



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P(MD)No.5665 of 2015

and

Crl.O.P(MD)No.7154 of 2015 and M.P(MD)No1 of 2015

W.P(MD)No.5665 of 2015:

Arunagiri

... Petitioner

Vs.

1.The Superintendent of Police,
Thanjavur District, Thanjavur.

2.The Deputy Superintendent of Police,
Papanasam,
Thanjavur District, Thanjavur.

3.Ms.Poongothai,
Sub Inspector of Police,
All Women Police Station,
Papanasam,
Thanjavur District, Thanjavur.

4.A.Shoba

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent to initiate appropriate action against the 2nd and 3rd respondents.

For Petitioner	: M/s.D.Geetha
For R-1 to R-3	: Mr.R.Karthikeyan Additional Government Pleader
For R-4	: Mr.T.Chandrasekaran

Crl. O.PMD)No.7154 of 2015:

Arunagiri

... Petitioner

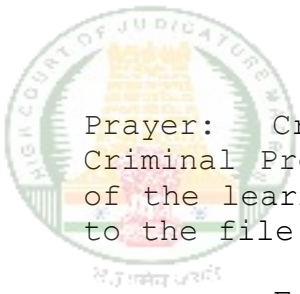
vs.

1.A.Shoba

2.The Sub-Inspector of Police,
All Women Police Station,
Papanasam, Thanjavur District.

... Respondents

(R-2 is suo-motu impleaded as per the order of this Honourable Court dt. 28.04.2015 and made in M.P(MD)No.5665 of 2015 and Crl.O.P(MD)No.7154 of 2015)



Prayer: Criminal Original Petition filed under Section 407(6) of Code of Criminal Procedure to withdraw the case in M.C.No.14 of 2014 on the file of the learned Judicial Magistrate No.II, Thanjavur and transfer the same to the file of the learned Judicial Magistrate No.I, Madurai.

For Petitioner : M/s/D.Geetha
 For R-1 : Mr.T.Chandrasekaran
 For R-2 : Mrs.S.Prabha
 Govt. Advocate(Crl. Side)

COMMON ORDER

The Writ Petition is filed to direct the first respondent to initiate appropriate action against the 2nd and 3rd respondents and the Criminal Original Petition is filed to withdraw the case in M.C.No.14 of 2014 from the file of the learned Judicial Magistrate No.II, Thanjavur and transfer the same to the file of the learned Judicial Magistrate No.I, Madurai.

2. When the matters are taken up today, a report has been filed by the learned Judicial Magistrate No.II, Thanjavur, explaining the circumstances under which the orders have been passed on 31.03.2015.

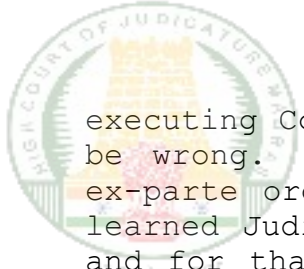
3. The learned counsel for the petitioner submitted that though the petitioner was present on 31.03.2015, he was not enquired into and the procedure for issuing non-bailable warrant has not been adopted. The petitioner has not been heard before passing the order on the application filed by the private respondent on the very same day. The child was enquired only on 17.04.2015. No attempt has been made to enquire the child on 31.03.2015 or before 17.04.2015. Even on 17.04.2015, the petitioner was not heard.

4. In view of the above submission made, this Court is of the view that this is a fit case to transfer the case for further hearing and therefore, this Court is constrained to transfer M.C.No.14 of 2014 from the file of Judicial Magistrate No.II, Thanjavur to another Court. Accordingly, this Criminal Original Petition is allowed and M.C.No.14 of 2014 is withdrawn from the file of the learned Judicial Magistrate No.II, Thanjavur and transferred to the file of the learned Judicial Magistrate, Kumbakonam. Consequently, connected miscellaneous petition is closed.

5. Insofar as the Writ Petition is concerned, it is submitted that the police have acted in a high-handed manner and the child was treated as property. On the complaint made by the wife of the petitioner, without any legal authority, the child has been forcibly taken from the custody of the petitioner. Therefore, action may be taken against the second and third respondents.

6. The learned counsel appearing for the private respondent submitted that the petitioner was given sufficient opportunities and non-bailable warrant was issued only due to the non-appearance of the petitioner and it is also to be noted that even thereafter, the petitioner did not appear. Therefore, no interference is required.

7. In the order passed earlier, this Court has expressed its prima facie view. Two things are clear. The concerned police officer has treated order like a civil Court order and he also assumed the role of



executing Court. The said action of the Officer, prima facie appears to be wrong. Insofar as the Judicial Officer is concerned, the second ex-parte order, dated 31.03.2015, ought not to have been passed. The learned Judicial Officer is supposed to know the psychology of the child and for that purpose appropriate training should have been given and he ought to have called the child on 31.03.2015 before passing the order to find out his view. Admittedly, no notice was issued on the application filed on 31.03.2015, which was apparently allowed on the very same day. This is an procedural violation apart from lack of sensitivity in dealing with the cases pertaining to children. Though the observations made are prima facie in nature, a direction is issued to the first respondent to conduct an enquiry on the alleged incident in which the respondents 2 and 3 are said to be involved even as per the report of the Judicial Officer. The said enquiry will have to be conducted and concluded within a period of three months from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of.
No Costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To,

- 1.The Superintendent of Police,
Thanjavur District, Thanjavur.
- 2.The Deputy Superintendent of Police,
Papanasam, Thanjavur District, Thanjavur.
- 3.Ms.Poongothai,
Sub Inspector of Police,
All Women Police Station,
Papanasam, Thanjavur District, Thanjavur.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2ccs to M/S.J.GEETHA, Advocate in SR.No. 30114 & 30115
+2ccs to MR.M.SARANGAN, Advocate in SR.No. 30285 & 30286
+1CC THE SPECIAL GOVERNMENT PLEADER, IN SR.NO. 30473

Pm

SR/SJW : 29.06.2015 : 3p/10c

W.P (MD) No.5665 of 2015

and

Cr1.O.P (MD) No.7154 of 2015

11.06.2015