



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 18.09.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.19255 of 2016

K.Sukumari

... Petitioner

Vs.

1.The Superintendent of Police,  
Virudhunagar District,  
Virudhunagar.

2.The Deputy Superintendent of Police,  
CBCID, Madurai Range, Madurai.

3.The Inspector of Police,  
Sivakasi East Police Station,  
Virudhunagar District.  
CRIME NO.61 OF 2012

...Respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to direct the third respondent to reopen the investigation in Crime No.61 of 2012 and transfer the same to the second respondent or any other impartial investigating agency.

For Petitioner : Mr.G.Marimuthu  
For Respondents : Ms.S.Bharathi,  
Government Advocate (Crl Side)

ORDER

This petition has been filed for reopening the investigation in Crime No.61 of 2012 and transfer the same to the filed of the CBCID.

2.The petitioner's husband was a history sheeter and was involved in several offences. He went missing from 18.01.2012 onwards and thereafter he was not traceable and therefore, a complaint was registered in Crime No.61 of 2012 under "man-missing" case.

3.The learned Counsel for the petitioner would submit that the third respondent did not take steps to investigate the case and a final report came to be filed on 30.07.2014 before the Judicial Magistrate, Sivakasi on the ground that the case is closed as "undetected". The learned Counsel would submit that the respondent Police cannot deal with a "man-missing" case in such a manner. Therefore, the learned Counsel would submit that the closure report is not est in the eye of law. The matter has to be re-investigated.



4. This Court had an occasion to deal with a case where the Police closed the man-missing case and filed a report as "undetected". Taking note of this procedure, this Court by an order dated 12.09.2014 made in HCP No.1454 of 2014, after considering the matter in detail and after referring to the relevant Police Standing Orders gave certain directions and the same is extracted here under:

" 6. This issue had cropped up earlier also before this Court in HCP No.658/2003 and this Court had passed an order on 05.08.2003, directing the police to put in place a procedure for tracking down missing persons,, pursuant to which the Office of the Director General of Police, Tamil Nadu, issued the following Circular Memorandum:

"C.No.016781/Cr.3(1)2005                      Office of the  
Director General of Police Tamil Nadu, Chennai - 600  
004. Dated: 31.1.2005.

#### CIRCULAR MEMORANDUM

Sub: Missing Persons - Certain instructions -  
Issued

- Ref: 1) Chief Office Memo in Rc.No.2110/128992/  
Cr.II(I)/2003, Dt 27.06.2003.  
2) Order of the High Court, Madras, HCP No.658  
of 2003 Dt 05.08.2003.  
3) Chief Office Memo in C.No.84/CIG/MOB/2003  
Dated 13.08.2003.  
4) Chief Office Memo in R.C.No.  
84/MOB/SCRB/2003 dated 19.01.2005.

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In several cases, Hon'ble High Court of Madras has observed that the investigations relating to Missing Persons are perfunctory. It is therefore necessary to streamline the investigation relating to Missing Persons.

2) It is seen that, during investigations, cases of missing persons, kidnapped, deserters, wanted criminals, escaped criminals, unidentified dead bodies etc., the computerised "Talash" software is not being availed of by the field officers. In order to streamline the process of monitoring and supervision, the following instructions are hereby issued:-

(i) Police Computer Wing (SCRB) will circulate the seven forms (i.e. for Missing, Kidnapped, Deserter, Wanted, Escaped, Unidentified Person, Unidentified Dead body) to District Superintendents of Police and Commission of Police.



(iii) Immediately after registering the case, (Missing, Kidnapped, Deserter, Wanted, Escaped, Unidentified Person, Unidentified Dead Body), wireless messages should be sent to DSPs, Police Computer Wing, DCRB and Modus Operandi Bureau by the Investigating Officer.

(iv) The SHOs will prepare "Talash" Forms for all cases reported in 2005 and send them to DSPs, Police Computer Wing, DCRB and Modus Operandi Bureau, if not already sent

(v) The IOs will collect Photos of Missing/Unidentified Dead bodies and send it to DSPs Police Computer Wing, DCRB and Modus Operandi Bureau.

(vi) Police Computer Wing will develop a software to match all the seven categories on different parameters, Photographs should also be included. The Dy. Superintendent of Police, Police Computer Wing will submit a project report on this within two months.

(vii) Manual verification should be done in Police Computer Wing forming a Special Team consisting of one Inspector of Police and three Police Constables.

(viii) The circular vide reference third cited is being sent again to all District Superintendents of Police and Commissioners of Police to reiterate the procedure that should be followed strictly.

(ix) Investigating Officer should be Inspector of Police.

(x) Instructions given in the reference third cited above should be followed strictly for reviewing the progress of the cases.

(xi) Special Cell consisting of one SI, two HCs and two PCs should be formed in the Districts to collect relevant details in all the seven categories.

(xii) Monthly meeting by SP should be conducted with IOs and DSPs to monitor the progress of the case.

(xiii) In all the cases of Missing, Kidnapped, Deserter, Wanted, Escaped, Unidentified Person, Unidentified Dead body and, when traced, message should be flashed to DSPs, Police Computer Wing,



DCRB and Modus Operandi Bureau.

3) The standardised proforma has been designed to be used in all the cases, is enclosed.

4) The consolidated database should be maintained at Police Computer Wing and a search should be done immediately after receiving messages from Districts.

5) The system should be followed with immediate effect. A compliance report should be sent to Addl. Director General of Police, Law and Order on or before 05.02.2005.

6) The receipt of this memorandum should be acknowledged.

Sd/- Director General of Police Tamil Nadu,  
Chennai - 4."

7. In Tamil Nadu, there are at present 40 Police Districts including 7 Commissionerates, 2 Railway Districts and 31 Districts. Each Police District has a District Crime Record Bureau [for brevity 'DCRB'] functioning under the control of a separate Deputy Superintendent of Police in the Office of the Superintendent of Police of the District. The Apex body in the State is the State Crime Record Bureau [for brevity 'SCRB'], which is under the control of an Officer of the rank of Additional Director General of Police. Whenever a FIR is registered under the caption "man missing", the photograph of the missing person and other details are required to be sent by the Station House Officer of the concerned Police Station to the DCRB, which in turn would send the details to the SCRB. The SCRB will host the entire details in the Tamil Nadu Police Website, which can be accessed by any member of the public by logging into [www.tnpolice.gov.in](http://www.tnpolice.gov.in) and can view the details of the missing person. Similarly, when an unidentified body is found, the police will register a FIR u/s 174 Cr.P.C., take photographs, conduct inquest and will despatch the body for post-mortem to the Government Hospital. The concerned Station House Officer will pass on these details to the DCRB, which in turn will transmit it to the SCRB and these details along with the photograph of the unidentified body will be hosted in the Tamil Nadu police website. In the SCRB, there is a special team of Officers who analyse the cases relating to missing persons and try to match it up with the cases relating to unidentified bodies. This Team has done commendable work and has been able to solve number of cases of man missing. In fact, even in this case, the matching was



first done by the SCRB and Cuddalore Police was intimidated by them. They have also solved a few murder cases by matching the profile of missing persons with that of unidentified bodies.

15. We have laboured to extract all the extant rules and instructions on the subject, in order to facilitate the legal community to properly guide the kith and kin of missing persons when they approach them for help.

16. To sum up:

a) The Police shall immediately register an FIR whenever a case of 'Man missing' is reported and follow the Circular dated 31.01.2005 issued by the Director General of Police.

b) ... .."

5. This Court took pains to give elaborate directions to the Police to follow the procedure as stipulated in the Circular dated 31.01.2005 issued by the Director General of Police. However, the police is completely unaware of this procedure and they continue to commit the very same mistake in all "man-missing" cases.

6. The learned Counsel for the petitioner also brought to the notice of this Court a Full Bench Judgment of this Court in Chinnathambi @ Subramani Vs State, reported in 2017 (1) MWN (Cr) 471 (FB) wherein this Court was dealing with the effect on the closure report filed as "undetected". The relevant portion of the judgment is extracted hereunder.

"32. Thirdly, if the Investigating Officer, despite the earnest efforts taken, is unable to detect the crime, he will submit a report to the Magistrate stating that the crime is "undetectable". In such a case, it cannot be construed that the investigation has been completed. If once the investigation is completed, then only a report could be filed under Section 173(2) Cr.P.C. A report of this kind where the Police Officer states that the crime is undetectable, does not terminate the investigation and thus, the investigation is construed to be in progress. It is like an interim report not falling within the scope of Section 173(2) Cr.P.C. On receipt of such a report, the learned Magistrate does not pass a judicial order but, instead, he simply receives and records the same. There is absolutely no element of any adjudication. This order of the learned Magistrate is undoubtedly not a judicial order."

7. A reading of the above judgment would show that the Police can never file a final report / undetected closure report on the ground of "undetectable". Even if such a report is filed before the Court, that does not automatically terminate the investigation and it is construed that the investigation is in progress. Undetectable is only a stage in investigation and not a final report. In the instant case, a final report has been filed on the



ground that the case is closed as "undetected". This procedure is again illegal and in many cases this Court finds that the Police files such a closure report before the concerned Court.

8. In the present case, the husband of the petitioner remains undetected / untraceable. Therefore, the respondent Police has to necessarily follow the circular dated 31.01.2005 issued by the Director General of Police and deal with the case in accordance with the said circular. Similarly, the report filed before the Court below cannot be taken as a final report, since it has been filed as "undetected". Therefore, the natural corollary is that the investigation is still pending and the respondent Police has to proceed further in the matter in accordance with the directions given hereinabove and accordingly, the criminal original petition is disposed of.

9. This Court is witnessing on a regular basis that the Police are not dealing the "man-missing" cases in accordance with the Circular of the Director General of Police dated 31.01.2005 and are not following the directions given by the Division Bench of this Court in HCP No.1454 of 2014 dated 12.09.2014. That apart, this Court is also witnessing on a regular basis that the Police file a closure report on the ground "undetected" before the concerned Court. This is also a practice which is in violation of the provisions of Section 173 (2) of CrPC and also in violation of the judgment of the Full Bench in Chinnathambi @ Subramani Vs State, reported in 2017 (1) MWN (Cr) 471 (FB).

10. This Court cannot keep on condoning the mistakes every time and the Police concerned must understand that they are duty bound to comply with the procedure that have been directed by this Court.

11. In the facts and circumstances of the case, there shall be a direction to the Director General of Police, Chennai and the Inspector General of Police of various Zones to immediately sensitize and educate the Police in dealing with the "man-missing" cases. The attention of the Police must be brought to the Circular dated 31.01.2005 issued by the Director General of Police and also the judgment of this Court in HCP No.1454 of 2014, dated 12.09.2014. Similarly, the Police must be specifically instructed not to file a closure report on the ground of "undetected". Such a report can at the best only be construed as a stage in investigation and the Police must continue with the investigation till a final report is filed under Section 173(2) of CrPC.

12. A copy of this order shall be marked to the Director General of Police, Chennai as well as the Inspector General of Police of all zones to act immediately and to comply with the directions given by this Court.



13. The learned Additional Advocate General is also directed to immediately intimate this order to the Police concerned and ensure that the mistakes do not continue in future.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Judicial Magistrate, Sivakasi.
2. The Director General of Police, Chennai.
3. The Inspector General of Police, All Zones.
4. The Inspector General of Police,  
South Zone, Madurai.
5. The Inspector General of Police,  
North Zone, Coimbatore.
6. The Inspector General of Police,  
Central Zone, Tiruchirappalli.
7. The Superintendent of Police,  
Virudhunagar District,  
Virudhunagar.
8. The Deputy Superintendent of Police,  
CBCID, Madurai Range, Madurai.
9. The Inspector of Police,  
Sivakasi East Police Station,  
Virudunagar District.
10. The Additional Advocate General,  
Madurai Bench of Madras High Court,  
Madurai.
11. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

1 CC TO M/S.G.M.LAW OFFICE IN SR No. 85062.

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