



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.03.2020

Delivered on : 20.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.(MD)No.5417 of 2016

Chelliah, S/o.K.S.Kasinathan

.. Petitioner

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Home Department (Police),
Fort St. George,
Chennai.

2.The Director General of Police,
Kamarajar Salai, Chennai.

3.The Inspector General of Police,
South Zone, Race Course, Madurai.

4.The District Collector,
Tirunelveli District,
Tirunelveli.

5.S.Syed Ibrahim .. Respondents
[R5 impleaded vide order dated 06.03.2020, made in
W.M.P.(MD)No.14538/2019 in W.P.(MD)No.5417/2016]

Prayer:- Petition is filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents to pay compensation of Rs.5,00,000/- or above for the atrocities against the petitioner in Crime No.62 of 2011, on the file of City Crime Branch, Tirunelveli, within a time frame to be fixed by this Court.

For Petitioner : Mr.R.J.Karthick

For R1 to R4 : Mr.S.Chandrasekar
Additional Public Prosecutor

For R5 : Mr.M.Subash Babu

**ORDER**

The writ petitioner herein is an Engineering Graduate and also qualified Class-I Contractor at State Level in the Highways Department. In response to the tender notification dated 24.08.2011, issued by the Highways Department, calling for tender pertaining to 86 works in Tirunelveli District, the writ petitioner has applied with necessary Pay Order for issuance of tender schedule. The Divisional Engineer, National Highways, Tirunelveli, has refused to give him the tender schedule. On representation to the Higher Officials, the Divisional Engineer gave the tender schedule to the writ petitioner and on his application, the work in Serial No.10 in the said Notification was sanctioned to him. To receive the work order, the writ petitioner went to the Office of the Divisional Engineer, National Highways on 25.11.2011. Mr.Soundarrajan, Divisional Engineer of National Highways, alleged to have demanded a sum of Rs.1,31,000/- as illegal gratification for issuance of work order. The writ petitioner not inclined to give illegal gratification, has preferred a complaint to the Vigilance and Anti-Corruption, Tirunelveli, on 29.11.2011 and the same was registered as Crime No.3 of 2011.

2.While so, the Contractor by name, R.S.Murugan and other Contractors developed grudge over the writ petitioner for giving complaint against the Divisional Engineer, who was very much favourable to them. Hence, they have hatched conspiracy and gave a complaint before the City Crime Branch, Tirunelveli, as if on 15.10.2009, one E.Murugan borrowed Rs.3,50,000/- from the writ petitioner to meet out his daughter's marriage expenses, for which, the writ petitioner charged exorbitant interest at the rate of 10% per month and also obtained four blank promissory notes and original title deed of the said E.Murugan. In the complaint, it was stated that the borrower E.Murugan was regularly paying the interest of Rs.35,000/- per month from the date of borrowing till October 2011. On 15.10.2011, the writ petitioner came to his house and received the principal amount of Rs.3,50,000/-. When the complainant demanded back the signed promissory notes and original title deed, the writ petitioner has promised to return the same within two days. But, after two days, when the complainant went to the house of the writ petitioner, again, he gave some excuse that the documents are with his Uncle. His family members became suspicious about the conduct of the writ petitioner. The complainant on 15.10.2011 went to the house of the writ petitioner and insisted upon return of documents. At that time, the writ petitioner alleged to have abused and threatened the complainant. When the complainant insisted upon return of documents, the writ petitioner attacked him on chest and stomach and tried to assault him with Aruval.



3. Upon receiving the complaint, Mr.S.Syed Ibrahim, Assistant Commissioner of Police, City Crime Branch, fifth respondent herein, has registered a case in Crime No.62 of 2011, against the writ petitioner for the offences under Sections 294(b), 506(ii), 420 and 384 IPC and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act.

4. The sequence of the complaint is that, for the incident, which alleged to have been taken place on 15.12.2011, one E.Murugan has given a complaint on 16.12.2011 and the same was received and a case was registered on 17.12.2011 by the said S.Syed Ibrahim, Assistant Commissioner of Police. On the same day, the writ petitioner was arrested and remanded to judicial custody. The writ petitioner came out on bail after 13 days. Meanwhile, the wife of the writ petitioner has sent representation to the authorities stating that there was no transaction between the complainant E.Murugan and her husband Chelliah as alleged in the complaint. The entire complaint is a concocted story, fabricated by R.S.Murugan, Contractor and E.Natarajan, Contractor [Brother of E.Murugan, Complainant], to settle score with her husband Chelliah, who has given complaint against the Divisional Engineer of National Highways Department to the Vigilance and Anti-Corruption, Tirunelveli.

5. According to the writ petitioner, the complaint of E.Murugan alleging demand of exorbitant interest and money transaction is a false one. The fifth respondent, Assistant Commissioner of Police without proper enquiry, in order to help the complainant E.Murugan and his brother E.Natarajan, has entertained the complaint as a retaliation to the complaint in Crime No.3 of 2011, given by the writ petitioner before the Vigilance and Anti-Corruption, Tirunelveli.

6. The petitioner's contention is that the complaint, in which, he was arrested and remanded to judicial custody for 13 days by the fifth respondent was subsequently investigated by the Inspector of Police, Organized Crime Unit, CBCID, Tirunelveli, and final report was filed on 07.01.2013, closing the complaint as it was a false one.

7. The petitioner claims that in view of the illegal confinement, his reputation and career have spoiled and his income has come to nil. Because, he has given a genuine complaint against the public servant namely, Soundarrajan, Divisional Engineer, as a counter-blast, the associates of the Said Soundarrajan and other Contractors have lodged a false complaint through E.Murugan. The fifth respondent - S.Syed



Ibrahim, Assistant Commissioner of Police in connivance with the associates of the said Soundarrajan, has registered the false complaint, arrested the writ petitioner and remanded him to judicial custody without following the procedure contemplated under the law and in violation of Article 21 of the Constitution of India. Hence, the State is vicariously liable for the misdeed of its Servant namely, S.Syed Ibrahim, Assistant Commissioner of Police, Tirunelveli and therefore, direction is sought to pay Rs.5,00,000/- as compensation for the atrocities faced by the writ petitioner.

8.The specific contention of the writ petitioner is that as a counter-blast to his complaint in Crime No.3 of 2011 against Soundarrajan, Divisional Engineer, National Highways, through E.Murugan and S.Syed Ibrahim, Crime No.62 of 2011 was registered against him and was arrested. Later, it was found to be false and the same was closed. This clearly indicating that the said S.Syed Ibrahim, Assistant Commissioner of Police, has fallen into the hands of E.Natarajan and R.S.Murugan, Contractors. Being the Principal and act being a sovereign function, the State is liable to pay compensation of Rs.5,00,000/- to the writ petitioner.

9.The learned counsel appearing for the petitioner would further submit that the final report in Crime No.62 of 2011, in which, the writ petitioner was arrested and remanded to judicial custody for 13 days would clearly show that the complaint is a fertile imagination emanated from R.S.Murugan and others, in which, S.Syed Ibrahim, Assistant Commissioner of Police, has connived with them and arrested the writ petitioner without following the procedure under law. The final report at length disclosed about the various dispute between the writ petitioner and R.S.Murugan. The conclusion of the Investigation Officer as found in the final report is that at the instigation of R.S.Murugan, his associate E.Natarajan through his brother E.Murugan, has given a false complaint against the writ petitioner. The fifth respondent viz., S.Syed Ibrahim, Assistant Commissioner of Police, City Crime Branch, without proper investigation, has registered the case and in haste, arrested the writ petitioner and remanded him to judicial custody and the complaint of E.Murugan was found to be a false one on conducting enquiry.

10.From the affidavit averments and the documents relied by the writ petitioner, it appears that the criminal complaint given by E.Murugan, in which, the writ petitioner was arrested and remanded to judicial custody, later found to be a false complaint after examining 88 witnesses. For foisting false complaint, the writ petitioner holds the State to be vicariously liable and has



Rs.5,00,000/- against the respondents 1 to 4.

11. Pending disposal of the writ petition, S.Syed Ibrahim, Assistant Commissioner of Police, against whom, serious allegations made, has taken out a petition to get himself impleaded as a respondent. This Court has allowed that impleading petition on 06.03.2020, since certain averments have been made in the Writ Petition questioning the style of his function while discharging his duty as Assistant Commissioner of Police. In the affidavit filed in support of the impleading petition, the said S.Syed Ibrahim, who is impleaded as fifth respondent, has placed his version about the allegation as under:-

'2. I state that the entire allegation made against me in the writ petition is totally false and concocted one. Actually I received a current paper from the Commissioner of Police, Tirunelveli City, on 16.12.2011 with endorsement to take appropriate action. When I gone through the complaint it is seen that the defacto complainant namely E.Murugan has asked a loan of Rs.3,50,000/- for interest from the writ petitioner. Accordingly the writ petitioner paid the amount of Rs.3,50,000/- for 10% interest on 16.10.2009, further for security purpose the writ petitioner demanded and collected unfilled promissory notes and original property documents from the defacto complainant. As per the terms and conditions, the de-facto complainant paid the interest perfectly upto month of October 2011 without fail. Since the interest is the very huge the de-facto complainant borrowed debt from his relatives and his known sources and accordingly, paid the borrowed loan amount of Rs.3,50,000/- with interest to the writ petitioner on 15.10.2011 and de-facto complainant requested the writ petitioner to return the documents and pro-notes, which were collected by him for security purpose. On the other hand, the petitioner informed that he kept all the documents in his uncle's house, who gone to tour and assured that he will hand over the documents within 2 days.

3. I state that thereafter in spite of multiple approaches the writ petitioner told some evasive reasons and failed to return the documents. Ultimately, on 15.12.2011 the de-facto complainant went to the writ petitioner's house and requested him to return the documents, where the writ petitioner demanded some amount. When the de-facto complainant refused to pay the amount, writ petitioner entered quarrel with the de-facto



complainant and made a serious life threat and also attempt to assault him with weapons. Further, he informed that his intention is to get all his property by filing cases against him using the documents. Further, it is seen in the complaint that the writ petitioner threatened the de-facto complainant with dire consequence and also threatened that if again he came to his home, surely he will murder.

4. I state that on bare reading of the complaint, it is disclosed that there is a strong prima-facie case against the writ petitioner, further the Commissioner of Police has forwarded the complaint with endorsement to conduct personal enquiry and take appropriate action. On perusal of the complaint, there is ingredient of cheating, extortion, attempt to assault using weapons and not handed over his documents and also demanded high rate of interest. Therefore, I registered the case in Crime No.62/2011 for offence under Sections 294 (b), 384, 506(i) and 420 of IPC and Section 4 of Tamil Nadu Prevention of charging Exorbitant Interest Act, 2003.'

12.The fifth respondent states in his counter affidavit that he has followed the procedures contemplated under the Police Standing Orders as well as the guidelines given by the Hon'ble Supreme Court while dealing with the complaint. He has duly recorded the statements of the witnesses under Section 164 Cr.P.C. The case was entrusted to him by the Commissioner of Police, for investigation. In view of the fact that the writ petitioner was not available in his house and the house was found locked, he had reasonable belief that the writ petitioner is trying to abscond. Therefore, when he received secret information about the presence of the writ petitioner, he went near Marutham Hotel and took him to City Crime Branch Office, for interrogation and being satisfied that the writ petitioner has committed the offence, he arrested the writ petitioner and remanded him to judicial custody. On 04.05.2012 as per the directions of the Commissioner of Police, he handed over the case diary to the Inspector of Police, Raj Kumar, CBCID. According to him, in the further investigation conducted by CBCID, the witnesses have turned hostile and therefore, FIR has been closed as 'mistake of fact'. He has discharged his duty as per law and he had no motive against the writ petitioner and also he was not aware of the alleged motive between the writ petitioner and one R.S.Murugan, Contractor.



13.Thus, from the above rival contentions, this Court finds that the writ petitioner claims that the fifth respondent S.Syed Ibrahim has acted hand in glove with E.Murugan, de-facto complainant in Crime No.62 of 2011. The said E.Murugan, who is the brother of E.Natarajan, has acted on behalf of his brother and the friend of his brother R.S.Murugan. Whereas the fifth respondent contends that he is a responsible officer and on receipt of the complaint from E.Murugan and being satisfied with the allegations and on the strength of abscondness of the writ petitioner, in exercise of his power *bona fide*, discharged his duty by recording the statement of witnesses under Section 164 Cr.P.C., arrested the writ petitioner and remanded him to judicial custody within 24 hours of the arrest, by following all the norms and guidelines.

14.In the said factual scenario, the question before this Court is in the given facts and circumstances can the Court by exercising the power under Article 226 of the Constitution of India award compensation on the ground of violation of Article 21 of the Constitution.

15.The issue of entertaining writ petition for awarding compensation has been dealt by the Hon'ble Supreme Court on various occasions. The appropriate case on this point, to the knowledge of this Court is **Sube Singh Vs. State Haryana and others**, rendered by three Judges Bench, reported in **2006 (3) SCC 178**. After tracing the history of awarding compensation for custodial death or custodial torture or violation of fundamental rights, the Hon'ble Supreme Court has concluded as below:-

''45.Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human right violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. Courts should, therefore, while jealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and

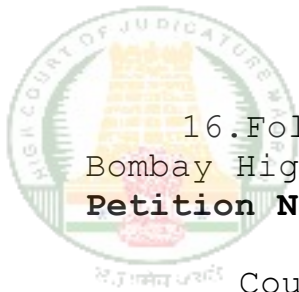


to enable Police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

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46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of appropriate civil/criminal action.

47. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier paragraph are satisfied. We may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters.''



16. Following the abovesaid judgment, a Division Bench of the Bombay High Court in **Gopal Vs. State of Maharashtra [Criminal Writ Petition No.3960 of 2015, dated 05.05.2017]**, has held as below:-

''45. From the observations made by the Courts in all the aforesaid decisions, it is clear that the compensation was awarded to the aggrieved person therein in the facts and circumstances of the said cases. The cases related to illegal detention or undergoing an extra detention, although, some of the petitioners were released by the Court. The cases also related to the false implication of the accused therein which was spelt out by the evidence on record. It is pertinent to note that in some of the cases which are relied upon by the petitioner although it was the prosecution case that the victim was murdered it was revealed that the victim was alive and, therefore, the Court found that there was gross violation of the fundamental right of the petitioner therein and, hence for violation of fundamental rights, the compensation was awarded.

46. In the case of **D.K. Basu Vs. State of Bengal [1997 (1) SCC 416 : AIR 1997 SC 610]**, the Supreme Court was pleased to observe that for established breach of fundamental rights, the compensation can be granted under public law by the Supreme Court and by the High Courts in addition to private remedy for tortious action and punishment to wrongdoers under criminal laws. It was further observed that custodial violence including torture and death in the lockups strikes a blow at the rule of law which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizen. It is committed under the shield of uniform and authority in the four walls of the police station or lockup. The victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. However, in paragraph 31 of the said decision it was observed as follows:-

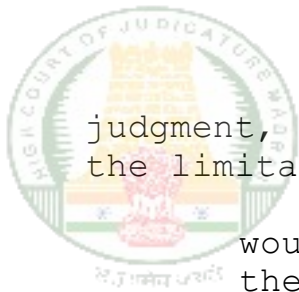
''31. There is one other aspect also which needs out consideration, We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view



of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals, Many hard core criminals like extremist, the terrorists, drug peddlers, smugglers who have organized gangs, have taken strong roots in the society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights such criminals may go scot-free without exposing any element or iota of criminality with the result, the crime would go unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This all the more so, in view of the expectation of the society that police must deal with the criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worst than the disease itself.' ' '

17. Compensation for violation of fundamental right is both a common law remedy as well as civil remedy. If the Violator, who is an instrument of the State, has failed to discharge the sovereign function, the State becomes vicariously liable. However, it is not in all cases, compensation can be given under the public law remedy, that too, by invoking Article 32 or Article 226 of the Constitution of India. The Courts have entertained Writ Petitions and awarded compensation if violation of fundamental right or custodial torture or abuse of power is patently seen from the record. Whereas the closure of complaint, acquittal by the Trial Court or by the Appellate Court per se will not give any right to seek compensation for violation of fundamental right. It has to be tested by the appropriate forum. Arbitrary claiming of compensation and arbitrary fixation of compensation summarily in a Writ Petition is unheard.

18. The learned counsel appearing for the writ petitioner would rely upon the unreported judgment of a Division Bench of this Court in **W.A. (MD) No. 1544 of 2018, dated 13.06.2019 [V. Kumaravel Vs. The Director General of Police and others]**. Even in the said



judgment, the Division Bench of this Court has been conscious of the limitation and has passed the following order:-

''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.''

19.In the said case, the reports of the three superior officers to arrive at a *prima facie* conclusion that there was gross violation in detaining the appellant. In this case, on the date of arrest, there was some *prima facie* materials subject to satisfaction of the Investigation Officer to arrest the writ petitioner. The final outcome of the investigation, on the face of it, does not indicate that the fifth respondent has maliciously exercised his power. In the absence of such material under Article 226 of the Constitution of India, this Court shall not award compensation arbitrarily. No doubt, there are some materials to show violation of fundamental right, however, to what extent and which is the cause for it are to be tested before the appropriate forum.

20.In addition to the above, admittedly, the de-facto complainant and the writ petitioner are related to each other. Even according to the complainant/E.Murugan, the writ petitioner has told him, the documents are not in his possession and the same has been given to his Uncle. It is not the case of the writ petitioner that he never knew the de-facto complainant. Recovery of documents from the de-facto complainant's house at a later



point of time, per se cannot be taken for awarding compensation. Since even few days before the arrest, the writ petitioner himself has told the complainant that he has handed over the documents to his Uncle. While filing the Writ Petition, the writ petitioner has not impleaded the private individuals or the police official, against whom, he has alleged abuse of power. The fifth respondent, on his own got impleaded. On closure of his complaint, whether he filed any protest petition or not is a fact not elucidated. The de-facto complaint has a right to explain how the documents came back to his possession. All these facts are matter for trial. The writ petitioner herein has filed the writ petition only against the State. At a later point of time, the fifth respondent, on his own, has come before this Court to get himself impleaded. When serious allegations are made against the individuals, filing of Writ Petition without impleading them and seeking compensation from the State itself is not proper. Hence, the Writ Petition is liable to be dismissed. While dismissing the Writ Petition, this Court gives liberty to the writ petitioner to move the appropriate forum and seek the civil remedy. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Home Department (Police),
Fort St. George,
Chennai.
- 2.The Director General of Police,
Kamarajar Salai,
Chennai.
- 3.The Inspector General of Police,
South Zone,
Race Course, Madurai.



4.The District Collector,
Tirunelveli District,
Tirunelveli.

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

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-12641[F] dated
20/03/2020)

+1 CC to M/s.R,J,KARTHICK, Advocate (SR-12909[F] dated 23/03/2020
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order made in
W.P. (MD) No.5417 of 2016
20.03.2020

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TR(27.05.2020)13P 8C