

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.562 of 2015
and
M.P.No.1 of 2015

1.K.Kandeepan
2.K.Mohan
3.A.Sundar
4.K.Velmurugan

..Appellants/Respondents 3to6

versus

1.Poovarasu @ Poovarasan

2.State of Tamil Nadu,
rep. by Secretary,
Home Department,
Fort St. George, Chennai - 9.

3.The Superintendent of Police,
Vellore District.

4.The Superintendent,
District Headquarters,
Government General Hospital,
Adukambarai, Vellore District.

5.The District Collector,
Vellore District, Vellore.

..Respondents/Petitioners
Respondents 1,2, 7 & 8

Appeal filed against the order passed by this Court dated 06.02.2015 made in W.P.No.33793 of 2014. Petition filed under Article 226 of the constitution of India praying to issue a writ of Mandamus to directing the respondents 1 and 2 to register an FIR against Respondents 3 to 6 and the driver of the police vehicle for illegal detention torture and causing grievous injuries to the Petitioner under different provisions of the IPC SC/ST (Prevention of Atrocities) Act 1989 and the Protection of Human Rights Act 1993 direct investigation of the same by a police officer of good reputation and unimpeachable integrity and not less than the rank of DSP of the CB-CID award compensation of Rs.50 lakhs.

For Appellants : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Dr.V.Suresh
for M/s.D.Nagasaila for R1
Mr.V.Anandhamoorthy for R2 to R5

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 06.02.2015 made in W.P.No.33793 of 2014. The said Writ Petition was filed by the 1st respondent seeking a Writ of Mandamus directing the respondents 2 and 3 herein to register an FIR against the appellants herein and others under the provisions of the IPC and SC/ST (Prevention of Atrocities), Act, 1989 and the Protection of Human Rights Act, 1993 and to direct investigation of same by a Police Officer of good reputation and unimpeachable integrity not less than the rank of DSP of the CBCID. The prayer for compensation of Rs.50,00,000/- was also made in the said Writ Petition.

2. The claim of the 1st respondent/ Writ Petitioner is that he is a person belonging to Scheduled Caste and resident of Athipattu Village in Vellore District. It is claimed by him that he and the other residents of the Village who mainly belong to Scheduled Caste community have been protesting the entry of lorries into the Village which is used as a shortcut to reach the sand quarry. It is also claimed that the Village route is used for transport of illegally mined sand through lorries without permits.

3. It is also claimed that sometime in September 2014, the Villagers got reliable information that the 1st appellant who was Inspector of Police at Kaveripakkam Police Station at the relevant point of time was actively helping illegal sand mining and transportation. It is also stated in the affidavit filed in support of the Writ Petition that the villagers had approached the Senior District Officials complaining about the illegal transportation of sand.

4. While so, on 23rd September 2014 around 11.30 p.m the 1st respondent herein was woken up by a team of five Policemen and he was severely beaten up by them. When the petitioner shouted in pain and sought the reason for the assault, they proclaimed that they were teaching the petitioner a lesson for trying to stop sand mining and complaining about other non-dalit community people. He was also abused using his caste name. He was taken in the police vehicle to the Kaveripakkam police station where he was severely beaten up by the policemen.

5. The 1st respondent would further contend that he was produced before the Judicial Magistrate, Walajahpet at about 1.15 p.m and the Magistrate on seeing his condition had sent him to the hospital for medical examination. After medical examination he was produced before the Magistrate again at 5.00 p.m and the Magistrate after noting fractures and multiple injuries from the medical documents enlarged him on bail on the same day. Since an attempt was made by the appellants herein to burke the injuries, the 1st respondent got himself discharged from the Government hospital and went for a treatment to a private hospital.

6. Not stopping there, the 1st appellant had registered an FIR in Crime No.393 of 2014 on 24.09.2014 against the 1st respondent for the offences under Sections 294-A and 506(i) IPC. The occurrence was shown to be at 11.00 a.m on 24.09.2014 and one Sivasankaran was shown to be the complainant. Though it was claimed in the FIR that there was no delay in filing the FIR, the recitals in the FIR would show that the occurrence had taken place on 23.09.2014 at 11.00 a.m.

7. He would also contend that he was threatened not to open his mouth about the assault before the Magistrate and was informed that the Inspector will pay the medical bills. It is also claimed by the 1st respondent that the Doctor present at the Government Hospital, Walajahpet did not make note of all the injuries in the Accident Register. Upon a complaint to the Medical Superintendent by the relatives of the 1st respondent, the duty Doctor was instructed to record all the injuries in the Accident Register. It is only thereafter the duty Doctor budged and chose to record the injuries found in the body of the 1st respondent.

8. It is also claimed that the 1st appellant had boarded the ambulance and directed the driver to take the ambulance away from the Court building and threatened the 1st respondent and his father with dire consequences if the 1st respondent persisted with the complaint to the Magistrate. It was only after much drama the 1st respondent was produced before the Magistrate at 5.00 p.m on 24.09.2014. On 25.09.2014 X-rays were also taken at the Government District Head Quarters Hospital at Adukamparai, Vellore. However, the Orthopedic Surgeon who visited the Hospital at 1.30 p.m on 25.09.2014 informed the 1st respondent that there has been no fractures. Sensing an attempt to screen away the truth, the 1st respondent had sought for discharge and finally at 8.30 p.m he was discharged from the Government Hospital after signing an "Against Medical Advice" slip. Thereafter, he got himself admitted in Life Care Multi Specialty Hospital in Kancheepuram. It is at this back drop the, 1st respondent after being discharged from the hospital had come forward with the above Writ Petition.

9. The appellants filed a counter affidavit denying the allegations made in the petition and claimed that it was the 1st respondent who was in an inebriated condition was shouting at everybody in abusive language and since his action amounted to breach of peace, he was arrested at 11.30 a.m on 24.09.2014 and was produced before the Magistrate on the same day. According to the version of the respondents 2 and 3, as well as the appellants the 1st respondent who was in an inebriated condition and shouting in public saw the policemen approaching him had started running and he fell down while attempting to flee and injured himself. The other allegations regarding torture and illegal custody were denied by the appellants as well as the respondents 2 and 3.

10. The learned Single Judge who heard the Writ Petition taking note of the observations of the learned Magistrate in the bail order, as well as the discrepancies in the FIR filed in Crime No.393 of 2014, concluded that there was a prima facie case made out against the appellants viz., Policemen who were in-charge of Kaveripakkam police station at the relevant point of time. On such prima facie conclusion the learned Single Judge directed an enquiry by the CBCID and also directed the respondents 2 and 3 in the Writ Petition to pay a compensation of Rs.2,00,000/-. The Crime No.393 of 2014 registered against the 1st respondent was also directed to be transferred to CBCID for further enquiry.

11. The learned Single Judge also took note of the fact that the medical records maintained by the Government Hospital which are produced before the Court disclose that the injuries that were sustained by the petitioner were inflicted on 23.09.2014 by the inspector of Police Kaveripakkam Police Station. In view of the categorical statement in the medical reports the learned Single Judge directed the interim compensation of Rs.2,00,000/-. It is this order which is challenged by the respondents 3 to 6 in the Writ Appeal before us.

12. We have heard Mr.K.Venkataramani, learned Senior Counsel appearing for the appellants, Dr.V.Suresh, learned counsel for M/s.D.Nagasaila, learned counsel appearing for the 1st respondent and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents 2 to 5.

13. Mr.K.Venkataramani, learned Senior Counsel appearing for the appellants would vehemently contend that the learned Single Judge was not right in directing the CBCID enquiry and also payment of compensation. According to the learned Senior Counsel, the 1st appellant was on other duty and that he had no role in apprehending the accused at his residence. According to him, it was the 1st respondent who had indulged in violence in an intoxicated state and was shouting in filthy language in a public place which amounted to disturbing the public tranquility

in the area. Therefore, the sub-Inspector attached to Kaveripakkam Police Station and others rushed to the place on information and upon seeing the Police, the 1st respondent attempted to escape and while he was chased by the Police he fell down near the bushes and sustained some injuries. According to the learned Senior Counsel, once the duty Medical Officer had certified that there was no fracture or bone injury, the Court should not rely upon the report of the Private Doctor who treated him after 29.09.2014 to the effect that there was a fracture.

14. Per contra Dr.V.Suresh, learned counsel appearing for the 1st respondent would contend that the fact that the injuries were caused by the assault made by the appellants on the 1st respondent stood proved. He would also rely upon the circumstances to show the existence of the injuries. Inviting our attention to the bail order passed by the learned Magistrate on 24.09.2014, wherein, it is observed that there are medical documents which disclose that there have been fractures and multiple injuries, Dr.V.Suresh would strenuously contend that it is a case in which the 1st respondent has been able to establish atleast prima facie that he was assaulted by the appellants 1 to 4. The out-patient slips issued by the Government Hospital, Walajahpet also show that there are multiple fractures. Therefore, according to Dr.V.Suresh, this is a case where there is atleast some evidence to show that there has been an assault of the 1st respondent by the Police Officials. Relying upon the above circumstances, Dr.V.Suresh would contend that the learned Single Judge was perfectly justified in directing a registration of an FIR and enquiry by CBCID on the conduct of the appellants.

15. Certain subsequent events have been brought to our notice by Dr.V.Suresh, learned counsel appearing for the 1st respondent. Pursuant to the direction of this Court, it is seen that an FIR in Crime No.3 of 2015 was registered against the appellants under Sections 147, 148, 342, 323, 324, 506(i) IPC, Section 3(i)(x) of SC/ST (Prevention of Atrocities) Act, 1989 on 12.05.2015. It is also seen that the said FIR has been closed with an endorsement "Further Action Dropped" on 23.05.2018.

16. The FIR registered against the 1st respondent in Cime No.393 of 2014 was numbered as STC.28/2016 and after trial, the learned Judicial Magistrate-III, Vellore had acquitted the 1st respondent on the ground that the prosecution has not proved the charges. Surprisingly, though this Court has ordered transfer of investigation of Crime No.393 of 2014 to CBCID, the learned Judicial Magistrate-III, Vellore has found that PW20 who is the Deputy Superintendent of Police, CBCID had deposed that he took over the investigation of Crime No.393 of 2014 on 21.01.2016 and he had not prepared any Inspection Magazar since Inspection Magazar has already been prepared by the Kaveripakkam police station in Crime No.393 of 2014. The learned Judicial

Magistrate-III, Vellore has also pointed out that the said officer after taking over investigation had not chosen to enquire PWs 1 to 12 and record their version.

17. The learned Magistrate had in fact found that the investigation by the CBCID is wholly unsatisfactory and the CBCID has solely relied upon the investigation done by the Kaveripakkam police before transfer of investigation was directed by this Court. On the above conclusions, the learned Judicial Magistrate acquitted the 1st respondent from all the charges. The entire evidence in the proceedings before the learned Judicial Magistrate-III in STC.No.28 of 2016 in the form of deposition of PWs 1 to 20 has also been produced before us. A reading of the evidence of PWs 18, 19 and 20 who are from the CBCID discloses that the entire investigation has been taken up in a very casual manner. The entire evidence appears to be directed only with an object of saving the appellants.

18. Dr.V.Suresh, learned counsel appearing for the 1st respondent would contend that the dropping of further action on his complaint which was registered in Crime No.3 of 2015 on 23.05.2018 is motivated and hence the same should be interfered with.

19. We are afraid that sitting in an appeal against the order of the learned Single Judge directing investigation, we cannot go into the correctness of the dropping of further proceedings by the CBCID in Crime No.3 of 2015. It is open to the 1st respondent to take appropriate proceedings to challenge the dropping of further action.

20. Dr.V.Suresh, learned counsel would further contend that the order dropping further proceedings does not contain any reason and he is entitled to a copy of the reasons. No doubt the 1st respondent would be entitled to copy of the report of the CBCID on the basis on which further action was dropped. In order to enable him to challenge the same, we don't propose to interfere with the award of compensation inasmuch as we are in agreement with the conclusions of the learned Single Judge that a prima facie case has been made out for award of compensation. We must also point out that the appellants are, in fact, not the aggrieved persons, the directions in the Writ Petition have been issued only to the respondents 2 to 5 and it is the State which has been directed to compensate the 1st respondent.

21. For the foregoing reasons we don't see any merit in the Writ Appeal and the Writ Appeal is dismissed, confirming the order of the learned Single Judge made in W.P.No.33793 of 2014. We reserve the liberty to the 1st respondent to take appropriate proceedings challenging the dropping of further proceedings on his complaint which was registered in Crime No.3 of 2015 on

23.05.2018 by the CBCID, Vellore. We make it clear that the 1st respondent will be entitled to a copy of the report which led to further proceedings being dropped on his complaint. In the circumstances of the case, we make no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dsa
To

1.The Secretary,
Home Department,
Fort St. George, Chennai - 9.

2.The Superintendent of Police,
Vellore District.

3.The Superintendent,
District Headquarters,
Government General Hospital,
Adukambarai, Vellore District.

4.The District Collector,
Vellore District, Vellore.

+ 1 cc to Mr.D. Nagasaila, Advocate SR.32099
+ 1 cc to Mr. M. Muthappan, Advocate Sr.36442
+ 1 cc to Government Pleader Sr.36998

W.A.No.562 of 2015

SR(CO)
EU(11/07/2018)

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