

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

W.P.No.22984 of 2016

Mr.M.Arun Kumar
S/o.(Late) P.L.Meenakshisundaram
T.C.25/909(1), ETRA 308,
Behind New Theater,
Thampanoor, Trivandrum- 695 014,
Kerala. .. Petitioner

Vs

- 1 The State of Tamil Nadu
Rep by its The Secretary,
Home Department
Secretariat, Fort St. George,
Chennai-9.
- 2 The Commissioner of Police
Chennai,
Office of Commissioner of police,
NO.132, EVK Sampath Salai,
Vepery, Chennai,
Tamil Nadu- 600 007.
- 3 The Inspector of Police
W-27, All Women Police Station,
Vadapalani, Chennai-600 026.
- 4 The Commissioner of Police
Trivandrum,
Office of City Commissioner of police,
Vazhuthacaud, Thycaud,
Trivandrum- 695 014.
- 5 Mr.Suresh.V.Nair
The Circle Inspector of Police (SHO),
Thampanoor Police Station,
Fort Sub-division, Thampanoor,
Trivandrum- 695 001.

6 Vijay Pandian
Sub Inspector of Police,
R-8 Vadapalani Police Station,
Vadapalani, Chennai-600 026.

7 Suji (WCPO 28150)
R-8 Vadapalani Police Station,
Vadapalani, Chennai-600 026.

8 Mrs. P.L.Vallikkannu
D/o.Palaniappan.N,
Old NO.61, New No.40,
Saidepet Road, Vadapalani,
Chennai-600 026.

Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, directing the first respondent to initiate disciplinary action and Criminal prosecution against respondents 3, 6 and 7 and further direct the respondents to pay exemplary damages that may be found just by this Hon'ble Court.

For Petitioner : Mr. Sundar Mohan
For Respondent : Mr.C.Emalias
Nos.1 to 7 Additional Public Prosecutor

ORDER

This writ petition has been filed seeking for a direction to the first respondent to initiate disciplinary action and Criminal prosecution against the respondents 3, 6 and 7 and further direct the respondents to pay exemplary damages that may be found just by this Hon'ble Court.

2. The case of the petitioner is that he got married to one P.L.Vallikkannu and their matrimonial life ran into rough weather. The said Vallikkannu initiated proceedings under the Domestic Violence Act against the petitioner in M.P.No.1848 of 2014 before the 17th Metropolitan Magistrate, Saidapet, Chennai - 15, claiming various reliefs under the said Act against the petitioner and his family members.

3. While so, it appears that an ex-parte order has been passed by the learned 17th Metropolitan Magistrate, in M.P. 1848 of 2014 on 18.08.2014, granting various reliefs to Vallikkannu. In the order dated 18.08.2014, the learned Magistrate has clearly recorded that despite service of summons

on Arun Kumar, the petitioner herein, he did not appear on 16.07.2014, 23.07.2014, 25.07.2014 and 11.08.2014. Ultimately, on 11.08.2014, Vallikkannu was examined ex-parte and certain reliefs were granted to her.

4. For executing the order, Vallikkannu filed MP.No.2953 of 2014 in MP.No.1848 of 2014 for issuance of warrant of arrest against Arun Kumar, pursuant to which, the learned 17th Metropolitan Magistrate issued a warrant on 18.12.2014 directing the Inspector of Police, All Women Police Station, Vadapalani, Chennai - 26 to execute the warrant. While so, it is alleged by the petitioner that they are residents of Trivandrum in Kerala and that on 29.10.2015, two police officers viz., respondents 6 & 7 from R-8 Vadapalani Police Station, came to the house of the petitioner in Trivandrum along with local police from Thampanoor Police Station, Trivandrum and called the petitioner to the local police station. The petitioner went to Thampanoor Police station and his father also came to the Police Station. A little later, the petitioner's father swooned in the police station and therefore, he was immediately rushed to PRS Hospital, Trivandrum, where, he subsequently died on the same day. The petitioner was not arrested by the police and the Police returned to Chennai.

5. Now, the petitioner has filed the present petition for tortious claim contending that the warrant issued by the learned 17th Metropolitan Magistrate had lapsed, since the main petition itself was dismissed for default on 13.05.2015. In this regard, the petitioner has obtained several details under the Right to Information Act.

6. The learned counsel for the petitioner placed strong reliance upon the judgment of the Hon'ble Supreme Court Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another reported in (2012) 9 Supreme Court Cases 791, wherein, an Advocate was arrested on a holiday and the Hon'ble Supreme Court had issued guidelines for execution of warrant of arrest and also awarded compensation of Rs.2,000/-.

7. This Court gave its anxious consideration to the facts of this case vis-a-vis the judgment of the Hon'ble Supreme Court Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another reported in (2012) 9 Supreme Court Cases 791. In that case, a prosecution for offence under Section 324 IPC was launched against the advocate and a warrant was obtained by the police and the advocate was arrested on a National holiday, when he was hoisting a flag in a public function viz. Independence day, when he was part of the celebrations at Radio Club. In the facts of that case, the Hon'ble Supreme Court held that the

advocate's arrest was engineered in order to humiliate the advocate for a trivial offence and in those circumstances, had awarded a compensation of Rs.2,000/- to the advocate. Of course, the Hon'ble Supreme Court has laid down the guidelines for issuance of warrant and returned of unexecuted warrants by Courts. In this case, there are several disputed questions of fact, which require to be adjudicated only in a regular civil Court inasmuch as,

(a) That a warrant was issued by the 17th Metropolitan Magistrate in MP.No. 1848 of 2014 on 18.12.2014.

(b). That the case was dismissed for default on 13.05.2015 and that the police knew of the fact that the case was dismissed for default on account of the warrant lapsed.

(c) That the police went to Trivandrum and called the petitioner and his father to the local station.

(e) that the petitioner's father died on account of the same

are aspects, which cannot be decided in the writ petition, especially, when even according to the petitioner, the police had gone armed with a valid warrant issued by the 17th Metropolitan Magistrate under Domestic Violence Act initiated against the petitioner by his wife. It is not a case, where, the warrant was hurriedly obtained and executed with great alacrity even going by the petitioner's version. According to the petitioner, the warrant was issued as early as on 18.12.2014 and the police went to Trivandrum only on 29.10.2015, nearly a year later. This is quite understandable because, when warrants are pending, during monthly meeting with the Superintendent of police and Chief Metropolitan Magistrate, there will be discussions of expeditious execution of warrants and the police are bound implicitly obey the order of Courts. It is for the learned 17th Metropolitan Magistrate to have sent a communication to the police withdrawing the warrant. This fact, whether the learned Magistrate sent a communication withdrawing the warrant, is once again a question of fact, which can be determined only in a regular trial.

8. Mr. Sundar Mohan, learned counsel for the petitioner relied upon the guidelines 28.4 and 28.9. issued by the Hon'ble Supreme Court, which according to him, has been violated by the police.

9. This Court finds that these guidelines are intended for the Court issuing warrants to be scrupulously followed and violation of the guideline by the Court cannot visit the police with serious consequences.

In the result, the writ petition is dismissed with liberty to the petitioner to work out his remedy in the manner known to law. Anything stated in the writ petition is only for deciding the issue as to whether the relief sought, as prayed for, could be issued in the teeth of disputed questions of facts. No costs.

Sd/-

Asst. Registrar,

/true copy/

Sub Asst. Registrar.

sms

To

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8. The Public prosecutor,
High Court, Madras.

+ 1 CC to Mr.Sunder Mohan, Advocate SR NO 37722

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CTK[CO]
GP/29.7.



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