



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.03.2022

CORAM:

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P (MD) No.13153 of 2009
and
M.P (MD) Nos.2 and 3 of 2009

1.Manohar
2.Shenthilkumar

... Petitioners

Vs.

1.The State of Tamil Nadu,
Represented by the
Home Secretary,
St. George Fort,
Chennai -9.

2.The Director General of Police,
Government of Tamil Nadu,
Mylapore,
Chennai - 4.

3.The Commissioner of Police,
Trichirappalli.

4.Ganeshan,
Inspector of Police,
Idaimalaipattipudhur Police Station,
Trichirappalli.

5.Pugalenthii,
Police Constable,
Edaimalaipattipudhur Police Station,
Trichirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents to pay compensation of a sum of Rs.10,00,000/- each to the petitioners.

For Petitioners
For R-1 to R-3

: Mr.C.M.Arumugam
: Mr.A.Thirvadi Kumar,
Additional Public Prosecutor
: Mr.R.Anand for
Mr.R.Ponkarthikeyan

For R-4 & R-5



ORDER

The Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to pay compensation of a sum of Rs.10,00,000/- each to the petitioners.

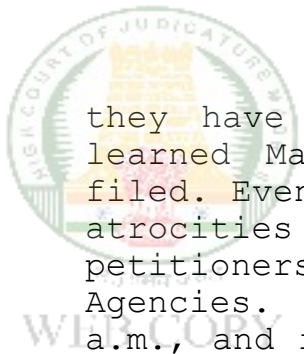
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2. It is the case of the petitioners that respondent Nos.4 and 5, took the petitioner on 10.10.2009 at 9.00 a.m., from their residence and confined under illegal custody with undergarments only. Besides, caused physical and mental torture. On the same day, the petitioners requested the fourth respondent to release them from the custody. When the mother of the first petitioner approached the fourth respondent to release the petitioners, for which, the fourth respondent demanded a sum of Rs.20,000/-. Thereafter, she lodged a complaint before the District Legal Services Authority and they had appointed a Commissioner. The Commissioner visited the police station and found that the petitioners were tortured by the police. Hence, their contention is that there was custodial violence and illegal detention and therefore, sought compensation as above.

3. The third and fourth respondents filed a counter affidavit denying the entire allegation. It is the case of the respondents that on the basis of the complaint lodged by the Manager of PLA Maruti Motor Service Centre, Pirattiyur, an F.I.R has been registered in Crime No.681 of 2009 for the offence under Section 379 I.P.C. On 12.10.2009, at about 10.30 a.m., the petitioners were arrested and remanded to the custody and the alleged torture both physical and mental, is denied. The further allegation that the petitioners were kept only with undergarment is also denied.

4. The learned counsel for the petitioner would submit that the Advocate Commissioner's report dated 12.10.2019 would clearly indicate that at the time of his visit, the petitioners were arrested and there was no arrest card in that aspect. Besides, he enquired the petitioners and they informed about the custodial violence. Hence, his contention is that the mother of the first petitioner lodged a complaint before the Legal Services Authority on 12.10.2009. Pursuant to the same, the Commissioner visited the police station and filed a report. That itself clearly proves the case of the petitioners to claim compensation for the illegal detention as well as physical violence.

5. Whereas Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State and Mr.R.Anand, learned counsel appearing for the respondents 4 and 5, would submit that the entire case is stage managed. If really the petitioners were arrested and detained from 10.10.2009, there was no reason for the mother to wait two days to give a complaint before the Legal Services Authority. Lodging of complaint before the Legal Services Authority itself clearly indicates that the petitioners are not rustic villagers. For this reason, it is the contention that while the accused were remanded,



they have not complained anything against the police before the learned Magistrate. On the same day, bail application has been filed. Even in the bail application, nothing whispered about alleged atrocities of the police. It is further submitted that the petitioners had been arrested for the theft of Car tyres of P.L.A Agencies. An F.I.R has been lodged on 12.10.2009 at about 10.30 a.m., and recovery has also been effected and on the same day, they have been remanded. However, only to dodge the criminal proceedings, the present writ petition has been filed.

6. After hearing the submissions, this Court directed the learned Additional Public Prosecutor to produce the F.I.R Register, to find out whether the F.I.R has been properly registered as contended by the respondent police.

7. A perusal of the F.I.R Register would show that the F.I.R in Crime No.681 of 2009 has been registered and entered in the F.I.R Register in seriatim. There is no interpolation or any alteration found in the Register, to contend that the F.I.R has been later foisted in order to avoid allegation of illegal detention.

8. Be that as it may, on the same day, the accused were remanded before the learned Judicial Magistrate concerned. Having disclosed the alleged illegal detention to the Commissioner appointed by the Legal Services Authority, there was no reason for the accused for not having disclosed the same to the learned Judicial Magistrate at the time of remand. Similarly, even in the bail application filed on the same day, there was no whisper whatsoever made against the police officials. Further, it is relevant to note that the Commissioner though visited the police station as per the orders of the District Legal Services Authority, he has given opinion only on the basis of the statement of the accused. His report would also indicate that some other Advocate by name Subramanian also requested the Inspector of Police for earlier release of the accused. It proves that the accused or the mother of the accused had legal assistance at the relevant point of time. This fact coupled with the delay in lodging the complaint before the authority ie., on 12.10.2009, makes the entire statement of the writ petitioners unreliable. Therefore, merely based on the Commissioner's report, it cannot be concluded that there was physical violence. Of course, the Commissioner has filed report that the accused were kept only with undergarment at the relevant point of time. Though, it may sometime affect the human dignity, but at the same time, the other consequences of allowing the prisoners to wear their own clothes also cannot be lost sight. Sometimes, the prisoners also make use of their pants and shirts to commit suicide etc., inside the premises. That may be the reason why the accused allowed to wear undergarments only. Merely because they worn undergarments, that cannot be a reason to say that they were tortured and they were in illegal detention.



9. Considering all these aspects, this Court finds that the case of the petitioners has not been established and is only an afterthought. Hence, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

To:

- 1.The Home Secretary,
State of Tamil Nadu,
St. George Fort,
Chennai -9.
- 2.The Director General of Police,
Government of Tamil Nadu,
Mylapore,
Chennai - 4.
- 3.The Commissioner of Police,
Trichirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.PON KARTHIKEYAN, Advocate (SR-12639[F] dated 17/03/2022)

W.P (MD) No.13153 of 2009
16.03.2022

PM
MS/31.03.2022/4P.6C