WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.06.2022
Delivered on	24.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.10742 of 2022

R. Kaleeswari ...Petitioner

Vs.

1.The Superintendent of Police,
O/o. Superintendednt of police,
Virudhunagar District.

2.State rep. by
The Inspector of Police,
Malli Police Station,
Virudhunagar District.

3.Nallathambi ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the second respondent and his officials not to harass the petitioner and his family members unnecessarily against law under the guise of enquiry on the basis of the petitioner's representation dated 09.06.2022 to the 1st Respondent.

For Petitioner : S.Siva Kumar
For Respondents : Mr.A.Albert James
Government Advocate (Crl. Side)
(for R1 and R2)

ORDER

This criminal original petition is filed to direct the second respondent and his officials not to harass the petitioner and his family members unnecessarily against law under the guise of enquiry on the basis of the petitioner's representation dated 09.06.2022 to the 1st respondent.

2.The learned counsel appearing for the petitioner submitted that the petitioner is having land in S.Nos.1258/4B 12581/4B2 at malli village, Srivilliputhur Taluk at Virudhunagar District. The third respondent, with *mala fide* intention and want to acquire the land, frequently threatened the petitioner. Further, the third respondent gave criminal complaint before the respondent police. Based on which, the respondent called the petitioner to attend enquiry. The action of the respondent police is in violation of the Articles 19 and 21 of the Constitution of India. Hence, he filed this petition.

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

WEB COPY

3.In support of his contention, the learned counsel for the petitioner placed reliance on the following decisions:-

(i) **Arnesh Kumar vs. State of Bihar and another** (2015-1-L.W.(Crl.) 318),

(ii) **L.N.Nithyanantham vs. the State and others** (Crl.O.P(MD)No.1776 of 2021,

(iii) **Dorand and others vs. the Superintendent of Police, Nagercoil and other another** [2016(2)CTC 286: (2016)2 MLJ CRL 437],

(iv) **Shanmugavadivel and others vs. The Superintendent of Police, Theni District, Theni and another** [2015-2-L.W.(Crl.) 627],

(v) **Jagdish Shrivastav vs. the State of Maharashtra and another** [S.L.P (Crl.)No.1758 of 2022] and

(vi) **Abhyanand Sharma @ Tinku Sharma vs. State of Bihar and another** [W.P.(Crl)No.420 of 2021]

4.The learned Additional Public Prosecutor appearing for the respondent police submitted that the respondent police received a complaint from the third respondent and made enquiry and the same is pending with the respondent police for further enquiry.

5.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.

6.In this original petition, the petitioner seeks a direction of this Court against the respondent police not to harass him under the guise of enquiry.

7.The inherent power under Section 482 Cr.P.C envisages three circumstances, under which, inherent jurisdiction may be exercised, namely, (1) to give effect to an order under the Code, (2) to prevent abuse of the process of the Court and (3) to otherwise secure ends of justice. The rule of inherent power has its source in the maxim *"Quando lex aliquid alique, concedit conceditur et id sine quo res ipsa esse non potest""* it means that when the law gives a person anything, it gives him that without which the thing itself cannot exist.

8.In the instant case, the third respondent gave a complaint against the petitioner alleging some offences. But, according to the petitioner, the dispute between him and the third respondent is in civil nature.

9.The criminal proceedings are not a short cut of other remedies available in law. The respondent police on investigation of the complaint, if found that the parties are essentially seeking redressal of their civil claim, the police may follow the procedure as contemplated under Section 157(1)(b) of Cr.P.C.

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

10.The power of investigation officer is statutory one. The power to investigate into the cognizable offence is to be legitimately exercised in strict compliance with the provision of Chapter XII of the Code. There is no unlimited discretion to act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself. Further, the investigation officer is empowered to collect evidence/material during investigation and arrive at a conclusion independently. This Court would not ordinarily interfere with the functioning of an Investigating Agency. It may do so only in exceptional circumstances.

11. In **Lalithakumari vs. State of U.P** [AIR 2014 SC 187], the Hon'ble Constitution Bench of the Hon'ble Supreme Court summarized law and gave following directions with regard to registration of F.I.R. For better appreciation, it is reproduced hereunder:-

> (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
>
> (iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> (iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
>
> (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> (vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are : (a) Matrimonial disputes/family disputes (b) Commercial offences (c) Medical negligence cases (d) Corruption cases (e) Cases where there is abnormal delay/*laches* in initiating criminal prosecution, for example, over 3

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

WEB COPY

months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

12.Further, the Hon'ble Apex Court in **Arneshkumar vs. State of Bihar and another** [2015-1-L.W. (Crl.) 318] has directed the police officer to follow up the provisions of 41A Cr.P.C and do not arrest the accused unnecessarily and gave the following directions:-

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

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

WEB COPY

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

13.The learned Additional Public Prosecutor brought to the knowledge of this Court to the consolidated instructions given to the police officer by the Director General of Police, Chennai in Rc.No.521017/Crime 3(2)/2020 dated 25.01.2021.

14.On perusal of the consolidated instructions, it is seen that the Director General of Police, Chennai gave instructions to all the police based on the Judgments of the Hon'ble Supreme Court in the cases of **D.K.Basu vs. State of West Bengal** [AIR (1997) SC 610] and **Arneshkumar vs State of Bihar** (supra) and also referred the order of this Court in **Crl.O.P.(MD)Nos.12665 and 12666 of 2020** with regard to treating the common man who approached the police station and handling the complaint given by the aggrieved person and the procedure to be followed in the arrest of accused as per Section 41 (1)(b) Cr.P.C.

15.This Court, by its order dated 01.02.2016 in Crl.O.P(MD) No.1727 of 2016 considered the similar prayer for the direction. The learned Judge of this Court in this case, observed the Code of Criminal Procedure "nowhere contemplates the remedy of title not to harass". For better appreciation, para 6 of the order is extracted hereunder:-

"6.When someone lodges a complaint, the bonafides of which is doubted by the Police Officer, he may choose to make a preliminary enquiry. This happens mostly in cheating cases, because, experience shows that, people frequently rush to the police for help even in purely civil and commercial transaction. If Police do not register an FIR immediately, the complaint rushes to this Court under Section 482 Cr.P.C for a direction to the register an FIR. When a direction to enquire is issued by this Court on the complainant's petition, the Police perforce will have to call the adverse party for enquiry. Immediately, the adverse party rushes to this Court with a? Not to Harass? Petition. If a? Not to Harass? order is passed, that is used as a shield by the adverse party

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

WEB COPY

to avoid appearance for police enquiry. On one hand, this Court directs Police to conduct an enquiry on the complaint of a person and in the same breath, if a? Not to harass? order is passed, at the instance of the adverse party, the Police will only be in a quandary."

16.In view of the above legal and factual position, I hereby direct the respondent police to follow the directions given by the Hon'ble Apex Court in the case of **Arneshkumar** (supra) with regard to handling the complaint and follow the guidelines stated by the Hon'ble Apex Court in the case of **D.K.Basu** (supra) and the Consolidated Instructions dated 25.01.2021 issued by the Director General of Police, Chennai. If the police is not followed the above legal principles, it is inevitable to meet the consequences of violation of law.

17.With the above directions, this Criminal Original Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

skn

To

1.The Superintendent of Police,
O/o. Superintendednt of police,
Virudhunagar District.

2.The Inspector of Police,
Malli Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court.
Madurai.

+1 CC to M/s.S.SIVAKUMAR, Advocate (SR-26491[F] dated 17/06/2022)

Crl.O.P.(MD) No.10742 of 2022

24.06.2022

MGJ(05.07.2022) 6P 5C

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