



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) No.12464 of 2016

and

Cr1.O.P. (MD) No.11983 of 2016

in W.P. (MD) No.12464 of 2016

M.Backiavalli

... Petitioner

vs.

1. The State of Tamil Nadu,
represented by its Secretary,
Home Department,
Secretariat,
Fort St. George,
Chennai.
2. The Director General of Police,
O/o. of Director General of Police,
No.601, Dr.Radhakrishnan Salai,
Mylapore,
Chennai.
3. The Assistant Director General of Police (Administration),
O/o. of Assistant Director General of Police,
Chennai.
4. The Inspector General of Police,
South Zone,
New Natham Road,
Madurai - 2.
5. The Superintendent of Police,
Tuticorin District,
Tuticorin.
- 6.Suresh Kumar
- 7.Thanaselvan
- 8.Balakrishnan
- 9.Paul Isac



10.Karunakara Pandian

11.Thanaselvan

...Respondents

Prayer: This petition filed under Article 226 of the Constitution of India, for issuing a Writ of Mandamus, directing the respondents 1 to 5 to take disciplinary / departmental action against the respondents 6 to 11 as laid down in Lalitha Kumar Vs. Government of U.P and others (2013 (4) CRIMES 243 (SC) and D.K.Basu Vs. State of West Bengal (AIR 1997 SC 610).

For Petitioner : Mr.Niranjana S.Kumar
For R1 to R5 : Mr.B.Bhagawathi
Government Advocate

in CrI.O.P.(MD) No.11983 of 2016

M.Backiavalli

... Petitioner

vs.

1. The Director General of Police,
O/o. of Director General of Police,
No.601, Dr.Radhakrishnan Salai,
Mylapore,
Chennai.

2. The Inspector General of Police,
South Zone,
New Natham Road,
Madurai - 2.

3. The Superintendent of Police,
Tuticorin District,
Tuticorin.

...Respondents

Prayer: This Criminal Original filed under Section 482 of the Code of Criminal Procedure, to direct the respondents to register a case against the accused persons on the basis of the petitioner's complaint dated 30.05.2016.

For Petitioner : Mr.Niranjana S.Kumar
For Respondents : Mr.B.Bhagawathi
Government Advocate

COMMON ORDER

It will be useful to extract the earlier order passed by this Court on 29.08.2016, which is self explanatory about the facts of this case.



The wife of the injured, namely, Backiavalli has filed this petition, seeking direction to the respondents to register a case against the proposed accused persons, in respect of alleged offences committed against her husband in tune with the petitioner's complaint dated 30.05.2016.

WEB COPY

2. A case has been registered on 29.05.2016 between 12:30hrs and 13.13hrs in Crime No.49 of 206 under Section 294(b) 353 and 307 IPC against the petitioner's husband Murugan based on the complaint of the Sub Inspector of Police, Thattaparai Police Station, In the complaint it is stated that on 29.05.2016 at about 12:00hrs, when the defacto complainant Paul Isac along with Special Sub-Inspector of Police Karunakara Pandian were on patrolling duty, they enquired a person (Murugan) standing in suspicious circumstances; that the accused took out the hidden Aruval and used abusive language against those Police Officials and attempted to cause injury over the neck; when it was prevented by use of Lathi, when they attempted to catch hold of Murugan, he escaped. Only based on this complaint, the case has been registered against Murugan.

3. When the petitioner was produced before the Magistrate, the Magistrate has raised the question regarding the injury on the right leg of Murugan and he has stated that he has fallen in the step and he did not make any complaint against the Police. The remark of the Magistrate reads as under:

"Received at 09.15pm on 29.05.2016. the accused produced. Grounds of arrest explained. When asked about the injury on right leg, he said that when he was fall in the step in the step. No complaint against the Police on the materials."

4. The injured has been admitted in RHOCK Hospital, Tirunelveli on 09.06.2016 and discharged on 15.06.2016. The diagnosis by the Doctor is that there had been open fracture distal end femur with Hyperglycemia (Strees induced).

5. Alleging that this injury was caused by the Police Officials named therein in the complaint and seeking action against them, this petition has been filed.

6. In the representation dated 30.05.2016, the petitioner has stated that on 28.05.2016 (Saturday) at 06.00pm, when she was in the house along with her husband, Inspector Suresh Kumar along with other Police officials trespassed into her house and they dragged her husband by his shirt and when questioned about their conduct, they



told her that they are going to break the leg of the petitioner's husband and later on, when she made enquiries in the Police Station, he was being continuously shifted and finally she was informed that case has been registered against her husband by Thattaparai Police. When she saw her husband in the Court, he was not in the position to walk and she was informed by her husband that his leg was broken by Police and only in order to escape from the offence committed, a false case has been registered against her husband that her husband was compelled to say before the Magistrate that the injury was sustained on account of fall and in case of failure, the petitioner's husband would be detained under Goondas Act and because of intimidation, her husband was not in a position to inform the truth before the Magistrate.

7. Learned Additional Government Pleader appearing for the respondents would submit that this complaint was considered and enquiry was conducted and finding had been given that the complaint is false.

8. Perusal of the report submitted by the Assistant Superintendent of Police would reveal that an enquiry has been conducted only by examining the Inspector of Police, Thenpakkam Police Station, Tuticorin. The nature of enquiry conducted is far from satisfactory.

9. The complaint has been made not exclusively against the Thenpakkam Inspector of Police, but also against some other Police Officials, who accompanied the Inspector. There is a specific allegation that only to cover up the injuries sustained by the petitioner's husband, a false case has been laid against her husband. The probability of this allegation has not been examined at all. The brutal beating is alleged as against the Inspector of Police, Pudukkottai and Police personnel accompanied by him. There is no reference about all those persons.

10. Neither the petitioner nor her husband has been examined. One would reasonably expect the enquiring officer to have examined the Doctor to find out what is the probable cause for the injuries, whether it is possible on account of falling or it is possible on account of beatings, probable time of the injuries, having been caused. The prosecution case suffers from many improbabilities. Whether a person with such a severe injury would have the courage enough to challenge the Police, who is armed with weapons. There is no enquiry with regard to these issues.



11. Under such circumstances, the enquiry report dated 05.07.2016 cannot be accepted and it is hereby set aside.

12. The Superintendent of Police, Sivagangai District is directed to conduct an enquiry in the light of the queries indicated above and to suggest further course of action to be taken, if any, and to file a report to this Court by one month (i.e.30.09.2016)

Post on 30.09.2016 for reporting compliance

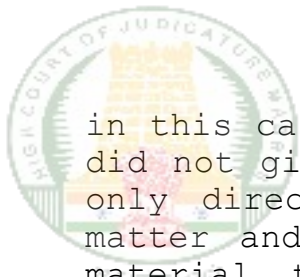
2.Subsequent to the orders passed by this Court, the Superintendent of Police, Sivagangai District, took up the enquiry and has filed an affidavit before this Court stating that the incident complained of by the husband of the petitioner, did not take place and the injuries were sustained by the husband of the petitioner only due to an accident. Before coming to such conclusion, the Superintendent of Police, has conducted a mini trial in this case. The Superintendent of Police, Sivagangai was only directed by this Court to conduct the enquiry and if he had found a cognizable offence made out, based on the allegation made by the petitioner and her husband, the Superintendent of Police, Sivagangai ought to have registered an FIR and thereafter proceeded further in accordance with law.

3.If after the registration of FIR, even if a closure report is filed by the respondent police at least, the petitioner will have a right to contest it by filing the protest petition before the appropriate Court. In this case, that avenue has also been closed to the petitioner and the petitioner is not in a position to challenge the findings given by the Superintendent of Police in his affidavit, filed in the present proceedings.

4.This Court has carefully considered the statement given by the husband of the petitioner. Even in the statement taken from the husband of the petitioner before the Superintendent of Police, Sivagangai District, he has clearly narrated the entire incident and has specifically answered the questions put to him. In spite of it, the Superintendent of Police has gone ahead and relied more on the entries made in the accident register and has come to the conclusion that since the husband of the petitioner has not named the accused persons before the Doctor, the fact that he had sustained injuries in an accident cannot be ruled out.

5.The Superintendent of Police has gone ahead and given further findings that since the husband of the petitioner did not complain about the attack made against him by the respondent police before the Magistrate and the statement given by the husband of the petitioner is not true.

6.In the considered view of this Court, the Superintendent of Police, Sivagangai District, ought not to have conducted the trial



in this case. The scope of the earlier order passed by this Court, did not give the Superintendent of Police such a power. This Court only directed the Superintendent of Police, to enquire into the matter and if the Superintendent of Police had found prima facie material to make out a cognizable offence, he ought to have proceeded further by registering the FIR. That procedure has been completely given a go by in this case.

7. On the nature of allegations that have been made by the petitioner against the police personnel and the orders that were passed by this Court on earlier occasion, this Court deems it fit to direct enquiry to be conducted by an independent agency. In all cases, involving police personnel, it will be appropriate if CBCID is directed to conduct the enquiry / investigation so that, there is a semblance of independence in the entire process. This Court is not satisfied with the manner in which the enquiry was conducted by the Superintendent of Police, Sivagangai District.

8. In view of the above, the Superintendent of Police, Sivagangai District, is directed to hand over the entire case records to the Superintendent of Police, CBCID, Chennai. The Superintendent of Police, CBCID, Chennai is directed to allot this case to any police officer in CBCID to conduct the enquiry. If the concerned police officer finds that a cognizable offence has been made out, he shall register the FIR as per the directions given by the Hon'ble Division Bench of Supreme Court in the case of Lalitha Kumari Vs. Government of Uthar Pradesh and others reported in 2013 (SC). Thereafter, the investigation shall be carried on in accordance with law. The concerned police officer is directed to investigate the case from all angles and to take statements of all persons concerned in order to come to a right conclusion with regard to the future course of action.

9. The Superintendent of Police, Sivagangai District, is directed to hand over the entire case records to the Superintendent of Police, CBCID, Chennai within a period of two weeks from the date of receipt of a copy of this order. The Superintendent of Police, CBCID, Chennai, shall allot the case to the police officer within a period of two weeks thereafter. The entire process is to be completed within a period of three months from the date of receipt of a copy of this order.

10. In the result, the writ petition is disposed of. No costs. The Criminal Original Petition is also disposed of on the above terms.

Sd/

Deputy Registrar (Accounts)

/True Copy/



To

1. The Secretary,
Home Department,
Secretariat,
Fort St. George,
Chennai.
2. The Director General of Police,
O/o. of Director General of Police,
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5. The Superintendent of Police,
Tuticorin District,
Tuticorin.
6. The Superintendent of Police,
CBCID, Chennai.
7. The Superintendent of Police,
Sivagangai District.
8. The Inspector of Police,
Thenpakkam Police Station,
Tuticorin District.
9. The Inspector of Police,
(Circle Inspector)
Thattaparai Police Station,
Tuticorin District.

+1 CC to Mr.Niranjan S.Kumar,Advocate,SR.No.89296

+1 CC to Spl.Govt. Pleader, SR.No.89422

mm

SS/SKN/SAR 1/10.12.2018/7P/12C

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