IN CRL OP(MD) . 1911/ 2015
T.PALANIAPPAN ... PETITIONER IN CRL OP(MD) . 1914/ 2015

1 SATHIANESAN
2 SECILY BAI ... PETITIONERS IN CRL OP(MD) . 1953/ 2015

VISWANATHAN ... PETITIONER IN CRL OP(MD) . 1981/ 2015

1 MURUGESAN
2 M.SHANTHI
3 VIGNESH
4 SURIYA ... PETITIONERS IN CRL OP(MD) . 2003/ 2015

G. CHARLES ... PETITIONER IN CRL OP(MD) . 2031/ 2015

1 S.MOHAMED KASIM
2 A.ABBAS
3 M.RAJATHI
4 M.IBRAHIM
5 M.MUMTAJ BEGUM
6 A.JEENU BASS ... PETITIONERS IN CRL OP(MD) . 2035/ 2015

SONAI MUTHU ... PETITIONER IN CRL OP(MD) . 2462/ 2015
K.MURUGAN ... PETITIONER IN CRL OP(MD) . 2471/ 2015

1 MRS.D.AMUTHA
2 D.NATANASABABATHY
3 M.NAVANEETHAKRISHNAN ... PETITIONERS IN CRL OP(MD) . 2512/ 2015

- VS. -

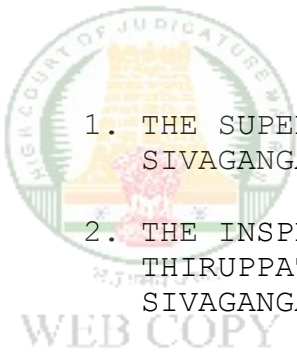
1. THE SUPERINTENDENT OF POLICE,
KARUR DISTRICT, KARUR.

2. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, (LAND GRABBING WING),
KARUR DISTRICT. ... RESPONDENTS IN CRL OP(MD) . 1911/ 2015

1. THE SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR DISTRICT, VIRUDHUNAGAR.

2. THE INSPECTOR OF POLICE,
RAJAPALAYAM SOUTH POLICE STATION,
VIRUDHUNAGAR DISTRICT. ... RESPONDENTS IN CRL OP(MD) . 1914/ 2015

THE DEPUTY SUPERINTENDENT OF POLICE,
ANTI LAND GRABBING SPECIAL CELL, NAGERCOIL,
KANYAKUMARI DISTRICT. ... RESPONDENT IN CRL OP(MD) . 1953/ 2015

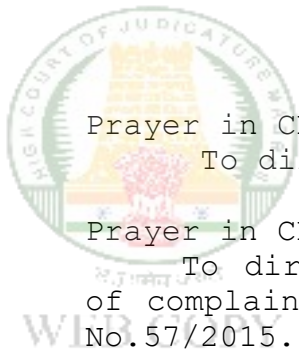


1. THE SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT, SIVAGANGAI.
2. THE INSPECTOR OF POLICE,
THIRUPPATHUR TOWN POLICE STATION, THIRUPPATHUR,
SIVAGANGAI DISTRICT. ... RESPONDENTS IN CRL OP (MD) . 1981/ 2015
1. THE SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT.
2. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, KARAIKUDI,
SIVAGANGAI DISTRICT. ... RESPONDENTS IN CRL OP (MD) . 2003/ 2015
1. THE SUPERINTENDENT OF POLICE,
NAGERCOIL, KANYAKUMARI DISTRICT.
2. THE INSPECTOR OF POLICE,
KARUNGAL POLICE STATION, KARUNGAL,
KANYAKUMARI DISTRICT.
3. MARIA STELLA ... RESPONDENTS IN CRL OP (MD) . 2031/ 2015
1. THE SUPERINTENDENT OF POLICE,
THENI, THENI DISTRICT.
2. THE INSPECTOR OF POLICE, LAND GRABBING WING,
THENI, THENI DISTRICT. ... RESPONDENTS IN CRL OP (MD) . 2035/ 2015
1. THE SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT, SIVAGANGAI.
2. THE INSPECTOR OF POLICE,
MANAMADURAI POLICE STATION,
SIVAGANGAI DISTRICT. ... RESPONDENTS IN CRL OP (MD) . 2462/ 2015
1. THE COMMISSIONER OF POLICE, TIRUNELVELI CITY.
2. THE INSPECTOR OF POLICE,
CENTRAL CRIME BRANCH,
TIRUNELVELI CITY. ... RESPONDENTS IN CRL OP (MD) . 2471/ 2015
1. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH (LAND GRABBING SECTION)
SIVAGANGAI S.P OFFICE, SIVAGANGAI DISTRICT.
2. THE DISTRICT SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT. ... RESPONDENTS IN CRL OP (MD) . 2512/ 2015

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure

<https://hservices.courts.gov.in/hcservices/> Prayer in CRL OP (MD) . 1911/ 2015 :

To direct the respondents not to harass the petitioner.



Prayer in CRL OP(MD). 1914/ 2015 :

To direct the respondents not to harass the petitioner.

Prayer in CRL OP(MD). 1953/ 2015 :

To direct the respondent not to harass the petitioner on the basis of complaint given by the defacto complaint dated 22.01.2015 in petition No.57/2015.

Prayer in CRL OP(MD). 1981/ 2015 :

To direct the respondents not to harass the petitioner in the name of enquiry regarding the civil dispute.

Prayer in CRL OP(MD). 2003/ 2015 :

To direct the respondent No.2 not to harass the petitioner in the guise of enquiry.

Prayer in CRL OP(MD). 2031/ 2015 :

To direct the 2nd respondent police not to harass/interfere in the civil dispute between the petitioner and the 3rd respondent herein in OS.No.4/2014 on the file of the District Munsif court, Padmanabhapuram, Kanyakumari District as regards property situated in Re.Sy.No.186/08 of Keezhmidalam Village in Kanyakumari District.

Prayer in CRL OP(MD). 2035/ 2015 :

To direct the 2nd respondent not to harass the petitioner in a Civil dispute under the guise of enquiry.

Prayer in CRL OP(MD). 2462/ 2015 :

To direct the respondents not to interfere in the civil dispute regarding family god Temple Festival of Arulmigu Sri Aladian Ganga Devi Karuppanasamy at S.Karaikudi Village, Manamadurai Taluk, Sivagangai District.

Prayer in CRL OP(MD). 2471/ 2015 :

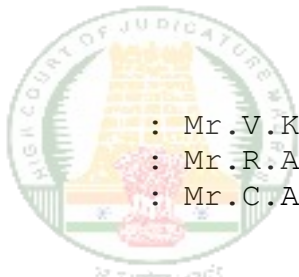
To direct the Inspector of Police, Central Crime Branch, Tirunelveli City, not to harass the petitioner by way of interfering into a civil subject matter in connection with the property situated in Plot No.40, Ramachandra Nagar, N.G.O. A Colony, Tirunelveli City under the garb of causing an inquiry on the strength of a complaint given by one C.Petchimuthu.

Prayer in CRL OP(MD). 2512/ 2015 :

To directing the respondents police officers not to interfere in the civil matter and from conducting any enquiry on the false complaint of Senthil Viswanath to decide the rights of the petitioner.

For Petitioner/petitioner

- : Mr.S.Gokul Raj in Crl.O.P.No.1911/2015
- : Mr.K.Vinayagan in Crl.O.P.No.1914/2015
- : Mr.D.Christenson Jugunu in Crl.O.P.No.1953/2015
- : Mr.V.Kannan in Crl.O.P.No.1981/2015
- : Mr.C.Jeyaprakash in Crl.O.P.No.2003/2015
- : Mr.E.V.N.Siva in Crl.O.P.No.2031/2015
- : Mr.K.Guhan in Crl.O.P.No.2035/2015



: Mr.V.Kannan in Crl.O.P.No.2462/2015
: Mr.R.Anand in Crl.O.P.No.2471/2015
: Mr.C.A.Ganapathy in Crl.O.P.No.2512/2015

For Respondents in all Crl.O.Ps.

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

C O M M O N O R D E R

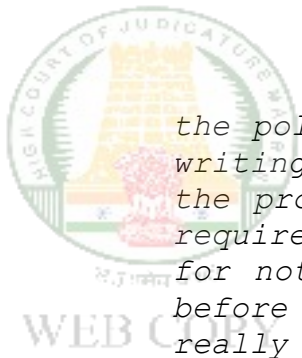
All the petitioner seek directions to the respective respondents not to harass the petitioner and their family members under the guise of enquiry.

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

3. The petitioner 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 petitioner 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.PC 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.

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.

4. These Criminal Original Petitions are ordered accordingly.

Sd/-

Assistant Registrar (Per Admn)

/True copy/

Sub Assistant Registrar

To

1. THE SUPERINTENDENT OF POLICE, KARUR DISTRICT, KARUR.
2. THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH,
(LAND GRABBING WING), KARUR DISTRICT.
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6. THE SUPERINTENDENT OF POLICE, SIVAGANGAI DISTRICT, SIVAGANGAI.



7. THE INSPECTOR OF POLICE,
THIRUPPATHUR TOWN POLICE STATION, THIRUPPATHUR,
SIVAGANGAI DISTRICT.
8. THE INSPECTOR OF POLICE,
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9. THE SUPERINTENDENT OF POLICE, NAGERCOIL, KANYAKUMARI DISTRICT.
10. THE INSPECTOR OF POLICE,
KARUNGAL POLICE STATION, KARUNGAL, KANYAKUMARI DISTRICT.
11. THE SUPERINTENDENT OF POLICE, THENI, THENI DISTRICT.
12. THE INSPECTOR OF POLICE, LAND GRABBING WING,
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13. THE INSPECTOR OF POLICE,
MANAMADURAI POLICE STATION, SIVAGANGAI DISTRICT.
14. THE COMMISSIONER OF POLICE, TIRUNELVELI CITY.
15. THE INSPECTOR OF POLICE, CENTRAL CRIME BRANCH, TIRUNELVELI CITY.
16. THE INSPECTOR OF POLICE,
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SIVAGANGAI S.P OFFICE, SIVAGANGAI DISTRICT.
17. THE DISTRICT SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT.
18. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR.S.GOKULRAJ, ADVOCATE IN SR : 8225
+1CC TO MR.K.VINAYAGAN, ADVOCATE IN SR : 8172
+2CCS TO MR.V.KANNAN, ADVOCATE IN SR : 8384
+1CC TO MR.C.JEYAPRAKASH, ADVOCATE IN SR : 8227
+1CC TO MR.E.V.N.SIVA, ADVOCATE IN SR : 8517
+1CC TO MR.K.GUHAN, ADVOCATE IN SR : 8858
+1CC TO MR.R.ANAND, ADVOCATE IN SR : 8130

Akv

SR : 11.03.2015 : 7p/27c

Cr1.O.P. (MD) Nos.1911,1914,1953,1981,
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and 2512 of 2015 (10 cases)
23.02.2015