



W.P.(MD).No.4395 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 30.11.2022

ORDER PRONOUNCED ON : 06.12.2022

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD).No.4395 of 2013

Auspin Jebaraj

....Petitioner

Vs

1.The Government of Tamil Nadu
Represented by its Secretary
Home Department
Secretariat, Chennai

2.The Revenue Divisional Officer
Padmanabhapuram
Kanyakumari District

3.The Superintendent of Police
Kanyakumari District
Nagercoil

4.Dharmaraj
Assistant Superintendent of Police
Colachel
Kanyakumari District
(Now at Deevala Sub Division, Nilagiri District)

5.N.Baskaran
Deputy Superintendent of Police
Nagercoil
Kanyakumari District (Now at Nagercoil Town)



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6.A.Rajarajan
Inspector of Police
Kollencode Police Station
(Kollencode Police Station to transfer Tiruvattar Police Station)
Kanyakumari District

7.Kumaravel Pandian
Sub Inspector of Police
Kollencode Police Station
Kanyakumari District
(Now at Kanyakumari Police Station)

8.M.Xavier Franklin
Police Constable -KK1172
Kollencode Police Station
Kanyakumari District
(Now at Kollencode Police Station)

9.C.Christopher John
Police Constable -KK 1858
Kollencode Police Station
Kanyakumari District
(Now at Kuzhithurai Police Station)

10.Samraj
Special Sub-Inspector of Police
Kollencode Police Station
Kanyakumari District
(Now at Kollencode Police Station)

11.Francis
Special Sub Inspector of Police
Kollencode Police Station
Kanyakumari District

12. Balasundaram
Sub Inspector of Police
Kollencode Police Station
Kanyakumari District



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13.T.Russelraj
Special Sub Inspector of Police
Kollencode Police Station
Kanyakumari District
(Now at Colachel Police Station)

14.Charles Kalaimani
Inspector of Police
Karingal Police Station
Kanyakumari District
(Now at Tirunelveli District)

15.Arulldhas
Karingal Police Station
Kanyakumari District
(Now at Pechiparai Police Station)

16.Sudeer Kumar
K.K.1452 Colachel A.R.Camp
(Now at A.R.Nagercoil)

17.Lehib Wilfred
K.K.1250 Colachel A.R.Camp
(Now at A.R.Nagercoil)

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to pay compensation of Rs.75/- lakhs only for the illegal detention of the petitioner and physical and mental torture sustained by the petitioner as well as for the fracture of his teeth and for damaging his reputation by the respondents 4 to 17 while they were under duty.

For Petitioner	: Mr.S.C.Herold Singh
For R1 & R2	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr..M.Lingadurai Special Government Pleader
For R4 to R17	: No Appearance
For R3	: Mr.P.Kottaichamy Government Advocate (Crl.Side)



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ORDER

The present writ petition has been filed seeking a compensation of a sum of Rs.75/-lakhs from the respondents 1 to 3 herein for the illegal detention of the petitioner and physical and mental torture sustained by the petitioner and for damaging his reputation by the respondents 4 to 17 while they were under duty.

2.According to the petitioner, he is an MCA graduate and he was undergoing MBA through Distance Education. While he was preparing for his examination on 31.10.2011 at about 7.00 p.m, the respondents 4 to 17 had rushed into the house and dragged him out of the house and forcefully took him to the Police Station. The respondents 4 to 15 had also taken away the Laptop, a bag, a gold ring, Rs.50,000/- cash, a mobile phone, a Camera, an I.D Card and pocket diary of the petitioner.

3.According to the petitioner, he was originally taken to Kuzhithurai Police Station and he was mercilessly attacked there. Thereafter, he was taken to Karungal Police Station and the respondents 7, 8 and 14 attacked him. After that, he was taken to Puthukkadai Police Station where the sixth respondent and other persons attacked him brutally with a metal torch. The



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petitioner again taken to Colachel Police Station where he was undressed and he was treated in an inhuman manner.

4. According to the petitioner, an F.I.R was registered against him in Crime No.384 of 2011 on 01.11.2011 and he was again attacked by the Police. Thereafter, the media and press people were called and photographs were also published in the newspaper. According to the petitioner, he was produced before the Judicial Magistrate at 9.00 p.m on 01.11.2011 as if he was arrested only at 12.30 p.m at Eraviputhoor Kadai. He had informed the Judicial Magistrate about the brutal attack and the Judicial Magistrate was kind enough to refer the petitioner to the Hospital. However, instead of taking the petitioner to the nearest Hospital at Kuzhithural, he was taken to Government Hospital at Asaripallam. Thereafter, he was taken to Palayamkottai Central Prison as if there were no serious injuries. However, the Prison Authority at Palayamkottai Central Prison had refused to admit him and refer the matter to the Medical College, Palayamkottai. Since the Doctors in the Medical College, Palayamkottai had refused to give treatment to the petitioner without a formal admission, the respondents 4 to 17 had again taken back the petitioner to Asaripallam Medical College at Kanyakumari District and influenced the Doctor there and got a slip from him as if there were only minor injuries.



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5. According to the petitioner, thereafter he again taken to Puthukkadai Police Station and he was attacked. Ultimately, the petitioner was lodged in the Central Jail at Palayamkottai on 02.11.2012 at about 8.30 a.m. According to the petitioner, he was under illegal custody from the respondents 4 to 17 from 7.00 p.m on 31.10.2011 to 8.30 a.m on 02.11.2011. He contended that he had suffered a lot at the hands of the Police.

6. The learned counsel for the petitioner had further contended that on seeing the injuries upon the petitioner, the Jail authorities have entered the injuries on the record book available in the Jail and referred the petitioner to Jail Hospital and after giving treatment, he was referred to Palayamkottai Medical College Hospital on 05.11.2011 there the petitioner was admitted in the Intensive Care Unit till 18.11.2011 as an inpatient. The petitioner was discharged on 18.11.2011. The Goondas Act imposed upon the petitioner was also recalled on 04.01.2012. The petitioner was ultimately released on bail on 21.01.2012. Thereafter, the petitioner had sent a representation on 02.02.2012 to the first respondent herein and other authorities complaining about the illegal detention made by the respondents 4 to 17 and brutally physical force exhibited by the said authorities. Since there was no responsible from the authorities, the petitioner has filed the present writ petition seeking compensation.



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7.Per contra, the learned Additional Advocate General appearing for the respondents had relied upon a counter and contended that the petitioner was arrested for handling explosive material at the house of Jeba Kennady and an F.I.R was registered in Crime No.384/2011 under Section 120(b), 34 r/w Sect.5(A) of the Explosive Substances Act 1908 and Section 6 of the Explosives Act 1884 dated 30.10.2011. According to the third respondent, the petitioner was arrested only at 12.30 p.m on 01.11.2011 and produced before the Judicial Magistrate, Kuzhithurai at 9.45 p.m on the same day. Hence, the contention of the writ petitioner that he was illegally detained from 7.00 p.m on 31.10.2011 till 9.45 p.m on 01.11.2011 is not factually correct.

8.The learned Additional Advocate General had further contended that the remand report of the Judicial Magistrate, Kuzhithurai will clearly indicate that at the time of remand, the petitioner has not made any complaint as against the police officers. Hence, all the allegations made by the writ petitioner are false and imaginary.

9.The learned Additional Advocate General has further contended that the petitioner was remanded by the Judicial Magistrate, Kuzhithurai at about 9.45 p.m on 01.11.2011. Thereafter, the petitioner was lodged at Central Prison, Palayamkottai at about 08.30 a.m on 02.11.2011. The allegation of the



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writ petitioner that he was taken from one Hospital to the other is not factually correct. He was directly taken only to the Central Prison at Palayamkottai. He had further contended that the allegation made against the police officials are not factually correct and there was no illegal detention or physical torture meted out by the writ petitioner at any point of time. Hence, he prayed for dismissal of the writ petition.

10.I have considered the submissions made on either side and perused the materials available on record.

11.The petitioner contends that he was arrested at 7.00 p.m on 31.10.2011 , but he was produced before the Judicial Magistrate only at 9.45 p.m on 01.11.2011. According to the petitioner, he was physically tortured in Kuzhithurai, Karungal, Puthukkadai and Colachel Police Stations before being produced before the Judicial Magistrate, Kuzhithurai. According to the petitioner, while he was produced before the Judicial Magistrate, he had informed the Magistrate about the physical torture meted out by him by the respondent police and the Judicial Magistrate directed the police authorities to refer him to the Hospital. However, a perusal of the remand report indicate that the Judicial Magistrate has specifically recorded that the petitioner has



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not made any complaint against the police when he was produced at 9.45 p.m.

Hence, the petitioner has not established the fact that he was arrested at 7.00 p.m on 31.10.2011 and after illegal detention, he was produced before the Judicial Magistrate at about 9.45 p.m on 01.11.2011. In view of the recording made by the Judicial Magistrate in the remand report, the petitioner has not established the fact that he was physically tortured by the respondent police officials before he was produced before the Judicial Magistrate.

12.The petitioner has produced a medical certificate issued by the Medical Officer of Central Prison, Palayamkottai dated 17.10.2012. In the medical report, it has been stated that at the time of admission in the Central Prison, Palayamkottai on 02.11.2011, the petitioner had complained of injuries in both the buttocks and thighs. The report further pointed out that the petitioner has multiple abrasion over both the buttocks and thighs and his left upper incisor tooth was found. With the above observations, the medical officer has referred the petitioner to Tirunelveli Medical College Hospital on 05.11.2011 where he was diagnosed as a case of multiple injuries. The report further states that the petitioner was discharged on 18.11.2011 and he was released on bail on 20.12.2011.



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13.A perusal of the report will clearly indicate that there were multiple injuries while he was admitted to the Central Prison, Palayamkottai on 02.11.2011. Hence, it is clear that the petitioner had being subjected some kind of physical torture by the respondent police after he was remanded by the Judicial Magistrate, Kuzhithurai at about 9.45 p.m. Though the Judicial Magistrate has remanded the petitioner at about 9.45 p.m on 01.11.2011, the petitioner has been admitted to the Central Prison, Palayamkottai only around 8.30 a.m on the next day. The delay in taking remand prisoner to concerned Central prison has not been properly explained by the respondent authorities. Hence, it creates suspicion in the minds of the Court with regard to the allegation made by the writ petitioner about the physical torture meted out by him after an order of remand was passed and before he lodged in the Central Prison.

14.This Court had directed the Deputy Inspector General of Police to conduct an enquiry with regard to the happening after 9.45 p.m on 01.11.2011 and before 08.30 a.m on 02.11.2011 and file a report on or before 28.10.2022.

15.The statement of several witnesses was filed by the Deputy Inspector General of Police on 07.11.2022.

16.A perusal of the report indicates that the Deputy Inspector General of Police, Tirunelveli had examined the respondents 7, 8 and 10 to 17 apart from the writ petitioner. The Deputy Inspector General of Police has also



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recorded the statement of co-accused namely Jeyachandra Boobathy and the said statement is also enclosed by way of typed set of papers. A copy of the report was furnished to the counsel for the writ petitioner and he has also filed a reply affidavit.

17.A perusal of the enquiry report indicates that all the respondents in their statements have stated that the Judicial Magistrate had remanded the writ petitioner and another co-accused namely Jeyachandra Boobathy at about 09.45 p.m on 01.11.2011. Thereafter, the petitioner and the co-accused were taken to Palayamkottai Central Prison at about 12.00 mid-night. Since the Jail authorities found that the writ petitioner was suffering from severe injuries, they have directed the police officials to get appropriate medical certificate from Tirunelveli Government Medical College Hospital. The authorities have taken the writ petitioner to Tirunelveli Medical College Hospital at about 12.15 a.m where they have refused to give a medical certificate on the ground that the police officials have to obtain medical certificate only from Aasaripallam Government Hospital at Nagercoil. Hence, they were directed to obtain a medical certificate from Aasaripallam Government Medical College Hospital at Nagercoil. Thereafter, the writ petitioner and co-accused Jeyachandra Boobathy were taken to Aasaripallam Medical College Hospital at Nagercoil at about 2.00 a.m and after examining the writ petitioner, a certificate has been issued at about 2.45 a.m. The escort



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police have taken the petitioner and other co-accused to Tirunelveli and reached Tirunelveli at about 6.00 a.m and lodged the petitioner and co-accused in Palayamkottai Central Prison at about 7.30 a.m.

18. A narration of the above said sequence of events will clearly indicate that there is some time gap between starting from Aasaripallam Hospital and reaching Palayamkottai Jail. This has been explained by way of statement that they have halted the vehicle at some places during night travel which cannot be considered to be an unreasonable one.

19.A perusal of the statement further indicates that neither the petitioner nor the co-accused Jeyachandra Boobathy were taken to any police station after they were remanded by the Judicial Magistrate. Even assuming that the statement of all the police officials are not believable, this Court has no reason whatsoever to disbelieve the statement of the co-accused namely Jeyachandra Boobathy who was arrested in the same crime number for similar nature of offences. Both of them were remanded before the Judicial Magistrate at the same time and both were directed to be lodged at Central Prison, Palayamkottai. The said co-accused namely Jeyachandra Boobathy has specifically stated that they were not taken to any police station after remand.

20.In the reply affidavit filed by the learned counsel for the petitioner has stated that the said co-accused is a habitual offender and many cases are



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pending against him. In order to get over those criminal cases, he has given this statement. When both the petitioner and the said Jeyachandra Boobathy were arrested for the same crime number and remanded by the Judicial Magistrate at the same time, it is not known why the petitioner alone could be subjected to physical torture and the said Jeyachandra Boobathy was handled properly by the respondent police. Hence, I do not find that there are any reason to disbelieve the statement of the co-accused namely Jeyachandra Boobathy.

21.In view of the above said discussion, I find that the petitioner has not established his case with regard to custodial torture by the respondent police either before the remand or after remand.

22.I do not find any merit in the writ petition and the writ petition stands dismissed. No costs.

06.12.2022

Internet : Yes/No
Index : Yes/No
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To

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1.The Government of Tamil Nadu
Represented by its Secretary
Home Department
Secretariat, Chennai

2.The Revenue Divisional Officer
Padmanabhapuram
Kanyakumari District

3.The Superintendent of Police
Kanyakumari District
Nagercoil



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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