



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on :19.11.2020

Orders Pronounced on :04.03.2021

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No. 8862 of 2020

and

W.M.P. (MD) .Nos. 8122, 8123 and 8125 of 2020

Raja

... Petitioner

Vs.

- 1.The State represented through the
Home Secretary,
Home Department,
Fort.St.George,
Chennai-600 009.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai-600 004.
- 3.The Superintendent of Police,
Theni,
Theni District.
- 4.The Inspector of Police,
Periyakulam Police Station,
Theni District.
- 5.The Inspector of Police,
Crime Branch Crime Investigation Department
(CBCID),
Superintendent of Police Office Campus,
Theni, Theni District.
- 6.The Superintendent,
District Jail,
Dindigul.
- 7.The Joint Director of Health Services,
Government Hospital Head,
Periyakulam,
Theni District.



8.The Joint Director of Health Services,
Government District Head Quarters Hospital,
Begambur, Dindigul,
Dindigul District.

... Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a a Writ of Mandamus directing the respondents 1 to 4 to take necessary criminal appropriate action based on the petitioner's complaint dated 06.06.2010 and entrust the investigation to the 5th respondent for a fair and impartial investigation and to direct the 5th respondent to file periodic reports to this Court on the progress made in the investigation.

For Petitioner : Mr.Henri Tiphagne

For Respondents : Mr.V.Neelakandan

Addl.Public Prosecutor

ORDER

This Writ Petition has been filed praying for the issuance of a Writ of Mandamus directing the respondents 1 to 4 to take necessary criminal appropriate action based on the petitioner's complaint dated 06.06.2010 and entrust the investigation to the 5th respondent for a fair and impartial investigation and to direct the 5th respondent to file periodic reports to this Court on the progress made in the investigation.

2. Similarly, the petitioner has filed three more miscellaneous petitions seeking for the relief listed below:-

a. WMP(MD) No.8122 of 2020 has been filed directing the seventh respondent to initiate appropriate action as against the medical doctor, namely, Babu Venkatesan and other in-charge medical officers who issued medical fitness certificate to the petitioner for judicial remand.

b. WMP(MD) No.8123 of 2020 has been filed directing the respondents to pay a just and reasonable compensation for the custodial torture of the petitioner.

c. WMP(MD).No.8125 of 2020 has been filed directing the first respondent to immediately provide him the best holistic medical examination and meticulous care possible even if it is a time of COVID in any well equipped private hospital that does not treat COVID patients at this time and provide the petitioner a complete medical check up and treatment and also issue a certificate if the petitioner suffers from any partial or permanent disability as a result of the torture he sustained.

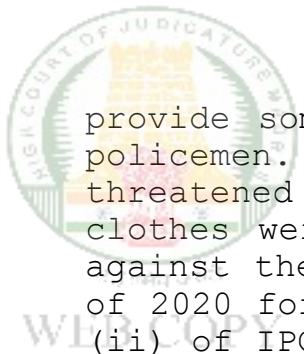


2. The gist of the case, as projected by the petitioner, in his affidavit filed in support of the writ petition, is as follows:-

2.1. The petitioner would aver among other things that on 28.05.2020 at about 3 p.m, the police officers, namely, one Karuppiah and one Paulpandi attached to the fourth police station had come to the petitioner's house and informed his wife that the Inspector of Police, namely, one Suresh has directed the petitioner to come to police station for an interrogation with regard to a complaint given by one Santhosham. (hereinafter called as 'the defacto complainant'). The defacto complainant is affiliated to a leading Political Party and he was also an Ex-vice Chairman of Thamarikulam. Thereafter, the petitioner went to the fourth respondent's police station where he had seen the defacto complainant also. On asking the defacto complainant as to why he lodged complaint against him since he did not involve any crime, the Inspector of Police attached to the 4th police station used filthy language against the petitioner and directed the Sub-Inspector of Police to register a case against the petitioner after assaulting him. Further, the defacto complainant had informed the Sub-Inspector of Police to continue the physical torture upon the petitioner till he reveals the whereabouts of one Puthiyavan and Prabhu. The petitioner informed the police that he did not know the whereabouts of both of them.

2.1. The Sub-Inspector of Police had directed another two police constables, namely, Mr.Karuppiah and Mr.Paulpandi to keep the petitioner in police station toilet and tie up his legs with a leading chain. The Sub-Inspector of Police, one Selvaraj, one Karuppiah, Paulpandi, Eswaran, Anish and other three policemen beat the petitioner with their *lathis* indiscriminately on the petitioner buttocks, thighs, chest and on the posterior. The petitioner screamed inside the Police Station and repeatedly informed the police officers in a loud voice that the petitioner did not know anything about the whereabouts of Puthiyavan and Prabhu that they were enquiring him. It was thus clear to the petitioner that the purpose of torturing him physically was to obtain some information about the whereabouts of Puthiyavan and Prabhu upon the alleged complaint of Santhosham affiliated to the leading political party and former Vice Chairman of Thamaraikulam.

2.2. That apart, the policemen inserted a piece of cloth in the mouth of the petitioner so that his crying out of pain would not be heard outside and started beating him severely with their *lathis*. Following the blunt force, he sustained grievous injuries and bleeding was coming out from the chest area and buttocks. The said Sub-Inspector of Police had further directed his subordinate policemen to prepare papers for remand. The petitioner requested to



provide some water to quench his thirst, which was refused by the policemen. It is also averred that the petitioner's wife was also threatened by the policemen. According to the petitioner, his clothes were removed and he was left naked. A case was registered against the petitioner and two others on 28.05.2020 in Crime No.789 of 2020 for the alleged offences under Sections 294(b), 324 and 506 (ii) of IPC. The petitioner came to know much later that he and two other persons had scolded in filthy language and threatened the defacto complainant while he was distributing corona relief materials. The petitioner did not know about any wordy quarrel between the defacto complainant and the two others. Further, the police officers had taken the petitioner to the Government Hospital, Periyakulam and done Covid-19 test. The policemen threatened the petitioner that he should not reveal the physical torture that he was subjected to by the policemen, to the Judicial Magistrate while taking him to the learned Judicial Magistrate, Periyakulam. However, the petitioner informed about the physical torture to the Judicial Magistrate who directed the policemen to take to the hospital for medical treatment to Government Hospital, Periyakulam where the doctors refused and treated him as outpatient and the policemen took the petitioner to the District Jail, Dindigul. However, the Superintendent of District Jail had refused to admit the petitioner inside the prison and he also directed to provide medical treatment to him. Accordingly, the police officers again took the petitioner to the Government Hospital, Dindigul for providing treatment. On 28.05.2020, around 11 pm, the doctors at this hospital had noted all the injuries and recorded them in their official note book.

2.3. While the petitioner was taking medical treatment at the Government Hospital, Dindigul, he was forcibly discharged the petitioner from the hospital in the early hours at 4 p.m, on 29.05.2020 and lodged the petitioner at District Jail, Dindigul. The petitioner had duly informed the prison officials that eight policemen including the Sub-Inspector of Police one Selvaraj, Karuppiyah and Suresh had assaulted the petitioner and they only caused injuries. The petitioner had informed the duty doctor of the Prison and informed about the police physical violence and afterwards some tablets were given to him. Thereafter, on 02.06.2020, the petitioner was released on bail. The petitioner stated that he could not tolerate the severe pain and particularly bleeding had started while he was urinating. The petitioner admitted himself as an inpatient at the Government Hospital, Periyakulam for a period of eight days from 03.06.2020 to 11.06.2020. It is stated by the petitioner that even after coming out on bail also the petitioner took medical treatment. Stating all these facts, the petitioner had sent complaints to the respondent police department for initiating criminal action as well as departmental action against the erring police officials. But, till the date of filing this writ petition, the respondents concerned did not register any case and they did not take any action against the proposed accused persons or any/all serving police personnel. The doctors recorded in



the medical documents as assault and multiple injuries. The petitioner preferred a complaint on 06.06.2020, even then, no action has been taken against the erred police officials. Therefore, the petitioner is before this Court for the relief stated supra.

3. The third respondent has filed a detailed counter affidavit in which he would aver among other things that on perusal of the records submitted by the fourth respondent police, a first information report has been registered by him on 28.05.2020. Since the petitioner is a notorious criminal and having previous antecedents, after having conducted preliminary enquiry with regard to the veracity of the compliant, the said case has been registered. Subsequently, on 28.05.2020, at about 4.45 pm., the petitioner has been secured by the fourth respondent police officials and he was taken to police station. Immediately arrest intimation was given to his relative one Jeyaraj and he was also appeared to the police station and signed in the arrest Namuna. Further after arresting the petitioner, he was taken to Government Hospital, Periyakulam, at about 7.00 p.m., for medical check up by the escort police officials. The medical officer attached with Government Hospital, Periyakulam examined the writ petitioner and he was medically examined and fitness certificate was given by Medical Officer, Government Hospital, Periyakulam, on the day itself. Later, he was produced before the Judicial Magistrate, Periyakulam along with medical fitness certificate issued by the Government Hospital, Periyakulam on 28.05.2020 at about 9.00 a.m. The Judicial Magistrate concerned after perusing the records and other documents and after having satisfied that there are no complaints as against the police officials and the same was also recorded and the writ petitioner was remanded to judicial custody till 11.06.2020. Thereafter, he was taken to District Jail in Dindigul at about 11 p.m. Since the petitioner made a complaint stating that he is having pain at his hands, the prison authorities informed to the Escort Police Officials attached with the fourth respondent to produce medical certificate of the writ petitioner from Government Hospital, Dindigul. Accordingly, he was taken to the hospital and treated by the doctors and later, he was remanded by the jail authorities.

3.1. Further, the third respondent have specifically denied the allegations levelled as against the police officials in paragraph Nos.2 to 6. In fact, the writ petitioner was arrested by the fourth respondent police officials at Kumbakarai Junction. However, the writ petitioner in his affidavit falsely averred that he was taken to police custody from his house. In addition to the present case in Crime No.789 of 2020, the writ petitioner was having seven more cases, in which five cases ended in conviction and one another case is pending on trial and one case was ended in acquittal. Hence, after having satisfied that the writ petitioner was notorious criminal, the fourth respondent police has opened

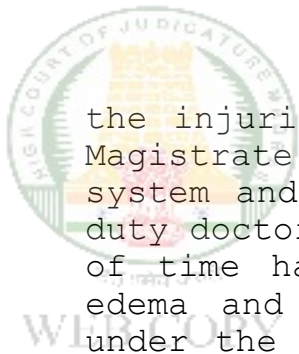


28.05.2020. In order to avert history sheet, the petitioner made false allegations against the police officials after enlarging him on bail. In the discharge summary, it reveals that his admission has been mentioned as 'Non-MLC' case. While he was inpatient in 'Non-MLC' case, he has sent representation to the higher officials including the Superintendent of Police by stating that, on 28.05.2020, he was brutally tortured by the fourth respondent police officials. Before remand, there was no complaint against the police officials and a doctor certificate was also enclosed in the remand report, which also did not mention any injury on the writ petitioner.

3.2. Further, the third respondent has specifically directed the Deputy Superintendent of Police, Periyakulam, Sub-Division to conduct detailed enquiry as regards the representation of the petitioner dated 06.06.2020. Accordingly, the Deputy Superintendent of Police conducted enquiry and enquiry report was also submitted by the Deputy Superintendent of Police, Periyakulam Sub Division, on 22.07.2020. On perusal of the enquiry report, it is revealed that the Deputy Superintendent of Police concerned has summoned all the police officials including the writ petitioner and their statement was also recorded and further the writ petitioner did not appear, however, he has given his written explanation to the enquiry officer. The fourth respondent has also filed the final report before the jurisdictional Magistrate. In fact, the police officials has only done their duties. Hence, the question of transfer of investigation at this stage would not arise at all.

4. Similarly, the fourth respondent has also filed a counter affidavit by reiterating the very same averments made by the third respondent, more particularly, he would aver that the writ petitioner was arrested by the fourth respondent police officials at Kumbakarai Junction. However, the writ petitioner in his affidavit falsely averred that he was taken to police custody from his house. By stating so, he would pray for the dismissal of this writ petition.

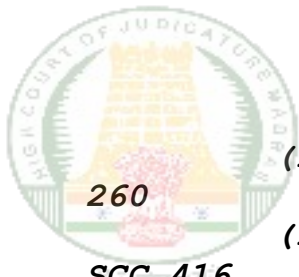
5. The learned counsel for the petitioner has also filed a rejoinder affidavit denying all the allegations levelled in the counter affidavit and he would stress upon the points urged in the affidavit filed in support of the writ petition. He has also stated that the allegations against the petitioner made in paragraph No.3 of the counter affidavit is false and fabricated one and it was done at the instigation of a member of the ruling party. He also denied the arrest made by the police officials. In paragraph No.10 of the rejoinder, the petitioner stated that he informed to the doctor about the physical torture done by the police official. However, the doctor did not record any injuries whereas the doctor on the contrary followed the instructions given by the police officials who were accompanying the petitioner to the hospital. In paragraph No.11 of the rejoinder, he would state that despite informing about



the injuries sustained by him, neither the doctor nor the Judicial Magistrate concerned had properly followed the criminal justice system and recorded the injuries sustained by the petitioner. The duty doctor available in Government Hospital, Dindigul at that point of time has specifically recorded about swelling in hands, pedal edema and abrasion in buttock. The petitioner sought information under the Right to information act wherein it was clearly recorded in the prison entry note book. By drawing the attention of this Court stated in paragraph No.15 of the counter affidavit, he would state that the data clearly reveals that there is one case where a fine has been paid and there are five other cases where all of them were under Sections 284(b) and 323 IPC and the fact that they have been registered in 2013, 2014 and 2015 and the cases have still not ended or have been closed show the importance of these cases. Therefore, he prays for allowing the writ petition.

6. Learned counsel for the petitioner would submit that the inaction on the part of the second respondent to take action against the accused persons on the petitioner's complaint dated 06.06.2020, though the same disclosed cognizable offence under Sections 323, 324, 330, 331 and 307 of IPC and in addition also various sections of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 is highly unjustifiable and it amounts to a clear case of abuse process of law. He further contended that it is mandatory for the second respondent to register a case since the offences are all cognizable in nature. Before interrogation, the police officials has to issue notice to the petitioner, however, in this case, it has not been done. He also contended that the accused police officials had removed the petitioner's clothes inside the police station and behaved in a manner cited in the definition of under Section 3(1) (e), 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015. He also submitted that since the doctor on duty had certified the medical fitness certificate though the petitioner was bleeding profusely, he prays to pass interim direction directing the seventh respondent to initiate appropriate necessary action as against the medical doctor namely Babu Venkatesan and other incharge medical officers who issued medical fitness certificate to the petitioner for judicial remand. In the case on hand, the police officials had scant respect for criminal judicial system. They have not followed up the procedure laid down in the criminal code of conduct. Since the allegations levelled against the police personnel, the interest of justice would be met if the case is transferred to the fifth respondent herein for an impartial investigation. Therefore, it is very much essential to entrust this case to the fifth respondent herein so that it can be unearthed the truth.

6.1. In support of his contention, he relied upon the following judgments:-



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(i) *Joginder Kumar Vs State of UP* reported in (1994) 4 SCC

(ii) *D.K.Basu Vs State of West Bengal* reported in (1997) 1 SCC 416.

(iii) *G.Prabakaran Vs The superintendent of Police, Thanjavur & another* reported in 2018 (5) CTC 623.

(iv) *People's Union for Civil Liberties and another Vs State of Maharashtra and others* reported in (2014) 10 SCC 635.

(v) *P.Rajakumari Vs the Additional Director General of Police and another* reported in CDJ 2014 MHC 3992.

(vi) *M.Deivam Vs. The Director General of Police, (Cr1.OP (MD) No.3121 of 2015 dated 10.04.2015.*

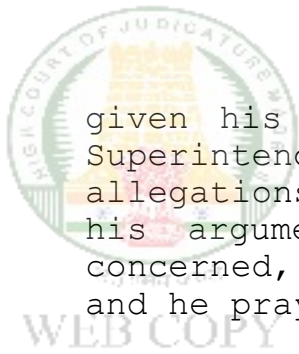
(vii) *Ramesh Kumari Vs State (NCT Delhi) & others* reported in (2006 (2) SCC 677)

(viii) *Rubabbuddin Sheikh Vs State of Gujarat* reported in 2010 (2) SCC (cr1) 1006)

7. *Per contra*, learned Additional Public Prosecutor has strongly refuted the allegations levelled against the police officials which is averred in the affidavit filed in support of the writ petition. He would submit that the major allegations against the police officials is that the petitioner was brutally attacked by the police during enquiry in connection with the case in Crime No.789 of 2020. But, during the enquiry, the petitioner was medically examined and fitness certificate was given by Medical Officer, Government Hospital, Periyakulam and thereafter, along with medical certificate he was produced before the Judicial Magistrate concerned and after having satisfied that there are no complaints as against the police officials and the same was recorded and thereafter, he was remanded to judicial custody till 11.06.2020. In the remand report, nothing was mentioned about injury on the writ petitioner.

7.1. By drawing the attention of this Court through his counter affidavit No.9, he would submit that there are seven criminal cases pending against the writ petitioner and he is a notorious criminal. When the police officials opened History Sheet No.2/2020, in order to avoid the same, the petitioner apprehended that Goondas Act may be invoked as against the writ petitioner and to protect himself, he made false allegations against the police officials and thereby, prevented the police officials from discharging their official duties. Added further, in the discharge summary, it reveals that his admission has been mentioned as 'Non MLC' case.

7.2. To strengthen his argument, he would also submit that the Superintendent of Police has directed the Deputy Superintendent of Police to conduct an enquiry against the police officials who has submitted an enquiry report where the petitioner also appeared and



given his written explanation to the enquiry officer. The Deputy Superintendent of Police has culled out the fact that the allegations against the police officials is a false one. To sum up his argument, having filed the final report before the Court concerned, the question of transfer of investigation does not arise and he prays for dismissal of this writ petition.

8. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor for the respondents and perused the court records as well as judgments placed before me.

9. It is pertinent to mention that while on his remand, the learned Judicial Magistrate, Periyakulam, specifically recorded that 'No complaint against the police'. More over, before remanding the writ petitioner, doctor certificate was also enclosed and in the remand report as well as in the doctor certificate, there was no mention about the injury on the writ petitioner. Nothing prevented him stating about the alleged custodial torture given by the police either to the Judicial Magistrate or to the Doctor concerned. Had he sustained any serious injury as alleged by the writ petitioner in his sworn affidavit, it would have noticed by the doctor attached to the Government hospital, periyakulam and his version would have been recorded by the Judicial Magistrate, Periyakulam. Though he pleads in his affidavit that despite he expressed his grievance to the said Judicial Magistrate and to the Doctor and it was not done by them, is not borne out from any record produced by the petitioner. Further, the writ petitioner was enlarged on bail in Crime No.789 of 2020, on 02.06.2020, and subsequently, he was admitted into Government Hospital, Periyakulam, on 03.06.2020. In the discharge summary, it reveals that his admission has been mentioned as 'Non MLC' case. That apart, in pursuant to the representation made by the writ petitioner, the Superintendent of Police has directed the Deputy Superintendent of Police, Periyakulam Sub Division to conduct detailed enquiry against the erring police officials, who submitted enquiry report, dated 22.07.2020, in which the Inspector of Police along with other police officials were enquired into and after enquiry, it is found that the complaint against the alleged police officials are false one. In fact, the writ petitioner was summoned by the Deputy Superintendent of Police for enquiry on 07.07.2020, 10.07.2020, 11.07.2020 and 14.07.2020. However, he did not choose to appear before the higher authorities and to prove his case in the manner known to law. Only on 17.07.2020, he filed written statement through his advocate. When he alleges major grievance against the erring police officials, this Court, at a loss to understand that why he did not appear before the Deputy Superintendent of Police and aired his grievance with supporting documents. Immediately after the arrest of the petitioner, proper intimation was given to his close relative, who did not speak about any injury or atrocity against the police officials. Therefore, this Court is of the considered view that it is only after-thought invented by the petitioner without any supporting documents to substantiate his claim as projected in the



writ petition. I do not see that this petition has any merit. Consequently, the petition and connected petitions are hereby dismissed. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

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To

- 1.The Home Secretary,Home Department,
Fort.St.George, Chennai-600 009.
- 2.The Director General of Police,
Dr.Radhakrishnan Salai,Chennai-600 004.
- 3.The Superintendent of Police,
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- 8.The Joint Director of Health Services,
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Dindigul District.

+1 CC to M/s.HENRI TIPHAGNE, Advocate (SR-8792[F] dated
04/03/2021)

order made in
W.P(MD)No.8862 of 2020
04.03.2021

DKS(CO)

TR(18.03.2021) 10P 10C

<https://hcservices.ecourts.gov.in/hcservices/>