



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.15383 of 2021

R.Indira

... Petitioner

Vs.

- 1.The Director General of Police and
Head of Police Force of Tamil Nadu,
No.1, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
- 2.The Inspector General of Police,
South Zone,
Reserve Line,
Race Course Colony,
Madurai-625 002.
- 3.The Commissioner of Police,
Madurai City,
Alagarkoil Road,
Madurai - 625 002.
- 4.The Deputy Commissioner of Police (Crime),
Office of the Commissioner of Police,
Madurai City,
Alagarkoil Road,
Madurai-625 002.
- 5.K.P.Manikumar,
The Sub-Inspector of Police,
C.3, S.S.Colony (Crime) Police Station,
S.S.Colony,
Madurai-625016.
- 6.Vimala,
Gr.I Constable,
C.3, S.S.Colony (Crime) Police Station,
S.S.Colony,
Madurai-625016.



7.Kalaivani
(Formerly Inspector of Police,
C.3, S.S.Colony (Crime)PS, Madurai)
Presently,
Inspector of Police,
Abiramam Police Station,
Abiramam, Kamuthi Road,
Ramanathapuram District-623 601.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 4 to take disciplinary action against the fifth, sixth and seventh respondents for gross violation of Section 46(4) Cr.P.C. and further direct to pay compensation of Rs.1.00 lakh by considering the petitioner's representation, dated 29.07.2021, within a time limit to be fixed by this Court.

For Petitioner : Mr.G.Rajaguru

For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

Heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

2.The case of the petitioner is that she was arrested after sunset without the order of the Magistrate. Thus, there was a violation of Section 46(4) of Criminal Procedure Code. The petitioner therefore wants this Court to direct the respondents 1 to 4 to take disciplinary action against the respondents 5 to 7. He also wants the respondents to pay compensation to the tune of Rs.1,00,000/-. In this regard, the petitioner had already given a representation on 29.07.2021. Since it was not acted upon, the petitioner has moved this Court for issuance of a Writ of Mandamus.

3.The learned Counsel appearing for the petitioner relies on a catena of decisions in this regard. Some of them have been enclosed in the typed set of papers. The petitioner places particular reliance on the order dated 18.10.2019 made in W.P(MD)No.5508 of 2019.

4.The petitioner's prayer was strongly opposed by the respondents. The learned Additional Public Prosecutor appearing for the respondents submitted that this Writ Petition is clearly not maintainable.



5.I carefully considered the rival contentions and went through the materials on record. If the respondent had arrested the petitioner after sunset without the order of the Magistrate then, that would definitely be a statutory violation. But in this case from the records it is seen that the police did not secure the petitioner. The petitioner appears to have been indebted to some local people. She was physically apprehended by the aggrieved persons and brought to the police station. Thereafter, S.S.Colony Police Station had taken her before the jurisdictional Magisterate, Madurai. The order of the learned Judicial Magisterate reads as follows:

'On hearing both side submissions and perusal of records it can be seen that the accused was arrested after sunset without order of Magistrate. Hence it is violation of Section 46(4) Crpc. But on perusal of records it can be seen that the accused had got large sums of money from many persons stating her husband has cancer. But the Counsel for accused also state that the accused's husband is not affected by cancer. Further from the statements of the witnesses it can be seen that same document was shown by accused to many persons to borrow money. Hence on perusal of records prima facie case against accused made out and reason for remand satisfied. Hence considering all the above facts this Court finds that remand of accused is necessary. Further IO also stated jewels and money has to be recovered

Hence consider all the above reasons the accused is remanded to Judicial Custody for 15 days till 13.05.2021.'

6.As rightly pointed out by the learned Additional Public prosecutor, the remand order furnishes a complete answer to the contentions now advanced by the learned Counsel for the petitioner. S.S.Colony Police did not arrest the petitioner on their own. They had only taken the petitioner from the police station directly to the residence of the Judicial Magistrate, Madurai. After considering the contentions, the learned Judicial Magistrate had remanded the petitioner.

7.The police personnel arrayed in this Writ Petition cannot be fastened with any liability. That apart whether to take disciplinary action against an employee is left to the discretion of the disciplinary authority concerned. It is not for this Court to issue any Writ of mandamus.



8. With the said observation, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar(CS)

lr

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

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+2 CC to M/s.G.RAJAGURU, Advocate (SR-4313[F] dated 04/02/2022)

W.P. (MD) .No.15383 of 2021
03.02.2022

SS (CO)
TR(18.02.2022) 5P 10C