

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2018

CORAM:

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

Crl.O.P.No.8542 of 2018

Y. Akbar Ahmed

Petitioner

vs.

- 1 The State represented by
the Chief Secretary
Government of Tamil Nadu
Secretariat
Chennai 600 009
- 2 The Director General of Police
Mylapore
Chennai 600 004
- 3 The Additional Director General of Police
State Human Rights Commission
Thiruvarangam
No.143, P.S. Kumarasamy Raja Salai
(Greenways Road)
Chennai 600 028
- 4 Rajasekaran
(the Then Inspector of Police)
E-2, Royapettah Police Station
Chennai 600 014
- 5 Kanimozhi
(the Then Sub-Inspector of Police)
E-2, Royapettah Police Station
Chennai 600 014

Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C. seeking to direct the first respondent to consider the petitioner's representation dated 10.07.2017 and to give the petitioner a compensation of Rs.10 lakhs for being responsible for the unlawful and illegal acts of respondents 4 and 5 and also to direct the respondents 2 and 3 to take strict action against the respondents 4 and 5 for spoiling the petitioner's life, character, name and reputation in the society.

For petitioner Mr. Y. Akbar Ahmed
Party-in-person

For RR 1-3

Mr. C. Raghavan
Government Advocate (Crl. Side)

For R4

Mr. V. Manisekaran

For R5

Mr. Sampath Kumar

ORDER

This Criminal Original Petition has been preferred seeking to direct the first respondent to consider the petitioner's representation dated 10.07.2017 and to give the petitioner a compensation of Rs.10 lakhs for being responsible for the unlawful and illegal acts of respondents 4 and 5 and also to direct the respondents 2 and 3 to take strict action against the respondents 4 and 5 for spoiling the petitioner's life, character, name and reputation in the society.

2 Today, S. Rajasekaran, the fourth respondent and K. Kanimozhi, the fifth respondent are present. Mr. Vinoth Santharam, A.C.P., Royapettah is also present.

3 Heard Mr. Akbar Ahmed, who appeared as party-in-person, Mr.C.Raghavan, learned Government Advocate (Crl. Side) appearing for respondents 1 to 3, Mr. V. Manisekaran, learned counsel for the fourth respondent and Mr. K. Sampath Kumar, learned counsel for the fifth respondent.

4 The dispute in this case lies in a narrow compass. Rajasekaran, the fourth respondent herein, was the then Inspector of Police in E-2, Royapettah Police Station and Kanimozhi, the fifth respondent herein, was the then Sub-Inspector in the same Police Station when the case in Cr. No.815 of 2013 was registered. After completing the investigation, the Inspector of Police filed a final report in P.R.C. No.64 of 2014 before the XVIII Metropolitan Magistrate, Saidapet, Chennai, for an offence under Section 306 IPC against Akbar Ahmed, the petitioner herein, alleging that he had abetted the suicide of Aayisha Rumaiah. The case was committed to the Court of Session in S.C. No.355 of 2014 and trial was conducted by the IV Additional Sessions Judge, Chennai, in which, ten witnesses were examined and 11 exhibits and 4 material objects were marked on behalf of the prosecution. No evidence was let in on behalf of Akbar Ahmed. The Trial Court, by judgment dated 23.06.2016, honourably acquitted Akbar Ahmed, but, has given certain adverse findings in respect of respondents 4 and 5 and the relevant paragraphs of the said judgment of the Trial Court are profitably extracted hereunder:

"21. . . . Likewise, in this case also, the Sub Inspector of Police, PW9 and Inspector of Police PW10 had not discharged their duties properly. The Court records displeasure in this case as to the slipshod and lethargic manner in which the investigation had been conducted by them. A copy of the judgment to be marked to the Director General of Police for taking appropriate action against them in this regard. Further, it is clarified that the above said observation is not a stricture against the investigation officers which requires hearing of the investigation officers before the said observation. It is only an intimation to the authorities concerned regarding the error committed by the police officers during investigation.

22. All the above said points stated by the accused counsel, not only raised serious doubt regarding the prosecution version, but also created a reasonable suspicion as to whether the occurrence as alleged by the prosecution could have ever taken place. The evidence of the prosecution witness go to the root of the prosecution and shake the very reliability of the prosecution version. Though the defective investigation is not a ground for disbelieving the prosecution case, there is not even a single evidence produced to show that the victim had committed suicide only due to the instigation of accused. Hence, the argument of the defence counsel that a false case had been foisted against the accused by the police with ulterior motive was found to be acceptable one. Since there is no clinching proof adduced by the prosecution to bring home the guilt on the part of accused, the prosecution version cannot be believed at all."

5 Under such circumstances, Akbar Ahmed is before this Court with the above prayer, placing strong reliance upon paragraph nos.22 to 24 of the judgment of the Supreme Court in State of Gujarat vs. Kishanbhai and others [(2014) 5 SCC 108], which read as under:

"22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training

programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

24. A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the Home Secretaries concerned, shall ensure compliance with the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained."

6 In this case, the Trial Court has indicted respondents 4 and 5 and therefore, it is incumbent upon the State Government to have ordered an enquiry into the conduct of the respondents 4 and 5.

7 The learned Government Advocate (Crl. Side) submitted that no enquiry has been conducted so far.

8 Hence, this Court directs the **Second respondent*** to conduct an enquiry into the conduct of the respondents 4 and 5 in the matter of prosecuting Akbar Ahmed in S.C. No.355 of 2014, in compliance with the directions of the Supreme Court in Kishanbhai (supra) and complete the same within a period of six months from the date of receipt of a copy of this order and file a compliance report in the Registry of this Court, which shall form part and parcel of this case records.

This Criminal Original Petition stands disposed of with the above direction.

Sd/-
Assistant Registrar (CS-VIII)
dt. 30.07.2018

Corrected as per order dated 23/07/2018
made in Crl.OP.NO.8542/18

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Chief Secretary
Government of Tamil Nadu
Secretariat
Chennai 600 009
- 2 The Director General of Police
Mylapore
Chennai 600 004
- 3 The Additional Director General of Police
State Human Rights Commission
Thiruvarangam
No.143, P.S. Kumarasamy Raja Salai
(Greenways Road)
Chennai 600 028
- 4 The Public Prosecutor
High Court of Madras
Chennai 600 104.

+ 1 cc to Mr. Y. Akbar Ahmed, Advocate Sr.46624
+ 1 cc to Mr. S. Bala Subramanian, Advocate SR.GJII

Crl.O.P.No.8542 of 2018