

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 14.10.2019

Order pronounced on : 07.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 13404 of 2005
and
W.P.M.P. 14698 of 2005

G.Tamilazhagan Petitioner

Vs

1. The State of Tamil Nadu,
represented by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.
 2. The Director General of Police (L & O),
Mylapore,
Chennai-600 004.
 3. The District Superintendent of Police,
Perambalur District,
Perambalur.
 4. Shri G. Kosalram,
Sub-Inspector of Police,
Irumpulikurichi Police Station,
Perambalur District.
 5. The Sub-inspector of Police,
Ariyalur Police Station,
Ariyalur, Perambalur Dt.
- ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st to 3rd respondents to initiate appropriate disciplinary action against the 4th respondent in pursuant to the petitioner's representation dated 30.03.2005 and award suitable damages for the acts of commission and omission by the 4th respondent for not following the guidelines issued by the Hon'ble Supreme Court of India in the case of D.K. Basu Vs. The State of West Bengal reported in A.I.R. 1997 Supreme Court page 610.

For Petitioner : Mr.B.Rabu Manohar

For Respondents: Mr.I.Sathish,
Addl. Govt. Pleader for R1 to R3

Mr.S.R.Ganesh Kumar for R4

O R D E R

This Writ Petition has been filed seeking a direction to the respondents 1 to 3 to take appropriate disciplinary action against the 4th respondent and also for awarding suitable damages for the acts of commission and omission by the 4th respondent.

2. The grievance of the petitioner is that, the 4th respondent was then working as the Sub-Inspector of Police at Vikramangalam Police Station, Perambalur District. On 24.08.2004, at about 05.30 a.m., the 4th respondent along with a police constable went to the petitioner's house in the guise of investigation in a criminal case pending against the petitioner's brother by name Kamaraj. At that time, the 4th respondent searched the petitioner's house, and found that his brother was not there, in the guise of conducting enquiry, the 4th respondent has assaulted the petitioner in front of his family members, and stripped him nude until his under garments, and paraded him for about 1 km. through the village, and took him to Vikramangalam Police Station. There also, the petitioner was brutally assaulted by the 4th respondent. Then a criminal case was registered against him before the Ariyalur Police Station in Crime No. 500 of 2004, for an offence under Sections 254 (5), 353 and 506 (ii) I.P.C. alleging that the petitioner tried to assault the 4th respondent, then he was handed over to the Ariyalur Police Station. Thereafter, the petitioner was taken to the Government Hospital, Ariyalur, wherein he was given treatment, then he was produced before the Judicial Magistrate, Ariyalur, at about 08.30 p.m., and remanded to judicial custody, and confined in Central Jail, Trichy, where he was admitted in the jail hospital and given treatment. On the next day, viz., 26.08.2004, the petitioner has sent a complaint to the learned Judicial Magistrate regarding the custodial violence of 4th respondent, but no action was taken on the complaint. Subsequently, the petitioner was released on bail on 02.09.2004. According to the petitioner, before arresting him, the guidelines issued by Hon'ble Supreme Court of India, in D.K.Basu vs. The State of West Bengal (reported in A.I.R. 1997 SCC 610) was not followed, and the petitioner's right guaranteed under Art. 21 of the Constitution of India has been violated. The petitioner has also sent written complaints to the respondents 1 to 3 to take suitable action against the 4th respondent, but no action has been taken by them. Hence, the present Writ Petition has been filed seeking for the above said relief.

3. The 3rd respondent, District Superintendent of Police filed a counter affidavit denying all those allegations made in the affidavit and stated that, the 4th respondent went to the petitioner's house in uniform searching for an accused by name Kamaraj, who is the brother of the petitioner, in connection with a criminal case registered against him in Vikkiramangalam Police Station. During the enquiry, the petitioner abused the 4th respondent and other police officials, came out with a sickle, criminally intimidated them, and prevented them from discharging their duty. When the petitioner refused to restrain himself, the 4th respondent has used minimum force and apprehended the petitioner. Thereafter, the petitioner was handed over to the jurisdiction police station viz., at Ariyalur at 09.00 a.m. and also filed a complaint, on which a case was registered in Crime No.500/2004 for an offence under Section 294(b), 353, 506(ii) I.P.C. It is further stated that, while arresting the petitioner, the guidelines issued by the Hon'ble Supreme Court of India, in D.K.Basu's case has been scrupulously followed.

4. The 4th respondent has filed a counter affidavit virtually reiterating the counter affidavit filed by the 3rd respondent, stating that, the 4th respondent along with a Police constable went to the petitioner's house for enquiry relating to a crime, in which the petitioner's brother was involved, where he was abused and criminally intimidated by the petitioner, and denied the allegation of custodial violence, and stated that it is only the petitioner has indulged in violence criminally intimidated the police personnel. It is further stated that, he has taken all steps to apprehend the accused, but the petitioner intervened into the lawful discharge of duty, and started abusing them with filthy language, threatened the 4th respondent, and criminally intimidated him. The allegation regarding the injuries suffered by the petitioner, the petitioner was treated as an outpatient and Doctor has only found some abrasions. The 4th respondent never used any third degree method, and he did not threaten the petitioner that he will kill him in an encounter. It is also stated that on 24.08.2004 at about 09.00 a.m. the petitioner was handed over to the Ariyalur Police Station for taking further action based on his complaint, thereafter, he never interfered with the investigation and not violated the guidelines issued by Hon'ble Supreme Court in D.K.Basu's case.

5. Mr.B.Rabu Manohar, learned counsel appearing for the petitioner has vehemently contended that, the petitioner is no way connected with the crime, which was registered against the petitioner's brother. In the guise of conducting investigation in the above criminal case, the 4th respondent has assaulted the petitioner and also striped him nude paraded him through his village, and the petitioner was also subjected

to custodial violence in the police station. In order to support his contentions, the learned counsel has relied upon the Accident Register issued by the Doctor at Government Hospital, Ariyalur, which reveals that the petitioner has suffered abrasions in various parts of his body, and he has been assaulted by the police. Subsequently, a complaint has been sent to the Judicial Magistrate on 26.08.2004, two days after the arrest. He has also sent various complaints to the higher officials regarding the custodial violence met out by the petitioner, but no action was taken on the complaints.

6. The learned counsel appearing for the 3rd and 4th respondents stoutly denied all those allegations, and stated that the petitioner has criminally intimidated the 4th respondent, and other police officials and also restrained them from discharging their duty, which necessitated to file a complaint against the petitioner. After registration of F.I.R., the petitioner was handed over to the 5th respondent Ariyalur Police Station. Pursuant to the complaint given by the petitioner to the authorities, an enquiry was conducted by the Inspector of Police, Vikramangalam Police Station, and the complaint was also closed after enquiry.

7. I have considered the submissions made by learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the records.

8. On perusal of materials available on record, it could be seen that on the date of arrest, the petitioner was taken for treatment to the Government Hospital, Ariyalur, and he was examined by the doctor and issued a wound certificate. The wound certificate reveals that there are multiple abrasions all over the body of the petitioner, and the Accident Register also shows that the injuries were caused due to assault by the police personnel. After remanded to judicial custody, on 26.08.2004, the petitioner has also sent a detailed complaint to the Judicial Magistrate, Ariyalur alleging custodial violence. Thereafter, the petitioner has sent a detailed representation to all the higher authorities, but none of the representations were considered by the authorities. Even though all those allegations are denied by the 4th respondent in the counter affidavit filed by the 4th respondent, it is stated that he has used minimum force to apprehend the petitioner. The materials available on record, prima facie shows that the petitioner was subjected to custodial violence. Apart from that, now, it is stated that the criminal case registered against the petitioner was ended in acquittal. In the above circumstances, I am of the considered view that the complaints given by the petitioner need an enquiry to find out the truth.

9. In the above circumstances, this Writ Petition stands disposed of with a direction to the Inspector General of Police, Central Zone to conduct an enquiry on the petitioner's complaint regarding the allegation made against the 4th

respondent, and pass suitable orders after giving opportunity to the petitioner as well as the 4th respondent. Since the occurrence took place in the year 2004, the petitioner is directed to file a fresh representation before the Inspector General of Police, Central Zone within a period of four weeks from the date of receipt of the copy of this order. Thereafter, the Inspector General of Police, Central Zone is directed to conduct an enquiry and pass final orders within a period of eight weeks. No costs. Consequently, the connected Writ Petition Miscellaneous Petition in W.P.M.P. 14698 of 2005 is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Home Department,
Fort St. George,
Chennai-600 009.
2. The Director General of Police (L & O),
Mylapore, Chennai-600 004.
3. The District Superintendent of Police,
Perambalur District, Perambalur.
4. The Sub-inspector of Police,
Ariyalur Police Station,
Ariyalur, Perambalur District.
5. The Inspector General of Police,
Central Zone.

+1cc to Mr.B.Rabu Manokar, Advocate Sr.92443
+1cc to Mr.R.Ganeshkumar, Advocate Sr.92563

W.P. 13404 of 2005

srg 26/11/2019