

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.05.2019

CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10760 of 2019
and
Crl.M.P.No.5524 of 2019

Varun Manian

... Petitioner

Vs.

State Rep by
Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore, Chennai - 600 004

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the respondent to provide the petitioner herein with requisite Personal Security at the petitioner's cost until further orders to protect his life and liberty.

For Petitioner : Mr.V.Prakash,
Senior Counsel
for Mr.V.S.Senthil Kumar

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This petition has been filed for a direction directing the respondent to provide the petitioner with requisite Personal Security at his cost.

2. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is a businessman having business in Mining and Real Estate. In the course of his business he received numerous threats to his life and property. There were instances during which some persons attempted to physically harm and intimidate the petitioner. Fortunately, he escaped from injuries. Those attacks were motivated by his business rivals through their henchmen. He would further submit that he also tried to make private security arrangements but they were inadequate considering the scale of threats and dangers posed to him. Therefore he lodged a complaint before the Commissioner of Police on 27.04.2017 seeking for adequate protection. Considering his complaint, the Commissioner of Police conducted discreet enquiry and revealed that the

petitioner was facing threats from his business rivals and ordered to provide personal security on payment of charges. It was extended until 30.11.2017. Thereafter it was withdrawn without appreciation of the fact that the petitioner was under threat continuously. Therefore, he approached this Court in CrI.O.P.No.27021 of 2017 for direction and this Court by an order dated 09.01.2018 directed the Commissioner of Police to consider his representation and pass appropriate orders. But the Commissioner of Police, Chennai by his order dated 21.01.2018 rejected his request with unsustainable reasons.

3. He would further submit that the case has been registered as against the petitioner in Cr.No.2666 of 2017 and thereafter it was quashed by this Court in CrI.O.P.No.6074 of 2018 by an order dated 27.02.2018. Thereafter the petitioner was threatened by one, Loganathan who claimed to be from the Samajwadi Party making extortion demands and threatening his life for the illegal demands. Therefore, he lodged complaint and on receipt of the same, the Inspector of Police, E-3 Teynampet Police Station issued in C.S.R.No.1373 of 2018. After a detailed enquiry, they registered F.I.R. in Crime No.1159 of 2018 for the offences under Sections 294(b), 384 and 506(i) I.P.C. In spite of registration of complaint, the police failed to provide necessary police protection to the petitioner. Therefore, the petitioner submitted a detailed representation to the Union Minister for Home Affairs, Government of India and the same was forwarded to the Secretary(Home), Government of Tamil Nadu by communication dated 22.03.2019. It was forwarded to the respondent requesting to take appropriate action on the representation of the petitioner. Even after receipt of the same, no steps have been taken by the respondent and the representation is kept pending without passing any orders. Therefore, the learned Senior Counsel for the petitioner prayed for direction directing the respondent to provide adequate police protection to the petitioner.

4. Per contra, the learned Additional Public Prosecutor filed counter and submitted that on the complaint lodged by the petitioner dated 27.04.2017, the Commissioner of Police, Chennai directed to provide a gunman for personal security on payment of charges to the petitioner. Thereafter discreet enquiry was conducted and found that there was no threat to the petitioner and as such it was withdrawn subsequently. Again, the petitioner approached this Court in CrI.O.P.No.27021 of 2017 and this Court by an order dated 09.01.2018 directed the Commissioner of Police, Chennai to consider his representation. As directed by this Court, the Commissioner of Police conducted enquiry and the reasons stated in his representation to provide police protection were rejected.

5. He further submitted that the said order was not at all challenged by the petitioner in any manner known to law. Further he submitted that one Balguru lodged a complaint as against the petitioner and the same was registered in Crime No.2666 of 2017 for the offences under Sections 143, 294(b), 323 and 506(i) I.P.C. In fact, the complaint lodged by the petitioner as against the said Balaguru in Crime No.2665 of 2017 was referred as mistake of fact. Thereafter the petitioner and the said Balaguru had compromised the issues and on compromise this Court quashed the F.I.R. in CrI.O.P.No.6074 of 2018.

6. He further submitted that on 20.11.2018, the petitioner lodged a complaint before the Inspector of Police, E3, Teynampet Police Station, Chennai and the same was registered in Crime No.1159 of 2018 for the offences under Sections 294(b), 384 and 506(i) I.P.C. against one, Loganathan. After investigation it was found that the said Loganathan is a Land Broker. The petitioner through the said Loganathan purchased a property and failed to give brokerage to him. Therefore, he called the petitioner through phone. He further submitted that the petitioner lodged another complaint on 09.02.2019 against his own ex-employee, Mr.Uma Maheswaran of Coimbatore and on receipt of the same, C.S.R. was issued in C.S.R.No.131 of 2019 and subsequently after conducting enquiry it was closed as action dropped on 12.02.2019 based on the compromise between the petitioner and the said Uma Maheswaran.

7. He would further submit that there is no specific threat of any kind either directly or indirectly to the petitioner by anyone. He is running a Security Agency in the name and style of M/s.Radiance Security, Annasalai, Chennai and as such there is no need of providing any security. That apart, he is also a licence holder to possess the arm of .32 bore Pistol under licence No.A113/MY/E3, which is valid upto the year 2021. In this regard, the learned Additional Public Prosecutor relied upon the judgment of this Court in W.P.(MD)No.13133 of 2011 dated 20.12.2011 in the case of S.Girinivasa Prasad Vs. the State of Tamil Nadu and others and prayed for dismissal of this petition.

8. Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

9. Admittedly, the petitioner is a business man doing mining and real estate business. Though his request was considered and the Commissioner of Police, Chennai provided a gunman for personal security on payment of charges, it was subsequently withdrawn. Again the petitioner sought for police protection, but it was not considered and as such he filed a direction petition before this Court in CrI.O.P.No.27021 of 2017

and this Court by an order dated 09.01.2018 directed the Commissioner of Police, Chennai to consider his representation. As directed by this Court, the Commissioner of Police, Chennai conducted detailed enquiry, however rejected the representation of the petitioner by an order dated 21.02.2018 for some reasons, which are extracted hereunder:

- "The reply to the Questionnaire provided by this office has been answered by you belatedly only after reminding you twice and it is also vague.
- The details furnished with regard to the threat and claim for security is not established with adequate evidence / proof.
- The dispute between Tr.Sreedhar Rao of Hyderabad and yourself seems to be of business in nature. Moreover, you have lodged a petition against him for development of land parcels in Semmenchery for a consideration of Rs.2 Crores which was later withdrawn on 18-9-2017 by you stating that the dispute was settled amicably.
- The messages of Tr.Sreedhar Rao furnished by you are not physically coercive and abusive in nature, as claimed by you. He is simply asking for registering the land from you for which the money has already been taken by you.
- You have furnished vague answers for every question which was asked from this office. Further, you have not given any concrete evidence of threat which was received by you and your office from the enemies.
- The persons from whom you face threats seem to be faceless and address-less and seem to be changing continuously. Hence, their genuineness is doubtful.
- There is already shortage of Police force in Greater Chennai Police and every constable is required to discharge public service
- You have been charge sheeted in Central Crime Branch Cr.No.2666 of 2017 u/s 143, 294(b), 323, 506 (i) I.P.C.
- The observations made in the memoranda dated 31.05.2017 and 16.10.2017 were based on the testimony of yourself and security was provided on that basis for a short time.
- You did not furnish any proof regarding the existence of threat. Hence, the security was withdrawn. Meanwhile, you have also got involved in Central Crime Branch Cr.No.2666/2017 u/s 143, 294(b), 323, 506(i) I.P.C. in which you have been charge sheeted. The complaint preferred by you against one, Tr.Balaguru has already been treated as "Mistake of Fact".

- Already point book has been placed at your residence, besides local Police are also marching regular beats covering your area to ensure your safety. We will continue this.
- The Security Branch of the State Intelligence also has advised that there is no threat to you. Detailed verification by Greater Chennai Police also confirms the same."

10. It is seen from the above, the dispute between the petitioner and one, Sreedhar Rao of Hyderabad is in business nature and later it was solved between them by amicable settlement. Further the case has been registered as against the petitioner for the offences under Sections 143, 294(b), 323 and 506(i) I.P.C. Though it was quashed on compromise, there was a complaint against the petitioner. It is also seen that threats seem to be faceless and address-less and its genuineness is doubtful. Even then, the petitioner has not chosen to challenge the said order passed by the Commissioner of Police, Chennai. Again, the petitioner requested the Union of India to provide adequate police protection and the same was forwarded to the respondent herein and it is pending. Though this Court while passing interim order directed the respondent to provide personal security at his cost till 09.06.2019, the respondent filed counter affidavit and sought for dismissal of this petition on the ground that the petitioner does not require any police protection since the threat call was received only from a person named Loganathan who is none other than a Land Broker. The petitioner purchased some property through him and failed to settle his brokerage. Therefore he phoned him and requested for his brokerage.

11. On perusal of documents it shows that the petitioner received calls only from the said Loganathan. Another complaint was lodged by the petitioner against one, Uma Mageswaran who is none other than his own ex-employee and the same was also closed as action dropped by the Inspector of Police, E-3 Teynampet Police Station on 12.02.2019 by amicable settlement between them. It shows that there is no threat from the said Loganathan or from the said Uma Mageswaran. It is also seen from the communication from the police concerned that they conducted a scientific enquiry and found that the petitioner does not require any police protection since he is running a Security Agency in the name and style of M/s.Radiance Security at Annasalai, Chennai. Further, he has also possessed gun licence for possessing .32 bore Pistol under licence No.A113/MY/E3.

12. In this regard, the learned Additional Public Prosecutor relied upon the judgment of this Court rendered in W.P.(MD)No.13133 of 2011 dated 20.12.2011 in the case of S.Girinivasa Prasad Vs. the State of Tamil Nadu and others,

wherein it is held as follows:

13. In P.R.Muralidharan vs. Swami Dharmananda Theertha Padar {2006 (4) SCC 501}, the Supreme Court held (in paragraph 12) that "the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution". But the Court cautioned that while doing so, it could not collaterally go into that question, the determination whereof would undoubtedly be beyond its domain. In a separate but concurring judgment, P.K.Balasubramaniam, J., pointed out that a writ of mandamus directing the police authorities to give protection to the person of a writ petitioner, can be issued, when the Court is satisfied that there is a threat to his person and the authorities have failed to perform their duties.

14. In Howrah Mills Co. Ltd vs. Mohd. Shamin {2006 (5) SCC 539}, the Supreme Court issued a direction to the State of West Bengal to give necessary police protection even in respect of the property of a company which was before the BIFR, in view of the fact that the properties had to be safeguarded in the interests of 6,000 workers, creditors and others. After expressing an opinion that in the case before them, the State Government could have offered protection even without insisting on payment, the Supreme Court directed the Government to charge a reasonable amount, in view of the offer made by the company itself.

15. In N.Jothi vs. The Home Secretary {MANU/TN/9756/2006}, K.Chandru, J., was dealing with a case where the petitioner sought a mandamus to forbear the respondents from withdrawing the existing security cover. After referring to the two decisions of the Supreme Court cited above, the learned Judge dismissed the writ petition on the ground that a periodical review was undertaken by the Security Review Committee comprising of very senior officers belonging to the Indian Administrative Service and Indian Police Service and that when their decision was not assailed as being motivated, there is no scope for judicial review of the decision of the Committee.

16. Therefore, from the law laid down in the above decisions, it is clear

(i) that there should be a clear threat perception, to the life and property of a person, to enable him to seek police protection;

(ii) that such perception should be based on some material worth considering;

(iii) that the Superintendent of Police should examine the request for protection on an objective basis, after collecting necessary data and

(iv) that if a decision is taken by the competent authority on a scientific basis, this Court will not easily interfere with such a decision, unless the decision is tainted.

17. If the above principles are applied to the case on hand, it will be seen that the petitioner has not made a strong factual foundation for the issue of a writ of mandamus. His pleadings disclose only an apprehension. An apprehension is different from a perception. A fearful expectation or anticipation is an apprehension and it can even be born out of imagination. But perception is the faculty of understanding things through the senses or the mind. It is cognitive. Therefore, in normal circumstances, the petitioner is not entitled to the relief prayed for.

18. But unfortunately, the third respondent has not chosen even to make a formal denial of the apprehension of the petitioner expressed in paragraphs 29 and 30 of the affidavit in support of the writ petition. The focus of the counter affidavit is only on the expenditure involved in providing security. Consequently, the third respondent has not examined the question whether there is a real threat and whether there is justification for police protection. Therefore, I am of the view that the third respondent should be directed to examine the request of the petitioner and pass appropriate orders, taking into account the above observations. Accordingly, the writ petition is disposed of, directing the third respondent to examine the request of the writ petitioner, with reference to all the attending circumstances and pass appropriate orders in accordance with law, shifting the focus from the fiscal to the physical aspects. The third respondent shall examine whether there is any threat to the life and property of the petitioner and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order.

13. The above judgment is squarely applicable to the case on hand. To consider the request of the petitioner there should be a clear threat perception to the life and property of a person to enable him to seek police protection and that such

perception should be based on some material worth considering.

14. In the case on hand, on a scientific detailed enquiry conducted by the police concerned, it has been found that the petitioner has no life threat by any person. Therefore, this Court finds that the petitioner being a businessman, though he is having rival competitors towards his business there is no life threat from anybody towards his business or from any other person. As such he does not require any police protection since he himself is running a security agency.

15. In view of the above discussions, this petition is devoid of merits and liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

lok

To

1.The Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore, Chennai - 600 004

2. The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.V.S.Senthilkumar, Advocate, S.R.No.43392

सत्यमेव जयते

Cr1.O.P.No.10760 of 2019

and

Cr1.M.P.No.5524 of 2019

SV(CO)

RRS (25/06/2019)

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