



W.P.(MD).Nos.15320 of 2020 and 7189 of 2023

and

CrI.O.P.(MD).No.6549 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.15320 of 2020 and 7189 of 2023

and

CrI.O.P.(MD).No.6549 of 2023

W.P.(MD).No.15320 of 2020:

K.Ruth Florance

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The District Registrar,
Department of Registration,
Palayamkottai,
Tirunelveli District.

3.The Tahsildar,
Palayamkottai,
Tirunelveli District.

4.The Joint – 1 Sub-Registrar,
Palayamkottai,
Tirunelveli District.

5.Ragu @ Sudha Ganesh

... Respondents



W.P.(MD).Nos.15320 of 2020 and 7189 of 2023

and

Crl.O.P.(MD).No.6549 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the fourth respondent to enquire into the petitioner's representation dated 08.10.2020 and to cancel the family arrangement deed dated 14.10.2005 in Document No.3930/2005 registered on the file of the fourth respondent as well as to issue proper direction to the fifth respondent to pay maintenance by invoking the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

For Petitioner : Mr.A.Mohamed Haneef

For R-1 to R-4 : Mr.C.Baskaran,
Government Advocate.

For R-5 : Mr.R.Ponkarthikeyan

W.P.(MD).No.7189 of 2023:

Ruth Florance

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Sub Collector,
Tirunelveli,
Tirunelveli District.



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3.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

4.The Tahsildar,
Palayamkottai,
Tirunelveli District.

5.The Inspector of Police,
Perumalpuram Police Station,
Perumalpuram,
Tirunelveli District.

5.Ragu @ Sudha Ganesh

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing third and fifth respondents to conduct investigation on the petitioner's representation dated 08.03.2023 and take suitable action under the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizen Act, 2007 within the time stipulated by this Court.

For Petitioner : Mr.P.M.Vishnuvarthanan

For R-1, R-2
and R-4 : Mr.C.Baskaran,
Government Advocate.

For R-3 and R-5 : Mr.K.Sanjai Gandhi,
Government Advocate,
(Criminal Side).

For R-6 : Mr.R.Ponkarthikeyan



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CrI.O.P.(MD) No.6549 of 2023:

Sudha Ganesh

... Petitioner

Vs

1.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

2.The Inspector of Police,
Palayamkottai Police Station,
Tirunelveli Town.

3.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.

4.K.Anand

5.K.Ruth Florance

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the second and third respondents not to harass the petitioner under the guise of enquiry.

For Petitioner : Mr.R.Ponkarthikeyan

For R-1 to R-3 : Mr.K.Sanjai Gandhi,
Government Advocate,
(Criminal Side).

For R-5 : Mr.P.M.Vishnuvarthanan



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COMMON ORDER

The Writ Petition in W.P.(MD)No.15320 of 2020 is filed for Mandamus, directing the fourth respondent to enquire into the petitioner's representation dated 08.10.2020 and to cancel the family arrangement deed dated 14.10.2005 in Document No.3930/2005 registered on the file of the fourth respondent as well as to issue proper direction to the fifth respondent to pay maintenance by invoking the provisions of Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

2. The fifth respondent has executed the Family Arrangement deed on 14.10.2005. The Senior Citizen Act came into effect only in the year 2008. Admittedly, the document was executed prior to the Act. On perusing the contents of the said family arrangement, the petitioner had settled the property stated thereunder in favour of the 5th respondent and it ought to be termed as settlement deed. Moreover, the deed was executed with a clause that the executant is not having any right to revoke. Also, there is no condition that the 5th respondent ought to take care of the petitioner. Therefore, the petitioner cannot seek to cancel the settlement deed by invoking the Maintenance and



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Welfare of Parents and Senior Citizen Act, 2007. If the settlement deed is

executed without any clause for revocation, then the said settlement cannot be revoked. In such circumstances, the authorities cannot invoke the section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The said issue is settled by the Hon'ble Full Bench in the case of *Sasikala Vs. Revenue Divisional Officer & another reported in 2022 (5) CTC 257*. The relevant portion is extracted hereunder:

*“46. The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. **The second respondent has specifically stated that he has no right to revoke the settlement deed.** From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. **In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed....”***

Following the Hon'ble Full Bench Judgment, this Court is of the considered opinion that the prayer in W.P.(MD)No.15320 of 2020 to cancel the



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settlement deed dated 14.10.2005 cannot be granted and the writ petition is dismissed.

3. The petitioner has filed another Writ Petition in W.P.(MD)No.7189 of 2023 for Mandamus, directing the third and fifth respondent to conduct investigation on the petitioner's representation dated 08.03.2023 and take suitable action under the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizen Act, 2007.

4. Even though the settlement deed cannot be cancelled, the petitioner is entitled to monthly maintenance of Rs.5000/- (Rupees Five Thousand only). Since the petitioner is having two sons, the petitioner is entitled to claim Rs. 5000/- from each son. Therefore, the respondent son Sudha Ganesh is directed to pay Rs.5,000/- (Rupees Five Thousand only) to the petitioner Ruth Florance.

5. Further the writ petitioner is seeking bus pass. The respondent son is an employee in TNSTC and the family is entitled to bus pass and the petitioner as a mother of the TNSTC employee is also entitled to bus pass. Therefore, the son is directed to include the name of the petitioner mother in the family card,



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so that the official respondents shall issue bus pass to the petitioner. The petitioner is directed to cooperate for issuance of the bus pass.

6. With the above observations, the Writ Petitions are dismissed. No costs.

7. The Criminal Original Petition in Crl.O.P.(MD)No.6549 of 2023 is filed by Sudha Ganesh, who is arrayed as fifth respondent in W.P.(MD)No. 15320 of 2020 and arrayed as sixth respondent in W.P.(MD)No.7189 of 2023, with a prayer, directing the second and third respondents not to harass the petitioner under guise of enquiry.

8. The writ petitioner K.Ruth Florance has given a complaint against her son Sudha Ganesh. Under the guise of enquiry, the son Sudha Ganesah is being harassed by the police officials. Hence, the said Sudah Ganesah has filed this Criminal Original Petition. The Learned Counsel appearing for the petitioner relied on the judgment rendered in ***Lalithakumari vs. State of U.P*** [AIR 2014 SC 187], the Hon'ble Constitution Bench of the Supreme Court summarized law and issued following directions with regard to registration of F.I.R. For



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better appreciation, it is reproduced hereunder:-

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(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 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.*



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(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.*

9. Further, the Apex Court in ***Arneshkumar vs. State of Bihar and another*** [2015-1-L.W. (CrI.) 318] has directed the police officer to follow the provisions of section 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



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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;

(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.

10. It was brought to the knowledge of this Court regarding the consolidated instructions issued to the police officers by the Director General of Police, Chennai in Rc.No.521017/Crime 3(2)/2020 dated 25.01.2021. On perusal of the consolidated instructions, it is seen that the Director General of Police, Chennai issued 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*** [2015-1-L.W. (Crl.)



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318/ and also referred the order passed in **CrI.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.

11. Another Learned Single Judge of this Court in CrI.O.P(MD)No.1727 of 2016 vide order dated 01.02.2016 has observed the Code of Criminal Procedure nowhere contemplates the remedy of title 'not to harass' is available and has observed as under:

“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 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.”



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12. In view of the above legal and factual position, this Court hereby directs 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 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 are not following the above legal principles, it is inevitable to meet the consequences of violation of law.

13. With the above directions, this Criminal Original Petition is disposed of.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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