



CRP(MD)No.2396 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2396 of 2018
and
CMP(MD)No.10709 of 2018

1.State rep. by its
Chief Secretary,
Government of Tamil Nadu,
Having Office at Secretariat,
Fort St.George,
Chennai.

2.The Commissioner of Police,
Having Office at South Chithirai Street,
Madurai City.

: Petitioners

Vs.

1.Jahir Hussain

2.Chakkaravarthi

3.Duraipandi

4.Mayil

5.Panchatcharam

6.Natthar Oli

: Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 27.07.2018 passed in I.A.No.1157 of 2017 in O.S.No.571 of 2013 on the file of the Principal District Munsif Court, Madurai and set aside the same.

For Petitioners : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

For Respondents : No appearance

ORDER

The petitioners are defendants 1 & 2 in the suit in O.S.No.571 of 2013, which is pending before the learned Principal District Munsif, Madurai. They have filed an interlocutory application in I.A.No.1157 of 2017 under Order 1 Rule 10(2) CPC to delete their names from the suit. The trial Court, by order dated 27.07.2018, dismissed the interlocutory application that the petitioners are also vicariously liable. Aggrieved over the same, the petitioners have moved the present revision petition.

2.The case of the first respondent / plaintiff is that the defendants 3 & 4, the then Inspector of Police, B1 Vilakkuthoon Police Station, Madurai, at the instance



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of one Abdul Kadar, foisted a false case as against him in Crime No.946 of 2011, arrested him and he was detained for twelve days. Charge sheet was also filed and the learned VI Additional District Judge, Madurai, in S.C.No.157 of 2012, acquitted the first respondent / plaintiff. After the acquittal, the first respondent / plaintiff, claiming that he was arrested on a malicious prosecution by the defendants 3 & 4, has filed the suit claiming damages of Rs.1,00,000/-. In the suit, the first respondent / plaintiff has also arrayed the petitioners herein as the defendants 1 & 2 stating that they are also vicariously liable for the act of the defendants 3 & 4.

3.Learned Additional Government Pleader appearing for the petitioners submitted that the first petitioner is the Chief Secretary to the Government of Tamil Nadu and the second petitioner is the Commissioner of Police, Madurai City, Madurai. On receipt of summons in the suit, the petitioners have filed the interlocutory application to delete them as party to the suit, however, the trial Court, without considering their role in the commission of offence as projected by the plaintiff, has summarily rejected the petition stating that the petitioners are also vicariously liable.



4.Learned Additional Government Pleader has also relied on the decisions of this Court in ***WP.No.32337 of 2012, dated 15.02.2022 [S.Ramasamy v. State of Tamil Nadu and Another]*** and in ***WP(MD)No.17595 of 2020, dated 07.12.2020 [N.Dinesh v. Project Director, Sand Mining Operation, Trichy and Others]***, wherein, it was held that the Chief Secretary to the Government need not be impleaded as a party unnecessarily. Therefore, he prayed for appropriate orders.

5.There is no representation for the respondents.

6.This Court considered the submissions made by the learned Additional Government Pleader appearing for the petitioners and perused the available materials.

7.The third defendant, then Inspector of Police, B1 Vilakkuthoon Police Station, Madurai, along with the fourth defendant, has arrested the first respondent / plaintiff in connection with the case in Crime No.946 of 2011 and a final report was also filed as against the first respondent / plaintiff. The trial was commenced and the learned VI Additional District Judge, Madurai, in S.C.No.157 of 2012, acquitted the first respondent / plaintiff, with certain observations as against the



police officers. Therefore, the first respondent / plaintiff has filed the above suit claiming damages of Rs.1,00,000/- from the defendants. The claim of the plaintiff is that the petitioners herein, being the superiors of the defendants 3 & 4, are also vicariously liable for the act of the defendants 3 & 4.

8.The law is settled that master is vicariously liable for the acts of his servant, which is done in the course of his discharge of duty, provided such act is an authorized one. The master is not liable for the acts done by his servant, if it is done in his individual capacity. The case of the plaintiff is that the defendants 3 & 4 have foisted a false case as against him at the instance of one Abdul Kadar. It is not the case of the plaintiff that at the instance of the petitioners herein, the case was registered as against him.

9.The Chief Secretary of a State cannot be simply added as a party in all the cases, uniformly, without ascertaining his role in that case. In **S.Ramasamy's** case (supra), this Court has held as follows:-

“Unnecessary impleadment of Officers, causing embarrassment and mental pressure, shall be avoided by requesting the writ petitioner from deleting the unnecessary parties, as contested by the learned Additional Advocate General Mr.J.Ravindran. The Chief Secretary is



impleaded indiscriminately, even in Writ Petitions for Mandamus, for grant of Patta, cancellation of Patta, issuance of legal heir certificate, cancellation of trade licenses, provision of electricity connections so on and so forth. The impleading of Chief Secretary in all the writ petitions, in which, he is not at all answering respondent is causing great hardship. Therefore, the Chief Secretary to the Government need not be impleaded as a party in writ petitions unless it is warranted.”

10.In **N.Dinesh**'s case (supra), a Division Bench of this Court, wherein Myself was a party to the judgment, has observed that the Chief Secretary to the Government is unnecessarily added as a party to the proceedings and issued directions to the Registry not to entertain such petitions. An administrative order in this regard was also issued by the then Hon'ble Administrative Judge of the Madurai Bench of Madras High Court on 08.12.2020.

11.The first petitioner / Chief Secretary to the Government is not having any direct control over the defendants 3 & 4. There is a hierarchy of administration, from the Deputy Superintendent of Police / Assistant Commissioner of Police upto the Home Secretary. The Chief Secretary is the chief advisor to the Government and though he is having overall superintendence over the entire administration, he



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need not be added as a party in all the proceedings, when each Department is represented by a Secretary, assisted by Joint Secretaries and Deputy Secretaries. It would be an unnecessary harassment to the Chief Secretary from discharging his duty. Therefore, this Court is inclined to allow this revision petition insofar as the first petitioner is concerned.

12.As regards the second petitioner / the Commissioner of Police, Madurai City, Madurai, this Court is not inclined to entertain this revision, inasmuch as he is the immediate supervisory authority of the defendants 3 & 4 and having direct administrative control over them.

In the result, this civil revision petition stands disposed of and the name of the first petitioner / first defendant alone is deleted from the suit in O.S.No.571 of 2013. Considering the age of the suit, the trial Court shall proceed with the trial and shall conclude the same, as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes
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B.PUGALENDHI, J.

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To

The Principal District Munsif,
Madurai.

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