

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.21298, 21299, 21300, 21301 and 22480 of 2011
and M.P.Nos.1 and 2 of 2011

G.Sivakumar

Petitioner in all W.Ps.

vs.

Inspector of Police
District Crime Branch
Tiruppur.

Respondent in W.P.21298/2011

Chief Secretary
Fort St.George, Secretariat
Chennai.

Respondent in W.Ps.21299/2011
and 21301/2011

Madras High Court
rep by its Registrar General
High Court, Madras

Respondent in W.P.21300/2011

1.Inspector of Police
Pollachi West Police Station
Pollachi.

2.Inspector of Police
Pollachi East Police Station
Pollachi

Respondents in W.P.22480/2011

W.P.No.21298 of 2011 filed under Article 226 of the Constitution of India seeking a writ of declaration propounding the police probe into a judicial conviction in WLOR 4/08, as being an assault on judicial independence, violative of Articles 14 & 21 of the Indian Constitution, and direct initiation of appropriate penal proceedings against police-officers & the DDP for criminal misconduct.

W.P.No.21299 of 2011 filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondent to ascertain as to who approved "OPERATION GREENHUNT", declare the same as illegal and to cease the same

forthwith, and further direct prosecution of those responsible for the same.

W.P.No.21300 of 2011 filed under Article 226 of the Constitution of India seeking a writ of mandamus, commanding the respondent to direct all Judicial Magistrates in Tamil Nadu to [a] stop passing mechanical orders of remand, [b] thoroughly read remand requests and reject them if the request was made upon complaints preferred by convicts/undertrials challenging their erstwhile conviction/prosecution and [c] consequently direct that judicial custody of citizens should be taken only by means of a speaking order, and only when the Judicial Magistrate is prima facie satisfied about (1) the criminal involvement of the detainee (on the basis of the materials presented), and (2) the need for such deprivation of personal liberty; [d] and fix responsibility upon Judicial Magistrates who issue mechanical orders of judicial custody disregarding the need for such custody.

W.P.No.21301 of 2011 filed under Article 226 of the Constitution of India seeking a writ of declaration, propounding his imprisonment in Crime No.568/2010 of Pollachi West Police Station as illegal, on account of his having successfully prosecuted the complainant therein for the very same offence, and direct the respondent to pay him exemplary compensation of Rs.50 lakhs.

W.P.No.22480 of 2011 filed under Article 226 of the Constitution of India seeking a writ of declaration, propounding the police-probe into a judicial trial in STOR'25/09, as being an assault on judicial independence, violative of Articles 14 & 21 of the Indian Constitution and direct initiation of appropriate penal proceedings against police-officers responsible for initiating such a probe for malicious motives.

For petitioner Mr.G.Sivakumar
[petitioner present in the Court]

For respondent Mr.V.Jayaprakash Narayanan
Special Government Pleader
[in W.Ps.21299 and 21301/2011]

Mr.C.Emalias,
Additional Public Prosecutor
[in W.Ps.21298 and 22480/2011]

COMMON ORDER

This batch of writ petitions was filed by G. Sivakumar, Forest Ranger, through Mr. Manikandan Vathan Chettiar, claiming various reliefs. The writ petitions were dismissed for default on 10.04.2012 and thereafter, they were restored on file. Since Mr. Manikandan Vathan Chettiar, advocate, was removed from the rolls of the Bar Council of Tamil Nadu, this Court printed the name of G. Sivakumar and directed the police to serve notice on Sivakumar in all these writ petitions.

2. Pursuant to the order passed by this Court, Sivakumar appeared before this Court on 20.12.2016 and on behalf of Sivakumar, Mr. Easan, advocate, undertook to file vakalat. Sivakumar submitted that since his counsel Mr. Manikandan Vathan Chettiar is not in practice, he does not have the bundles. Therefore, this Court took photocopies of the petition, affidavit, counter affidavit and typed set of papers in all the writ petitions and handed them over to Sivakumar and adjourned the case to 04.01.2017.

3. On 04.01.2017, Mr. Easan, advocate, withdrew his appearance and one Mr. Ponnambala Thyagarajan (Enrolment No. 298/86) submitted through Mr. John Sathyan, learned counsel, that he has filed vakalat for Sivakumar and sought further time for arguments. This Court accepted his submission and adjourned the case to today, finally, for arguments.

4. Today, when the matter was taken up for hearing, Mr. Rajendra Prasad, learned counsel (Enrolment No. 1167/2003) submitted that Mr. Ponnambala Thyagarajan, advocate, has withdrawn his appearance and that he is undertaking to file vakalat for and on behalf of Sivakumar. Mr. Rajendra Prasad sought further time. From the above, it is crystal clear that Sivakumar is playing truant with this Court and is adopting dilatory tactics, which cannot be countenanced.

5. These writ petitions are of the year 2011, wherein, Sivakumar has obtained stay of the investigation of the cases against him and is taking umbrage under Court orders. Therefore, this Court proceeded to hear Sivakumar. Sivakumar is present today and he was heard.

6. At the outset, it may be necessary to state the allegations against Sivakumar. Sivakumar was working as Forest Ranger in Udumalpet Range. On 17.02.2008, he, along with his colleagues, registered a forest case in W.L.O.R. No.4 of 2008 against one Jeganatha Swami, alleging that Jeganatha Swami was in illegal possession of sand boa, a banned species of snake, in his poultry farm. The confession statement of Jeganatha Swami was recorded by Sivakumar and his colleagues, as if he has confessed that he was in possession of sand boa. Jeganatha Swami was produced before the jurisdictional Magistrate, who remanded him to custody. Jeganatha Swami was released on bail in W.L.O.R. No.4 of 2008. After his release on bail, he gave a detailed representation to the Superintendent of Police stating that he has been falsely implicated by Sivakumar and his gang in W.L.O.R. No.4 of 2008 as if he was in illegal possession of sand boa. Enquiries were conducted by the police and it came to light that Sivakumar and his gang were found to be in the habit of using their official position as Forest Officers and extorting money from the local people on the threat of foisting false cases against them. Under the Wild Life Protection Act, mere possession of banned forest items would per se make a person criminally liable with the burden of proof being shifted on the accused, coupled with the fact that a confession to such forest officers would not be hit by Section 25 of the Evidence Act. With such sky high powers, Sivakumar and his gang have been on prowl to identify rich farmers holding huge lands adjoining the Pollachi reserve forest area and extorting money from them on the threat of booking them under the Wile Life Protection Act. It is alleged that, in this manner Sivakumar and his gang, which included a Press Reporter, had extorted money in the following cases:

(I) District Crime Branch Crime No.9 of 2011 on the complaint of Jeganatha Swami:

7. As regards this case, it is seen that Jeganatha Swami had retired as Police Constable in the year 1995 and he was keeping a poultry farm in his land adjoining the Forest area. It is alleged by Jeganatha Swami that on 17.02.2008, around 1'o clock in the afternoon, Sivakumar and his gang descended on his poultry farm and held him in confinement alleging that he was in possession of sand boa, a banned species of snake in his farm and that if he does not pay them Rs.5 lakhs, they would foist a case against him and remand him to custody. One Sekar [A3] - a press reporter, was also part of the gang. Jeganatha Swami did not relent. Therefore, Sivakumar and his gang made it look as if they recovered a pot containing sand boa and took Jeganatha Swami and his servant Murugan to the forest office. At the

forest office, they started bargaining with Jeganatha Swami. But, Jeganatha Swami did not concede to their illegal demands. Therefore, they let off Murugan, but, arrested Jeganatha Swami by registering a case in W.L.O.R. No.4 of 2008 for offences under the Wild Life Protection Act and remanded him to custody.

8. After release on bail, Jeganatha Swami gave a memorial to the Superintendent of Police narrating the entire facts. Discreet enquiries conducted by the police showed that the gang headed by Sivakumar was operating in and around Pollachi by planting and extorting money from farmers threatening that they would foist cases of possession of banned forest species against them. In this case, Sivakumar and his gang had handed over a pot containing sand boa to Murugan for planting it in the poultry farm of Jeganatha Swami. One day prior to 17.02.2008, when Murugan went to a tea stall with the pot containing sand boa, the snakes started wriggling out, which was noticed by the villagers. Therefore, the entire village knew that Murugan had been used by Sivakumar and his gang to plant the pot of sand boa in the poultry farm of Jeganatha Swami, so that they can extort money from him or inter alia, foist a case against him if he does not relent.

9. Since Jeganatha Swami's complaint appeared to be bona fide, the District Crime Branch registered a case in Cr. No.9 of 2011 on 06.06.2011 under Sections 120-B, 365, 342 and 395 IPC against (1) Sivakumar (A1)-Forest Ranger, (2) Nedunchezian-Ranger, (3) Sekar-Press Reporter, (4) Parthasarathy-Forester, (5) Thangavel-Forester and (6) Appunni, Forester. Investigation conducted by the police revealed that Sivakumar had obtained Rs.1,50,000/- from the relatives of Jeganatha Swami when Jeganatha Swami was in remand and with that money, he has paid Rs.25,000/- in the name of Jeganatha Swami as compounding fees for compounding the offence. Sivakumar has submitted a report withdrawing the case in W.L.O.R.4 of 2008 before the Judicial Magistrate-I, Udumalpet, in order to cover up his misdeeds.

(II) Pollachi West Police Station Cr.No.568 of 2010 on the complaint given by one Gandhi:

10. One Gandhi, a real estate businessman from Chennai came with his friends on a business trip to Pollachi and stayed at KDK Lodge on 28.10.2009. Mr.Rajendran, the Sub-Inspector of Police raided the said lodge in the course of his official duty and rounded up Gandhi and his friends on suspicion that Gandhi and his friends were involved in some forest offence. The Sub-Inspector of Police handed over Gandhi to Mr.Veeramani, the Forest Ranger of Pollachi for verification. Mr.Veeramani conducted enquiry and let off Gandhi and others on the same day

since they were not wanted by the Forest Department. Sivakumar, who was a Forest Ranger got information about this and came to Pollachi Forest Range Office and illegally took Gandhi to the farm of one Meesai-Shanmugam and demanded Rs.2,00,000/- for not booking them under the Wildlife Protection Act. He also registered a false case against Gandhi in STOR No.25 of 2009 and remanded him and his friends to judicial custody. After release from jail, Gandhi gave a representation to the Superintendent of Police, Coimbatore and after conducting preliminary enquiry, the Inspector of Police, Pollachi West Police Station registered a case in Cr.No.568 of 2010 on 23.09.2010 under Sections 365,342 and 392, IPC against Sivakumar and others and subsequently after investigation, it has been altered to 120-B, 365, 342 and 395 IPC.

(III) Pollachi East Police Station Cr.No.678 of 2010 on the complaint given by one Saleem:

11. One Saleem lodged a written complaint with the Sub-Inspector of Police, Pollachi East Town Police Station alleging that his paternal uncle Abu Bekkar, who was supposed to come for the funeral of one Siraj on 26.07.2010 did not attend the funeral; that Saleem received a call from Abu Bekkar, that he has been illegally confined by Forest officials in Indirapuri lodge. Based on the complaint given by Saleem, the Sub-Inspector of Police, Pollachi East Town Police Station, registered a case in Cr.No.678 of 2010 on 28.07.2010, for offences under Sections 147, 342, 365 and 387 IPC and secured Abu Bekkar and his friends from the custody of Sivakumar and his gang. Investigation conducted by the police revealed that Sivakumar and his gang had lured Abu Bekkar and his friends to come to Pollachi in connection with real estate business and had placed a gunny of ground snake in the car of Abu Bekkar and threatened to foist a case against them. They demanded Rs.5 lakhs from the victims and managed to get around Rs.50,000/- from the relatives of the victims. When the police were alerted by the relatives, FIR was registered and the police swung into action and rescued the victims. In this case, investigation has been completed and charge sheet has also been filed in PRC No.11 of 2012 before the Judicial Magistrate No.I, Pollachi against Sivakumar and six others for offences under Sections 147, 342, 365, 395 r/w 34, 389 and 109 IPC and committal proceedings are pending.

12. According to Sivakumar, the police have foisted false cases against him as he is supposed to have been very strict in his duties.

13. Mr.R.Senthil Kumar, Inspector of Police, District Crime Branch, has filed a counter affidavit in this case and the relevant portion of it, reads as follows:

"11. It is submitted that the above said facts reveals that the petitioner is a habitual offender and has committed the above said offences in the above said manner by using his official position along with his associates. Now the petitioner has come forward before this Hon'ble Court with this Writ of Declaration propounding the police probe into a Judicial Conviction in WLOR No.4/2008 as being an assault on judicial independence, violative of Articles 14 and 21 of the Constitution, and to direct initiation of appropriate penal proceedings against Police officers and the Deputy Director of Prosecution for Criminal Misconduct.

16. It is submitted that the case of the prosecution is that such like the petitioner and his associates has created false documents, obtained illegal gratification from Jaganathasamy and threatened him and made him to sign the admission petition and the petitioner himself has paid the fine from the amount of the said illegal gratification and has compounded the said case by covering up the said illegalities before the lower court and with the law officers. Hence, the probe is not in regard with the judicial order it is the probe by the police in regard to the offences committed by the petitioner and his associates against the de-facto complainant with an ulterior motive."

14. Coming to the aforesaid prayers, they are per se not maintainable, because, valid investigations have commenced by various police on complaints by different persons against Sivakumar and his gang for extortion and robbery. This cannot be interdicted by way of a writ of declaration as prayed for by Sivakumar in these writ petitions. Sivakumar has even sought Rs.50 lakhs as compensation from the police in one of these writ petitions, which is indeed very strange. These writ petitions are per se frivolous and are intended only to impede the course of investigation of the criminal cases against Sivakumar and his gang, who have been operating with impunity in and around Pollachi area. The affidavits filed by Sivakumar in support of the prayers in the Writ Petitions are very vague and bland and proprio vigore no relief can be granted. It is not known as to why the Registrar General of the Madras High Court has been added as party respondent in W.P.No.21300 of 2011. Perhaps, to overawe the police and tie their hands.

15. Challenging the FIR in Cr.No.9 of 2011, one Parthasarathy [A4], Thangavel [A5] and Appunni [A6] filed CrI.O.P.No.14140 of 2011 for quashing the FIR and the same has been dismissed by this Court by order dated 09.01.2017 holding that there are sufficient materials in the FIR for the police to proceed further with the investigation and that the prosecution cannot be quashed in the light of the law laid down by the Supreme Court in State of Haryana vs. Bhajan Lal, [1992 (Supp.) 1 SCC 335].

In view of the foregoing discussion, these writ petitions are dismissed with exemplary costs of Rs.10,000/- payable to the Chief Justice Relief Fund, Madras High Court, within two weeks from the date of receipt of a copy of this order. The respondent police is directed to proceed with the investigation in Cr. Nos.678 of 2010, 568 of 2010 and 9 of 2011 and take them to their logical conclusion, expeditiously. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1. Inspector of Police
District Crime Branch
Tiruppur.
2. The Chief Secretary
Fort St.George, Secretariat
Chennai.
3. The Registrar General
Madras High Court
High Court, Madras
4. The Inspector of Police
Pollachi West Police Station,
Pollachi.

5. The Inspector of Police
Pollachi East Police Station
Pollachi.

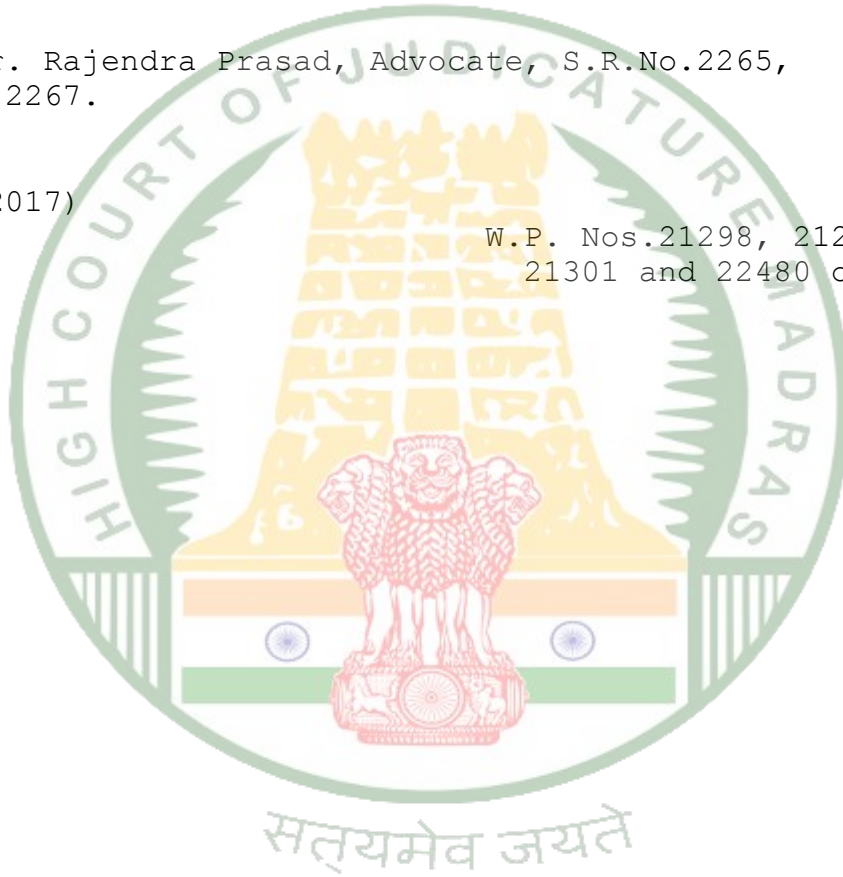
6. The Public Prosecutor
Madras High Court.

7. The Section Officer,
Accounts Section,
High Court,
Madras.

+4cc to Mr. Rajendra Prasad, Advocate, S.R.No.2265,
2266,2263,2267.

LNS (CO)
RS (23/01/2017)

W.P. Nos.21298, 21299, 21300,
21301 and 22480 of 2011



WEB COPY