



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2019

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

W.P. (MD) No. 572 of 2014

WEB COPY

G.Arulappan

... Petitioner

Vs.

1.The Chief Secretary to
Government of Tamil Nadu,
St.Fort George,
Chennai - 09.

2.The Home Secretary to
Government of Tamil Nadu,
St.Fort George,
Chennai - 09.

3.The Director General of Police,
Beach Road,
Chennai - 600 001.

4.The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli - 627 001.

5.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

6.Tmt.Anthony Ammal,
Sub Inspector of Police,
Kottiyode Police Station,
Kanyakumari District.
Now working as
Sub Inspector of Police (Prohibition Wing)
Kuzhithurai, Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents to register a case against the 6th respondent for committing the offence under Sections 166A, 167, 168 & 511 IPC and consequently, direct the respondents to pay a compensation of Rs.5,00,000/- (Rupees Five Lakh) to the petitioner for the mental and physical agony suffered by the petitioner and damages caused to the reputation of the petitioner's family.



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For Petitioner : Mr.C.Sankar Prakash
For Respondents : Mr.R.Anandharaj,
Additional Public Prosecutor
for R.1 to R.5
Mr.S.C.Herold Singh for R.6

ORDER

This Writ Petition is filed by the petitioner seeking issuance of a Writ of Mandamus directing the official respondents to register a case against the 6th respondent for the offence under Sections 166A, 167, 168 & 511 IPC and also to direct the official respondents to pay a sum of Rs.5,00,000/-, as compensation, for the mental and physical agony suffered by the petitioner and for the damages caused to the reputation of his family.

2. According to the petitioner, he is residing at Akkarivattam Parampilveedu, Muttaiakadu, Kumarapuram Taluk, Kanyakumari District and is doing Poultry and Bakery business. On 04.05.2013, some rowdy elements in and around Kottiyode Police Station assaulted his brother, namely, Francis and in this regard, they gave a complaint before the then Sub-Inspector of Police, Kottiyode Police Station / 6th respondent, for which, a receipt was given in C.S.R.No.63 of 2013. While so, on 02.06.2013, the same persons trespassed into the poultry shop of the petitioner, with weapons; attacked the petitioner and also used obscene words to insult the modesty of his wife in front of the public. In this regard, he gave a complaint before the 6th respondent. But, the 6th respondent has not registered any case and also not taken any action against the accused persons.

3. Again, on 15.09.2013, the same persons attempted to murder the petitioner, in which, he sustained grievous injuries. The petitioner got treatment in Padmanabapuram Government Hospital and for better treatment, he was referred to Asaripallam Government Medical College Hospital. Only after this incident, the 6th respondent received a complaint from the petitioner and registered a case in Crime No.189 of 2013, as against unknown persons, though the petitioner has specifically told the names of the accused. But, on the contra, colluding with the accused persons, the 6th respondent has foisted a false case against the petitioner for the offence under Section 307 IPC and has also arrested him.

4. The grievance of the petitioner is that if the 6th respondent has taken action, by registering a complaint, for the incident that took place on 02.06.2013, the subsequent incident on 15.09.2013 would not have been occurred at all. Due to the inaction on the part of the 6th respondent to register a case against the accused, the petitioner was put into mental agony and physical suffering and therefore, he has made a representation to the



official respondents to take action against the 6th respondent. Alleging that no action was taken against her, the petitioner has filed the instant writ petition.

5. The fifth respondent / Superintendent of Police, Kanyakumari District and the sixth respondent / then Sub-Inspector of Police, Kotticode Police Station, through their respective Counsel, have filed individual counter affidavits that for the alleged incident took place on 04.05.2013, the petitioner's brother preferred a complaint before the Kotticode Police Station and the same was enquired in Petition No.63 of 2013. During the course of enquiry, the complainant reported that they compromised the matter and accordingly, the complaint was closed. With regard to the occurrence that took place on 02.06.2013, it is their stand that no such incident took place and the petitioner has never lodged any complaint before the Kotticode Police Station. Had he lodged any such complaint, as alleged, then the Kotticode Police Station would have taken action.

6. It is their further stand that on 15.09.2013, the Kotticode Police received information from Thuckalay Police that one person from Kotticode Police limit was hospitalized at Government Hospital, Padmanabhapuram, Thuckalay. Immediately, the 6th respondent went to the hospital and found that one Aswin was hospitalized in critical condition in ICU. Based on the statement given by the said Aswin's father, a case was registered in Crime No.188 of 2013, under Sections 147, 148, 294(b), 324, 506(ii) & 307 IPC, against the petitioner and five others. The petitioner was also hospitalized in the same hospital for the injuries sustained by him in the same occurrence and therefore, based on the statement given by him, a counter complaint was registered in Crime No.189 of 2013 under Sections 147, 323 & 427 IPC. Since the petitioner has not named any persons, the case was registered against ten unidentified persons.

7. In fine, it is the stand taken by the fifth and sixth respondents that no complaint was filed on behalf of the petitioner for the alleged incident took place on 02.06.2013 and only to evade from the clutches of law, the petitioner has filed this petition and therefore, they prayed for dismissing this petition.

8. At this juncture, the learned Counsel for the petitioner intervened and by referring to the receipt issued by the 6th respondent on 07.06.2013, submitted that for the complaint dated 02.06.2013, they have issued this receipt and now, they are taking a contra stand. He has also produced a copy of the hand written complaint dated 02.06.2013, wherein, the following endorsement was made:

"Sir, Received a petition and registered as CSR 96/13 on 7.6.13."

The learned Counsel has also produced a copy of the receipt dated 07.06.2013, issued in C.S.R.No.96 of 2013.

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

9. Heard the learned Counsel appearing for the respective



parties and perused the documents placed on record.

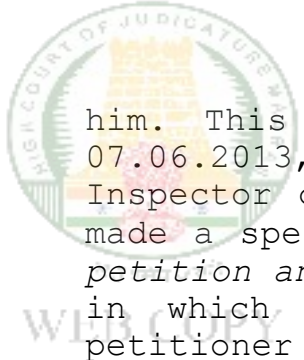
10. The main grievance of the petitioner is that an attempt was made by his opposite group to kill him on 02.06.2013 and he escaped from that attack by locking the door. He lodged a complaint on the same day by enclosing the copies of some previous complaints made by him. But, the sixth respondent / Tmt.Anthony Ammal, Sub Inspector of Police, failed to act upon the complaint dated 02.06.2013 and therefore, the subsequent incident was taken place on 15.09.2013.

11. But, the sixth respondent has filed a counter affidavit, taking a specific stand that no such complaint was lodged on 02.06.2013 and she further stated that it was a group clash between two groups and whenever complaints were received, cases were registered irrespective of the group. But in one occasion, the parties themselves have informed that they have solved their issues and therefore, the complaint in C.S.R.No.63 of 2013 was closed. This counter affidavit of the sixth respondent / Tmt.Anthony Ammal was filed on 08.12.2014. Another counter affidavit was filed on 26.10.2015, signed by the Inspector of Police, Thuckalay Circle, Kanyakumari District. On a perusal of this counter affidavit, it is seen that it was sworn-in by Tmt.Anthony Ammal, Sub-Inspector of Police, but signed by some other person. The signatures found in the counter affidavit filed on 08.12.2014 and in the counter affidavit filed on 26.10.2015 are different. This Court is unable to understand as to how a counter affidavit sworn-in by a person was signed by some other person and was filed by the prosecution agency before this Court. Such a conduct on the part of the prosecution agency has to be deprecated.

12. Be that as it may, the Superintendent of Police, Kanyakumari District, namely, Mr.N.Sreenath, has also filed a counter affidavit in the month of March, 2019, sailing with the stand taken by the sixth respondent. According to him, the Kottikode Police was not at all aware of the occurrence alleged to have been occurred on 02.06.2013 and no telephonic message to that effect was received from anybody.

13. The learned Counsel for the petitioner filed the complaint dated 02.06.2013 in the additional typedset of papers, wherein, an endorsement was made that "*Sir, Received a petition and registered as CSR 96/13 on 7.6.13*". A receipt in Serial No.297 for C.S.R.No.96 of 2013, dated 07.06.2013, was also issued to the petitioner by the sixth respondent / Tmt.Anthony Ammal, Sub-Inspector and the same was enclosed in the typedset of papers.

14. Perusal of the receipt in Serial No.297 for C.S.R.No.96 of 2013, dated 07.06.2013, would disclose that a complaint was received on 07.06.2013 from the petitioner, namely, G.Arulappan, that the opposite parties entered into his shop and quarrelled with



him. This complaint, based on which the receipt was issued on 07.06.2013, was made on 02.06.2013. Tmt. Anthony Ammal, the Sub-Inspector of Police, who issued the receipt in C.S.R.No.96 of 2013 made a specific endorsement in the complaint that "Sir, Received a petition and registered as CSR 96/13 on 7.6.13". The said complaint, in which the endorsement was made, was dated 02.06.2013. The petitioner has referred the date as 02.06.2013 at two places and the nature of the complaint is that on the date of occurrence, around 08.00 pm, the accused one John Ignasios, Aspin, Melvin and Jenu, armed with knife and stick, trespassed into his shop on previous motive, abused with filthy language and also criminally intimidated him. The petitioner / complainant is said to have prevented the attack by locking the door. The petitioner, his wife and son were inside the shop and apprehending danger to their life, they also informed the police station over phone. It is further stated in the complaint that his customers and the neighbours have witnessed the occurrence.

15. The averment in the complaint constitute a cognizable offence, but the same was treated as a petition enquiry. Even in this complaint dated 02.06.2013, the petitioner had enclosed the complaint dated 21.04.2013 lodged against the same accused; another complaint dated 04.05.2013; a receipt in C.S.R.No.63 of 2013; and the undertaking of the accused given in C.S.R.No.63 of 2013. It is clear that the guidelines issued by the Hon'ble Supreme Court in **Lalitha Kumari Vs. Government of Uttar Pradesh** reported in (2014) 2 SCC 1, for registering the case was not followed in this case. But for reasons best known, the sixth respondent / Tmt. Anthony Ammal, Sub-Inspector, is taking a stand that she has not at all received any complaint.

16. After three months, another occurrence was taken place on 15.09.2013, wherein an attempt was made as against this petitioner and the petitioner is said to have sustained grievous injury, admitted in Government Hospital, Padmanabapuram and considering the nature of injury, he was referred to Asaripallam Government Medical College Hospital and on the intimation from the Hospital, the sixth respondent registered a case in Crime No.189 of 2013, as against ten unknown persons. A reading of the first information report would show that the complaint was made by referring his opposite parties as "vjph;kDjhuh;fs;", whereas the case was registered as against ten unknown persons. On the other hand, a counter complaint was registered at the instance of the said opposite party in Crime No.188 of 2013, as the previous case to this complaint, as against the petitioner and others. Both the cases in Crime No.189 & 188 of 2013 are for the same occurrence and both the complainants were taking treatment at Asaripallam Government Medical College Hospital and both the cases were registered by the very same sixth respondent. It is not known as to how, in a case and counter, the accused were arrayed in only one case and not in the another case. Further, the case in Crime No.189 of 2013 was also referred to as mistake of facts on 22.09.2014.



17. The manner in which the sixth respondent treated the complaint of the petitioner does not satisfy the judicial conscience of this Court. The sixth respondent is also having the audacity to file an affidavit before this Court as if no such complaint was received on 02.06.2013, when, admittedly, she received a complaint from the petitioner and also issued a receipt for the same in C.S.R.No.96 of 2013. It is surprise that a counter affidavit sworn-in by her, has been signed by some other person and also filed before this Court. The Superintendent of Police has also filed an affidavit in March, 2019, without even verifying the records, that no complaint was received by the sixth respondent.

18. Chapter XI of the Police Standing Orders deal with the personal conduct of officers and PSO 110(2) reads that Police are essentially a law enforcing agency. They should enforce the law, firmly and impartially, without fear or **favour**, malice or vindictiveness. But, it, *prima facie*, appears that the sixth respondent has shown favouritism to one party.

19. Under such circumstances, this Court directs the Inspector General of Police, South Zone, to look into the issue, conduct an enquiry with regard to the aforesaid episodes and to take appropriate action against the erring officials.

20. Insofar as the petitioner's plea for compensation, this Court is of the view that the quantum of compensation, if any, has to be decided only by adducing evidence before the competent forum. Therefore, liberty is granted to the petitioner to work out his remedy for compensation, by filing necessary suit, before the competent Civil Court, if he so advised.

21. With the above observations and directions, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk
To

1.The Chief Secretary to
Government of Tamil Nadu,
St.Fort George,

<https://hcservices.ecourts.gov.in/hcservices/>
Chennai - 09.



2.The Home Secretary to
Government of Tamil Nadu,
St.Fort George,
Chennai - 09.

3.The Director General of Police,
Beach Road,
Chennai - 600 001.

4.The Deputy Inspector General of Police,
Tirunelveli Region,
Tirunelveli - 627 001.

5.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

Copy to:
The Inspector General of Police,
South Zone, Madurai.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-63792[F] dated
29/04/2019)

W.P. (MD) No.572 of 2014
29.04.2019

KK(27.07.2020) 7P 8C