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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.12.2019
CORAM:
THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.(MD) No.18567 of 2019

1. Rafeekabeevi
2. Mohamed Abduk Kader
3. Hajamoideen ... Petitioners

Vs.

1. The Superintendent of Police
   Tirunelveli, Tirunelveli District

2. The Inspector of Police
   Pettai Police Station
   Tirunelveli District ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to to direct the second respondent not to harass the petitioners without due process of law

For Petitioners : Mr.C.Susi Kumar
For Respondents No.1 & 2 : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to direct the second respondent not to harass the petitioners without due process of law.

2. The learned Additional Public Prosecutor appearing for the respondent police submits that in respect of complaint given by one Asan Fathima with regard to the missing of her minor daughter named Apsana Meera aged about 17 years a case in Crime No.266 of 2019 has been registered for the offences under Section 'Woman Missing' by the second respondent police. He would further submit that during enquiry , it transpired that the son of first and second petitioner and the grand son of the third petitioner one Asardeen has kidnapped the victim and the petitioners were called for enquiry. During enquiry they gave an undertaking that they will produce the victim girl within two days other than that they have not harassed the petitioners.

3. At this juncture, the learned counsel for the petitioner submitted that it is a case of elopement and the said Asarudeen has taken the victim girl and their whereabouts are not known to the

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petitioners. However the respondent police is harassing the petitioner under the guise of enquiry.

4. It is the grievance of the petitioners that the respondent police has been harassing them under the guise of an enquiry/investigation and hence, has invoked the inherent powers of this Court under Section 482 of Cr.P.C.

5. An enquiry into a non cognizable offence or a cognizable offence is the unfettered powers of the Investigation Officers so long as the power to investigate/enquire into these offences are legitimately exercised within the frame work of Chapter XII of the Code of Criminal Procedure. Though the Code of Criminal Procedure empowers the Magistrate to be a guardian in all the stages of the police investigation, there is no power envisaging him to interfere with the actual investigation or the mode of investigation. It is in this background that numerous petitions complaining of harassment are being reported and filed before this Court seeking for directions to refrain the police officials from harassing the persons named in a complaint.

6. This Court, exercising its power under Section 482 of the Criminal Procedure Code normally would not interfere with the investigation conducted by a police officer. Nevertheless, it would also not turn a blind eye to instances of harassment by the police under the guise of investigation is brought to its notice.

7. In the present case in hand, the petitioners have complained of harassment by the police based on a complaint and seek for this Court's intervention by way of a direction. The term 'harassment' by itself has a very wide meaning and hence, what could be harassment to the petitioner may not be the same to the police officer.

8. In order to circumvent such situations, the following guidelines are issued:

a) While summoning any person named in the complaint or any witness to the incident complained of, the police officer shall summon such person through a written summon under Section 160 Cr.P.C., specifying a particular date and time for appearing before them for such an enquiry/investigation.

b) The respondent police is directed to serve summons mentioning the CSR number, date of complaint and the name of the complainant

c) The minutes of the enquiry shall be recorded in the general diary/station diary/daily diary of the police station.

d) The police officer shall refrain himself or herself from harassing persons called upon for enquiry/investigation.

e) The guidelines stipulated for preliminary enquiry or registration of FIR by the Hon'ble Supreme Court in **Lalita Kumari**

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Vs. Government of Uttar Pradesh and others [2014 (2) SCC (1)] shall be strictly adhered to.

10. With the above observations and direction, the Criminal Original Petition stands disposed off. Further if it is found that the victim girl has been subjected to any sexual assault, the respondent shall conduct investigation and alter the FIR in accordance with law.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Superintendent of Police
   Tirunelveli, Tirunelveli District

2. The Inspector of Police
   Pettai Police Station
   Tirunelveli District

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

+1 CC to Mr.C.SUSIKUMAR, Advocate (SR-104801[F] dated 13/12/2019)

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