



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.03.2016

Coram

THE HONOURABLE MR. JUSTICE A.SELVAM

AND

THE HONOURABLE MR. JUSTICE V.S.RAVI

Cont.P(MD)No.13 of 2016

M.Anbuchelvan

..Petitioner

Vs.

1.Mr.T.Selvam

Deputy Superintendent of Police,  
Ottanchanthiram Sub Division,  
Ottanchathiram,  
Dindigul District.

2.Mr.G.Thiruvanantham

The Inspector of Police,  
Kannivadi Police Station,  
Dindigul District.

..Respondents

Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971 praying to punish the contemnors herein for their willful disobedience of the order passed by this Court in HCP(MD)No.1236 of 2014 dated 01.09.2015.

Prayer in Habeas Corpus Petition(MD) No.1236/ 2014 :

Petition under article 226 of the Constitution of India, petition praying that in the circumstances stated therein and issue writ of Habeas Corpus directing the respondents to produce the person and body of the detenu by name Muthulakshmi daughter of Sermalai, aged about 15 years, before this Honourable Court and handover the custody of the detenu to the petitioner.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.C.Ramesh

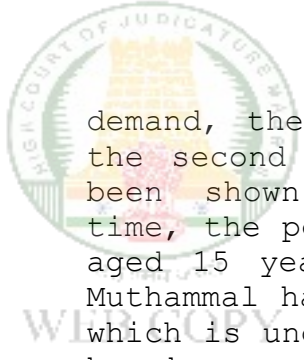
Addl.Public Prosecutor

ORDER

(Order of the Court was made by A.SELVAM, J.)

This Contempt Petition has been filed under Section 11 of the Contempt of Courts Act, 1971 by way of alleging that the contemnors have failed to obey the orders passed in HCP(MD)No.1236 of 2014 on 01.09.2015.

2.It is averred in the petition that the petitioner and his family members are living in the given address. The petitioner has been running a smaller cement hallow block bricks manufacturing unit in the given address. The second contemnor has very often used to call the petitioner and his employees to police station in connection with missing of a girl in the same locality. The second contemnor has decided to go to  
<https://hservices.ecourts.gov.in/hservices/> to verify houses of some employees of the petitioner and due to that he has demanded a sum of Rs.2,00,000/- from the petitioner. Further, he stated that if the petitioner has failed to comply with his



demand, the petitioner would face consequences. The petitioner has told the second contemnor to the effect that he and his employees have not been shown in the complaint given in respect of girl missing. After some time, the petitioner has come to know that one Muthulakshmi, D/o.Sermalai aged 15 years has been missing from 10.06.2014 and her aunty by name Muthammal has given a complaint on 12.06.2014 in Kannivadi Police Station which is under the control of the second contemnor and the said complaint has been registered in Crime No.109 of 2014 as 'girl missing'. Since no fruitful action has been taken, the father of the girl by name Sermalai has filed HCP(MD)No.1236 of 2014 on the file of this Court by way of impleading all necessary parties and despite of repeated adjournments, the second contemnor has not taken proper steps to secure and produce the concerned girl and ultimately this Court has passed an order to the effect that investigation should be done by a separate officer, not below the rank of Deputy Superintendent of Police, on 01.09.2015. After passing such order, on 09.10.2015 at about 08.00 pm., the second contemnor and Special Sub Inspector of Police namely Rajamarthandam have come to the place of the petitioner and indiscriminately attacked him and due to that a complaint has been given. No proper action has been taken. But on the other hand, a complaint has been registered against the petitioner and others on the basis of the complaint given by the second contemnor in Crime No.364/2015 under various sections. The allegations made in the First Information Report relating to Crime No.364/2015 are totally baseless. Since the first contemnor has not taken up investigation as per order dated 01.09.2015 and since the second contemnor has failed to hand over investigation to the first contemnor in pursuance of the said order, both are liable to be punished in accordance with law. Under the said circumstances, the present Petition has been filed for getting the relief sought therein.

3. In the counter filed on the side of the first respondent it is alleged that most of the allegations made in the petition are false. Further it has been specifically alleged in the counter that as per order dated 01.09.2015, the first contemnor has taken up investigation and in connection with investigation, the first contemnor has directed the second contemnor to bring the petitioner to police station on 09.10.2015. But the petitioner and others have attacked the second contemnor and also directed his dog to bite the second contemnor. Further it is averred in the counter that both the contemnors have not disobeyed the order passed in HCP(MD)No.1236 of 2014 on 01.09.2015 and therefore, the present petition deserves to be dismissed.

4. The only point that comes up for consideration in the present petition is as to whether the contemnors have disobeyed the specific order dated 01.09.2015 passed in HCP(MD)No.1236 of 2014?

5. The learned counsel appearing for the petitioner has completely assorted the various alleged incidents mentioned in the petition. The specific occurrence mentioned in the petition is that on 09.10.2015 at about 08.00 pm., the second contemnor and others have come to the place of the petitioner and indiscriminately attacked him and others.

6. It is seen from the records that on the basis of such occurrence, Crime No.364/2015 has been registered against the present petitioner and others under various sections of law and only due to such occurrence, the present petition has been filed.



7. The learned Additional Public Prosecutor has contended that in pursuance of the order dated 01.09.2015 passed in HPC(MD)No.1236 of 2014, entire investigation has been taken over by the first contemnor and he has evinced his interest in securing the detenu and only for conducting enquiry he directed the second contemnor to go and fetch the petitioner. But the petitioner and others have attacked him indiscriminately and due to that a case has been registered in Crime No.364/2015 under various sections of law and only with a view to wriggle out from the said situation, the present petition has been filed and therefore, the same deserves to be dismissed.

8. The learned counsel appearing for the petitioner has relied upon the following decisions:

(i) (2000) 3 Supreme Court Cases 171 (*Om Prakash Jaiswal Vs. D.K.Mittal and another*)

(ii) (1988) 3 Supreme Court Cases 26 (*D.N.Taneja V. Bhajan Lal*)

(iii) (1996) 4 Supreme Court Cases 411 (*State of Maharashtra Vs. Mahboob S.Allibhoy and another*)

(iv) (1998) 4 Supreme Court Cases 409 *Supreme Court Bar Association Vs. Union of India and others*

(v) (2011) 2 Supreme Court Cases (Cri) 709 = (2011) 5 Supreme Court Cases 496 (*Muthukaruppan Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and another*)

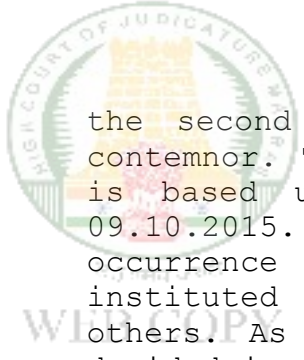
(vi) (2010) 8 Supreme Court Cases 673 (*Biman Basu Vs. Kallol Guha Thakurta and another*)

9. From a cumulative reading of the decisions mentioned supra, it is made clear to the Court that a third party to a criminal proceeding can also maintain this type of petition.

10. As adverted to earlier, the only point that comes up for consideration in the present petition is as to whether the contemnors have disobeyed the specific order passed by this Court on 01.09.2015 in HCP(MD)No.1236 of 2014?

11. It is an admitted fact that the father of the concerned girl has filed HCP(MD)No.1236 of 2014 on the file of this Court, wherein the second contemnor has been specifically directed on many occasions to trace out and produce the detenu, since she is a minor. Since performance of the second contemnor is not satisfactory and also in the interest of minor girl, this Court has directed the concerned Superintendent of Police to transfer investigation to some other officer, not below the rank of Deputy Superintendent of Police.

12. The main contention put forth on the side of the petitioner is that in pursuance of the order dated 01.09.2015 passed in HCP(MD) No.1236 of 2014, the first contemnor has not taken up investigation and



the second contemnor has not handed over investigation to the first contemnor. The entire contention put forth on the side of the petitioner is based upon the occurrence alleged to have been taken place on 09.10.2015. It is seen from the rival contentions that on 09.10.2015 an occurrence has taken place and due to that a criminal case has been instituted in Crime No.364/2015 against the present petitioner and others. As pointed out in many places, the only issue that has to be decided in the present petition is as to whether both the contemnors have disobeyed the order dated 01.09.2015 passed in HCP(MD)No.1236 of 2014?

13. In fact, on the side of the first contemnor a detailed counter has been filed, wherein it has been clearly stated that in pursuance of the order dated 01.09.2015, the Superintendent of Police, Dindigul has directed the second contemnor to hand over investigation to the first contemnor and accordingly, the second contemnor has handed over the same to the first contemnor and only on the basis of direction given by the first contemnor, for conducting enquiry in relation to missing of the concerned girl, the second contemnor has gone to the place of the petitioner on 09.10.2015.

14. On the basis of the averments made in the counter, the Court can easily deduce that in pursuance of the order dated 01.09.2015 passed in HCP(MD)No.1236 of 2014, the second contemnor has handed over the concerned file to the first contemnor and only on the basis of his direction, the second contemnor has gone to the place of the petitioner on 09.10.2015, wherein the said alleged occurrence has taken place.

15. On the basis of such occurrence, the Court cannot come to a conclusion that both the contemnors have disobeyed the order dated 01.09.2015. It is an admitted fact that on the basis of alleged occurrence taken place on 09.10.2015, a case has been registered in Crime No.364/2015 against the petitioner and others and therefore, the petitioner has to take all type of defence only in Crime No.364/2015. Simply because such a criminal case has been registered against them, the Court cannot come to a conclusion that both the contemnors have disobeyed the order dated 01.09.2015 passed in HCP(MD)No.1236 of 2014 and further, this Court is of the considered view that since a criminal case has been registered against the petitioner, as a measure of talion, the present petition has been filed against the contemnors. Under the said circumstances, the contentions put forth on the side of the petitioner cannot be accepted.

16. It has already been pointed out in many places that the only point for consideration is as to whether the contemnors have disobeyed the order dated 01.09.2015 passed in HCP(MD)No.1236 of 2014. In view of the discussion made earlier, this Court is of the view that both the contemnors have clearly obeyed the order dated 01.09.2015 and there is no deviation nor infraction on their part and altogether, the present Petition deserves to be dismissed.

17. In fine, this Contempt Petition is dismissed.

Sd/-

Assistant Registrar(Records)



To

1.Mr.T.Selvam

Deputy Superintendent of Police,  
Ottanchanthiram Sub Division,  
Ottanchathiram,  
Dindigul District.

2.Mr.G.Thiruvanantham

The Inspector of Police,  
Kannivadi Police Station,  
Dindigul District.

3.Addl.Public Prosecutor,

Madurai Bench of Madras High Court,  
Madurai.

+3cc to M/s.A.Saravanan, Advocate in SR.17318

Cont P(MD)No.13 of 2016  
29.03.2016

mj

PBK/AAL-MPA/AR-I 30/03/2016 ::5P-7C::