

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2018
Pronounced on : 28.06.2018

CORAM:

THE HON'BLE Mr.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Writ Appeal No.1141 of 2016

Mr.M.Arun Kumar ... Appellant

Vs.

1. The State of TamilNadu
represented by the Secretary,
Home Department,
Secretariat, St. George Fort,
Chennai - 9.
2. The Commissioner of Police,
Chennai, Office of Commissioner of Police,
No.132, EVK Sampath Salai, Vepery,
Chennai, Tamil Nadu - 600 007.
3. The Inspector of Police,
W-27, All Women Police Station,
Vadapalani, Chennai-600 026.
4. The Commissioner of Police,
Trivandrum, Office of City Commissioner of Police,
Vazhuthacaud, Thycaud, Trivandrum - 695014.
5. Mr. Suresh.V.Nair,
The Circle Inspector of Police (SHO)
Thampanoor Police Station,
Fort Sub - Division, Thampanoor,
Trivandrum - 695 001.
6. Vijay Pandian,
Sub Inspector of Police,
R-8, Vadapalani Police Station,
Vadapalani,
Chennai - 600 026.
7. Suji (WCPO 28150),
R-8, Vadapalani Police Station,
Vadapalani,
Chennai - 600 026.

8. Mrs.P.L. Vallikkannu ... Respondents

WP.No.22984 of 2016:Petition filed under Article 26 of the constitution of India for a writ of mandamus directing the first respondent to initiate disciplinary action and Criminal prosecution against respondents 3,6 and 7 and further direct the respondents to pay exemplary damages that may be found just by this Honourable Court.

For Appellant : Mr.Sunder Mohan

For Respondents : Mr.V. Anandha Murthy
(1 to 3, 6 & 7) Additional Government Pleader

For Respondent-4 : No Appearance

For Respondent-5 : Not Ready in Notice

For Respondent-8 : Mr.S. Thirumavalavan

J U D G M E N T

(Order of the Court was made by P.VELMURUGAN,J.,)

This intra court Appeal is directed against the order in W.P. No.22984/2016, dated 05.07.2016, whereby, the learned Single Judge was pleased to dismiss the Writ Petition filed by the appellant herein.

2. The facts of the case, which led to the filing of this Appeal in brief are as follows:-

i) The marriage between the appellant and the eighth respondent was solemnized on 22.05.2011. Soon after the marriage, the eighth respondent left the matrimonial home on 01.07.2011. Hence, the appellant filed a Petition for restitution of conjugal rights in O.P.(HMA) No.1920 of 2011 before the Learned Family Court Judge, Trivandrum. In the meantime, i.e., in the year, 2012, the eighth respondent has lodged a criminal complaint against the appellant, pursuant to which, the respondent/Police, Sivagangai, registered a case against the appellant, his parents and sisters. Anticipating arrest at the hands of the police, the appellant and his parents obtained bail in their favour. Thereafter, the eighth respondent filed a Petition for divorce on the file of the I Additional Judge, Family Court, Chennai, in O.P.No.1320/2014. The eighth respondent has also filed a Maintenance Case in M.C.No.1929 of 2014. Apart from filing the aforesaid cases, the eighth respondent also filed Original Petition under the Domestic Violence Act on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, against the appellant, his parents and his aunt. The said Petition was ordered exparte on 18.08.2014. Thereafter, the eighth respondent filed a petition in M.C. No.2953 of 2015 to implement the said exparte order, wherein, Non Bailable Warrants were issued against the appellant and his parents on 08.12.2014. Later, the case in M.C.No. 2953/2015 was dismissed for non-prosecution on 15.06.2015. The respondent/Police, based on the NBW issued earlier, arrested the appellant and his father, on 29.10.2015. The appellant's father, who was unable to bear the humiliation and torture died due to

heart attack on the very same day of arrest.

ii) The appellant filed a Writ Petition seeking an order for compensation for his illegal arrest besides his father as there was no warrant pending on the date of arrest. The appellant has also prayed for an order for initiation of disciplinary action against the concerned police officers for their alleged highhandedness.

3. The learned Single Judge dismissed the Writ Petition by observing that, the guidelines issued by the Hon'ble Supreme Court in the case *Raghuvansh Dewanchand Bhasin v. State of Maharashtra and Anr* reported in [(2012) 9 SCC 791] are only to the Magistrate and not to the police. Challenging the said order, the present Writ Appeal is preferred.

4. The learned counsel appearing for the appellant would submit that the fundamental rights of the appellant under Article 21 of the constitution has been affected, inasmuch as, the warrant was said to have been executed by the respondent/Police long after its expiry i.e., on 29.10.2015. The case was dismissed for non-prosecution as early as on 15.06.2015, even though the warrant was issued on 8.12.2014, as evidenced by the docket entries made by the learned XVII Metropolitan Magistrate, Saidapet, Chennai, Magistrate in CrI.M.P. No.1448 of 2014. The respondent/Police before executing the warrant ought to have verified as to whether the place would fall within their jurisdiction. Similarly, they should have verified as to whether the warrant was pending or not as on the date of its execution, especially, when they execute a warrant dated 18.12.2014, ten month's latter i.e., on 29.10.2015. The respondent/Police have not given any valid reasons, as to why, they have failed to verify as to whether the warrant was pending against the appellant and his father as on the date of execution of the same. In this connection, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of *Raghuvansh Dewanchand Bhasin v. State of Maharashtra and Anr*, reported in [(2012) 9 SCC 791], wherein, the Hon'ble Apex Court has issued certain guidelines in case, expired warrant was sought to be misused. The learned counsel therefore, contended that the respondent/Police have executed the warrant in an illegal manner, and they have violated the guidelines issued by the Hon'ble Supreme Court in the aforementioned decision.

5. The learned counsel appearing for the appellant further submitted that the respondent/Police without getting instructions from the learned Magistrate as to whether the warrant can be executed or not, proceeded to the State of Kerala, which is out of their jurisdiction and arrested the appellant and his father. The learned counsel submitted that, before executing the warrant, the respondent/Police were expected to obtain fresh instructions from the concerned Magistrate, and without following the procedure, simply, they went to the other State and arrested the appellant and his father and went to the extent of torturing them, and owing to

which, the appellant lost his father. The father of the appellant who was unable to bear the torture and humiliation on account of the attitude of the respondent/Police died due to heart attack. The learned counsel, therefore, submitted that all these aspects have not been properly appreciated by the learned Single Judge and thus, prayed for setting aside the order passed in the Writ Petition.

6. We have also heard the learned counsel appearing for the respondents.

7. It is an undisputed fact that the appellant filed a Petition against the eighth respondent for restitution of conjugal rights. Similarly, it is not in dispute that the eighth respondent filed several Petitions against the appellant and his family members before various Forums viz., (i) the Family Court, Trivandrum, (ii) I-Additional Family Court, Chennai and (iii) XVII Metropolitan Magistrate, Saidapet, Chennai, seeking for divorce, Maintenance, etc. In one such case, which was filed as an Original Petition before the XVII Metropolitan Magistrate, Saidapet, Chennai, the eighth respondent obtained an ex parte order and for execution of the said ex-parte order, she filed a Petition in M.P.No.1848 of 2014. Since the appellant and his parents failed to appear before the court, NBW was issued against them on 8.12.2014. Subsequently, the said Maintenance Case was dismissed for default on 15.06.2015. The NBW issued was executed by the respondent /Police on 29.10.2015. The appellant and his father were taken to the Police Station, wherein the eighth respondent was also present. The father of the appellant suffered heart attack. He was taken to a Hospital from where he died.

8. The questions that arise for consideration in this Writ Appeal are i) as to whether the procedure followed by the respondent/Police with regard to the arrest of the appellant and his father is correct or not and ii) whether the respondent/Police have violated any procedure established by law and more particularly Article 21 of the Constitution.

9. On a perusal of the docket order, dated 18.08.2014, made in M.P.No.1848 of 2014, it is seen that the eighth respondent was present. It was recorded that notice to respondents R1 to R4 was served but they did not appear. Hence, ex parte order was passed on 18.08.2014. In the main case also, R1 to R4 did not appear and therefore, to procure the presence of R1 to R4, NBW was issued on 8.12.2014. The docket entries would show that the order issuing NBW was passed on 8.12.2014 and subsequently validity of warrant was extended periodically from 18.12.2014 onwards. The following are the endorsements made in the docket sheet in relation to Petition is O.P.No.1320 of 2014.

"Petitioner absent. Memo process of application filed for fresh NBW previously issued was not returned. Hence, NBW pending for R1 to R4. Call on 20.01.2015.

M.P.No.1848 of 2014:

NBW steps taken through W-27 Police Station represented by the concerned station was counsel request R8, L&O to extended the NBW and Memo filed previously issue warrant reference was immediately the cover. Hence, NBW issue fresh to R1 to R4 call on 20.01.2015.

On 20.01.2015

NBW pending in last hearing await. Call on 13.02.2015.

On 13.02.2015

Petitioner absent. Advocate Boycott. NBW await call on 10.03.2015.

On 10.03.2015

Petitioner absent. NBW await pay process. Call on 10.04.2015.

On 10.04.2015

Petitioner absent. No representation. No petition process for NBW to 13.05.2015.

On 13.05.2015

Petitioner absent. No representation.

No petition process not paid for NBW. Hence, petition for dismissed. Subsequently, that was non appearance of the petitioner and not paid in a process. Hence the petition was dismissed."

10. Thus, on a perusal of the endorsements made in the docket sheet, it would reveal that the NBW was executed ten months later, i.e., on 29.10.2015, though the warrant was issued on 08.12.2014. Therefore, it could be easily inferred that the NBW was originally issued on 08.12.2014 and the same was pending till 29.10.2015. The eighth respondent has not taken any steps to execute the non bailable warrant for ten months. Even 6th and 7th respondent have not given any proper explanation, as to why, they have not taken steps to execute the warrant, dated 08.12.2014 on or before 20.01.2015 and what made them to execute the same on 29.10.2015. Similarly, it is not known as to why the respondent/Police have failed to verify the various stage of the case and as to whether the warrant was in force as on the date of its execution and such other aspects.

11. The medical records of the PRS Hospital Pvt. Ltd., Killipallam, Trivandrum shows that while the father of the appellant was at the Police Station, due to sudden collapse, he fell down and sustained head injuries and therefore, the respondent/Police took him to the Hospital for treatment and there he died.

12. The respondent/Police filed a counter affidavit, inter alia contending that the appellant, Mr.Arun Kumar was brought to Thampalur Police Station and identified by his wife Vallikanu and when the respondent/Police requested the local police to send the appellant along with them in connection with the Non-

bailable warrant issued against him, the local police sought for certain details from the respondent/Police herein. Since the particulars sought for by the Local Police were not readily available, the local police declined to send the appellant along with them to Chennai in execution of the said Non-Bailable Warrant. Therefore, it is contended that the 6th and 7th respondents have no intention or motive of any nature as against the appellant and his family members. The respondent/ Police have acted only as per the instructions issued by the Superior Officials and the respondent/Police acted in accordance with the terms of the Non-Bailable Warrant issued by the XVII Metropolitan Magistrate Court, Saidapet, Chennai. It is further submitted that neither the appellant nor his father were arrested by the respondent/Police at any point of time. The allegations of arrest and torture are all concocted and have been made with ulterior motives.

13. The Inspector of Police, R-8, Vadapalani Police Station proceeded to Kerala in connection with the execution of Non-Bailable-Warrant issued by the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai in M.P.No.1848 of 2014 on 23.12.2014 for arrest and production of the appellant herein and his parents. Accordingly, a Passport was issued on 20.10.2015 in their names. The 6th and 7th respondents reached Kerala and approached the Inspector of Police, Thampanoor Police Station, Trivandrum within whose limits, the appellant and his father were residing and obtained necessary endorsements on the warrant and sought the assistance of the local police for executing the Non-Bailable Warrant. During that time, the eighth respondent was also present to identify the appellant and his parents. The 6th and 7th respondents, with the help of the local police identified the father of the appellant. Since the appellant's father was not feeling well, he was not arrested by the 6th and 7th respondents. The appellant and his father were brought to the local police station by the sixth and seventh respondents. Since the Local Police sought for certain details, which was not readily available with the respondent/Police, the local police declined to send the appellant along with the 6th and 7th respondents. Therefore, the third respondent/ Inspector of Police has stated they have no inimical intention to arrest the appellant and their family members and only in order to execute the NBW issued by the XVII Metropolitan Magistrate, Saidapet, Chennai-15, they acted bonafide and therefore, they have not committed any offence.

14. On a perusal of the counter affidavit filed by the respondent/ Police, it is not clear as to whether the Police have verified the stage of the case and particularly whether the warrant was in force as on the date of its execution; or the next hearing date and the date before which they have to execute the warrant and produce the appellant and his father before the Magistrate who issued the warrant. Thus, the failure on the part of the respondent/Police to verify the vital aspects as pointed out supra would amount to violation of the guidelines issued by the Hon'ble Supreme Court in the case of Raghuvansh Dewanchand Bhasin (referred supra).

15. It would be relevant to extract the material portion of the judgment, which are as follows:-

28.4. The court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or un-executed, on or before the date specified therein;

28.5 Every court must maintain a register (in the format given below at p.804), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

28.6 No warrant of arrest shall be issued without being entered in the register mentioned above and the court concerned shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the case concerned;

28.7. A register similar to the one in para 28.5 supra shall be maintained at the police station concerned. The Station House Officer of the police station concerned shall ensure that each warrant of arrest issued by the court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution.

28.8. Ordinarily , the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

28.9. On the date fixed for the return of the warrant, the court must insist upon a compliance report on the action taken thereon by the Station House Officer of the police station concerned or the officer in charge of the agency concerned;

28.10. The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;"

16. On a reading of the aforementioned guidelines issued by the Hon'ble Supreme Court and a careful perusal of the entire records, it is clear that the neither the Magistrate concerned nor the respondents / Police have followed the guidelines given

by the Hon'ble Supreme Court in the above said judgment scrupulously.

17. In pursuance of the directions given by the Hon'ble Supreme Court in the afore said case, the Registry of this Court has circulated the instructions vide Lr.No.T&PSC.No.3393/2011, dated 02.11.2011 and communicated the operative portion of the judgment of the Hon'ble Supreme Court, (supra), especially, para Nos. 28 and 29 extracts and also communicated to all the District Courts of all the Districts for compliance within the time frame as directed therein. It is worthwhile to extract the above said letter, regarding the guidelines issued by the Hon'ble Supreme Court, circulated for strict compliance.

"The Hon'ble Apex Court by order dated 09.09.2011 in Criminal Appeal No.1758 of 2011 have issued certain guidelines on issuance of non-bailable warrants. The relevant portion of the order is extracted below:-

"28.However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above, it would be appropriate to issue the following guidelines to be adopted in all cases where non-bailable warrants are issued by the courts.

(a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for;

(b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;

(c) The Presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;

(d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;

(e) Every court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

(f) No warrant of arrest shall be issued

without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;

(g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

(h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

(i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency;

(j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in the case of misuse;

(k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancellation warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.

Format of the Register

S. No	The number printed on the form used	Case title and particulars	Name & Particulars of the person against whom warrant of arrest is issued (accused/witness)	The Officer/person to whom directed	Date of judicial order directing Arrest Warrant to be issued	Date of issue	Date of cancellation, if any	Due date of return	Report returned on	The action taken as reported	Remarks

29. We expect and hope that all the High Courts will issue appropriate directions in this behalf to the subordinate courts, which shall endeavour to put into practise the aforesaid directions at the earliest, preferably within six months from today."

The aforesaid directions of the Hon'ble Supreme Court are circulated for strict compliance within the time frame as directed therein. A compliance report in the matter may be forwarded to this Registry."

18. Despite receipt of the direction vide letter No.T & PSC.No.3393/2011 dated 02.11.2011, the learned Magistrate has neither followed the guidelines of the Hon'ble Supreme Court nor the direction given by this Court, dated 02.11.2011 Similarly, the respondent / Police have not followed the guidelines issued by the Hon'ble Supreme Court. Based on the warrant issued by the learned Magistrate, dated 08.12.2014, the third respondent / Police has issued the Passport to the respondents 6&7 to proceed for execution of the warrant on 29.10.2015, and based on the same, the sixth and seventh respondents without verifying the aspect as to whether the warrant was still in force on the date of its execution and even without getting fresh instructions from the concerned court i.e. XVII Metropolitan Magistrate, Saidapet, Chennai acted mechanically and executed the warrant. Thus, it is clear that the third respondent/Police have mechanically issued the Passport and the 6th and 7th respondent proceeded to execute the warrant along with the eighth respondent. The eighth respondent was well aware of the fact that the case filed by her was dismissed for non-prosecution on 15.6.2015. Since no steps was taken to restore the case, NBW got expired and despite the same, she accompanied the respondents 6 and 7 to Trivandrum, in the State of Kerala, which is out of their jurisdiction. Therefore, it is clear that the respondent/Police have not followed any instructions given by this Court on earlier occasions or the guidelines issued by the Hon'ble Supreme Court, in Raghuvansh Dewanchand Bhasin v. State of Maharashtra and Anr, reported in [(2012) 9 SCC 791]. From the available records, we find that neither the Magistrate nor the respondent/Police followed the guidelines issued by the Hon'ble Apex Court and the directions circulated by this Court, vide letter T & PSC.No.3393 of 2011, dated 02.11.2011.

<https://hcservices.ecourts.gov.in/hcservices/>

19. Since the concerned Magistrate has failed to obey the guidelines issued by the Hon'ble Apex Court as well as the

circular issued by this Court, the Registrar General is directed to issue notice to the Magistrate concerned, as to why proceedings should not be taken against him. The respondents 1 and 2 are directed to take action against the third respondent, the officer, who was in charge of Vadapalani Police Station and who issued the passport at the relevant point of time and to the respondents 6 and 7, who have executed warrant, and submit report to this court.

20. The Writ Appeal is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Home Department,
Secretariat, St. George Fort, Chennai - 9.
2. The Commissioner of Police,
Chennai, Office of Commissioner of Police,
No.132, EVK Sampath Salai, Vepery,
Chennai, Tamil Nadu - 600 007.
3. The Inspector of Police,
W-27, All Women Police Station,
Vadapalani, Chennai-600 026.
4. The Commissioner of Police,
Trivandrum, Office of City Commissioner of Police,
Vazhuthacaud, Thycaud, Trivandrum - 695014.
5. The Circle Inspector of Police (SHO)
Thampanoor Police Station,
Fort Sub - Division, Thampanoor,
Trivandrum - 695 001.

Copy to:

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| <ol style="list-style-type: none">1. The Registrar General,
High Court, Madras2. The Registrar Judicial
High Court, Madras.3. The Section Officer,
B Section,
High Court, Madras4. The Section Officer,
Judicial Section,
High Court, Madras. | <p>To comply with the Direction issued in para 19 of the Judgment.</p> |
|--|--|

5.The First Additional Judge,
Family Court, Chennai

6.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

7.The Family Court Judge,
Family Court,
Trivandrum
Kerala State.

+1cc to M/s.J.Antony Jesus, Advocate Sr.No.41274

PPA(CO)
sm:13.7.2018

W.A. No.1141 of 2016



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