



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2021

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.15793 of 2020

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Ashokkumar

... Petitioner

Vs.

1.State Rep. through

The Superintendent of Police,
Superintendent of Police Office,
Sivagangai District - 630 562.

2.The Deputy Superintendent of Police,
DSP Office, Manamadurai Division,
Manamadurai - 630 606

3.The Inspector of Police,
Manamadurai Police Station,
Sivagangai District - 630 606.

4.The Sub Inspector of Police,
Manamadurai Police Station,
Sivagangai District - 630 606.

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to direct the fourth respondent not to harass the petitioner and his family members and consequently prevent to insist to produce the petitioner's Swift Car Vehicle No.TN-09-BX-0965 without any reasons or summons to the fourth respondent Police Station.

For Petitioner : Mr. R.Senthilkumar

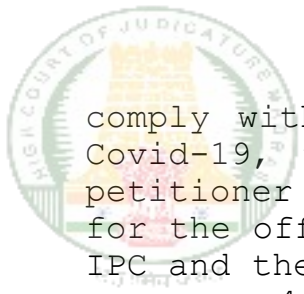
For Respondents : Mr.Erottuchamy
Government Advocate (Crl. Side)

ORDER

The petitioner has filed the present petition under Section 482 Cr.P.C praying to direct the fourth respondent not to harass him or his family members.

2.The case of the petitioner is that the fourth respondent came over to the house of the petitioner on 16.12.2020 and directed him to hand over the vehicle to the third respondent Police Station. His specific contention is that the respondents in utter violation of Section 91 of Cr.P.C., directed the petitioner to hand over the vehicle and that the police are also harassing him.

3. Per contra, Mr.Erottuchamy, learned Government Advocate, on instructions, would contend that since the petitioner did not



comply with the guidelines issued by the Government on account of Covid-19, the First Information Report was registered against the petitioner in Crime No.671 of 2020 of Manamadurai Police Station, for the offence punishable under Sections 143, 353, 290, 269, 270 of IPC and therefore, he prayed for dismissal of this petition.

4.The contention of the petitioner is that the respondent police has not followed Section 91 of Cr.P.C., before directing the petitioner to hand over the vehicle namely, Swift Car bearing registration No.TN-09-BX-0965.

5. Section 91 of Cr.P.C. reads as follows :-

91. Summons to produce document or other thing

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

6.Therefore, as per Section 91(1) of Cr.P.C. the police should issue summons before securing any vehicle and the police should not direct anyone over the phone to produce a vehicle. Moreover in the decision in ***D.K.Basu Vs. State of West Bengal reported in AIR (1997) SC 610, it has been held thus :***

"36.We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their



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designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness. who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of he next friend of the person who has been informed of the arrest an the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the



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arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaga Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

37. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter."

7. In view of the above, the Criminal Original Petition is disposed of with a direction to the respondent police to follow the guidelines issued in **D.K.Basu and Section 91 (1) Cr.P.C (cited supra)**.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Superintendent of Police,
Superintendent of Police Office,
Sivagangai District - 630 562.
2. The Deputy Superintendant of Police,
DSP Office, Manamadurai Division,
Manamadurai - 630 606
3. The Inspector of Police,
Manamadurai Police Station,
Sivagangai District - 630 606.
4. The Sub Inspector of Police,
Manamadurai Police Station,
Sivagangai District - 630 606
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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