

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2014

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Suo Motu Cont.P.No.1424/2013
and W.P.Nos.29196 to 29199/2013

Suo Motu Cont.P.1424 of 2013

- 1.Krishnakumar
Sub-Inspector of Police,
All Women Police Station,
Palladam,
Tiruppur District.
- 2.K.Shanthamoorthy,
Inspector of Police,
Komarapalayam Police Station,
Namakkal District.
- 3.C.Pitchai,
The Deputy Superintendent of Police,
Udumalpet Sub Division,
Tiruppur District.
- 4.Suresh Kumar
The Deputy Superintendent of Police,
Palladam,
Tiruppur District.
- 5.R.Ponni, IPS,
The Superintendent of Police I/c,
Tiruppur District

.. Contemnors

W.P.Nos.29196 to 29199/2013

1. G.Manjula Devi
The Secretary,
Women Lawyers Association,
High Court Buildings,
Chennai-600 104. .. Petitioner in W.P.No.29196/2013

2.P.S.Amalraj,
The Vice Chairman,
Bar Council of Tamil Nadu,
High Court Buildings,
Chennai-600 104. .. Petitioner in W.P.No.29197/2013

3.M.Baskar,
The Secretary,
Tamil Nadu Advocates Association,
High Court Buildings,
Chennai-600 104. .. Petitioner in W.P.No.29198/2013

4.S.Arivazhagan,
The Secretary,
The Madras High Court Advocates Association,
High Court Buildings,
Chennai-600 104. .. Petitioner in W.P.No.29199/2013

Vs.

1. The Chief Secretary to the Government of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai-600 009.

2. The Home Secretary to the Government of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai-600 009.

3. The Director General of Police,
Tamil Nadu Police Head Quarters,
Mylapore,
Chennai-600 004.

4. R.Poonni, IPS,
Superintendent of Police (In charge),
Thiruppur District.

5. Suresh Kumar,
Deputy Superintendent of Police,
Palladam,
Thiruppur District.

6.C.Pitchai,
Deputy Superintendent of Police,
Udumalpet Sub-Division,
Thiruppur District.

7.Mr.K.Shanthamoorthy,
Inspector of Police,
Komarapalayam Police Station,
Namakkal District.

8.Mr.Krishnakumar
Sub-Inspector of Police,
All Women Police Station,
Palladam,
Thiruppur District.

.. Respondents in all W.Ps.

Prayer in Suo Motu Contempt Petition No.1424/2013:- Suo Motu Contempt Proceedings initiated against the Contemnors as per the letter and fax messages.

Prayer in W.P.Nos.29196 to 29199 of 2013:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to take action against the respondents 4 to 8.

Mr.S.Parthasarathy, Senior Counsel
Amicus Curiae

For Contemnors/ : Mr.V.Giri, Senior Counsel
for M.D.Ilayaraja
for contemnors 1 to 5
and for R4 to R8 in W.Ps.

For Writ Petitioners: Mr.S.Prabharakan
for Mr.T.P.Senthilkumar
in W.P.Nos.29196 to 29198/2013
Mr.R.C.Paul Kanagaraj
in W.P.No.29199/2013

For Respondents : Mr.M.Maharaja, Additional Public
Prosecutor for State Government.

C O M M O N O R D E R

Suo Motu Cont.P.No.1424/2013

The First Bench of this Court [Mr.R.K.Agrawal, The Hon'ble Acting Chief Justice and M.Sathyanarayanan, J.] has taken into consideration the report submitted by the Registrar General of this Court in ROC.No.295/2013-B3 dated 01.07.2013, which in-turn is based on the report submitted by the District Judge-cum-Judicial Magistrate, The Nilgiris at Uthagamandalam in D.No.1298 dated 29.06.2013, wherein it has been stated that a case in Crime No.16/2013 for the alleged commission of offences under Sections 417,

376 and 506(i) IPC was registered by All Women Police Station (AWPS), Palladam against Thiru S.Thangaraj, Judicial Magistrate, Fast Track Court, Coonoor on the basis of the complaint given by Ms.Uma Maheswari, Sub-Inspector of Police, Palladam Police Station, Thiruppur District.

2. Police party consisting of Mr.Pitchai, Deputy Superintendent of Police, Udumalpet, Mr.Suresh Kumar, Deputy Superintendent of Police, Palladam, Mr.Krishnakumar Sub-Inspector of Police, Palladam and the Inspector of Police, Komarapalayam along with three constables went and picked up Thiru S.Thangaraj at about 6.30 p.m on 29.06.2013 in a police Bolero Vehicle bearing Reg.No.TN-38-G-0138 to Avinashi and he was kept at Avinashi Tourist Bungalow till 12.20 p.m. The Judicial Officer, namely Thiru S.Thangaraj was taken by the said police team based on the registration of case in the above said crime number on the complaint given by Ms.Uma Maheswari, Sub-Inspector of Police, Palladam Police Station and the said complaint was given by her at about 4.00 a.m. on 29.06.2013 at the AWPS, Palladam. Thiru Mahoharan, Inspector of Police, Special Branch, Udhagamandalam sent a fax message to the District Judge-cum-Chief Judicial Magistrate, Udhagamandalam, Nilgiris District and it was received at 9.05 a.m. by the Superintendent attached to the Court of Principal District Judge-cum-Chief Judicial Magistrate, Nilgiris District, which was received at about 10.30 a.m. on 29.06.2013 by the copyist Superintendent attached to the said Court and the message conveyed the information that the above said Judicial Officer is going to be arrested. The very same official has once again sent a fax message, which was received at 12.30 p.m. on 29.06.2013 by the Principal District Judge-cum-Chief Judicial Magistrate, Nilgiris District and as per the said message, the Judicial Officer was arrested in front of the house of one Mathesh, son of Kandan, Veeramathikoil Street, Thallankuttai, Keelavalavu, Thiruchencode Taluk, Namakkal District.

3. The Principal District Judge-cum-Chief Judicial Magistrate, Nilgiris District had sent the details in the form of representation dated 29.06.2013 to the Registrar General of this Court, who in-turn placed a note under ROC.No.295/2013-B3 dated 01.07.2013 before the Hon'ble Acting Chief Justice and the Hon'ble Acting Chief Justice has passed an order dated 02.07.2013, directing the matter to be placed before the First Bench of this Court for taking action suo motu and accordingly, it was listed before the First Bench of this Court on 02.07.2013.

4. The First Bench of this Court has taken into consideration the judgment of the Hon'ble Supreme Court of India in Delhi Judicial Service Association v. State of Gujarat [(1991) 4 SCC 406], wherein guidelines have been framed as to the steps to be taken before arresting a Judicial Officer and further taking into consideration the sequence of events, had observed that it is apparent that the police officials, namely Mr.Krishna Kumar, Sub-Inspector of Police,

AWPS, Palladam, Tiruppur District, Mr.K.Shanthamoorthy, Inspector of Police, Komarapalayam Police Station, Namakkal District, Mr.C.Pitchai, Deputy Superintendent of Police, Udumalpet Sub-Division, Tiruppur District, Mr.Suresh Kumar, Deputy Superintendent of Police, Palladam, Tiruppur District and Ms.R.Ponni, IPS., Superintendent of Police (I/c), Tiruppur District had deliberately violated the guidelines framed by the Hon'ble Supreme Court of India, more particularly Guideline (A) of para 55 of the above cited judgment and also recorded as to why suo motu cognizance of committing contempt of Court has been initiated and therefore, passed an order dated 02.07.2013, issuing notice to the above said officials for their personal appearance before the Court on 29.07.2013 at 10.30 a.m. and explain their conduct/stand.

5. On 29.07.2013 all the contemnors were present and taking into consideration the representation made by the learned Senior Counsel appearing for the contemnors, the First Bench of this Court has dispensed with their personal appearance for the present and granted two weeks time for filing counter. On 03.09.2013, the contemnors had filed their individual affidavits explaining their stand and the First Bench of this Court appointed Mr.S.Parthasarathy, learned Senior Advocate to assist the Court as Amicus Curiae and the matter for directed to be listed on 10.10.2013 and on that day, it was further adjourned to 28.10.2013.

6. Ms.G.Manjula Devi, The Secretary, Women Lawyers Association, High Court, Chennai, Mr.P.S.Amalraj, The Vice Chairman, Bar Council of Tamil Nadu, High Court, Chennai, Mr.M.Baskar, The Secretary, Tamil Nadu Advocates Association, High Court, Chennai and Mr.S.Arivazhagan, The Secretary, The Madras High Court Advocates Association, High Court, Chennai, had filed W.P.Nos.29196 to 29199/2013 respectively in the nature of public interest litigations, praying for issuance of a Writ of Mandamus directing the respondents 1 to 3, namely the Chief Secretary to the Government of Tamil Nadu, Home Secretary to the Government of Tamil Nadu, The Director General of Police to take action against the respondents 4 to 8 (contemnors) and pass such further orders. In all the writ petitions, the sixth respondent, namely Mr.C.Pitchai, Deputy Superintendent of Police, Udumalpet Sub-Division, Thiruppur District has filed counter affidavit for himself and also on behalf of the respondents 4, 5, 7 and 8, as he has been authorized to do so.

7. The First Bench of this Court, vide order dated 03.03.2014, directed the appearance of the contemnors on 12.03.2014 and on that day, they appeared and their appearance were dispensed with and subsequently, vide order dated 12.03.2014, the suo motu contempt petition was directed to be listed before the Division Bench presided over by Hon'ble Mr.Justice N.Paul Vasanthakumar and the above said writ petitions are also tagged along with the suo motu contempt petition as they are connected.

8. Mr.S.Parthasarathy, learned Senior Counsel/Amicus Curiae has invited the attention of this Court to the Contempt of Court Rules High Court Madras, 1975 and would submit that Rule 8 contemplates that where a Judge of the High Court considers that any matter that might have come to his notice in any way requires initiation of proceedings in contempt against any person, the papers relevant thereto together with the direction of the Judge shall be placed before the Chief Justice for consideration as to whether the matter may be forwarded to the Advocate General. The learned Senior Counsel would further submit that from the wordings of Rule 8, it is made to appear that initiation of suo motu contempt may not be possible and the procedure is to be followed should be in terms of Rule 8. Alternatively, the learned Senior Counsel has drawn the attention of this Court to the Delhi Judicial Service Association case (cited supra), wherein it has been held that under sub-section (1) of Section 15 of Contempt of Courts Act, 1971 (Central Act No.70 of 1971) the Supreme Court or the High Court has power to take cognizance of criminal contempt on its own and Section 15(2) does not restrict the power of the High Court to take cognizance of contempt of itself or the subordinate Courts of its own motion.

9. The learned Senior Counsel has further invited the attention of this Court to the judgment in Sahdeo @ Sahdeo Singh v. State of Uttar Pradesh and Others [(2010) 3 SCC 705] and would submit that the High Court is having power to initiate contempt proceedings suo motu and in the light of the above said decision, there cannot be any impediment on the part of this Court to initiate suo motu contempt proceedings, though Rule 8 of Contempt of Courts Rules High Court Madras, 1975 is not clear. It is the further submission of the learned Senior Counsel/Amicus Curiae that as per Guideline (A) in para 55 of Delhi Judicial Service Association case (cited supra), if a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be and as per Guideline (C), the fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court and as per Guideline (G), burden would be on the police to establish the necessity for effecting physical arrest and handcuffing of the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

10. It is further contended by the learned Senior Counsel/Amicus Curiae that in para 56 of the above cited judgment, it has been observed that the Guidelines (A) to (G) in para 55 are not exhaustive, but are immediate safeguards which must be observed in

case of arrest of a Judicial Officer and the guidelines should be implemented by the State Government as well as by the High Court and further direction was also given that copy of the guidelines should be forwarded to the Chief Secretaries of all the State Government and to all the High Courts with a direction that the same may be brought to the notice of the concerned officers for compliance and in the light of the same, the State Police supposed to have knowledge of the above cited judgment and inspite of having knowledge, there are major and serious infractions of such guidelines while effecting arrest of Mr.S.Thangaraj, Judicial Magistrate, Fast Track Court, Coonoor.

11. The learned Senior Counsel/Amicus Curiae has further drawn the attention of this Court to the series of fax messages sent by Mr.C.Pitchai, The Deputy Superintendent of Police, Udumalpet Sub-Division, Thiruppur District and would submit that as per the fax message received on 12.30 p.m. on 29.06.2013, the concerned Judicial Officer was arrested at 8.45 a.m. on 29.06.2013 and such arrest should have been done under intimation to the District Judge or the High Court as the case may be and after effecting arrest, the intimation/fax message was sent to the Principal District Judge-cum-Chief Judicial Magistrate, Nilgiris District and it is in violation of Guidelines (A) and (C) of para 55 of the above cited judgment for the reason that prior information/intimation regarding the arrest of the Judicial Officer has not been communicated to the District and Sessions Judge of Nilgiris District and not immediately communicated to the said officer and the Hon'ble Chief Justice of this Court and made a further submission that there is no necessity at all to effect the arrest of the concerned officer in the facts and circumstances of the case and therefore, the Guideline (G) has also been violated.

12. Mr.S.Prabakaran, learned counsel appearing for the writ petitioners had drawn the attention of this Court to the typed set of documents filed by the contemnors and would submit that the complaint itself is false and motivated for the reason that the defacto complainant Ms.Uma Maheswari on an earlier occasion on 21.06.2013 has given a complaint to All Women Police Station, Coonoor and she was issued with a receipt in CSR.No.171/2013 and the concerned Station House Officer has forwarded the same to the Superintendent of Police, Nilgiris District, who in-turn forwarded the same to the Principal District and Sessions Judge-cum-Chief Judicial Magistrate, Nilgiris for enquiry and the same is pending and suppressing the said fact, she has chosen to lodge a fresh complaint on the file of All Women Police Station, Palladam, which came to be registered in Crime No.16/2013 at about 4.00 a.m. on 29.06.2013 and it also came to the knowledge of the 5th contemnor, namely Superintendent of Police (In-charge), Thiruppur District and she passed a proceedings in Rc.No.27677/G1/2013 dated 29.06.2013, nominating Mr.C.Pitchai, Deputy Superintendent of Police, Udthagamandalam Sub-Division, Thiruppur District as the Enquiry Officer with a further direction directing the Inspector of Police, All Women Police Station, Palladam to

handover all the relevant records to the said official and she has also been kept informed of subsequent developments considering the nature and sensitivity of the issue and being a topmost official of the District Police administration, has failed to follow the mandatory guidelines given in the Delhi Judicial Service Association case (cited supra).

13. The learned counsel appearing for the writ petitioners would further contend that though as per the proceedings of the fifth respondent dated 29.06.2013, Mr.C.Pitchai, Deputy Superintendent of Police, Udhagamandalam Sub-Division, Thiruppur District came to be appointed as the Investigating Officer, the F.I.R registered by All Women Police Station, Palladam at about 4.00 a.m on 29.06.2013 would disclose that the copy of the F.I.R was also forwarded to the said official and therefore, it is crystal clear that the F.I.R itself is ante-timed. It is the further submission of the learned counsel that after effecting arrest of the Judicial Officer, obligation is cast upon the contemnors to inform the same to the jurisdictional Principal District and Sessions Judge but admittedly Mr.C.Pitchai, Deputy Superintendent of Police, Udhagamandalam Sub-Division, Thiruppur District has belatedly sent the fax message, which reached the District Judge subsequent to the arrest and the explanation/defense offered by him as to the belated communication is only a moonshine.

14. The learned counsel appearing for the writ petitioners further submitted that immediately after effecting arrest, he was not allowed to contact his relatives and Advocates and was taken to Avinashi Police Station and thereafter to Avinashi Tourist Bungalow and subsequently, after bringing him to the Jurisdictional Magistrate Court at Thiruppur, deliberately informed the print and visual media to give wide publicity and also covered his face with a cloth and treated him like a worst criminal and they also tied the hands of the judicial officer and by doing the said acts, the contemnors/private respondents in the writ petitions had lowered the dignity and majesty of the judiciary in the eyes of general public. It is also contended that the acts of the contemnors are per se in violation of Delhi Judicial Service Association case (cited supra) and D.K.Basu v. State of West Bengal [AIR 1997 SC 610] and therefore, prayed for imposing maximum punishment under Contempt of Courts Act by imposing sentence of imprisonment as well as fine with a further direction to initiate departmental proceedings against all of them.

15. Per contra, Mr.V.Giri, learned Senior Counsel assisted by Mr.M.D.Ilayaraja, learned counsel appearing for the contemnors has invited the attention of this Court to the individual affidavits of the contemnors filed in the suo motu contempt petition as well as the counter affidavit of Mr.C.Pitchai, Deputy Superintendent of Police, Udhagamandalam Sub-Division, Thiruppur District filed on his behalf and on behalf of the private respondents and would submit that the

contemnors had taken all necessary steps to comply with the mandatory guidelines framed by the Hon'ble Supreme Court of India in Delhi Judicial Service Association case (cited supra) and would submit that the contemnors before taking their defence had tendered unconditional apology and it may kindly be considered. The learned Senior Counsel appearing for the contemnors, on merits of the case, contended that having found that the Judicial Officer was in the house of his relative, the police party has reached the house and permitted him to contact his relatives as well as his lawyers and was also informed about the grounds of arrest and he was arrested at about 8.45 a.m on 29.06.2013 and invited the attention of this Court to the affidavit of the contemnors and would submit that the Judicial Officer was also permitted to contact the Principal District Judge-cum-Chief Judicial Magistrate, Nilgiris District and sent a fax message to the Principal District Judge, Ooty informing the arrest of judicial officer on the basis of the F.I.R lodged at All Women Police Station, Palladam on the basis of complaint given by Ms.Uma Maheswari and since there was no fax facility in Palladam Police Station, the said message was sent through the Police Constable Ms.Suganthi to the Office of the Special Branch, Tiruppur, which is 21 kms away from Palladam and from there, the message was forwarded through one Gopal, Special Sub-Inspector to the District Court, which is 1 km away from the Special Branch Office, Ooty and since it was found that no one was available in the Court premises, he directly went to the residence of the District Judge, Ooty, which is 4 kms away from the Court and having found that he was not available in the headquarters, as he has left for Coimbatore, Mr.Gopal was directed to forward the message to one Saleem, Copyist of the District Court and accordingly, it was received at about 9.05 a.m. It is the further submission of the learned Senior Counsel appearing for the contemnors that after effecting arrest at 8.45 a.m on 29.06.2013, Mr.C.Pitchai, Deputy Superintendent of Police, Udhamandalam Sub-Division, Tiruppur District, once again sent the fax message to the Principal District Judge, Ooty from Perumanallur at 10.00 a.m. and the very message was again forwarded in the manner as done earlier and it reached the Sirasdar of District Court, Ooty at 12.30 p.m.

16. The learned Senior Counsel has denied the allegation that the Judicial Officer, after arrest, was not permitted to contact his relatives and Advocate and that he was handcuffed and taken to Avinashi Police Station and thereafter produced before the Judicial Magistrate Court at Tiruppur. It is the further submission of the learned Senior Counsel appearing for the contemnors that all due courtesies were extended to the Judicial Officer prior to his arrest as well as after the arrest and after effecting arrest, he was taken to Avinashi Travelers Bungalow, where he was kept till 12.00 noon and during the said time, the judicial officer contacted many number of persons over the mobile phone of one Nagarajan, Mobile No.94895 74287 and Rajendran No.86750 42826 and also contacted his relatives and Advocates and two Advocates, namely Karthick and Ramesh Babu as also

his relatives, namely, Madesh, Easwari, Bhavani and Sakthi and Soundar were also present during the short stay of the Judicial Officer at Highways Travelers Bangalow, Avinashi and the arrest of the officer was also informed to the Registrar General of this Court through fax message at about 11.00 a.m. and later on he was produced before the In-charge Magistrate, namely Judicial Magistrate No.I, Thiruppur at 13.00 hours and made to wait till 5.45 p.m. and thereafter, he was remanded to judicial custody.

17. The learned Senior Counsel appearing for the contemnors would further submit that the Guidelines formulated in Delhi Judicial Service Association case (cited supra) has been scrupulously complied with and even assuming without admitting that there are violations, it can be termed only as hyper-technical and as regards the reasons for effecting arrest of the Judicial Officer, has invited the attention of this Court to the Remand Requisition, wherein it has been stated that as per the version of the defacto complainant Ms.Uma Maheswari, Sub-Inspector of Police, AWPS, Palladam, the accused/judicial officer threatened her with dire consequences and considering his position as the Judicial Magistrate of Coonoor District, there is every possibility of tampering with the evidence and there is also possibility of abscondance, the Investigating Officer made such a requisition and the Jurisdictional Magistrate has also considered the Remand Requisition and also heard the version of the Judicial Officer, who has stated that the police has taken him to interrogation and he was not allowed to contact his relatives and he was arrested at 06.45 p.m and ordered his remand till 12.07.2013 and later on, he was confined at Central Prison, Coimbatore and therefore, it cannot be said that, no reasons are made available for effecting arrest of the said judicial officer.

18. The learned Senior Counsel appearing for the contemnors, on the legal plea, made a submission that criminal contempt is quasi criminal in nature and proof beyond reasonable doubt is necessary and drawn the attention of this Court to the suo motu contempt notice issued against the contemnors and would submit that the said notice did not contain any reason as to why suo motu contempt proceedings came to be initiated against them and only on their appearance before the Court, they became aware of the alleged violation of the guidelines mandated under Delhi Judicial Service Association case (cited supra) and considering the nature and seriousness of the allegation levelled against them, it should be reduced in the form of a definite charge and if the court feels that further proceedings should take place, a fair and reasonable opportunity have to be given to the contemnors to put forward their effective defence.

19. This Court paid its anxious consideration and best attention to the submissions made by the learned Senior Counsel/Amicus Curiae, the learned counsel appearing for the writ petitioners and the learned Senior Counsel appearing for the contemnors.

20. At the outset, this Court is not prepared to venture into the merits of the criminal case registered against the Judicial Magistrate, namely Mr.S.Thangaraj, as urged by the learned counsel appearing for the writ petitioners for the reason that the investigation of the case is pending and for proceeding further in the suo motu contempt, it is wholly unnecessary to go into the merits and demerits of the complaint and also the alleged suppression of the earlier complaint given by the defacto complainant, namely Ms.Uma Maheswari to the All Women Police Station, Coonoor.

21. The primordial issue arises for consideration is whether a prima facie case has been made out for proceeding further in the suo motu contempt proceedings ?

22. It is relevant to extract below the guidelines framed by the Hon'ble Supreme Court in the case of Delhi Judicial Service Association v. State of Gujarat and Others [(1991) 4 SCC 406] :

"55....

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the subordinate judiciary, a technical or formal arrest may be effected.

(C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court."

As per Guideline (A) of para 55 of the above cited judgment, if a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

23. The ordinary meaning of the word 'intimation' is knowledge. As per P.Ramanatha Aiyar's Law Lexicon - 3rd Edition -2012, 'Intimation' means making known; hinting; implying; a conclusion from something said.

24. The affidavit of the third contemnor, namely Mr.C.Pitchai, Deputy Superintendent of Police, Udhagamandalam Sub-Division, Thiruppur District would disclose that he received the proceedings of the fifth contemnor at about 5.00 a.m on 29.06.2013 and on receipt of the same, he proceeded to investigate the complaint of Ms.Uma Maheswari and reached the Palladam Police Station at 5.00 a.m. and collected the relevant materials, including the F.I.R. for further investigation and after going through the contents of the complaint, he commenced his investigation and during the course of investigation, he got the assistance of Tmt.Kaleeshwari, Inspector of Police, AWPS, Palladam and another team headed by Mr.R.Suresh Kumar, Deputy Superintendent of Police, Palladam was also directed to coordinate with the investigation for further probe into the matter. He also sent a fax message to the District Judge, Ooty at 5.30 a.m informing that investigation is ordered against Thangaraj, Judicial Magistrate, Coonoor on the basis of the F.I.R. Lodged at AWPS, Palladam and narrated the sequence of events as to the steps taken by him to inform the Principal District Judge, Ooty in paras 10 and 11 about the registration of F.I.R. and impending arrest of the said officer. In paras 13 to 15 of his affidavit, the Investigating Officer Mr.C.Pitchai has stated that he met Mr.S.Thangaraj at about 8.45 a.m. on 29.06.2013 at his uncle's house along with the team

headed by the fourth contemnor in which the second contemnor is also one of the member and explained to him the sequence of events leading to his arrest and requested his cooperation and effected arrest at 8.45 a.m. in the presence of his relatives and general public and thereafter, took him in a police jeep to Travelers Bungalow at Avinashi and after effecting arrest, he sent a fax message informing his arrest at 10.00 a.m and it was forwarded to the Office of the Special Branch, Ooty, which ultimately reached the Principal District Judge, Ooty at about 12.30 p.m. and the said fax message was also forwarded to the Registrar General of this Court at 11.00 a.m informing the arrest of Thangaraj, through the office of the Special Branch, Tiruppur and the same was received by P.A. to the Registrar General of this Court.

25. The Hon'ble Supreme Court of India in Delhi Judicial Service Association case (cited supra), in para 37, observed among other things that there may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation, it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation, the Apex Court must intervene to ensure smooth functioning of courts and ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, the Supreme Court may directly take cognizance of contempt of subordinate Courts and also strike a note of caution that it will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate courts, as ordinarily matters relating to contempt of courts must be dealt with by the High Courts.

26. The word "under intimation" used in Guideline (A) in para 55 of the above said judgment, in the considered opinion of the Court, means prior intimation or information and that is the correct interpretation for the reason that a Magistrate is to be present in the place in which he is posted on all days for the reason that remand prisoners will be produced at his residence and he has to held inquest as well as to record dying declarations and if he is arrested without any prior intimation and taken away for remand, the entire judicial work more particularly recording of dying declarations will definitely be affected/paralyzed. Moreover, the arrest of a Judicial Officer, in the eye of general public may definitely bring down the glory and majesty of the institution and faith and confidence as the Institution may definitely go down and may not be good for the Institution and for that reason only, the Hon'ble Supreme Court of India felt that such an intimation is to be sent to the jurisdictional Principal District Judge.

27. The affidavit of Mr.C.Pitchai, filed in the contempt

petition coupled with the fax messages sent to the Principal District Judge-cum-Chief Judicial Magistrate, Nilgiris would disclose that Thiru S.Thangaraj, Judicial Magistrate/FTC Judge, Coonoor is going to be arrested in connection with Crime No.16/2013 registered at AWPS, Palladam and the said information/intimation was sent in the form of fax message and was received by Mr.K.Saleem, Copyist, attached to the District Court, Ooty at 10.00 a.m on 29.06.2013 from Perumanallur and admittedly the officer was arrested at 8.45 a.m. on 29.06.2013 and the subsequent fax message informing the arrest of the judicial officer had reached the Principal District Court at 13.30 p.m. on 29.06.2013.

28. The affidavit of the first contemnor as well as the fourth contemnor would disclose that Mr.S.Thangaraj, Judicial Magistrate, Coonoor had contacted the Principal District Judge, Ooty, his Advocate and relatives including the defacto complainant, namely Ms.Uma Maheswari in the presence of police party through mobile numbers of Nagarajan-9489574287 and Rajendran-8675042826 and nothing prevented the Investigating Officer, namely the third contemnor or the fourth contemnor, who was assisting the third contemnor, to inform the Principal District Judge through phone/mobile phone prior to arrest and it was not done so. Thus, a prima facie case has been made out for proceeding further in the suo motu contempt against the third and fourth contemnors.

29. Insofar as the fifth contemnor is concerned, she was the Superintendent of Police (In-charge) of Thiruppur District and the affidavit filed by her in the contempt petition would disclose that she was holding additional charge as Superintendent of Police in Thiruppur District and during the said period, she was asked to take care of the entire administration of the said District and further that, on 29.06.2013 at about 3.30 a.m, she received a phone message from Mrs.Kaleeshwari, Inspector of Police, AWPS, Palladam, informing about the registration of case in Crime No.16/2013 on the basis of the complaint given by Ms.Uma Maheswari and on hearing the grave situation and seriousness disclosed by the Inspector of Police, AWPS, Palladam, she asked the third contemnor at about 4.30 a.m to proceed and investigate the matter and take appropriate action and she also formed another team headed by Mr.R.Suresh Kumar, fourth contemnor to verify the genuineness and veracity of the complaint against Thiru.S.Thangaraj and coordinate with the Investigating Officer and she has also issued proceedings in R.C.No.27677/G1/2013 dated 29.06.2013, nominating Mr.C.Pitchai, Deputy Superintendent of Police, Udhagamandalam Sub-Division, Thiruppur District as the Inquiry/Investigating Officer. The fifth contemnor, being the head of the police administration in respect of Thiruppur District, considering the sensitivity of the matter which involves a judicial officer, in all probability would have been kept informed of the developments that had taken place and it is also fortified by the affidavit of the fourth contemnor at para 11, wherein it has been

stated that the fourth contemnor contacted the Superintendent of Police, Erode District (In-charge of Thiruppur District) as well as the Investigating Officer, namely the third contemnor at about 8.00 a.m. on 29.06.2013 for appropriate action and the first contemnor in para 6 of her affidavit has also stated on similar lines.

30. Admittedly, the Judicial Magistrate, Coonoor was arrested at 08.45 a.m. on 29.06.2013 and 45 minutes prior to his arrest, the fifth contemnor was also informed about the latest development by the first contemnor as well as by the fourth contemnor and being the head of the police administration of Thiruppur District on that particular day and being a regular recruit to the Indian Police Service, she is supposed to have knowledge of the decision rendered by the Hon'ble Supreme Court of India in Delhi Judicial Service Association case (cited supra) and also the sensitivity of the issue. Therefore, a prima facie case has also been made out for proceeding further in the suo motu contempt petition against the fifth contemnor.

31. The typed set of documents dated 28.10.2013, filed in W.P.No.29198/2013 would disclosed that Thiru.S.Thangaraj, Judicial Magistrate/FTC Judge, Coonoor, at the time of his production before the Court of Judicial Magistrate No.I, Thiruppur (In-Charge - Judicial Magistrate No.I, Palladam), has given a statement dated 29.06.2013 stating among other things that when the police party entered on the early morning hours on 29.06.2013 at his relatives house, The Deputy Superintendent of Police, Suresh Kumar/Contemnor No.4 has told that he does not care about his status and if he is not coming with them, treatment will be different and he will be beaten and dragged and on hearing the said words, he was shocked and when he asked whether any order came from higher official, they told him to come and also got his signature on the arrest card at the Court of Judicial Magistrate No.I, Thiruppur and also removed the towel put on his face. A certified copy of the said statement issued by the Judicial Magistrate, Palladam is also available at Page No.9 of the typed set of documents. Further, in the Remand Report filed by the contemnors at Page 25 of the typed set of documents, Thiru S.Thangaraj, Judicial Magistrate/FTC Judge, Coonoor, gave a statement before the learned Judicial Magistrate, Palladam that the police had taken him for interrogation, not allowed to consult the Advocate and arrested at his residence at 6.45 a.m.

32. It is the vehement submission of the learned Senior Counsel appearing for the contemnors that due respect has been observed while arresting the concerned Judicial officer, however the statement of the Judicial Officer, which is available at Page No.9 of the typed set of documents reveals some other. It is also the submission of the learned Senior Counsel appearing for the contemnors that the Judicial Officer was permitted to contact his Advocates and relatives through two mobile phones and therefore, it cannot be said that before or after effecting arrest, the concerned Judicial Officer was

not allowed to contact his Advocate, however no material has been placed to show that the concerned Judicial Officer, who was arrested, was permitted to contact his Advocate and thus a prima facie case has been made out for proceeding against the contemnors 3 and 4.

33. Insofar as the contemnors 1 and 2 are concerned, they are part of the team headed by the fourth contemnor and being subordinate to contemnors 3 and 4, one cannot except them to act independently and the affidavits filed by them in the suo motu contempt petition would also disclose that they merely carried out the orders of the superior officials. The second contemnor, in his affidavit at paras 5 and 6, had stated that as the Inspector of competent jurisdiction of Komarapalayam Police Station, he was instructed to be present along with the investigating team for appropriate action and subsequently, he reached Thallankuttai Village around 8.30 a.m. on 29.06.2013 and at about 8.45 a.m. the Judicial Magistrate/FTC Judge, Coonoor was taken to Palladam for production before the Judicial Magistrate, Palladam and thereafter he left for Komarapalayam to discharge his routine duties in the police station. It is the contention of the first contemnor that fifth contemnor directed him to assist the investigation with the third contemnor and the third contemnor instructed to conduct the investigation and he has no independent role to play and the said statements are not denied by the contemnors 3 to 5. They being lower level officials having carried out the orders of the superior officers, no substantive material has been made out to proceed further against them in the suo motu contempt petition. Therefore, insofar as contemnors 1 and 2, this suo motu contempt petition is closed.

34. This Court is of the view that prima facie materials are available to proceed against the contemnors 3 to 5 under the Contempt of Courts Act, 1971 as well as under Article 215 of the Constitution of India. Hence, Registry is directed to issue notice to the contemnors 3 to 5 returnable on 23.07.2014 for answering the following charges:

(a) Whether the acts of contemnors 3 to 5 in not taking effective and proper steps to inform the Principal District and Sessions Judge-cum-Chief Judicial Magistrate, Uthagamandalam (Ooty), Nilgiris District in advance before effecting arrest of Mr.S.Thangaraj, Judicial Magistrate/FTC Judge, Coonoor at about 8.45 a.m on 29.06.2013 are in violation of Guideline (A) of para 55 of Delhi Judicial Service Association v. State of Gujarat and Others [(1991) 4 SCC 406];

(b) Whether the acts of contemnors 3 to 5 in not communicating the arrest of Thiru.S.Thangaraj immediately to the Principal District and Sessions Judge-cum-Chief Judicial Magistrate, Ooty and the Hon'ble Chief Justice of High Court

are in violation of Guideline (C) of para 55 of the above cited judgment ?

(c) Whether the acts of contemnors 3 to 5 in not permitting Mr.S.Thangaraj, Judicial Magistrate/FTC Judge, Coonoor, to contact his legal advisers is in violation of Guideline (e) of para 55 of the above cited judgment?

(d) Whether, the contemnors 3 to 5, in the facts and circumstances of the case, had established the necessity for effecting the physical arrest of the Judicial Officer and whether the said act constitute violation of Guideline (G) of para 55 of the above cited judgment?

35. It is made clear that this Court has narrated the facts leading to the initiation of suo motu contempt proceedings in detail to arrive at the conclusion that a prima facie case has been made out for proceeding further in suo motu contempt petition against contemnors 3 to 5 and it cannot be construed as opinion on merits.

36. Registry is directed to list the writ petitions for further hearing on 23.07.2014 at 02.15 p.m.

Sd/-

Assistant Registrar(RECORDS)

Dated: .07.2014

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to the Government of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The Home Secretary to the Government of Tamil Nadu,
Secretariat,
Fort St.George, Chennai-600 009.
- 3.The Director General of Police,
Tamil Nadu Police Head Quarters,
Mylapore, Chennai-600 004.
- 4.R.Poonni, IPS,
Superintendent of Police (In charge),
Thiruppur District.
- 5.Suresh Kumar,
Deputy Superintendent of Police,
Palladam, Thiruppur District.

6.C.Pitchai,
Deputy Superintendent of Police,
Udumalpet Sub-Division,
Thiruppur District.

7.Mr.K.Shanthamoorthy,
Inspector of Police,
Komarapalayam Police Station,
Namakkal District.

8.Mr.Krishnakumar
Sub-Inspector of Police,
All Women Police Station,
Palladam,
Thiruppur District.

9.The Section Officer, Writ Section,
High Court, Madras.

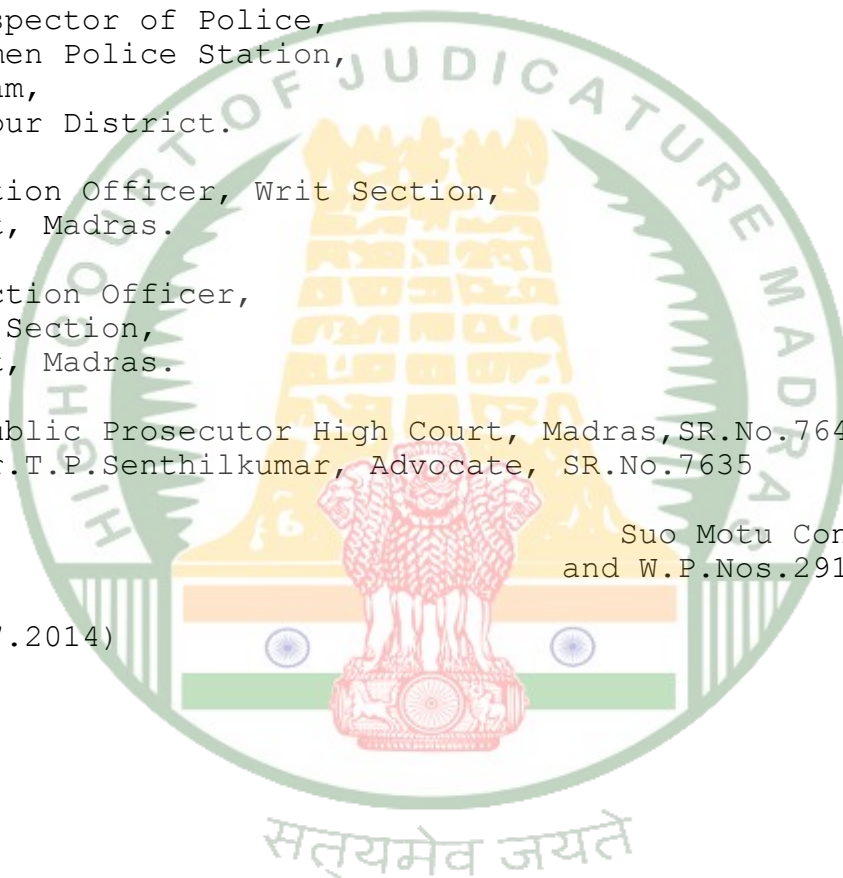
10.The Section Officer,
Contempt Section,
High Court, Madras.

1 CC to Public Prosecutor High Court, Madras, SR.No.7641

1 CC to Mr.T.P.Senthilkumar, Advocate, SR.No.7635

Suo Motu Cont.P.No.1424/2013
and W.P.Nos.29196 to 29199/2013

ng (CO)
JJM (08.07.2014)



WEB COPY