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Writ Petition (MD)No.11695 of 2013



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition (MD)No.11695 of 2013

S.John Edward Raj

... Petitioner

Vs.

1.State represented by,
The Secretary to Government of Tamil Nadu,
Home Department,
Secretariat, Chennai.

2.The Superintendent of Police,
Kanyakumari District, Nagercoil.

3.The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.

4.Rameshkumar

5.Kumar

6.Prabhakaran

7.Lawrence

8.Girishkumar

9.David ... Respondents
(R4 to R9 impleaded as per suo motu order dated 23.07.2013)

Prayer: Writ Petition is filed under Article 226 of Constitution of India,



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praying for issuance of a Writ of Mandamus, directing the first respondent to pay compensation of sum of Rs.25,00,000/- to the petitioner for the mental agony caused by the respondents 2 and 3 by filing false case against the petitioner.

For Petitioner	: Mr.M.Gnanagurunathan
For Respondents 1 to 3	: Mr.R.M.Anbunithi
	Additional Public Prosecutor
For 4 th Respondent	: Mr.D.Sivaraman
For 5 th Respondent	: Mr.T.Jeen Joseph
For Respondents 7 to 9	: Mr.B.Brijesh Kishore
For 6 th Respondent	: Dismissed for default

ORDER

The petitioner has filed this writ petition in a nature of Writ of Mandamus, directing the first respondent to pay compensation of sum of Rs. 25,00,000/- to the petitioner for the mental agony caused by the respondents 2 and 3 by filing false case against the petitioner.

2. According to the petitioner, one P.S.Rameshkumar and other police persons, who were working in Pudukadai Police station, Kanyakumari District on 21.12.2009 at 23.30 hours trespassed into licensed Sand godown of said Devaraj with white color Tempo Traveller bearing registration No.TN-74-G-0215 and Hero honda two wheeler bearing registration No.TN-75-3394 and reloaded the unloaded sand from Kappakadu godown in the lorry bearing registration No.TN-75A-6541 and seized the Taurus



lorry and arrested Ramesh (Cleaner) at Kappukadu Devaraj sand godown.

The Inspector of Police, Pudukadai Police Station had registered a false case on 22.12.2009 in Crime No.402 of 2009 under Sections 379 of IPC and Section 4(1)(a)(ii) I.A. r/w. Section 21 of Mines and Minerals Development Regulation Act r/w. G.O.Ms.No.12 of Industry (MMCI) Department dated 02.02.2009 against the petitioner, driver Jeyaraj and cleaner Ramesh. In the FIR, it is alleged that the tauras lorry was carrying sand from Vettuvani to Kerala State through Munchirai Junction. When the Inspector of Police, Pudukadai Police station and five other Police doing vehicle checkup at Munchirai Junction, the lorry bearing registration No.TN-75A-6541 was attempted to stop and the driver stopped the lorry just before the Police and escaped, but the cleaner was caught by the Police.

3. Against the illegal act, the petitioner lodged a complaint before the respondents 1 and 2, Chief Minister's Cell and other officials. The first respondent had referred the matter to the CBCID. When CBCID investigation was pending, the Inspector of Police, Pudukadai had filed charge sheet before the learned Judicial Magistrate No.II, Kuzhithurai in C.C.No.26 of 2010. On 22.05.2010, CBCID had filed a report that the respondents jointly preplanned and misused their official power and falsely



foisted the case against the petitioner. Hence, the petitioner filed CrI.O.P.No. 4697 of 2012 before this Court seeking quash of Crime No.402 of 2009 on the file of the Puthukadai Police and the proceedings in C.C.No.26 of 2010 on the file of the learned Judicial Magistrate No.II, Kuzhithurai. In the proceedings, it was found that the Inspector and Sub Inspector of Police had changed the place of occurrence and thereby, Inspector and Sub Inspector of Police have been recommended for departmental action under Rule 3(a).

4.The Superintendent of Police have taken disciplinary action against the erring officers for falsely foisting the criminal case for changing the place of occurrence under Section 3(a) of Rules. Thereafter, the CBCID investigated the case and filed final report that the police officers had misused their power and by changing the place of occurrence foisted case against the petitioner and others. Thereafter, in order to escape from their wrongful acts and to justify their action, even after the CBCID report and the action of Superintendent of Police had filed charge sheet. The Police Officer further recommended the Regional Transport Officer to cancel his permit and based on the recommendation of police, permit was also cancelled. Thereafter, this Court accepting the act of petitioner and the case was also quashed by this Court. Hence, this petitioner should be awarded a



monetary compensation.

5.The statutory authority had misused their power and were foisted the false case against him and two others and it was proved before this Court by quashing the order of the said case. Due to the act of the said Police Officers, the petitioner has affected mentally, physically and financially. The petitioner filed the return of property petition before the learned Judicial Magistrate No.II, Kuzhithurai. The above said persons had seized his lorry bearing registration No.TN-75-A-6241 on 21.12.2009. The petition was allowed by the learned Judicial Magistrate No.II, Kuzhithurai and his lorry was released from the Court on 08.06.2010. Hence, he had suffered a loss of sum of Rs.2,000/- per day. Even after the release of said vehicle from the Court, thereafter for a period of 27 months, the petitioner could not use his vehicle due to the cancellation of permit of his lorry. Further the respondents had taken away the battery and other spare parts of the lorry. Hence, he filed this petition to award the compensation.

6.The third respondent filed a counter stating that the petitioner is a history sheeted rowdy in Puthukkadai Police Station and he involved in so many cases. On 22.12.2009, at about 06.00 hours, the 3rd respondent Sub



Inspector of Police and Head Constables bearing general numbers 353, 706 and 967 were engaging in vehicle check at Munchirai Junction within Puthukadai Police Station limit to find out illegal transportation of sand and other essential commodities. At that time, one Torres lorry bearing registration No.TN-75-A-6541 with the inscription 'J.S. Andros Emerald Seemon – Neesammal' was intercepted by the police party. The driver of the torres lorry by name Jeyaraj @ Appu, a resident of Kappukadu village stopped the lorry and got down and ran away. Another person who travelled in the same lorry attempted to escape, but he was secured by the police party. The petitioner is the owner of the said lorry and the sand was illegally loaded in the said lorry and was transported to Kerala for sale. Based on the confession statement, the seized Torres lorry was brought to Puthukkadai Police Station with the sand on 22.12.2009 at 09.00 hours and a case in Puthukadai Police Station in Crime No.402 of 2009 under Section 379 of IPC and Section 4(1)(a)(ii) I.A r/w. Section 21 of Mines and Minerals (Development and Regulation) Act, 1957 r/w. G.O.Ms.No.12 of Industry (M.M.C.I. Department) dated 02.02.2009 was registered. The petitioner, who was driver and cleaner were arrayed as accused. The vehicle with sand seized at Munchirai Junction and not between Vettuveni to Kerala route. The vehicle was remanded with sand before the Court of Judicial Magistrate



No.II, Kuzhithurai on 22.12.2010 in R.P.No.248 of 2009. No case was foisted against the petitioner and his men. Since the petitioner and his men were actually transporting sand illegally to Kerala state through Munchirai Junction, his vehicle was seized and lawful action was taken. After thorough investigation and adopting all legal procedures, the case was charge sheeted on 25.01.2010 before the learned Judicial Magistrate, Kuzhithurai and the charge sheet was taken on file as C.C.No.26 of 2010. During investigation, the cleaner namely Ramesh alone was arrested on 22.12.2009 and remanded by them. This Court in CrI.O.P.(MD)No.4697 of 2012 quashed the charge sheet through order dated 14.12.2012 on the ground that the place of occurrence was wrongly mentioned. As far as the averments regarding the battery and other accessories are concerned, the police officers have not taken any things from the lorry. No any complaint was lodged with regard to mention about the missing parts while taking custody of the lorry. Therefore, this petition is liable to be dismissed.

7.The fourth respondent filed a counter by denying the facts mentioned in the counter of the third respondent with regard happenings on 22.12.2009. Further he alleged that the petitioner has sent a petition to the Inspector General of Police, South Zone, Madurai in March 2010. A



direction was given by the Inspector General of Police to the Additional Superintendent of Police Prohibition Enforcement Wing at Kanyakumari District to conduct an enquiry and to submit a report. The Additional Superintendent of Police summoned and enquired all the relevant persons including the petitioner. The petitioner sent a petition to the Special Cell of Hon'ble Chief Minister which was forwarded to the Deputy Superintendent of Police, District Crime Branch, Colachel Sub Division, Kanyakumari District. The Deputy Superintendent of Police also conducted an enquiry and he sent a report to the Special Cell of the Hon'ble Chief Minister on 23.04.2010 holding that the allegations alleged in the petition by the petitioner are utter false. The second respondent herein initiated disciplinary proceedings under Rule 3(a) of Tamil Nadu Police Subordinate Services Discipline and Appeal Rules. A detailed enquiry was conducted before the second respondent and thereby, he imposed punishment of “deferred censure” for six months. Already three enquires have been conducted by three different officers of the Police Department and there was no occasion for the Inspector of CBCID. The alleged report contained in the typed set of paper filed by the petitioner also do not show that the Inspector of CBCID has enquired any of the person related to the incident. The alleged report of Inspector, CBCID is liable to be rejected on the sole ground of violation of



nature justice as no enquiry was conducted and no opportunity was given.

Hence, this petition is liable to be dismissed.

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8.The learned counsel appearing for the petitioner would contend that the third respondent Police foisted the false case against the petitioner and seized the lorry and the lorry was remanded to the learned Judicial Magistrate and it was released after six months. The respondents foisted a false case and the same was also quashed by this Court and thereby the right of privacy was affected. Hence, this Court is competent to award compensation under Article 226 of Constitution of India.

9.To support his contention, he relied upon the judgment of this Court in the case of *T.J.Subija v. The State of Tamil Nadu and others* in *W.P. (MD)No.2584 of 2016*.

10.The learned Additional Public Prosecutor appearing for the respondents 1 to 3 would contend that when the police officials were on patrol checking the illegal sand mining and they found that this lorry with sand and immediately, the driver ran away. The cleaner Ramesh was caught red handed. At that time, the petitioner is the owner of the lorry and they



transported sand to Kerala and thereby, the lorry and cleaner was taken to Pudukkadai police station and they registered a FIR in Crime No.402 of 2009 for the offence under Sections 4(1)(a)(ii) r/w. Section 21 of Mines and Minerals (Development and Regulation) Act. On the same day itself, the lorry was remanded for judicial custody. There is no delay on the part of the police. Thereafter, the police investigated the case and filed final report in C.C.No.26 of 2010 before the learned Judicial Magistrate No.II, Kuzhithurai and the said final report was challenged by the petitioner through CrI.O.P.(MD)No.4697 of 2012. This Court quashed the charge sheet on the ground that the place of occurrence was wrongly mentioned. The quashment of charge sheet on the ground of wrongly mentioned place of occurrence alone is not sufficient to award compensation. The respondents did not violate any rights of the petitioner and already on the request of the respondent police, the permit of the said lorry was cancelled by the Regional Transport Officer. But the said cancellation of permit was not challenged by the petitioner. Further at the time of quashment of charge sheet, the petitioner did not claim any compensation. Thereby, the petition is liable to be dismissed.

11.The learned counsel appearing for the private respondents



contended the same as contended by the learned Additional Public Prosecutor.

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12.Further he argued that already disciplinary proceedings was taken against the petitioner and the quashment of FIR on the ground of place of occurrence was wrongly mentioned alone is not a ground to award compensation and immediately after the occurrence, the FIR was registered within six hours and then the lorry was produced before the Judicial Magistrate Court No.II and thereafter, the vehicle was under the judicial custody. Hence, this respondents are no way responsible for the alleged damages caused to the lorry and thereby, this petition is liable to be allowed.

13.To support his contention, he relied upon the judgment of this Court in the case of *Chelliah v. The Principal Secretary and others* in *W.P. (MD)No.5417 of 2016*.

14.This Court heard both sides and perused the material available on record.

15.It is admitted fact that FIR was registered and thereafter the



respondent police have filed final report. After filing final report, the petitioner has challenged the final report. This Court also quashed the charge sheet on the ground that the place of occurrence was wrongly mentioned. It is admitted fact that the lorry was immediately remanded to judicial custody and it was in custody of learned Judicial Magistrate No.II, Kuzhithurai. Now the petitioner has filed this petition claiming compensation on the ground that the respondents have foisted a false case and lorry was in the judicial custody for more than six months without any use.

16. According to the petitioner, the fundamental right of privacy was infringed and damages was also caused to the lorry, thereby, the respondents are liable to pay the compensation. The petitioner already filed quash petition before this Court and at that time, he has not sought for any compensation for the aforesaid lorry and for infringement of fundamental rights. After the quashment of the FIR only, he filed this petition for claiming compensation based on the quashment order passed by this Court. Mere quashing the FIR on the ground of place of occurrence was wrongly mentioned is not a sufficient ground to award compensation and it will not amount to infringement of fundamental rights. Further the petitioner himself



filed a petition for return of property only on 25.03.2010 with delay and the learned Magistrate also passed order by directing the vehicle to be handed over to the petitioner. The petitioner has not filed petition for return of property immediately after registration of FIR. There is no any fault on the part of the respondents in producing the vehicle. Immediately, after FIR, the vehicle was produced before the learned Judicial Magistrate and thereby, the respondents are not liable to pay compensation to the petitioner.

17.The learned counsel appearing for the petitioner relied upon the judgment in the case of ***T.J.Subija v. The State of Tamil Nadu and others*** in ***W.P.(MD)No.2584 of 2016***, wherein this Court in para nos.25 and 26 reads as follows:-

“25.In view of the above said undisputed facts, it is clear that the right of privacy and reputation of the writ petitioner have been sullied by the act of the police officials for which the State is certainly responsible. The State cannot escape from contending that the officials at the station level have unauthorisedly done the said act and hence, the State is not liable for the same. Though the Deputy Superintendent of Police, DCB, Nagercoil had filed a report on 29.04.2011, the authorities have not proceeded upon the said report till the High Court was pleased to quash the charge sheet on 26.06.2015. Therefore, it is clear that even after the report of



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the Deputy Superintendent of Police, DCB, Nagercoil, for nearly 4 years, the police authorities have continued with the prosecution. The State has not initiated any action as against the police officials who were found to be guilty in the report of the Deputy Superintendent of Police, DCB, Nagercoil dated 29.04.2011. Therefore, the contention of the learned Additional Advocate General that only because of the report of the police officials, the petitioner was found innocent and therefore, the State is not liable to pay compensation is not legally sustainable.

26.In view of the above said facts and the judgement referred supra, this Court is of the view that the official respondents have violated the privacy and harmed the reputation of the writ petitioner. Therefore, the State is liable to pay compensation. The first respondent is directed to pay a compensation of Rs.2,00,000/~ to the writ petitioner within a period of 8 weeks from the date of receipt of a copy of this order and the State is at liberty to recover the same from the erring police officials if they are advised to do so.”

18.On careful reading of the judgment, it is clear that the State is liable for the acts of the done by the police officials and if police have violated the privacy and harmed the reputation of any individual, the State is liable to pay compensation.



19. The learned counsel appearing for the respondents relied upon the judgment in the case of ***Chelliah v. The Principal Secretary and others*** in ***W.P.(MD)No.5417 of 2016***, wherein this Court in para nos.15 and 17 reads follows:-

“15. The issue of entertaining writ petition for awarding compensation has been dealt by the Hon'ble Supreme Court on various occasions. The appropriate case on this point, to the knowledge of this Court is Sube Singh Vs. State Haryana and others, rendered by three Judges Bench, reported in 2006 (3) SCC 178. After tracing the history of awarding compensation for custodial death or custodial torture or violation of fundamental rights, the Hon'ble Supreme Court has concluded as below:

"45. Cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, nor any mark/scar, it may not be prudent to accept claims of human right violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims, either to mulct money from the State or as to prevent or thwart further investigation. Courts should, therefore, while jealously W.P.(MD)No.5417



of 2016 protecting the fundamental rights of those who are illegally detained or subjected to custodial violence, should also stand guard against false, motivated and frivolous claims in the interests of the society and to enable Police to discharge their duties fearlessly and effectively. While custodial torture is not infrequent, it should be borne in mind that every arrest and detention does not lead to custodial torture.

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability.

Where there is no evidence of custodial torture of a person except his own statement, and where such W.P.(MD)No.5417 of 2016 allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of



appropriate civil/criminal action.

47. We should not, however, be understood as holding that harassment and custodial violence is not serious or worthy of consideration, where there is no medical report or visible marks or independent evidence. We are conscious of the fact that harassment or custodial violence cannot always be supported by a medical report or independent evidence or proved by marks or scars. Every illegal detention irrespective of its duration, and every custodial violence, irrespective of its degree or magnitude, is outright condemnable and per se actionable. Remedy for such violation is available in civil law and criminal law. The public law remedy is additionally available where the conditions mentioned in the earlier paragraph are satisfied. We 17/27 <http://www.judis.nic.in> W.P.(MD)No.5417 of 2016 may also note that this Court has softened the degree of proof required in criminal prosecution relating to such matters."

17. Compensation for violation of fundamental right is both a common law remedy as well as civil remedy. If the Violator, who is an instrument of the State, has failed to discharge the sovereign function, the State becomes vicariously liable. However, it is not in all cases, compensation can be given under the public law remedy, that too, by invoking Article 32 or Article 226 of the Constitution of India. The Courts have entertained Writ Petitions and awarded compensation if violation of fundamental right or



custodial torture or abuse of power is patently seen from the record. Whereas the closure of complaint, acquittal by the Trial Court or by the Appellate Court per se will not give any right to seek compensation for violation of fundamental right. It has to be tested by the appropriate forum. Arbitrary claiming of compensation and arbitrary fixation of compensation summarily in a Writ Petition is unheard.”

20. On reading of the aforesaid judgment, it is clear that compensation for violation of fundamental right is both a common law remedy as well as civil remedy. If the violator, who is an instrument of the State, has failed to discharge the sovereign function, the State becomes vicariously liable. However, it is not in all cases, compensation can be given under the public law remedy, that too, by invoking Article 32 or Article 226 of the Constitution of India. In this case, already this Court has decided that there is no fault on the respondents and no any infringement of fundamental right and thereby, the judgments relied on by the petitioner cannot help to decide the case in his favour and as per the judgment produced by the respondents if any damages caused to the vehicle during judicial custody, he can seek civil remedy in accordance with law.

21. As far as the missing of spare parts is concerned, according to the



petitioner, some of the spare parts were missing. But at the time of receipt of return back of vehicle from the Court, he has not raised any objection with regard to missing of spare parts and the petitioner has not informed to the learned Judicial Magistrate No.II, Kuzhithurai as about the alleged missing spare parts. There is no materials produced to substantiate the above said claim of petitioner. However, the petitioner is at liberty to approach the concerned civil Court, if any damages caused to him and his property.

22. With the aforesaid observation, this Writ Petition is dismissed.

03.08.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes/No
Mrn

To

1. The Secretary to Government of Tamil Nadu,
Home Department,
Secretariat, Chennai.
2. The Superintendent of Police,
Kanyakumari District, Nagercoil.
3. The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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