



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.01.2019

Delivered on: 13.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.A. (MD) No.1544 of 2018

V.Kumaravel

: Appellant/Petitioner

Vs.

1.The Director General of Police,
Government of Tamil Nadu,
Chennai.

2.Jangid,
A.D.G.P.,
Vigilance Officer,
Tamil Nadu State Transport Corporation,
Nagercoil.

3.Abaskumar,
Inspector General of Police,
Intelligence II,
Chennai.

4.Johnrose,
Deputy Superintendent of Police,
Metro Crime,
Chennai.

: Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order made in W.P.(MD) No.11204 of 2011, dated 28.03.2018.

Prayer in WP(MD). 11204/ 2011 :

To issue a Writ of Mandamus to direct the respondents 1 to 4 jointly to compensate Rupees One Crore for illegal detention and for the purpose of uplifting of the petitioner's social and departmental credibility in the interest of justice and equity. (Prayer amended vide Court Order dt.23/11/17 in WMP(MD)16354/17).

For Appellant : Mr.B.Janath Ahmed

For Respondents : Mr.V.R.Shanmuganathan,
(1 to 3) Special Government Pleader

**JUDGMENT****S. S. SUNDAR, J.**

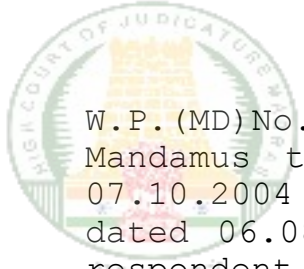
This Appeal is preferred by the petitioner in W.P.(MD)No.11204 of 2011 as against the order of the learned Single Judge dismissing the Writ Petition for issuing a Writ of Mandamus directing the respondents 1 to 4 jointly to compensate a sum of Rs.1 Crore for the illegal detention of the appellant and for the purpose of uplifting the appellant's social and departmental credibility.

2.The appellant was appointed as a Sub Inspector of Police on 01.03.1996. It is contended by the appellant that he was transferred and posted to four police stations within a short span of time at the instance of fourth respondent who was then the Inspector of Police. It is the case of the appellant that a false case was foisted against the appellant in Crime No.135/2000 on the file of the Soolakarai Police Station for offences under Sections 353 and 506 (ii) of I.P.C. The criminal complaint against the appellant was given by a driver of Virudhunagar District Superintendent of Police. The allegation in the complaint is that the appellant came to the Camp Office of Superintendent of Police and wanted to see the Superintendent of Police urgently on 01.08.2000 at 09.30 p.m. It was then alleged that the appellant enquired with the complainant when he was preparing the official car for the District Superintendent of Police and shouted at him for not listening to him. It was further alleged that the appellant instead of asking the police constable who is in charge of reception compelled him to respond and threatened him that he would face the consequences. As a matter of fact, the appellant himself was given a charge-memo in connection with an incident on the same date and time where he was stated to have shouted at the District Superintendent of Police when he met him in connection with his own grievance against the fourth respondent. It is admitted that the appellant went to the office of the third respondent to report about the harassment meted out by the fourth respondent. It is not in dispute that the appellant was arrested while he was in uniform on the basis of the complaint that was registered in Crime No.135 of 2000 and remanded. It is the case of the appellant that he was put to untold sufferings and humiliations on account of such illegal detention and that his right to decent life and liberty under Article 21 of the Constitution of India are infringed. Though the prayer originally in the Writ Petition was for issuing a Writ of Mandamus directing the respondents 2 to 4 jointly to compensate the appellant for Rs.1 Crore for the purpose of uplifting the appellant's social and department credibility in the interest of justice and equity, the prayer was amended as one for issuing a Writ of Mandamus directing the respondents 1 to 4 jointly to compensate the appellant for a sum of Rs.1 Crore for illegal detention and for the purpose of uplifting the appellant's social and departmental credibility.



3. The Writ Petition was opposed by all the respondents. Separate and independent counter affidavit has been filed by respondents 2, 3 and 4. The fourth respondent filed a counter affidavit denying the allegations. It is not in dispute that the criminal complaint was withdrawn and the appellant was discharged from the criminal case on the basis of the memo filed by the department. However, it was contended in the counter affidavit that the dismissal of the criminal case was not on merits but due to the lenience shown by the department and that therefore, payment of compensation cannot be directed. It was further contended by the fourth respondent that the Writ Petition is not maintainable as the appellant can approach this Court under Article 226 of the Constitution of India only if his fundamental right is infringed. The third respondent's counter is the same as that of the fourth respondent. The second respondent filed a counter pointing out that the appellant cannot take advantage of the lenience shown in favour of the appellant to withdraw the criminal complaint and that the Writ Petition which is filed only in 2011 and not immediately in 2001 or within a reasonable time is liable to be dismissed. The Writ Petitioner has relied upon the report of the then Deputy Inspector General of Police, Madurai Range, by name Mr.P.Mahendran, dated 15.07.2002 and the reports of two other Deputy Inspector General of Police dated 02.02.2007 and 03.05.2007. The Writ Petition was dismissed by accepting the case of the department that the criminal case registered against the appellant was withdrawn out of magnanimity and showing mercy on the appellant and that the appellant cannot claim that the criminal case registered against him was a false case. Stating that mere withdrawal of criminal case would not indicate the criminal case was a false one, the learned Judge further observed that the appellant can claim compensation in exercise of power under Article 226 of the Constitution of India only if there is any infringement of petitioner's fundamental right. Aggrieved by the same, the above appeal has been preferred by the appellant.

4. The learned Counsel appearing for the appellant submitted that the appellant was put to much hardship and harassment by the respondents 2 and 3 and suffered irreparable injury. It is further stated that the appellant was illegally detained in violation of the principles of natural justice and fundamental rights. The prime contention is that the illegal detention of the appellant while he was in police uniform is a serious incident affecting the fundamental right guaranteed to the appellant under Articles 14 and 21 of the Constitution of India. The learned Counsel appearing for the appellant relied upon the arrest report and the reports of three Deputy Inspector General of Police who have conducted a discreet enquiry and found that the conduct of the fourth respondent was high-handed and the appellant was put to humiliations by the fourth respondent with motive. The learned Counsel appearing for the appellant relied upon the judgment in STC No.3512 of 2001 in continuation of the complaint that was registered in Crime No.135 of 2000 on 01.08.2000. The appellant earlier filed a Writ Petition in



W.P.(MD)No.7210 of 2006 for issuing a Writ of Certiorarified Mandamus to quash the proceedings of the first respondent dated 07.10.2004 confirming the order passed by the second respondent dated 06.08.2003 in turn confirming the order passed by the third respondent in his proceedings dated 14.05.2003 and to direct the respondents to include the appellant's name in the 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2005-2006 published by the first respondent in his proceedings dated 05.07.2005. It is to be noted that in connection with the incident dated 01.08.2000 which was the subject matter of the criminal case, a departmental action was also initiated. From the show-cause notice issued to the appellant, it is seen that the disciplinary proceedings was not in relation to any misbehaviour with the driver of District Superintendent of Police. However, the disciplinary proceedings was initiated by issuing charge memo under Rule 3 (a) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, alleging that on 01.08.2000 the appellant came to the camp office of the Superintendent of Police to present his grievance and ask the Superintendent of Police in a high-pitched tone whether he or Mr. John Rose (4th respondent) was the Superintendent of Police of the District. It was further stated in the charge-memo that the appellant refused to obey the instructions and hence, this was reported by the Superintendent of Police as unbecoming conduct of the appellant. It is not in dispute that the enquiry officer found the appellant guilty of charges and ultimately, the punishment was set aside by a learned Single Judge of this Court by allowing the Writ Petition in W.P.(MD)No7210 of 2006 on 23.04.2009. The prayer regarding mandamus was also allowed and it is held that the appellant was entitled to be included in 'C' list of Sub Inspector of Police fit for promotion as Inspector of Police for the year 2005-2006 published by the first respondent in his proceedings dated 05.07.2005.

5. From the sequence of events, the following facts can be gathered. A complaint was given by the driver of District Superintendent of Police, Virudhunagar, on 01.08.2000 before the Soolakarai Police Station as if the appellant prevented him from doing his official duty and threatened him with dire consequences, because the complainant Driver could not help him to see the Superintendent of Police without waiting. Based on the complaint, at 00.30 hours on 02.08.2000, the appellant was arrested and taken into custody while he was in uniform. It is stated in the complaint that the offence was committed at 21.30 hours on 01.08.2000. The appellant was brought to Soolakarai Police Station (Rural) at 01.00 a.m. on 02.08.2000. It is also admitted that he was remanded to judicial custody on the same day. It is the consistent case of the appellant that a false criminal case was foisted and he never committed any offence as alleged in the criminal complaint which resulted in registration of a case in Crime No.135 of 2000 on the file of the Soolakarai Police Station. In this connection, the appellant also made a representation for an enquiry alleging that the fourth respondent has acted in a high-handed manner during his

tenure as the immediate superior officer of the appellant.

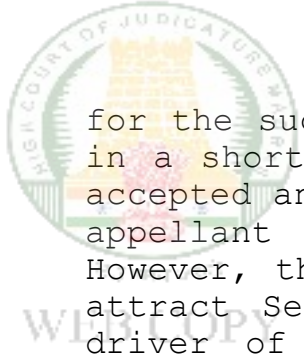
6. On behalf of the Station Inspector of Police, a memo was filed by the prosecution under Section 321 of Cr.P.C. on 21.10.2002 before the Judicial Magistrate II, Virudhunagar in C.C.No.3512 of 2001. As per the memo, it was requested by the Assistant Public Prosecutor that the learned Judicial Magistrate - II was requested to permit the prosecution to withdraw the criminal case. On the basis of the said memo, the appellant was discharged from the criminal case. But, subsequently, the Deputy Inspector General of Police, Madura Range, Madurai, submitted a detailed report in W.P. (MD)No.7210 of 2006 which was pending before this Court. In the said report, it was remarked as follows:

"6. It is submitted that as per instructions of Chief Office departmental action should have been initiated against Sub Inspector of Police for the facts furnished in the FIR in Cr.No.135/2000, since the criminal case against Sub Inspector of Police has been withdrawn. But, inasmuch as the real incident of questioning the Superintendent of Police, Virudhunagar in loud voice took place on 01.08.2000 has been recorded in the show cause notice issued by Deputy Inspector General of Police, Madurai Range, the facts furnished in the FIR in Cr.No.135/00 u/s 353, 506(II) I.P.C. of Soolakarai P.S. registered on the complaint of NK 1913 Thiruvassagam would be considered as falsehood and no departmental action could be initiated against Sub Inspector of Police by taking into account of registration of case under any circumstance. Moreover, the connected Case Diary file reveals that no sanction order was obtained from the Deputy Inspector General of Police before filing charge sheet in the court against the Sub Inspector of Police by the Inspector of Police by the Investigating Officer. The Xerox copy of the CD file in Soolakarai P.S., Cr.No.135/2000 is also sent herewith for ready reference."

7. Again the Deputy Inspector General of Police, Madurai Range, by name Mr.A.Kalimulla Khan, I.P.S. submitted a report. All the reports invariably reveal that the criminal case that was registered against the appellant was motivated and it was at the instance of the fourth respondent against whom the appellant had raised serious allegations.

8. The fact that the appellant was arrested within 30 minutes of the incident happened on 01.08.2000 is not in dispute and he was in police uniform at the time when he was arrested.

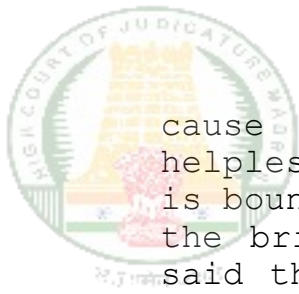
9. The question whether the appellant had committed the offence, as per the complaint on 01.08.2000 can be answered if one have close scrutiny of events and the reports of the superior officers. It appears that the appellant visited the camp office of the District Superintendent of Police, Virudhunagar on 01.08.2000 in connection with his personal grievance against the fourth respondent. The grievance against the fourth respondent is that he was responsible



for the successive transfer of appellant to four different stations in a short span of time. Since the complaint was not immediately accepted and the third respondent was reluctant, it appears that the appellant was frustrated and an emotional outburst was possible. However, the allegation in the complaint in Crime No.135 of 2000 to attract Section 353 and 506(ii) of IPC is that he prevented the driver of the District Superintendent of Police to perform his official duty and threatened him. Since the charge memo does not contain the offence that was reported by the driver of the District Superintendent of Police, Virudhunagar it can be safely concluded that the criminal complaint was unwarranted and it was intended for teaching a lesson to the appellant who raised his voice while addressing his grievance against another superior officer. Hence, this Court can come to the conclusion that the appellant was arrested by foisting a false case. Hence, the appellant was detained illegally on 02.08.2000 when he was arrested on 02.08.2000. Article 21 has now been expanded by the Hon'ble Supreme Court to include the right to life, right to livelihood, right to decent living and right to liberty. Illegal detention certainly infringes the constitutional right guaranteed to every one of the citizens under Article 21 of the Constitution of India. Hence, the conclusion of the learned Single Judge that there had been no infringement of appellant's fundamental right in any manner and that the Writ Petition filed by him without establishing that his fundamental right had been infringed cannot be sustained.

10.The learned Counsel appearing for the appellant relied upon a judgment of the Hon'ble Supreme Court in **Mehmood Nayyar Azam v. State of Chhattisgarh and others** reported in **(2012) 8 SCC 1 : (2012) 3 SCC (Cr.) 733**. The appellant before the Hon'ble Supreme Court was a Doctor who has been falsely implicated in multiple criminal cases and the appellant was found helping the weaker sections of the society against local coal mafia and others. The Hon'ble Supreme Court found that the appellant was spreading awareness against the exploitation of weaker and marginalised sections of society and became a victim of the local coal mafia, police and persons whose interests were being affected thereby. It was further found that pursuant to the criminal cases lodged against the appellant, the individual was humiliated in police custody. Allowing the appeal the Hon'ble Supreme Court has observed as follows:

"48.On a reflection of the facts of the case, it is luculent that the appellant had undergone mental torture at the hands of insensible police officials. He might have agitated to ameliorate the cause of the poor and the downtrodden, but, the social humiliation that has been meted out to him is quite capable of destroying the heart of his philosophy. It has been said that philosophy has the power to sustain a man's courage. But courage is based on self-respect and when self-respect is dented, it is difficult even for a very strong minded person to maintain that courage. The initial invincible mind paves the path of corrosion. As is perceptible, the mindset of the protectors of law appears to



cause torment and insult and tyrannize the man who is helpless in custody. There can be no trace of doubt that he is bound to develop stress disorder and anxiety which destroy the brightness and strength of the will power. It has been said that anxiety and stress are slow poisons. When torment is added, it creates commotion in the mind and the slow poisons get activated. The inhuman treatment can be well visualized when the appellant came out from custody and witnessed his photograph being circulated with the self-condemning words written on it. This withers away the very essence of life as enshrined under Article 21 of the Constitution. Regard being had to the various aspects which we have analysed and taking note of the totality of facts and circumstances, we are disposed to think that a sum of Rs.5.00 lacs (Rupees five lacs only) should be granted towards compensation to the appellant and, accordingly, we so direct. The said amount shall be paid by the respondent State within a period of six weeks and be realized from the erring officers in equal proportions from their salary as thought appropriate by the competent authority of the State."

11. The reports of three Superior Officers would certainly help the appellant to conclude that the minimum procedure was not followed when the appellant was detained illegally. Even the guidelines of the Supreme Court in **Bhajan Lal's** case was not followed when he was arrested and remanded. The illegal detention of the appellant is definitely an act of humiliation affecting the fundamental rights of the appellant guaranteed under Article 21 of the Constitution of India. For awarding compensation for the damage caused to the appellant, the Writ Petition may not be appropriate in all cases where the issue involves disputed facts. However, the pride, moral and dignity of the police officers cannot be compromised unmindful of the evil consequences. However, we cannot accept the contention of the appellant that he is entitled to Rs.1 Crore by way of compensation. Having regard to the overall circumstances, this Court is of the view that the appellant is entitled to a compensation of Rs.5,00,000/- (Rupees Five Lakhs only) from the first respondent State who in turn can fix the liability by proceeding against the fourth respondent departmentally if the State so desires. Accordingly, the Writ Appeal is partly allowed and disposed of accordingly. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Director General of Police,
Government of Tamil Nadu,
Chennai.
2. The Additional Director General of Police,
Vigilance Officer,
Tamil Nadu State Transport Corporation,
Nagercoil.
3. The Inspector General of Police,
Intelligence II,
Chennai.
4. The Deputy Superintendent of Police,
Metro Crime,
Chennai.

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JUDGMENT IN
W.A. (MD) No.1544 of 2018
13.06.2019

CS: (26/06/2019) 8P 6C