



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2019

Pronounced on : 18.10.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P. (MD) No.5508 of 2019

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S.Vijayalakshmi

... Petitioner

Vs

1. Director General of Police,
Dr. Radha Krishnan Salai,
Mylapore,
Chennai - 600 004.

2. South Zone Inspector General of Police,
Race Course Colony,
Reserve line,
Madurai - 625 002.

3. Commissioner of Police,
Madurai City,
Madurai - 625 002.

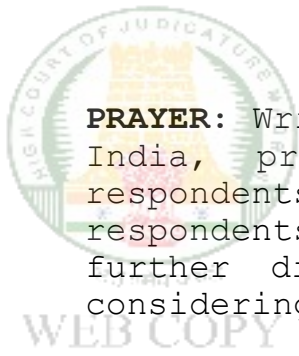
4. Deputy Commissioner of Police (L&O)
Madurai City,
Madurai - 625 002.

5. S. Deepa,
Sub Inspector of Police,
C4-Thilagar Thidal Police Station,
Madurai City,
Madurai - 625 002.

6. Krishnaveni,
Woman Head Police Constable,
C4-Thilagar Thidal Police Station,
Madurai City,
Madurai - 625 002.

7. S. Anitha,
Inspector of Police,
C4-Thilagar Thidal Police Station,
Madurai City,
Madurai - 625 002.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to take disciplinary action against the respondents 5 to 7 for gross violation of provision of law and further direct to pay compensation amount of Rs.1,00,000/- by considering the petitioner's representation dated 25.02.2018.

For Petitioner : Mr.S.R.Anbarasu

For Respondents : Mr.R.Anandharaj, APP for RR1 to 3
Mr.Veera. Kathiravan, senior counsel
for M/s.W.Pamelin, for RR5 to 7

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, directing the respondents 1 to 4 to take disciplinary action against the respondents 5 to 7 for gross violation of provision of law and further direct to pay compensation amount of Rs.1,00,000/- by considering the petitioner's representation dated 25.02.2018.

2.The learned counsel appearing for the petitioner submitted that the husband of the petitioner is doing tyre business in the name and stile of S.P.Saravanan Tyre Unit-1. The brother of her husband petitioner viz., Madhupandian also doing tyre business in the name and style of S.P.Saravanan Tyre Unit-2 just opposite to the shop of the husband of the petitioner. His brother and henchmen obtained signature in the blank stamp papers by force from her husband. Therefore, the husband of the petitioner lodged a complaint before the 5th respondent, but, no action was taken on the complaint lodged by him.

3.While being so, on 28.10.2018, when the petitioner proceeded to the shop of her husband, the said Madhupandian threatened her and also had taken video coverage in his cellphone and threatened her that the videographs would be morphed and published in the whatsapp. Therefore, the petitioner lodged a complaint before 4th respondent on 01.11.2018 as against her husband's brother and others and the cyber crime police recovered three videos from him.

4.In fact, her husband also filed a private complaint in Cr.M.P.No.4660 of 2008 before the learned Judicial Magistrate No.2, Madurai and obtained a direction to take appropriate action on his complaint. Therefore, his brother influenced the respondent police and threatened the petitioner as well as her husband to withdraw the cases lodged against him. At last, on the direction issued by the learned Judicial Magistrate, a case in crime No.950 of 2018 has been registered as against his brother. Therefore, the respondent police colluded with him and received a false complaint from him and immediately, registered a case in crime No.20 of 2018 on 12.01.2019 at about 10.15 p.m.



5.The learned counsel further submitted that when the petitioner and her husband had planned to go to their native for celebration of Pongal festival, the brother of the husband of the petitioner entered into their shop and looted their belongings including tyres. Therefore, the petitioner lodged a complaint through Police Control Room. Unfortunately, no action was taken on the said complaint. On the contrary, on 14.01.2019, at about 20.00 hours, the respondents 5 and 6 on the instructions of the 7th respondent came to their shop and arrested the petitioner on the false complaint lodged by the brother of her husband and they abused her and also had taken to their police station by force. The 5th respondent scolded her with filthy languages and behaved like animal and they also beaten her. They had taken away her mobile phone and also cash of Rs.15,000/- and they have caused injury by using small knife to the petitioner and as such, she was taken to hospital and thereafter, she was remanded to judicial custody on 15.01.2019 at about 07.00 p.m. by the Judicial Magistrate, F.T.C.No.1, Madurai. In fact, at the time of her remand, she complained everything in respect of the illegal action of the respondents 5 and 6.

6.The learned counsel further submitted that the petitioner was arrested after sunset, which is highly illegal and it is in violation of the provision of Section 46(4) of Cr.P.C. In fact, she was also kept in illegal custody for two days and they violated all the procedures laid down under the Code of Criminal Procedure. Therefore, she lodged a detailed complaint before the respondents 1 to 4 for taking appropriate action as against the respondents 5 to 7 herein.

7.Per contra, the learned senior counsel appearing for the respondents 5 to 7 filed counter and submitted that on 14.01.2019, when the 5th respondent was incharge of Thilagar Thidal police station, she received a call from '100' from the Police Control Room about 07.40 p.m., intimating that there was some problem at North Line 2nd Land Simmakal and she was directed to proceed the spot and take appropriate action. Since, the 7th respondent was on other duty, the 5th respondent rushed to the spot along with the 6th respondent and found the situation to be volatile and unless corrective action is ensured, there will be law and order problem. Therefore, she had taken custody of the petitioner at about 08.00 p.m., on 14.01.2019 only to prevent escalation of violence and took her to Thilagar Thidal police station.

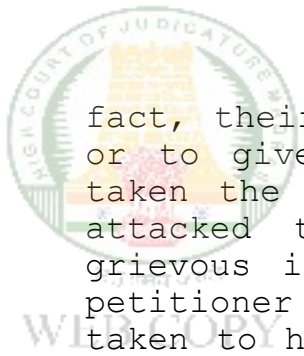
8.In fact, the petitioner was already arraigned as accused in crime No.20 of 2019 registered for the offences under Sections 448, 294(b), 323 and 506(i) of I.P.C. on the file of Thilagar Thidal Police Station dated 12.01.2019. When they proceeded to produce her before the Court, the 6th respondent was directed to make a physical checkup on the petitioner and when the 6th respondent was attempted to checkup the petitioner, she abused the 6th respondent and took a pen



knife from her bag and attempted to stab her and at that time, she herself sustained injury on her right fore finger and little finger and with a clever scheming, she attempted to cut herself by using the same knife on her right fore arm to escape from the criminal act perpetrated by her. Therefore, immediately, the 6th respondent was sent to Government Rajaji Hospital and was admitted as in-patient for assault with multiple injuries and she was discharged on 16.01.2019. The petitioner was also taken to Ganesh Nursing Home with severe bleeding and she was very arrogant and the injury sustained by her as self due to the quarrel with the police constable. Since the bleeding was severe, she was referred to Government Rajaji Hospital for further treatment and thereafter, she was discharged on 15.01.2019. Thereafter, on the complaint lodged by the 6th respondent, a case in crime No.26 of 2019 has been registered as against the petitioner for the offences under Sections 294(b), 353, 332 and 506(ii) of I.P.C., for which, the 5th respondent had taken up the investigation and examined 8 witnesses so far.

9.The learned senior counsel further submitted that already on the complaint lodged by one Madhupandian, who is none other than the brother of the petitioner's husband, a case has been registered in crime No.20 of 2019 for the offence under Sections 448, 294(b), 323 and 506(i) of I.P.C. with the allegations that he is running the tyre unit and the said unit is a common property belonging to him, his mother and his brother. His brother Saravanan quarreled with him to run a separate unit and hence, he gave a sum of Rs.22,00,000/- for doing separate business. On 16.12.2018, his brother and his wife Vijayalakshmi, the petitioner herein barged into his shop and did business of selling the tyre in his unit. On 17.12.2018, the said Madhupandian and his mother questioned the same, for which, the petitioner and her husband quarreled them with filthy languages. In fact, the complaint lodged by the petitioner's husband in crime No.950 of 2018 has been closed as Mistake of Fact, after due enquiry.

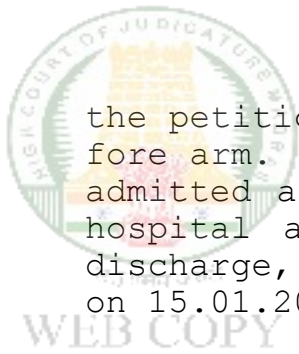
10.The learned senior counsel further submitted that the petitioner also filed a complaint and the same has been registered in crime No.24 of 2018 on the file of the Inspector of Police, All Women Police Station, Thilagar Thidal Police Station for the offences under Sections 498(A), 354(C) of I.P.C. and Section 4 of the Prohibition Harassment of Women Act, 2002. Later, a report has been submitted by the District Social Welfare Officer dated 13.03.2019 vide Roc.No.7071/A4/2018 stating that there was no dowry harassment. Thus, the petitioner and her husband have taken the law into their hands and foisted frivolous complainants and only to escape from the clutches of law, the present writ petition has been filed with ulterior motive. He further submitted that only on a call received from '100' from the Police Control Room as well as the intelligence section, R5 and R6 went to the place of occurrence and only to ensure normalcy in the troubled spot and they were forced to take the petitioner into custody around 8.00 p.m. on 14.01.2019. In



fact, their intention was to let her to go from the police station or to give her station bail. Unfortunately, the petitioner had taken the law into her hands and with the pen knife kept by her attacked the 6th respondent herein. Therefore, she sustained grievous injury and admitted into the hospital. Thereafter, the petitioner also sustained self injury and immediately, she was also taken to hospital for treatment. In fact, during her remand, she contended before the learned Judicial Magistrate that she was stabbed by one person and as such, the learned Judicial Magistrate suspected that there would be any foul play, he would have ordered for detailed enquiry and it is implausible that within the precinct of police station, anybody including police could stab an accused with a knife.

11.The learned senior counsel further submitted that the respondents 5 to 7 are women and they only handled the petitioner and arrested her and they do not violate any of the procedures contemplated under the Code of Criminal Procedure. The petitioner was taken to custody only to prevent recurrence in future and also on the call received from '100' from the Police Control Room and to prevent any untoward incident as well as to extend protection to the petitioner. However, they also sought unconditional apology before this Court for taking the petitioner into custody on 08.00 p.m. Therefore, he sought for dismissal of this writ petition.

12.The learned Additional Public Prosecutor appearing for the respondents 1 to 4 submitted by filing counter that the brother of the petitioner's husband lodged a complaint alleging that he is running a tyre unit by name SP Saravanan Tyres and the said unit is a common property belonging to him, his mother and his brother Saravanan, who is the husband of the petitioner. While being so, his brother Saravanan quarreled with him to run a separate unit and hence, he gave a sum of Rs.22,00,000/- and left for doing separate business. Again on 16.12.2018, his brother and his wife viz., the petitioner herein barged into his shop and did business of selling the tyre in his unit. On 17.12.2018, the said Madhupandian and his mother went to the shop and questioned about the same. Immediately, the petitioner and his brother scolded them with filthy languages and also threatened them with dire consequences. Thus, he lodged a complaint as against the petitioner and her husband. On the complaint, a case has been registered in crime No.20 of 2019 for the offence under Sections 448, 294(B), 323 and 506(i) of I.P.C. on 12.01.2019 by the 5th respondent herein. On the said complaint, on 14.01.2019, the investigating officer went to the place of occurrence and at about 20.00 hours, the petitioner was arrested and had taken her to police station with the assistance of the 6th respondent herein. In the police station, while she was made to physical check up by the 6th respondent, the petitioner took one pen knife from her bag and threatened them with dire consequences and also attempted to stab her. Therefore, she sustained bleeding on her right fore finger and middle finger. Immediately,



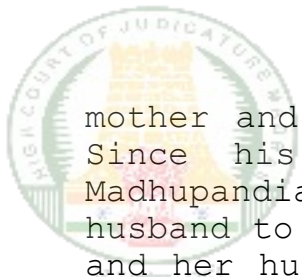
the petitioner also by using the same knife cut herself on her right fore arm. Immediately, the said constable was taken to hospital and admitted as in-patient. In fact, the petitioner was also taken to hospital and admitted for the injuries sustained by her. After discharge, she was produced before the learned Judicial Magistrate on 15.01.2019 and remanded to judicial custody.

13.He further submitted that the earlier occasion, the husband of the petitioner lodged a complaint and the same was registered in crime No.24 of 2018 and the same is pending for investigation. On the complaint lodged by the 6th respondent also, a case in crime No.26 of 2019 has been registered as against the petitioner and it is also pending for investigation. On receiving a call from '100', the 7th respondent deputed the 5th and 6th respondents with the driver and accordingly, they went to the place of occurrence on 14.01.2019 at about 08.00 p.m. Due to the turbulent situation affecting peace and tranquility in the vicinity, the petitioner was taken into custody and brought to the police station. Due to the above incident, another case has been registered as against the petitioner. After giving treatment to the petitioner due to the injury sustained by herself, she was produced before the learned Judicial Magistrate for remand.

14.He further submitted that insofar as the violation of the procedures contemplated under Section 46(4) of Cr.P.C. is concerned, it prohibits the arrest of woman after sunset, except some exceptional circumstances. Only on receiving call from '100', the police officials had gone to the place of occurrence and found that the arrest of the petitioner is necessary to avoid further incidents affecting the peace and tranquility, the arrest was effected. In fact, on the representation received from the petitioner, the enquiry was ordered in C.No.138/PG/DCP(L&O)/MC/2019 and the Assistant Commissioner of Police, Thilagarthidal issued summon to the police officials. The petitioner was also appeared on 23.03.2019 and the enquiry is pending. Therefore, the writ petition has been filed only to escape from the clutches of law and also assaulting the law enforcing officials while they were on duty and hence, the present writ petition has to be dismissed with exemplary costs.

15.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents 1 to 4 and the learned senior counsel appearing for the respondents 5 to 7 and perused the materials available on records.

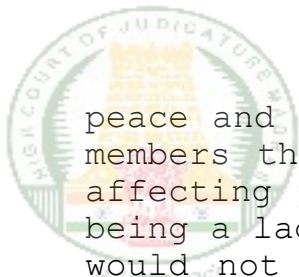
16.On the complaint lodged by one Madhupandian, who is none other than the brother of the petitioner's husband, a case was registered in crime No.20 of 2019 for the offences under Sections 448, 294(b), 323 and 506(i) of I.P.C. on 12.01.2019 on the allegation that the said Madhupandian running a tyre unit by name Saravanan Tyres, which was a common property of his



mother and his brother viz., the husband of the petitioner herein. Since his brother wanted to run a separate unit, the said Madhupandian gave a sum of Rs.22,00,000/- to the petitioner's husband to start a separate business. On 16.12.2018, the petitioner and her husband went to his shop and started to sell the tyre from his shop. It is further alleged that on 17.12.2018, when the said Madhupandian and his mother questioned the same, the petitioner and her husband scolded them with filthy language. Since the husband of the petitioner is a differently abled person, he resorted to resolve the issue by elders. Hence, the complaint. Admittedly, the occurrence had taken place on 17.12.2018, whereas the complaint lodged only on 12.01.2019. According to the respondents 5 to 7, they received a call from '100' from the Police Control Room and on the instructions of the 7th respondent herein, the respondents 5 and 6 went to place of occurrence and since they found turbulent situation affecting the peace and tranquility in the vicinity, they arrested the petitioner and brought her to the police station. While they made physical checkup on the petitioner, the petitioner took a pen knife from her bag and assaulted the 6th respondent herein. She also cut her fore arm by the same knife to create scene as if she was attacked by the police officials. For the injury sustained by the 6th respondent, she lodged a complaint as against the petitioner and the same also resulted in crime No.26 of 2019 for the offences under Sections 294(b), 353, 332 and 506(i) of I.P.C. Immediately, both had taken to hospital and admitted as inpatients and after treatment, they were discharged.

17.Now, the core question in this writ petition is whether the respondents 5 to 7 violated the procedure laid down under Section 46 (4) of Cr.P.C. or not? Even according to the respondents 5 to 7, on receipt of emergent call from '100' from the Police Control Room and on instructions of the 7th respondent, the respondents 5 and 6 went to the place of occurrence. It is pertinent to mention here that the occurrence took place on 17.12.2018, for which, the said Madhupandian lodged the complaint only on 12.01.2019. Thereafter, they went to the scene of occurrence only on 14.01.2019 at about 20.00 hours and the petitioner was arrested by them and they brought her to the police station. Only thereafter, when the petitioner was subjected to search by them, she assaulted the 6th respondent with pen knife. Admittedly, there was a dispute between the brothers viz., the husband of the petitioner and the said Madhupandian in respect of their property and their business.

18.It is seen from the allegations made in the complaint lodged by the said Madhupandian, the petitioner and her husband trespassed into the shop and sold out some tyres. When it was questioned by the said Madhupandian and his mother, the petitioner and her husband scolded them with filthy language and also threatened them with dire consequences. On receipt of the emergency call through '100' from the Police Control Room, the respondents 5 and 6 went to the place of occurrence and they found some turbulent situation affecting the



peace and tranquility. When there was a dispute between the family members that too, in respect of her shop, there is no question of affecting peace and tranquility among the public. The petitioner, being a lady and her husband is a physically challenged person, they would not have created any turbulent situation that too affecting the peace and tranquility. All the respondents categorically admitted that the petitioner was arrested at about 8.00 p.m., on 14.01.2019.

19..The relevant portion of the counter affidavit of the 5th respondent is extracted hereunder:

"3. Since the Inspector of Police was away on other duty at Avaniapuram, I informed her about the and immediately proceeded to the spot in the Control room vehicle by taking Tmt.Krishnaveni, Grade I PC, Thiru Palanichamh, SSI and the AR driver of the Control Room vehicle and that on reaching the spot I found situation to be volatile and unless corrective action is ensured, there will be law and order problem and hence I had to take into custody the petitioner herein at about 8 PM on 14.01.2019 to prevent escalation of violence and took her to Thilagar Thidal Police Station. The petitioner herein was already arrayed as accused in Crime No.20 of 2019 under Sections 448, 294(b), 323, 506(i) IPC on the file of Thilagar Thidal Police Station dated 12.01.2019.".

20.The relevant portion of the counter affidavit of the 6th respondent is extracted hereunder:

"3. On finding quarrel in the occurrence place and to prevent escalation of violence, the Sub Inspector of Police took into custody the petitioner herein at about 8 PM on 14.01.2019. The petitioner herein was already arrayed as accused in Crime No.20 of 2019 under Sections 448, 294(b), 323, 506(i) IPC on the file of Thilagar Thidal Police Station and the Sub Inspector of Police directed us to complete the formalities to enable us to take the accused for remand before the learned Judicial Magistrate.".

21.The relevant portion of the counter affidavit of the 7th respondent is extracted hereunder:

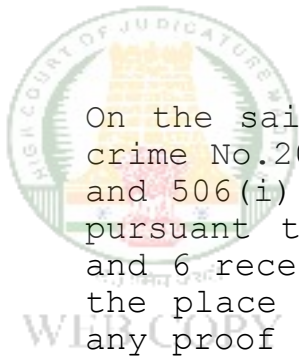
"3.It is respectfully submitted that I was deputed to Avaniapuram and other places in Madurai District on special bandobust duty relating to Jallikattu events from 14.01.2019 to 17.01.2019 on the orders of the Commissioner of Police, Madurai City and that I was



posted at Vadivasal at Avaniapuram for the Jallikattu event scheduled on 15.01.2019 and hence I could not move away from the spot. It was informed by Tmt.Dheepa, the Sub Inspector of Police around 07.40 PM on 14.01.2019 that she is proceeding to North Line 2nd Lane, Simmakal in Control Van on receiving information from the Control Room through '100 call' as well as from the about Intelligence Section by taking Tmt.Krishnaveni, Grade I PC, Thiru.Palanivhamy, SSI and the AR driver of the vehicle and that the Sub Inspector of Police further informed her that the situation at the occurrence place was volatile and that she had to take into custody Tmt.Vijayalakshmi, the petitioner herein at about 8 PM on 14.01.2019 to prevent escalation of violence. In-fact the Sub Inspector further informed me that the petitioner was arrayed as an accused in Crime No.20 of 2019 under Sections 448, 294(b), 323, 506(i) IPC on the file of Thilagar Thidal Police Station dated 12.01.2019. In instructed her to strictly follow the mandate of Hon'ble Supreme Court while arresting a woman. I was also informed later that with no other option and with a view to avert further incident, the Sub Inspector of Police had to take the petitioner into custody and brought her to the Police Station with the assistance of Krishnaveni, Woman Police Constable and other police person in the control room van sent from the Police Control Room at 20.30 hours.".

22.Perusal of the said averments would clearly show that there was no quarrel about the fact that the petitioner was arrested only on 14.01.2019 at about 08.00 PM. Only thereafter, the police officials made search on her and according to the prosecution, the petitioner attacked the 5th respondent by the pen knife and she also cut her fore arm by herself. It cannot be believed that while making search on her, she took the pen knife and assaulted the 6th respondent. If at all, she intended to assault the police officials, she would have assaulted them even at the time of her arrest. Therefore, it is clear that the respondents 5 to 7 concocted the cock and bull story and remanded the petitioner into judicial custody.

23. On a perusal of the records would show that on the complaint lodged by the petitioner as against the said Madhupandian, FIR in crime No.950 of 2018 has been registered on 25.12.2018 itself. Subsequently, it was closed as Mistake of Fact. Earlier, on the complaint of the petitioner dated 14.12.2018, one another FIR has been registered in crime No.24 of 2018 on the file of the All Women Police Station, Thilagar Thidal for the offences under Sections 498(A), 354(C) of IPC and Section 4 of the Prohibition of Harassment of Women Act, 2002 against the said Madhupandian and others. After the said complaint, the said Madhupandian lodged a complaint on 14.01.2019 for the occurrence took place on 17.12.2018.



On the said complaint, the respondents 5 to 7 registered a case in crime No.20 of 2019 for the offences under Sections 448, 294(B), 323 and 506(i) of I.P.C. It is the case of the respondents 5 to 7 that pursuant to the said occurrence, on 14.01.2019, the respondents 5 and 6 received a call by '100' from the Police Control Room went to the place of occurrence. However, the respondents did not produce any proof to show that they received call by '100' from the Police Control Room and also did not state that from whom they received information about the incident. Therefore, there is absolutely no circumstances warranted them to arrest the petitioner at about 20.00 hours on 14.01.2019 that too for the occurrence took place on 17.12.2018. The procedure contemplated under Section 46(4) of Cr.P.C. prohibits the arrest of a woman after sunset. It is relevant to extract the provision of Section 46(4) of Cr.P.C., which reads thus:

"46.Arrest how made. -

1. to 3.

4.Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."

24.According to the said provision, if any exceptional circumstances arise to arrest a woman, the police officer shall make a written report and obtain prior permission from the concerned Judicial Magistrate to arrest a woman after sunset. In the case on hand, no circumstances established and even assuming that there was a circumstance to arrest the petitioner, the respondents 5 to 7 did not make any written report to the concerned Judicial Magistrate and failed to obtain any prior permission before the arrest of the petitioner herein. Therefore, the respondents 5 to 7 willfully violated the procedure laid down in the criminal procedure code to satisfy the said Madhupandian.

25.In this regard, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Division Bench of the Hon'ble High Court of Bombay in Writ Petition No.1142/2018 dated 10.05.2018, wherein, the High Court of Bombay has held as follows:

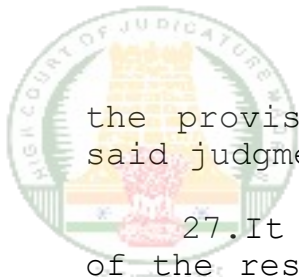
"The case of the petitioner is squarely covered by the said judgment. Though the learned counsel for the CBI has placed reliance on the judgment of the Rajasthan High Court, taking a view that the **provisions of Section 46 (4)** are merely procedural in nature and though they are expected to be followed honestly but there may be cases where it is impossible to fulfill the requirement and that each and every contravention would not entitle for declaration that



the said act was illegal, is not correct view and in true application of **Section 46(4) of the Code**. The Division Bench of this Court in **Mrs. Bharti S. Khandhar Vs. Maruti Govind Jadhav**, PSI and Ors.; (supra), has clearly held the consequence for non observance of the mandate prescribed under **Section 46(4) of the Code** and squarely covers the facts of the present case. The divergent views relied upon by the learned counsel for the CBI in judgments in **Rakesh Chand Vs. State of NCT of Delhi**, and **Smt. Sandhya Upmanyu Vs. Station House Officer, ACB & Ors.**; supra, where it has been held that exigency of situation will have to be taken into account before it can be held that arrest of a woman after sunset is in contravention of **Section 46(4) of the Code**. However, in the light of clear pronouncement of this Court in **Mrs. Bharti S. Khandhar Vs. Maruti Govind Jadhav**, PSI and Ors.; (supra), the arrest of the petitioner is liable to be declared as illegal and in utter violation of the **provisions contained in Section 46(4) of the Code**.

16. The precious guarantee of Life and Liberty as enshrined in Art. 21 of Constitution of India available to a citizen of this Country can not be denied to a convict, an accused in custody and surely not to a suspect who is sought to be converted to an accused on investigation and then from an accused to a convict on trial. It is an obligation upon State to ensure that there is no infringement of indefeasible right of citizen to life and liberty, which he can not be deprived of without following the procedure established by law. The Code of Criminal Procedure which outlines the manner and to the extent to which a person can be denuded of his liberty, hence, needs a strict compliance. Any deviation from the prescribed procedure in the matter of arrest can therefore, be not countenanced and is liable to be declared as illegal."

26. In the case on hand, the petitioner was arrested at about 8 PM on 14.01.2019 by the 5th and 6th respondents on the instruction given by the 7th respondent herein in pursuant to the FIR registered in crime No.20 of 2019. Though the petitioner was arrested by the Women Sub Inspector of Police and a woman constable, by relying upon the mandate contained in Section 46(4) of Cr.P.C., the action of the respondents 5 to 7 in arresting the petitioner at 20.00 hours on 14.01.2019 is in violation and utter disregard to Section 46(4) of Cr.P.C., and hence, the same is illegal and cannot be countenanced. The arrest was in flagrant violation of Section 46(4) of Cr.P.C., and hence, the same is illegal and cannot be countenanced. The arrest of the petitioner by the respondents 5 to 7 is in utter violation of



the provisions of Section 46(4) of Cr.P.C. Therefore, the above said judgment is squarely applicable to the case on hand.

27. It is also seen from the counter affidavits filed on behalf of the respondents 5 to 7, they have not signed in the affidavits. It is also noted that without signature of the deponents, the Advocates attested the counter affidavits. It is very unfortunate to state here that this kind of practices by the learned counsels can be avoided and the respective counsels, without even verifying the counter affidavits as to whether it is signed or not, mechanically attested the counter affidavits filed by the respondents 5 to 7. Therefore, the counter affidavits filed by the respondents 5 to 7 are not valid in the eye of law. Though the counter affidavits have not been signed by the respective respondents, this Court has taken into consideration the same and found that all the respondents categorically stated that the petitioner was arrested at about 20.00 hours on 14.01.2019. They further averred that they tendered their unconditional apology for the illegal arrest of the petitioner violating the procedures contemplated under Section 46(4) of Cr.P.C., The learned senior counsel appearing for the respondents 5 to 7 also submitted that the respondents 5 to 7 have no ulterior motive to arrest the petitioner at about 20.00 hours. In order to prevent the untoward incident as well as to extend the protection to the petitioner, the petitioner was arrested.

28. However, the precious guarantee of Life and Liberty as enshrined in Art. 21 of Constitution of India available to a citizen of this Country can not be denied to a convict, an accused in custody and surely not to a suspect who is sought to be converted to an accused on investigation and then from an accused to a convict on trial. It is an obligation upon State to ensure that there is no infringement of indefeasible right of citizen to life and liberty, which he can not be deprived of without following the procedure established by law. In such circumstances, the action of the respondents 5 to 7 in arresting the petitioner at about 20.00 hours on 14.01.2019 in pursuant to the crime No.20 of 2019 registered for the offence under Sections 448, 294(b), 323 and 506(i) of I.P.C. is in violation and utter disregard to Section 46(4) of Cr.P.C. and hence, the arrest of the petitioner is declared as illegal. Therefore, the respondents 5 to 7, who are responsible for the flagrant violation of the provision of Section 46(4) of Cr.P.C., are liable for the disciplinary proceedings.

29. In view of the above discussion, this writ petition is allowed. The respondents 1 to 4 are directed to initiate disciplinary proceedings against the erring officers viz., respondents 5 to 7 in accordance with law for flagrant violation of the statutory provisions. The respondents 1 to 4 shall pay costs of the petitioner within a period of eight weeks from



the date of receipt of a copy of this order and they are at liberty to recover the said cost from the respondents 5 to 7, who are responsible for violations, as may be concluded after disciplinary proceedings.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. Director General of Police,
Dr. Radha Krishnan Salai,
Mylapore,
Chennai - 600 004.
2. South Zone Inspector General of Police,
Race Course Colony,
Reserve line,
Madurai - 625 002.
3. Commissioner of Police,
Madurai City,
Madurai - 625 002.
4. Deputy Commissioner of Police (L&O)
Madurai City,
Madurai - 625 002.
5. Sub Inspector of Police,
C4-Thilagar Thidal Police Station,
Madurai City,
Madurai - 625 002.
6. Woman Head Police Constable,
C4-Thilagar Thidal Police Station,
Madurai City,
Madurai - 625 002.
7. Inspector of Police,
C4-Thilagar Thidal Police Station,
Madurai City,
Madurai - 625 002.



8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.S.R.ANBARASU, Advocate (SR-92892[F] dated 18/10/2019)

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Arul

Order made in
W.P (MD) No.5508 of 2019
18.10.2019

_KK/SAR/01.11.2019/14P-11C/