

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.1026 of 2013
(heard through VC)

M.S.Shahul Hameed

... Petitioner

- Vs
- 1.The Government of Tamil Nadu
Rep. by its Secretary
Home Department
Fort St. George, Chennai - 9
 - 2.The Commissioner of Police
Commissionerate, Egmore
Chennai - 8
 - 3.Ilayaraja
Sub-Inspector of Police
E-1 Mayilapore Police Station
Chennai
- ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondent Nos.1 and 2 to take appropriate departmental and criminal action against the 3rd respondent contemplated PSO 81 and in view of the judgment of the Apex Court, 1997(1) SCC Page 46 and to direct the respondents to provide compensation as Rs.5,00,000/-.

For Petitioner : Mr.P.Vijendran

For Respondents: Mr.V.Shanmuga Sundar,
Spl. GP for R1 & R2
Mr.K.Rajendra Prasad for R3

O R D E R

The petitioner has sought for a Writ of Mandamus, directing the respondents 1 and 2 to take appropriate departmental and criminal action against the 3rd respondent as contemplated under PSO 81 and in view of the judgment of the Apex Court reported in 1997(1) SCC Page 46 and also for a direction to the respondents

to provide compensation of Rs.5,00,000/- to the petitioner.

2. The case of the petitioner is that, he was married in the year 2002. His wife's sister i.e. sister-in-law was also staying with him in the same house. It is stated that the family situation compelled and pushed him to marry his sister-in-law Shifa Begum. The marriage was also said to be registered. However, the mother of the said Shifa Begam i.e. mother-in-law of the petitioner, had lodged a complaint with the third respondent, complaining that her daughter was missing. A case was registered in Crime No.2084/12.

3. Based on the complaint, the third respondent had summoned the petitioner to the police station, who, according to the petitioner, had beaten him up, causing severe and serious injuries all over the body. Shifa Begam was also present at that point of time and she was threatened to go along with her mother though she refused to go. The petitioner had taken treatment at Government General Hospital and also said to the hospital authorities that he was beaten by the police. A telegram was sent to the Commissioner of Police, Chennai, to take action against the third respondent and also to rescue Ms.Shifa Begam. The petitioner also filed a habeas corpus petition in H.C.P. No.2619/2012, to produce her wife. She was produced before the court and this court, after enquiry, sent her along with her mother upon her wish.

4. The petitioner states that, as per Muslim rites and customs, he is entitled to marry more than one wife and that the police has no right to interfere with his personal right. Therefore, he has sought for a direction to take departmental and criminal action against the third respondent and also to pay him a compensation of Rs.5,00,000/- for the harassment undergone by him in the police station in the hands of the third respondent.

5. The third respondent against whom allegations are made, also filed a counter affidavit wherein he has stated that the petitioner married the said Shifa Begam on 14.12.2012 claiming himself to be a bachelor in the marriage registration book of Lajunathul Irshad Muslim Jamad Committee, Chennai, though he was already a married man.

6. The above said facts will go to show that the petitioner as well as the said Shifa Begam were major on the relevant date. As the said Shifa Begam was living with the petitioner in her sister's house, they have developed a relationship and said to have married. Even, as claimed by the petitioner, if he had a right as per Muslim Personal Law to marry more than one wife, nothing stopped him from informing the mother of the girl or get

married in the presence of others. There is no reason assigned as to why he should elope with the girl and get married. Secondly, if the act of the petitioner was correct, there is no reason for his own mother-in-law to give a complaint before the police to rescue her missing daughter.

7. Admittedly, the girl was produced only after the habeas corpus petition was filed. Even though the girl was major at the relevant point of time and she was free to marry anyone she likes or live with anyone she wishes, when she disappeared all of a sudden, a complaint had to be lodged by the mother. The police, in discharge of their duties, had to enquire the parties. The petitioner, who had done the mistake, cannot take advantage of his own wrong and claim that he was subjected to torture by the policemen. There is no previous enmity between the third respondent and the petitioner. If the third respondent had exceeded his limits, it is for the second respondent to take appropriate action, based on any complaint, and that the petitioner cannot seek any indulgence from this court for the mistake done by him.

8. The learned Special Government Pleader, though had not produced the copy of the letters alleged to have been written by the petitioner as well as Shifa Begam, read out the same. As per the said letters, they mutually got separated and undertook not to interfere with each other's life. The above said letters have been independently written by each of them in the police station.

9. In view of the above, this court finds no reason to issue a writ of mandamus, much less, a compensation. Accordingly, the writ petition is dismissed, as bereft of any merits. However, there shall be no order as to cost.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Asr

To

1.The Secretary,
Home Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 9.

2.The Commissioner of Police,
Commissionerate, Egmore,
Chennai - 8.

+1cc to Mr.K.Rajendra Prasad, Advocate, S.R.No. 28541

W.P.No.1026 of 2013

VSN II (CO)
GN (29/10/2020)



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