

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.03.2015****CORAM****THE HONOURABLE MR.JUSTICE C.T.SELVAM****CrI.O.P. (MD) Nos. 4932, 4934, 4969, 4990,
4995, 4997 and 5065 of 2015**

1 KRISHNAMANI
2 PRABAKARAN ... Petitioners in CRL OP (MD) No. 4932/2015

S.SANKARAN ... Petitioner in CRL OP (MD) No. 4934/2015

DR.N.THULASEEDHARAN ... Petitioner in CRL OP (MD) No. 4969/2015

1 POONGOTHAI
2 MANONMANIAN
3 DIVYAPRABA ... Petitioners in CRL OP (MD) No. 4990/2015

P.MUTHAIAH ACHARI ... Petitioner in CRL OP (MD) No. 4995/2015

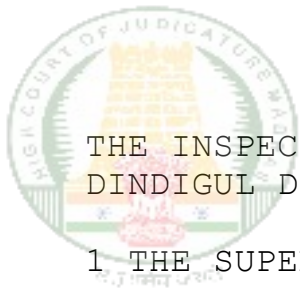
1 R.POUN
2 A.KARUPPAYI
3 S.RAJANGAM
4 PERIYA AYYAMMAL
5 THANGAPANDI
6 SUBRAMANIAN
7 CHANDRAN @ SUGADEV ... Petitioners in CRL OP (MD) No. 4997/2015

1 GEETHA MERLIN
2 JEYARAJ ... Petitioners in CRL OP (MD) No. 5065/2015

- Vs. -

1 THE SUPERINTENDENT OF POLICE, THOOTHUKUDI DISTRICT, THOOTHUKUDI.
2 THE INSPECTOR OF POLICE, MEIGNANAPURAM POLICE STATION,
THOOTHUKUDI DISTRICT. ... Respondents in CRL OP (MD) No. 4932/2015

1 THE STATE REP. BY THE INSPECTOR OF POLICE,
SADAYANPATTI POLICE STATION, SATTUR, VIRUDHUNAGAR DISTRICT.
2 THE SUB- INSPECTOR OF POLICE SADAYANPATTI POLICE STATION,
SATTUR, VIRUDHUNAGAR DISTRICT. ... Respondents in CRL OP (MD) No. 4934/2015



THE INSPECTOR OF POLICE, THANDIKUDI POLICE STATION,
DINDIGUL DISTRICT ... Respondent in CRL OP(MD)No.4969/2015

1 THE SUPERINTENDENT OF POLICE, SIVAGANGAI DISTRICT. SIVAGANGAI.

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

3 THE INSPECTOR OF POLICE, THIRUPACHATHI POLICE STATION,
THIRUPACHATHI, SIVAGANGAI DISTRICT.

... Respondents in CRL OP(MD)No.4990/2015

1 THE SUPERINTENDENT OF POLICE, TIRUNELVELI DISTRICT.

2 THE INSPECTOR OF POLICE, SIVAGIRI POLICE STATION,
TIRUNELVELI DISTRICT.

... Respondents in CRL OP(MD)No.4995/2015

1 THE INSPECTOR OF POLICE, ELUMALAI POLICE STATION, PERAIYUR TALUK,
MADURAI DISTRICT.

2 THE DEPUTY SUPERINTENDENT OF POLICE, USILAMPATTI SUB DIVISION,
USILAMPATTI, MADURAI DISTRICT.

... Respondents in CRL OP(MD)No.4997/2015

1 THE SUPERINTENDENT OF POLICE, TIRUNELVELI DISTRICT.

2 THE INSPECTOR OF POLICE, ALANGULAM POLICE STATION,
TIRUNELVELI DISTRICT.

3 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, ALANGULAM,
TIRUNELVELI DISTRICT.

... Respondents in CRL OP(MD)No.5065/2015

Prayer in CRL OP(MD)No.4932/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to direct the respondents police not to harass the petitioners and pass such further or other orders as this Hon'ble Court may deem fit and proper.

Prayer in CRL OP(MD)No.4934/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to issue a direction directing the respondent herein Not to Harass the petitioner and his club activities members under the guise of enquiry.

Prayer in CRL OP(MD)No.4969/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to directing the respondent or his men not to harass the petitioner without due process of law.

Prayer in CRL OP(MD)No.4990/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to direct the Respondents 2 and 3 not to harass the Petitioners under the guise of enquiry and such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in CRL OP(MD)No.4995/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to direct the respondents herein not to harass the petitioner and his other family members under the guise of enquiry.

Prayer in CRL OP(MD)No.4997/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to direct the Respondent and his subordinates not to harass the petitioners in the guise of enquiry and to pass any other order or direction as this Hon'ble court may deem fit and proper in the circumstances of the case.

Prayer in CRL OP(MD)No.5065/ 2015 :

This Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to direct the respondents police not to harass the petitioner on the complaint of Annalakshmi @ Mariapushpam.

For Petitioner/Petitioners

- : Mr.T.A.Ebenezer in Crl.O.P.Nos.4932/2015 & 5065/2015
- : Mr.J.Senthil Kumaraiah in Crl.O.P.No.4934/2015
- : Mr.T.Lenin Kumar in Crl.O.P.No.4969/2015
- : Mr.S.M.Mohan Gandhi in Crl.O.P.No.4990/2015
- : Mr.J.Jeyakumaran in Crl.O.P.No.4995/2015
- : Mr.S.Baskar Mathuram in Crl.O.P.No.4997/2015

For Respondents in all Crl.O.Ps.

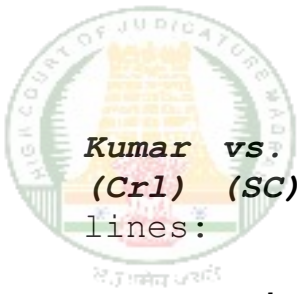
- : Mr.K.V.Rajarajan, Government Advocate (Crl.side)

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 (Cr1) (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 (Cr1) (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 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.PC;

(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(Writs)

/True Copy/

Sub-Assistant Registrar

TO

1. THE SUPERINTENDENT OF POLICE,
THOOTHUKUDI DISTRICT, THOOTHUKUDI.
2. THE SUPERINTENDENT OF POLICE,
SIVAGANGAI DISTRICT, SIVAGANGAI.
3. THE SUPERINTENDENT OF POLICE, TIRUNELVELI DISTRICT.
4. THE DEPUTY SUPERINTENDENT OF POLICE,
USILAMPATI, SUB DIVISION, USILAMPATTI, MADURAI DISTRICT.
5. THE INSPECTOR OF POLICE,
MEIGNANAPURAM POLICE STATION, THOOTHUKUDI DISTRICT.
6. THE INSPECTOR OF POLICE,
SADAYANPATTI POLICE STATION, SATTUR, VIRUDHUNAGAR DISTRICT.
7. THE INSPECTOR OF POLICE,
THANIDIKUDI POLICE STATION, DINDIGUL DISTRICT.



8. THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION, MANAMADURAI, SIVAGANGAI DISTRICT.
9. THE INSPECTOR OF POLICE, THIRUPACHATHI POLICE STATION,
THIRUPACHATHI, SIVAGANGAI DISTRICT.
10. THE INSPECTOR OF POLICE, SIVAGIRI POLICE STATION,
TIRUNELVELI DISTRICT.
11. THE INSPECTOR OF POLICE, ELUMALAI POLICE STATION,
PERAIYUR TALUK, MADURAI DISTRICT.
12. THE INSPECTOR OF POLICE, ALANGULAM POLICE STATION,
TIRUNELVELI DISTRICT.
13. THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, ALANGULAM,
TIRUNELVELI DISTRICT.
14. THE SUB-INSPECTOR OF POLICE, SADAYANPATTI POLICE STATION,
SATTUR, VIRUDHUNAGAR DISTRICT.
15. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +2CCS TO MR.T.A.EBENEZER, ADVOCATE, IN SR. NO.14309 & 14311.
- +1CC TO MR.T.SENTHIL KUMARIAH, ADVOCATE, IN SR. NO.14132.
- +1CC TO MR.S.M.MOHAN GANDHI, ADVOCATE, IN SR. NO.13825.
- +1CC TO MR.J.JEYAKUMARAN, ADVOCATE, IN SR. NO.14169.

Crl.O.P. (MD) Nos.4932,4934,4969,4990,
4995, 4997 and 5065 of 2015
23.03.2015

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