

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.03.2018

Pronounced on: 28.04.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.32420 of 2013

Tmt.M.P.Jothi

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to Govt.,
Home Department,
Fort St. George,
chennai - 600 009.

2. The District Collector,
Chennai District,
Chennai.

3. The Commissioner of Police,
Chennai City,
Egmore,
Chennai - 600 008.

4. The Inspector of Police (Crime),
R.1, Mambalam Police Station,
T.Nagar,
Chennai - 600 017.

...Respondents

PRAYER:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents to consider the representation of the petitioner dated 21.11.2013 and to hold an enquiry under Section 151 and 152 of Police Standing Order to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.V.Shanmuga Sundar, Spl.G.P.

ORDER

Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents and perused the materials available on record.

2. The petitioner, a practicing lawyer at Metropolitan Magistrate Court, Chennai has filed this Writ Petition for issuance of a Writ of Mandamus, directing the respondents to consider her representation dated 21.11.2013 to hold enquiry under Tamil Nadu Police Standing Orders in PSO 151 and 152.

3. According to the petitioner, her husband Yesudoss was running a hotel business. While so, on 08.10.2013, at 1.00 pm one Mr.Durai, Inspector of Police, attached to R1 Mambalam Police Station along with his personnel, trespassed into her house and started abusing her, even though they were informed that she is a practicing advocate. Hence, she sent a representation to the 3rd respondent on 09.10.2013 for necessary action against the Inspector Mr.Durai and to give her protection of life and belongings.

4. It is further alleged that the policemen again tortured her family members without any cause and her brother-in-law was illegally tortured for over 10 days and thereby, he suffered injuries on his body. Since no enquiry was held under PSO 151 and 152, the present Writ Petition has been filed.

5. The Joint Commissioner of Police has filed a counter affidavit on behalf of the 3rd respondent, in which, it is stated that the petitioner's husband involved in Crime No.1329 of 2013 for the offences under Section 379 IPC for committing theft of 5 kgs. of gold jewels belonging to one Mahesh Kumar by adopting a modus of diverting his attention. After great efforts, the said Yesudoss was arrested on 29.01.2014 and on the basis of his confession part of jewels were recovered.

6. It is further stated that the said Yesudoss along with other accused was involved in the following cases:

- i) J-1 Police Station, Crime No.761 of 2010, for offence under Sections 341, 397, 336, 427, 506(ii) of IPC.
- ii) J-1 Police Station, Crime No.615/2010 for offence under Section 379 IPC.
- iii) J-4 Police Station, Crime No.388/2010 for offence under Sections 392 and 506 (ii) of IPC
- iv) J-5 Police Station, Crime No.613/2010 for offence under Section 379 of IPC
- v) Pudukottai Police Station, Crime No.28/2011 for offence under Section 379 of IPC

7. It is further stated that the representation addressed to the Commissioner of Police, dated 09.10.2013 was forwarded to the Deputy Commissioner of Police, T-Nagar and Assistant Commissioner of Police, T-Nagar Range to carry out enquiry over the same. Despite service of notices issued by the Assistant Commissioner of Police, T-Nagar Range, on 30.11.2013, 13.12.2013 and 14.12.2013, the petitioner failed to co-operate for enquiry. When the accused were produced before the Metropolitan Magistrate, Saidapet, there was no complaint of torture or injuries said to have been sustained in the Police Station due to the assault by the Police.

8. The counter affidavit further proceeds that Mr.Durai, Inspector of Police is a member of the Special Team formed to deduct the cases of theft and in order to give threat to him, this Writ Petition has been filed. It is further stated that since there is no torture or visible injury, necessity does not arise to hold enquiry under PSO 150 and 151. After completion of enquiry, final report under Section 173(ii) of Cr.P.C. was filed and the said Yesudoss is facing trial before the XVII Metropolitan Magistrate, Saidapet in C.C.No.5712 of 2015.

9. In reply affidavit, the petitioner has stated that the 2nd and 3rd respondents have to held enquiry, but no summons was received from them. Instead, the Assistant commissioner, ASP Mambalam, who is an accused officer caused summons to appear before him. He should have visited the scene house and enquired her about the torture.

10. The learned counsel for the petitioner contended that no proper enquiry was conducted by the respondents as per law. Further when the petitioner made allegations against the Assistant Commissioner of Police, Mambalam, enquiry should have been conducted by the Commissioner of Police.

11. In the case on hand, the petitioner alleges torture and abuse by the Inspector of Police attached to the Mambalam Police Station, but it is not denied or disputed the receipt of summons issued by the Assistant Commissioner of Police, T-Nagar for conducting enquiry with regard to the allegations of the petitioner against the Inspector of Police Mr.Durai. Perusal of records shows that neither in the complaint sent to the Commissioner of Police nor in the affidavit filed in support of the Writ Petition, allegations have been made against the Assistant Commissioner of Police, T-Nagar.

12. It is to be noted that involvement of the petitioner's husband in cases of the grave offences of 397 and 379 IPC is not denied. It is specifically stated by the respondents that based

on the complaint of one Mahesh Kumar for theft of 5 kgs. of gold jewels, a case was registered in Cirme No.1329 of 2013 and after securing the petitioner's husband on 29.01.2014, they have recovered a part of the jewels under Section 27 of the Indian Evidence Act. The accused is also facing trial in C.C.No.5712 of 2015.

13. It is pertinent to point out that duty is cast upon the police to conduct proper investigation to unearth the truth in the complaint. As stated supra, registration of criminal cases and laying of final report against the said Yesudoss is not in dispute. Except making bald allegations, no materials have been produced in support of the case of the petitioner.

14. After perusing the materials produced by the respondents, this Court is satisfied that this Writ Petition has been filed with an ulterior motive to prevent the Police from proceeding against her husband, who is a habitual offender of committing theft. It is to be noted that the accused at the time of remand, has not complained about the torture or the external injuries said to have been caused by the respondent.

15. In the light of the above facts, this Court is of the view, that this is not a fit case to conduct enquiry under PSO 151 and 152. In the result, the Writ Petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The State of Tamil Nadu,
Rep. by the Secretary to Govt.,
Home Department,
Fort St. George,
chennai - 600 009.
2. The District Collector,
Chennai District,
Chennai.
3. The Commissioner of Police,
Chennai City, Egmore, Chennai - 600 008.

4. The Inspector of Police (Crime),
R.1, Mambalam Police Station,
T.Nagar,
Chennai - 600 017.

WP.No.32420 of 2013

CS/20/06/18



WEB COPY