



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.05.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.8910 of 2017

M.Michael Santha Forgia

... Petitioner

vs.

1. The Director General of Police,
Chennai.

2. Ashwin Kotnis
3. Nagaselvarathinam
4. Mathavan Nair
5. Parthiben
6. Devanand Kingsley
7. Nagakumari
8. Sabapathi
9. Jeevamani Dharmaraj
10. Rennis
11. Sankareswari
12. Gemini Ganesan
13. Ramachandran

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to institute appropriate actions against respondents 2 to 13 for violation of Sections 46(4) and 160(1) of Cr.P.C. and consequently direct the respondents 2 to 13 to compensate the petitioner for their gross violation of provisions of law and further direct the 2 to 13th respondents to forbear from harassing the petitioner and her family members on the basis of petitioner's representation dated 17.04.2017.

For Petitioner : Mr.B.N.Raja Mohamed

For R1 : Mr.B.Pugalenth

Additional Advocate General

Assisted by Mr.C.Selvaraj

Special Government Pleader

ORDER



of a Writ of Mandamus, directing the 1st respondent to institute appropriate action against the respondents 2 to 13 for violation of Sections 46(4) and 160(1) Cr.P.C and consequently to direct the respondents 2 to 13 to compensate the petitioner for their gross violation of the provisions of law and also to forbear the respondents 2 to 13 from harassing the petitioner and her family members on the basis of the petitioner's representation dated 17.04.2017.

2.Learned counsel for the petitioner would submit that on 02.02.2017 at 4.45 a.m, a police team headed by respondents 4 to 7, 9 and 10 assembled in front of the house of Mr.Michael Stanis Prabhu, who is the 1st accused in Crime No.1193/2016 on the file of South Police Station, Turicorin and forced his wife namely, Usha Janet Mary to come to the police station. Immediately on receipt of the information, the petitioner rushed to the spot and requested the Police officials to adhere to the guidelines of the Hon'ble Supreme Court laid down then and there that while making any arrest of persons especially, a woman, before sunrise, they should follow certain procedure. Moreover, whenever any arrest is made, they ought to have possessed summon or warrant therefor which the respondents have not even possessed at the relevant point of time.

3.When the petitioner has requested the police officials to follow the procedure, they all turned deaf ear and continued their mounting pressure on the petitioner and another as mentioned above. However, in obedience to the instruction of the respondents/police, as a law abiding citizen, the petitioner and Usha Janet Mary went along with them and they were detained illegally at All Women Police Station, Tuticorin and that the said Police Station is also equipped with CCTV coverage.

4.It is the contention of the petitioner that the respondents 4 to 7, 9 and 10 have threatened her and Usha Janet Mary for their failure to disclose the whereabouts of Michael Stanis Prabhu, which would amount to human rights violation.

5.Adding further, it is contended that on 20.02.2017, the police team headed by the respondents 9 and 10 without any search warrant, wrongly entered into the house of the petitioner at 8 a.m in her absence and when her aged mother was staying at her house lonely, the respondents 9 and 10 without having any warrant, searched her entire house and abused her mother with obscene words. This would also amount to violation of human rights. Therefore, the petitioner has given a representation on 22.02.2017 through Registered Post with Acknowledgment Due to the 1st respondent with copies marked to the Principal Secretary(Home), Government of Tamilnadu, Chennai, and the Superintendent of Police, Tuticorin, alleging illegal activities and misbehaviour of



the respondents 4 to 7, 9 and 10 and to take necessary action against them. But, till date, no action has been taken on the said representation. Therefore, the petitioner has come to this Court for the above mentioned relief.

6. In reply, the learned Additional Advocate General appearing for the respondents would submit that the submission made by the learned counsel for the petitioner that the petitioner was arrested and wrongly treated by the aforementioned respondents 4 to 7, 9 and 10 is far from acceptance since it is a frivolous allegation without being supported with any documents whatsoever. Secondly, it is contended that at 7.30 a.m., the petitioner was arrested and taken to police station for interrogation in view of registration of criminal case in Crime No.66/2017 on the file of Tuticorin North Police Station for the offence under Section 294 (b), 353, 506(ii) IPC. Therefore, when a criminal case has been registered in the abovesaid crime number, it is a duty and obligation cast on the respondents/police to do the needful. Therefore, as a part of their duty, they visited the house of Mr. Michael Stanis Prabhu, but not at 4.45 a.m as alleged by the petitioner.

7. Adding further, learned Additional Advocate General would submit that the allegation made before this Court has to be brushed aside for the simple reason that when the petitioner and Pipin Bose were produced before the Judicial Magistrate No.II, Tuticorin, in connection with Crime No.66/2017, the petitioner has not made any complaint whatsoever. Even assuming that there had been a complaint, the matter has to be enquired by the Judicial Magistrate only and not by this Court by entertaining the present writ petition.

8. I find merit in the submission made by the learned Additional Advocate General. The reason is, the affidavit filed in support of the present writ petition does not speak any thing about the complaint made by the petitioner before the Judicial Magistrate No.II at Tuticorin that she was harassed or ill-treated by the respondents 4 to 7, 9 and 10 on the above mentioned dates.

9. At this juncture, learned counsel for the petitioner submitted that when the petitioner appeared in person in Crl.OP.No.1002/16 before this Court on 23.02.2017 and narrated the harassment done by the respondents on 20.02.2017, she came out of the Court campus only at 05.20 p.m. Therefore, it is not open to the respondents to contend that the petitioner was present on the same day at Tuticorin and preventing them from discharging their duty relating to searching the whereabouts of one Michael Stanis Prabhu in connection with Crime No.66/2017. While analysing the case of the petitioner in this context, this Court is not able to agree with the prayer made by the petitioner, inasmuch as the



petitioner claims to be a practicing lawyer in Tuticorin, she has not substantiated any averment in the affidavit filed in support of the writ petition.

10.As highlighted by the learned Additional Advocate General, when the petitioner was arrested and produced before the learned Judicial Magistrate No.II, at Tuticorin, till date, no complaint regarding harassment has been made. Even assuming that there had been a complaint, it is for the Judicial Magistrate concerned to look into the matter and the petitioner cannot come to this Court. The reason is, when a case has been registered in Crime No.66/2017 on the file of Tuticorin North Police Station, the matter has to be looked into only by the concerned learned Judicial Magistrate and not by this Court. Therefore, this Court is not inclined to entertain the present writ petition.

Hence, the Writ Petition fails and the same is dismissed. No costs.

Sd/-
Vacation Officer

/True Copy/

Sub Assistant Registrar

To

The Director General of Police,
Chennai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 56401
+ 1 CC TO Mr.B.N.RAJA MOHAMED, ADVOCATE IN SR No. 56435

NBI
TE/RSK/SAR-IV : 17/05/2017 : 4P/4C

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