



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2016

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THE HONOURABLE DR. JUSTICE S.VIMALA

Cr1.O.P. (MD) No.7252 of 2016

R.Dhayalan

... Petitioner

-vs-

The Inspector of Police (Crime),
Sutthamalli Police Station,
Tirunelveli District.
(Crime No.253 of 2014).

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to direct the respondent to secure the accused persons in Crime No.253 of 2014 pending on the file of the respondent police within time bound stipulated by this Court.

For Petitioner	: Mr.P.Krishnasamy (No appearance)
For Respondent	: Mr.A.P.Balasubramani, Government Advocate (Cr1. Side)

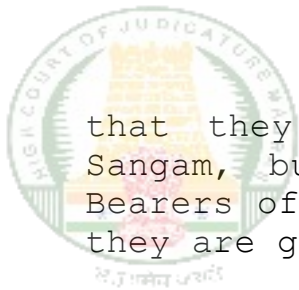
ORDER

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so." So cautioned the Supreme Court in the case of **Joginer Singh vs. State of U.P., 1994 (4) SCC 260**"

This is a petition, seeking a direction to the respondent to secure the accused person in Crime No.253 of 2014, which has been registered in respect of offences under Sections 120(b), 465, 467, 468, 471 and 420 IPC.

2. Heard the learned Government Advocate (Criminal Side) appearing for the respondent.

3. The sum and substance of the allegation is that the accused persons established one society in the name and style of **Devendrakula Velalar Sangam**, arraying the 1st opponent as President, 2nd opponent as Vice President and 3 to 11 as members;



that they have obtained property from the Government for the Sangam, but they have divided the property between the Office Bearers of the Sangam, as if it is their private property and thus they are guilty of various offences.

4. It is not known what are the materials available to substantiate the allegations raised. Having regard to the nature of the allegations made, there must be documents to establish the same, but no document has been produced before this Court.

5. The circumstances under which a Police Officer can arrest the accused is mentioned under Section 41 of Cr.P.C., which reads as under:

"Any police officer may without an order from a Magistrate and without a warrant, arrest any person,-

1.who commits, in the presence of a police officer, a cognizable offence;

2.against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence 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, if the following conditions are satisfied, namely:-

1.the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

2.the police officer is satisfied that such arrest is necessary,-

1.to prevent such person from committing any further offence; or

2.for proper investigation of the offence; or

3.to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

4.to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

5.as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in



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writing. (ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

3. who has been proclaimed as an offender either under this Code or by order of the State Government; or

4. in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

5. who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

6. who is reasonable suspected of being a deserter from any of the Armed Forces of the Union; or

7. who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

8. who, being a released convict, commits a breach of any rule made under Sub-Section (5) of section 356; or

9. for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

2....."



the Police have not chosen to arrest the accused persons. The content of the petition reads as if that once a case is registered, arrest is mandatory and that the Police Officers did not arrest the accused. The petitioner has gone to the extent of saying that the Police did not give pressure to the accused to get anticipatory bail.

7. Liberty and dignity are highly cherished values. The consequences of causing arrest has been highlighted in the decision reported in **Arnesh Kumar vs. State of Bihar and another (2014 (8) SCC 273)**, wherein it has been pointed out that the attitude to arrest first and then proceed with arrest is despicable and the relevant observation reads as under:

"Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result."

8. Such being the case, it may not be legal for the Court to direct the respondent to arrest the accused persons. However, it is open to the respondent to decide on the issue subject to the merits of the case.

With the above observation, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1.The Inspector of Police (Crime), Sutthamalli Police Station,
Tirunelveli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

GJM/SK/SKN/17.6.16-4p-3C