



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

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THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

W.P (MD).No. 4922 of 2022

Sethupathy @ Sethuraman

.. Petitioner

Vs.

1. The Superintendent of Police,
Madurai District,
Madurai.

2. The Inspector of Police,
Keelavalavu Police Station,
Keelavalavu,
Madurai District.

3. Murugesan

.. Respondents

Prayer : This petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his impugned summons NIL dated and quash the same as illegal, arbitrary, violation of law and further direct the 2nd respondent not to harass the petitioner without prima-facie against the petitioner call for enquiry

For Petitioner : Mr.A.Sekar

For Respondents : Mr.R.M.Anbunithi

No.1 & 2

Additional Public Prosecutor

ORDER

This Writ Petition is filed to call for the records of the 2nd respondent in his impugned summons NIL dated and quash the same as illegal, arbitrary, violation of law and further direct the 2nd respondent not to harass the petitioner without prima-facie against the petitioner call for enquiry

2.The petitioner is running a Registered Consultant Firm name and style of 'KM Consultants ' registered under Tamil Nadu Registration, arranging job in foreign countries. While being so, three persons approached the petitioner for getting job for the third respondent and his brother's son in Saudi Arabia. On the assurance given by the third party, the petitioner processes visa through Embassy in which the petitioner did not receive any money from the third respondent as well the party who introduced him.



After completing the visa process the third respondent failed to pay the visa as well as process fee and when it was questioned by the petitioner, the third respondent represented that he already paid a sum of Rs.1,40,000/- to the third party. However the third respondent lodged complaint alleging that the petitioner refused to hand over the original passport. On receipt of said complaint the second respondent issued summons under Section 41(A) of Cr.P.C for enquiry to be conducted on 17.03.2022, however the date of hearing now expired and the prayer sought for has become infructuous.

3.The learned Additional Public Prosecutor appearing for the respondent police submits that on the complaint given by the third respondent against the petitioner, petition enquiry is pending.

4.Heard the learned Counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondent police.

5.It is the grievance of the petitioner that the respondent police have been harassing him under the guise of an enquiry/investigation.

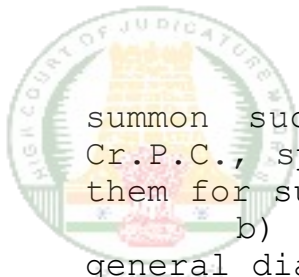
6. An enquiry into a non cognizable offence or a cognizable offence is the unfettered powers of the Investigation Officers so long as the power to investigate/enquire into these offences are legitimately exercised within the frame work of Chapter XII of the Code of Criminal Procedure. Though the Code of Criminal Procedure empowers the Magistrate to be a guardian in all the stages of the police investigation, there is no power envisaging him to interfere with the actual investigation or the mode of investigation. It is in this background that numerous petitions complaining of harassment are being reported and filed before this Court seeking for directions to refrain the police officials from harassing the persons named in a complaint.

7.This Court, exercising its power under Article 226 of the Constitution of India normally would not interfere with the investigation conducted by a police officer. Nevertheless, it would also not turn a blind eye to instances of harassment by the police under the guise of investigation is brought to its notice.

8.In the present case in hand, the petitioner has complained of harassment by the police based on a complaint and seek for this Court's intervention by way of a direction. The term 'harassment' by itself has a very wide meaning and hence, what could be harassment to the petitioner may not be the same to the police officer.

9.In order to circumvent such situations, the following guidelines are issued:

a) While summoning any person named in the complaint or any incident complained of, the police officer shall



summon such person through a written summon under Section 160 Cr.P.C., specifying a particular date and time for appearing before them for such an enquiry/investigation.

b) The minutes of the enquiry shall be recorded in the general diary/station diary/daily diary of the police station.

c) The police officer shall refrain himself or herself from harassing persons called upon for enquiry/investigation.

d) The guidelines stipulated for preliminary enquiry or registration of FIR by the Hon'ble Supreme Court in **Lalita Kumari Vs. Government of Uttar Pradesh and others [2014 (2) SCC (1)]** shall be strictly adhered to.

10. With the above observations and direction, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Superintendent of Police,
Madurai District,
Madurai.
2. The Inspector of Police,
Keelavalavu Police Station,
Keelavalavu, Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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