



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2015

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.O.P.(MD)Nos. 3489, 3629,3648,3685,3706,
3726,3736,3745,3748 and 3750 of 2015 (10 cases)

MUTHUSAMY ... PETITIONER IN CRL OP(MD). 3489/ 2015

JOHN STEPHAN ... PETITIONER IN CRL OP(MD). 3629/ 2015

P.DUKKAYANNAN ... PETITIONER IN CRL OP(MD). 3648/ 2015

1 I.MAHARAJAN
2 B.KUMARESAN
3 M.PALANIVEL
4 M.SELVAM ... PETITIONERS IN CRL OP(MD). 3685/ 2015

M.RAMASAMY NADAR ... PETITIONER IN CRL OP(MD). 3706/ 2015

SAMUEL VIJAY ... PETITIONER IN CRL OP(MD). 3726/ 2015

1 SYED ANWAR
2 SHAJATHIBEGUM ... PETITIONER IN CRL OP(MD). 3736/ 2015

M.ELANGO VAN ... PETITIONER IN CRL OP(MD). 3745/ 2015

R.SURESHKUMAR ... PETITIONER IN CRL OP(MD). 3748/ 2015

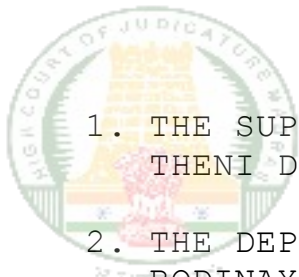
A.ADAIKALAM ... PETITIONER IN CRL OP(MD). 3750/ 2015

- VS. -

1. THE SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERINTENDENT OF POLICE,
MADURAI DISTRICT.

2. THE INSPECTOR OF POLICE,
SILAIMAN POLICE STATION,
MADURAI. ... RESPONDENTS IN CRL OP(MD). 3489/ 2015

THE INSPECTOR OF POLICE, LAW AND ORDER,
TALLAKULAM POLICE STATION, TALLAKULAM,
MADURAI DISTRICT. ... RESPONDENT IN CRL OP(MD). 3629/ 2015



1. THE SUPERINTENDENT OF POLICE,
THENI DISTRICT.

2. THE DEPUTY SUPERINTENDENT OF POLICE,
BODINAYAKANUR DIVISION, THENI DISTRICT.

3. THE INSPECTOR OF POLICE,
BODINAYAKANUR RURAL POLICE STATION, BODINAYAKANUR,
THENI DISTRICT.

4. THE THASILDHAR, BODINAYAKANUR TALUK,
THENI DISTRICT.

5. THE VILLAGE ADMINISTRATIVE OFFICE,
B.AMMAPATTI VILLAGE, SILLAMARATHUPATTI VIA,
BODINAYAKANUR TALUK,
THENI DISTRICT. ... RESPONDENTS IN CRL OP(MD). 3648/ 2015

1. THE COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE,
MADURAI CITY.

2. THE DEPUTY COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE, MADURAI CITY.

3. THE INSPECTOR OF POLICE,
JAIHINDPURAM POLICE STATION, L & O,
MADURAI CITY. ... RESPONDENTS IN CRL OP(MD). 3685/ 2015

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

2. THE DEPUTY SUPERINTENDENT OF POLICE,
KEELAKARAI, RAMANATHAPURAM DISTRICT.

3. THE INSPECTOR OF POLICE,
LAW AND ORDER, SAYALKUDI POLICE STATION,
SAYALKUDI, RAMANATHAPURAM DISTRICT.

4. BOSE, HEAD CONSTABLE,
SAYALKUDI POLICE STATION, SAYALKUDI,
RAMANATHAPURAM DISTRICT.

5. RAJANGA THEVAR ... RESPONDENTS IN CRL OP(MD). 3706/ 2015

THE SUB INSPECTOR OF POLICE, (L&O),
KARAIKUDI NORTH POLICE STATION,
SIVAGANGAI DISTRICT. ... RESPONDENT IN CRL OP(MD). 3726/ 2015



1. THE COMMISSIONER OF POLICE,
TIRUNELVELI CITY, TIRUNELVELI.

2. THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION,
TIRUNELVELI DISTRICT. ... RESPONDENTS IN CRL OP(MD). 3736/ 2015

1. THE SUPERINTENDENT OF POLICE, MADURAI DISTRICT.

2. THE SUB INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, USILAMPATTI,
MADURAI DISTRICT. ... RESPONDENTS IN CRL OP(MD). 3745/ 2015

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

2. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, SANKARANKOVIL,
TIRUNELVELI. ... RESPONDENTS IN CRL OP(MD). 3748/ 2015

1. THE SUPERINTENDENT OF POLICE,
PUDUKOTTAI DISTRICT, PUDUKKOTTAI.

2. THE INSPECTOR OF POLICE,
KARAIYUR POLICE STATION, KARAIYUR,
PUDUKOTTAI DISTRICT. ... RESPONDENT(S) IN CRL OP(MD).3750/2015

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

Prayer in CRL OP(MD). 3489/ 2015 :

To direct the respondent No.2 not to harass the petitioner by way of interfering with the matter purely civil in nature.

Prayer in CRL OP(MD). 3629/ 2015 :

To issue direction, directing the respondent not to harass the petitioner .

Prayer in CRL OP(MD). 3648/ 2015 :

To direct the respondent not to intervene with the peaceful possession and enjoyment of the petitioner in his property to an extent of 67 cents situated in S.No.131/4 B.Ammapatti Village, Bodinayakanur Taluk, Theni District in view of forcing him to vacate his land on the basis of the complaint given by Rajan Son of Ramar @ Ramasamy which is purely civil in nature.

Prayer in CRL OP(MD). 3685/ 2015 :

To direct the 1st and 2nd respondents to direct the 3rd to not to harass the petitioners in running their licenced video game center business peacefully as per the terms and guidelines laid down by Tamil Nadu Government.



Prayer in CRL OP(MD). 3706/ 2015 :

To direction directing the respondents not to harass the petitioner in the guise of enquiry by the 3rd respondent police.

Prayer in CRL OP(MD). 3726/ 2015 :

To direct the respondent not to harass the petitioner under the guise of enquiry based on the complaint of Boster.

Prayer in CRL OP(MD). 3736/ 2015 :

To direct the 2nd respondent and their subordinates not to harass or ill-treat the petitioners on the guise of enquiry in connection with a business transaction.

Prayer in CRL OP(MD). 3745/ 2015 :

To direct the 1st respondent to give suitable direction to the 2nd respondent not to harass the petitioner in the guise of the family dispute by considering the petitioner complaint dated 16.02.2015 within the period stipulated by this Honourable court.

Prayer in CRL OP(MD). 3748/ 2015 :

To direct the 2nd respondent not to harass the petitioner and his family members under the guise of enquiry.

Prayer in CRL OP(MD). 3750/ 2015 :

To direct the respondents not to interfere in the civil dispute pending between the petitioner and the defacto complaint in S.A.(MD).SR. No. 5847 of 2015 is pending before this Honourable Court against judgement and decree dated 02.06.2014 on the file of the subordinate Judge, Pudukkottai.

For Petitioner/Petitioners

: Mr.D.Senthil in Crl.O.P.No.3489/2015
: Mr.S.Vellaichamy in Crl.O.P.No.3629/2015
: Mr.A.K.Manickam in Crl.O.P.No.3648/2015
: Mr.P.Vijay Raghavan in Crl.O.P.No.3685/2015
: Mr.M.Kannan in Crl.O.P.No.3706/2015
: Mr.D.Venkatesh in Crl.O.P.No.3726/2015
: Mr.R.Gandhi in Crl.O.P.No.3736/2015
: Mr.A.Haja Mohideen in Crl.O.P.No.3745/2015
: Mr.S.Muthalraj in Crl.O.P.No.3748/2015
: Mr.M.Muniyasamy in Crl.O.P.No.3750/2015

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

<https://hcservices.ecourts.gov.in/hcservices> 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 for not making the arrest. In pith and core, the police office 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 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 (AS)

/True copy/

Sub Assistant Registrar

TO

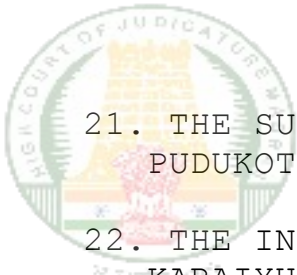
1. THE SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERINTENDENT OF POLICE, MADURAI DISTRICT.

2. THE INSPECTOR OF POLICE,
SILAIMAN POLICE STATION, MADURAI.

<https://hcservices.courts.gov.in/hcservices>
3. THE INSPECTOR OF POLICE, LAW AND ORDER,
TALLAKULAM POLICE STATION, TALLAKULAM, MADURAI DISTRICT.



4. THE SUPERINTENDENT OF POLICE, THENI DISTRICT.
5. THE DEPUTY SUPERINTENDENT OF POLICE,
BODINAYAKANUR DIVISION, THENI DISTRICT.
6. THE INSPECTOR OF POLICE, BODINAYAKANUR RURAL POLICE STATION,
BODINAYAKANUR, THENI DISTRICT.
7. THE THASILDHAR, BODINAYAKANUR TALUK, THENI DISTRICT.
8. THE VILLAGE ADMINISTRATIVE OFFICE,
B.AMMAPATTI VILLAGE, SILLAMARATHUPATTI VIA,
BODINAYAKANUR TALUK, THENI DISTRICT.
9. THE COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE, MADURAI CITY.
10. THE DEPUTY COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE, MADURAI CITY.
11. THE INSPECTOR OF POLICE,
JAIHINDPURAM POLICE STATION, L &O, MADURAI CITY.
12. THE SUPERINTENDENT OF POLICE,
RAMANATHAPURAM DISTRICT, RAMANATHAPURAM.
13. THE DEPUTY SUPERINTENDENT OF POLICE,
KEELAKARAI, RAMANATHAPURAM DISTRICT.
14. THE INSPECTOR OF POLICE,
LAW AND ORDER, SAYALKUDI POLICE STATION,
SAYALKUDI, RAMANATHAPURAM DISTRICT.
15. THE SUB INSPECTOR OF POLICE, (L&O),
KARAIKUDI NORTH POLICE STATION, SIVAGANGAI DISTRICT.
16. THE COMMISSIONER OF POLICE, TIRUNELVELI CITY, TIRUNELVELI.
17. THE INSPECTOR OF POLICE,
TIRUNELVELI TOWN POLICE STATION, TIRUNELVELI DISTRICT.
18. THE SUB INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, USILAMPATTI, MADURAI DISTRICT.
19. THE SUPERINTENDENT OF POLICE,
TIRUNELVELI DISTRICT, TIRUNELVELI.
20. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, SANKARANKOVIL, TIRUNELVELI.



21. THE SUPERINTENDENT OF POLICE,
PUDUKOTTAI DISTRICT, PUDUKKOTTAI.

22. THE INSPECTOR OF POLICE,
KARAIYUR POLICE STATION, KARAIYUR, PUDUKOTTAI DISTRICT.

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

+1CC TO MR.M.MUNIASAMY, ADVOCATE IN SR : 11052
+1CC TO MR.S.MUTHALRAJ, ADVOCATE IN SR : 11037
+1CC TO MR.A.HAJA MOHIDEEN, ADVOCATE IN SR : 11214
+1CC TO MR.R.GANDHI, ADVOCATE IN SR : 11062
+1CC TO MR.D.VENKATESH, ADVOCATE IN SR : 10850
+1CC TO MR.M.KANNAN, ADVOCATE IN SR : 11196
+1CC TO MR.S.VELLAICHAMY, ADVOCATE IN SR : 11036
+1CC TO MR.D.SENTHIL, ADVOCATE IN SR : 10952

Pjl

SR : 20.03.2015 : 9p/32c

Crl.O.P.(MD)Nos. 3489, 3629,3648,
3685,3706,3726,3736,3745,3748
and 3750 of 2015 (10 cases)
06.03.2015